1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327.7500

Facsimile
916.441.5507

June 2, 2016

The Honorable Tani Cantil-Sakauye, Chief Justice,
and Honorable Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-3600

Re: *Rubenstein v. Doe No. 1*, Case No. S234269
(Court of Appeal Case No. D066722)
Letter in Support of Petition for Review

Dear Chief Justice Cantil-Sakauye and Honorable Associate Justices:

The California State Association of Counties ("CSAC") and the League of California Cities ("League") write in support of the Petition for Review in the above-mentioned case.

I. CSAC and League Interest in the Case.

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of County Counsels throughout the State. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case raises issues affecting all counties.

The League is an association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

The cities and counties that are members of the League and CSAC are responsible for providing countless services for the public benefit. In providing such services, cities and counties are inevitably subject to litigation. In order to provide services in an atmosphere of relative certainty concerning potential liability, the courts must strictly

construe the requirements of the Government Claims Act, and limit public entity liability only to those cases when the various requirements of the Act are satisfied.

II. Review Should Be Granted to Resolve a Dispute on the Proper Application of *Shirk v. Vista Unified School District.*

CSAC and the League participated as Amici Curiae before this Court in *Shirk v. Vista Unified School District* (2007) 42 Cal.4th 201. In that case, this Court was called upon to resolve the issue of whether the timelines contained in the statutory scheme commonly known as the California Government Claims Act (Cal. Gov. Code, §§ 810-996.6) for presenting a claim to a public entity were altered by amendments to the Code of Civil Procedure reviving certain claims of childhood sexual abuse that would otherwise be barred by the statute of limitations. (Code Civ. Proc., § 340.1.) Section 340.1 allows actions for recovery of damages suffered as a result of childhood sexual abuse to be filed "within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse."

In facts strikingly similar to the present case, the plaintiff in *Shirk* experienced abuse in the 1970s, but discovered she suffered psychological damages in 2003 after undergoing counseling. She filed a claim against the school district, alleging the action was permitted under the delayed discovery rules in section 340.1. This Court concluded that Code of Civil Procedure section 340.1 allows claims that are barred solely by a statute of limitations, but because the Government Claims Act is not solely a statute of limitations provision, Section 340.1 did not relieve her of the obligation to timely file a claim with the school district.

In response to the *Shirk* decision, the Legislature amended the Government Claims Act (Gov. Code, § 905), to include an exemption to the claim filing requirement for delayed discovery sexual abuse claims. That amendment specifically states that it applies only prospectively "to claims arising out of conduct occurring on or after January 1, 2009." The bill's analysis notes that the prospective application was included to "reduce the bill's financial impact on local public entities."

In the present case, plaintiff alleges that the sexual abuse occurred in 1994 (obviously well before January 1, 2009), but that the repressed memories of the abuse did not resurface until 2012. Thus, just as in *Shirk*, plaintiff suffered abuse decades before, but became aware of the damages of the earlier abuse more recently. Although plaintiff's claim is not barred by the statute of limitations because the delayed discovery provisions

of the Code of Civil Procedure permit such claims, plaintiff's claim is, just as in *Shirk*, barred by the Government Claims Act. As this Court noted in *Shirk*, the Government Claims Act is not merely a statute of limitations provision, but acts as a separate requirement for pursuing claims against public agencies. And since the revisions to the Government Claims Act specifically state that the claims requirements are only waived for conduct occurring after January 1, 2009, the claim was properly denied for conduct occurring in 1994.

The Court of Appeal, however, concluded otherwise. The court made note of the 2008 amendment to the Claims Act, even noting that the amendment allows an exception to the claims presentment requirements only for claims arising out of conduct occurring after January 1, 2009. But then the court inexplicably states: "Because the conduct in this case occurred in 1994, this amendment does not apply." Despite the fact that the amendment was put into place specifically to address the *Shirk* case, and that it unequivocally waives the claim presentment timelines only for conduct occurring after January 1, 2009, the court found the amendment was "not relevant here."

In these two cases, with nearly identical facts, the only difference is a change in the statute that waives the claim presentment requirements for claims based on conduct occurring after January 1, 2009. Where conduct occurs before 2009, the results should be the same as *Shirk*. This Court should grant review to resolve this conflict.

III. Review is Warranted as Claims Presentment Requirements are an Issue of Significant Ongoing Interest.

As this Court noted in the *Shirk* opinion, "[t]imely claim presentation is not merely a procedural requirement, but is . . .'a condition precedent to plaintiff's maintaining an action against defendant.'" (*Shirk, supra,* 42 Cal.4th at p. 209.) Interpretation of the Claims Act requirements is therefore a continuing interest to this State's cities and counties.

The Government Claims Act serves an important function in the scheme of public entity liability, and is part of the careful balancing of competing policies undertaken by the Legislature when the Government Claims Act was enacted. The Claims Act is the result of the Legislature's recognition that government agencies provide unique and necessary services to the people, including issuing and revoking licenses, ordering a quarantine of sick persons, prosecuting and incarcerating violators of the law, administering prison systems, and building and maintaining thousands of miles of streets, sidewalks, and highways. Providing these services puts local agencies in a particularly vulnerable position that warrants a higher level of protection against legal claims than given to

private entities. (Calif. Law Rev. Comm., 4 Reports Recommendations and Studies 807 (1963).)

Historically, the practical necessity of exercising these government functions led to creation of the doctrine of sovereign immunity, which generates from the legal fiction that the king can do no wrong. (See *People v. Superior Court of San Francisco* (1947) 29 Cal.2d 754, 756.) As this common law developed in California, numerous inconsistencies developed as well. (*Elson v. Public Utilities Commission* (1975) 51 Cal.App.3d 577, 583.) To address the significant policy issues at stake in a comprehensive fashion, the Legislature appointed a Law Revision Commission to thoroughly study the issue of governmental immunity and make policy recommendations. The work of the Law Revision Commission became, in essence, the first version of the Government Claims Act, which was enacted in 1963. (Stats 1963 ch 1681 § 1.)

The Government Claims Act is the Legislature's attempt at reconciling two competing policy considerations—protecting the public fisc from the liability that arises from providing critical public services, and protecting individuals from bearing the burden of loss caused by government actions. In striking the balance between the objectives, the Act has both substantive and procedural elements. Substantively, the statute abolished all common law liability based on the doctrine of absolute sovereign immunity. (*Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450.) Instead, all government liability must be based on statute. (*Elson v. Public Utilities Commission* (1975) 51 Cal.App.3d 577.) The general rule in California since 1963 is sovereign immunity, with government liability limited to exceptions specifically set forth by statute. (*Wright v. State of Calif.* (2004) 122 Cal.App.4th 659.)

But in addition to these more substantive provisions, the Government Claims Act contains certain procedural requirements as part of striking the balance between the competing policy concerns. Of particular interest to this case is the requirement that a claim be filed with the public entity within a certain timeframe after an incident giving rise to a cause of action has occurred. (Gov. Code, §§ 910 et seq.) In other words, the Legislature determined that it would allow government liability only under specified conditions, including compliance with certain procedural safeguards.

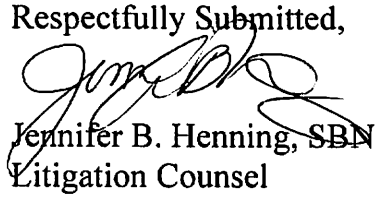
As such, courts should require strict compliance with the claims presentment rules established by the Legislature. Here, the Legislature unmistakably authorized claims to be filed in delayed discovery sexual abuse cases only when the underlying conduct occurred after January 1, 2009. To conclude that this amendment is irrelevant not only ignores this Court's ruling in *Shirk,* but also disregards the careful balancing undertaken

by the Legislature in the Government Claims Act. Review should be granted to address this issue of ongoing interest.

IV. Conclusion

The Court of Appeal's opinion creates a conflict with this Court's opinion in *Shirk v. Vista Unified School District* and involves an issue of ongoing interest. CSAC and the League therefore urge this Court to grant the Petition for Review.

Respectfully Submitted,



Jennifer B. Henning, SBN 193915
Litigation Counsel
California State Association of Counties

Proof of Service Attached

Proof of Service by Mail

Rubenstein v. Doe No. 1
Case No. S234269

I, MARY PENNEY, declare:

That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within **LETTER IN SUPPORT OF PETITION FOR REVIEW** by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Proof of Service List

Party	Attorney
Latrice Rubenstein : Plaintiff and Appellant	Elliott N. Kanter Law Offices of Elliott N. Kanter, PC 2445 Fifth Avenue, Suite 350 San Diego, CA 92101 Justin O. Walker Law Offices of Elliott N. Kanter 2445 Fifth Avenue, Suite 350 San Diego, CA 92101
Doe No. 1, et al. : Defendant and Respondent	Richard J. Schneider Reece Allen Roman Lee Harris Roistacher Daley & Heft 462 Stevens Avenue, Suite 201 Solana Beach, CA 92075
Court of Appeal	Clerk of the Court Fourth District Court of Appeal, Div. 1 750 B Street, #300 San Diego, CA 92101-8189

Trial Court	Imperial County Superior Court Attn: Hon. Juan Ulloa 939 West Main Street El Centro, CA 92243

and by placing the envelopes for collection and mailing following our ordinary business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 2, 2016, at Sacramento, California.

MARY PENNEY