A169314

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION 5

West Contra Costa Unified School District,
Defendant and Petitioner,

v.

Contra Costa County Superior Court,
Respondent;

Jane Doe A.M.M.
Real Party in Interest.

Case No. C22-02774
Hon. John P. Devine, Trial Judge
Contra Costa County Superior Court

APPLICATION TO FILE AMICI CURIAE BRIEF AND BRIEF OF PUBLIC JUSTICE, CHILD USA, EQUAL RIGHTS ADVOCATES, AND NATIONAL CENTER FOR VICTIMS OF CRIME

PUBLIC JUSTICE
Sean Ouellette
Adele P. Kimmel, SBN 126843
1620 L Street NW, Suite 630
Washington, DC 20036
Telephone: (202) 797-8600
Email: souellette@publicjustice.net
akimmel@publicjustice.net

ATTORNEYS FOR AMICI CURIAE

COURT OF APPEAL First **APPELLATE DISTRICT, DIVISION** Five

COURT OF APPEAL CASE NUMBER: A169314

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 126843
NAME: Adele P. Kimmel
FIRM NAME: Public Justice
STREET ADDRESS: 1620 L St. NW
CITY: Washington STATE: DC ZIP CODE: 20036
TELEPHONE NO.: (202) 797-8600, ext. 229 FAX NO.:
E-MAIL ADDRESS: akimmel@publicjustice.net
ATTORNEY FOR (*name*): Amici Curiae

SUPERIOR COURT CASE NUMBER: C22-02774

APPELLANT/ PETITIONER: West Contra Costa Unified School District

RESPONDENT/ REAL PARTY IN INTEREST: Contra Costa County Superior Court / Jane Doe A.M.M.

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [x] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party *(name*): Amici Curiae Public Justice, CHILD USA, Equal Rights Advocates, and National Center for Victims of Crime

2. a. [x] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	Nature of interest *(Explain):*
(1)		
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 4/11/2024

Adele P, Kimmel
(TYPE OR PRINT NAME)

s/ Adele P. Kimmel
(SIGNATURE OF APPELLANT OR ATTORNEY)

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APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF

Amici Curiae Public Justice, CHILD USA, Equal Rights Advocates, and the National Center for Victims of Crime respectfully seek permission to file the accompanying brief as amici curiae in support of Respondent and Plaintiff Jane Doe, the real party in interest. *See* Cal. Rule of Court 8.200(c)(3). Amici each have significant experience working with victims of childhood sexual abuse—including many victims who did not disclose their abuse well into adulthood. Given their significant experience and expertise, Amici are well-positioned to offer current research and analysis regarding the constitutionality of California's revival law, the statistics and science concerning the disclosure of sexual abuse by survivors, and the widely-recognized public interest in reviving expired sexual abuse claims.

Public Justice is a national public interest advocacy organization that fights against abusive corporate power and predatory practices, the assault on civil rights and liberties, and the destruction of the earth's sustainability. In its Students' Civil Rights Project, Public Justice often represents students denied equal educational opportunities because of sexual harassment and abuse suffered at school, including hundreds of survivors who did not disclose the abuse until adulthood. Based on its experience, Public Justice believes that access to justice for survivors of sexual abuse is essential not only to protect students' right to learn free from sexual harassment and abuse, but also to get them the closure and compensation they need to recover.

CHILD USA is an interdisciplinary nonprofit think tank fighting for the civil rights of children. It pairs in-depth legal analysis with cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors. This case directly implicates its mission to protect children from sex abuse and eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions.

Equal Rights Advocates (ERA) is a national civil rights advocacy organization dedicated to protecting and expanding economic and educational access and opportunities for people of all marginalized gender identities. Since its founding in 1974, ERA has led efforts to combat sex discrimination and advance gender equality by litigating high-impact cases, engaging in policy reform and legislative advocacy campaigns, conducting community education and outreach, and providing free legal assistance to individuals experiencing unfair treatment at work and in school through our national Advice & Counseling program. ERA has filed hundreds of suits and appeared as amicus curiae in numerous cases to defend and enforce gender equity civil rights in state and federal courts, including before the United States Supreme Court. Headquartered in California, ERA's Advice & Counseling program receives thousands of inquiries and requests for legal information and assistance regarding childhood sexual assault in per year. In the twenty years that ERA has administered its Advice & Counseling program, a number of calls have come in from adults who were sexually abused as children in schools, including in California schools, and are only able to come forward and seek legal advice and counsel years, and sometimes decades, after the egregious harm they suffered. ERA therefore strongly asserts that the California Legislature's efforts to provide victims of sexual assault with access to justice, and thereby the result of this case, is essential for student's access to school, the widely-recognized public interest of gender equity at work and at school, and access to meaningful economic security for women and children throughout their lifetimes.

National Center for Victims of Crime (NCVC), a nonprofit organization based in Washington, D.C., is a leading resource and advocacy organization for all victims of crime. The mission of NCVC is to forge a national commitment to help victims of crime rebuild their lives. Dedicated to serving individuals, families, and communities harmed by crime, NCVC,

among other efforts, advocates for laws and public policies that create resources and secure rights and protections for crime victims. To that end, NCVC has filed and joined in amicus curiae briefs in cases across the country to advance the rights and interests of crime victims, including victims of abuse or sexual assault. This case involves an issue of great importance to the community of crime victims served by the NCVC.

No party or party's counsel authored the attached amicus curiae brief in whole or in part. Other than amici curiae and their members, no person or entity made a monetary contribution intended to fund the preparation or submission of this brief.

Accordingly, Amici respectfully request that this Court grant them leave to file the attached brief in this matter.

Respectfully submitted,

/s/Sean Ouellette
Sean Ouellette
Adele P. Kimmel, SBN 126843
PUBLIC JUSTICE
1620 L Street NW, Suite 630
Washington, DC 20036
Telephone: (202) 797-8600
souellette@publicjustice.net
akimmel@publicjustice.net

Counsel for Amici Curiae

AMICI CURIAE BRIEF

INTRODUCTION

California's AB 218 is one of many state laws enacted to restore access to the justice that thousands of childhood sexual abuse victims have long been owed. When West Contra Costa Unified School District (the "District") knowingly exposed Jane Doe to repeated sexual assaults by her guidance counselor for her entire high school career, it violated California law and owed her compensation. That debt is now over forty years overdue. To pay it now would not be a "gift"; it would be justice. In restoring Jane's right to seek that relief in court, AB 218 aligns both with the California Constitution and the state's highest ideals.

Amici submit this brief to make two key points. First, the government does not give a "gift" when it simply pays what it owes, or when it reopens the courthouse doors to pre-existing claims. Second, even if AB 218 were a gift on its face, it is constitutional because it serves a public purpose recognized in the California Constitution itself, AB 218's legislative history, and the laws of at least 33 states and territories: to give child sexual abuse victims access to compensation that will help relieve the lifelong psychological and economic costs of abuse on both victims themselves and the public at large—costs that are well-documented in scientific literature.

For these reasons, Amici urge the Court to uphold AB 218, deny the District's petition for a writ of mandate, and affirm the Superior Court's order denying the District's Demurrer to Plaintiff's Second Amended Complaint.

I. The Government Does Not Give Victims a "Gift" When It Compensates Them for Violating their Legal Rights

To interpret the California Constitution, the Court must "look first to the language of the constitutional text, giving the words their ordinary meaning. [Citation.]" (*Thompson v. Dep't of Corr.* (2001) 25 Cal. 4th 117, 122.) Using the ordinary meaning of the word, the government does not

award a "gift" when it compensates someone for violating their legal rights. A gift is "a transfer of personal property, made voluntarily, and without consideration." (*Allied Architects' Ass'n of Los Angeles v. Payne* (1923) 192 Cal. 431, 438, citing Civ. Code § 1146) "'To be a gift, this voluntary transfer must be gratuitous—a handing over to the donee something for nothing.' [Citation.]" (*Id*. at p. 439) But compensating someone for damages the government caused (and for which the law made it responsible) when it enabled their sexual abuse is not "something for nothing": it is the payment of a liability that arose when the government violated the law. As is "well settled," "the extinguishment . . . of a pre-existing debt constitutes a valuable consideration" for the transfer of property (*Hart v. Church* (1899) 126 Cal. 471, 480). That is true even after the statute of limitations expired so the creditor can no longer sue. (*See Ferguson v. Larson* (1934) 139 Cal. App. 133, 135-36). So the state's decision to have municipalities pay damages they legally owe sexual abuse victims is not a "gift," regardless of whether the victim could have gone to court to force them to pay.

That fits the ordinary usage of the term. If a thief gave back stolen property, no one would call that a "gift"—even if the victim had no right to sue him for the conversion. Nor would anyone call it a "gift" if he destroyed the property and paid the victim back for its value. That is because in either case, the wrongdoer *owes* the victim compensation. As the District admits (Pet. 32), such restitution is constitutional (and is not a "gift") even after the statute of limitation has expired and the victim can no longer sue. (*Bickerdike v. State* (1904) 144 Cal. 681, 692 [holding a statute reviving stale claims did not violate the Gift Clause because "[t]he payment of such a debt by the debtor is not a 'gift,' in any proper sense of the word"]; *see also Coats v. New Haven Unified Sch. Dist*. (2020) 46 Cal. App. 5th 415, 425 ["Legislation reviving the statute of limitations on civil law claims does not violate constitutional principles."].) The same holds true here: the District violated

the law, caused Jane damages, and has owed her compensation for more than four decades. *See* Return at pp. 24-25. If the jury ordered the District to pay those damages, that would be fair compensation, not a "gift."

Supreme Court precedent confirms that AB 218 does not give victims a "gift" simply because it gives them a path to recover the compensation the state institutions who enabled their abuse have long owed them. In *Chapman v. State* (1894) 104 Cal. 690, 696, the Court held that the state does not violate the Gift Clause when it creates a retroactive "right to sue" the state for damages caused by conduct that was already unlawful. There, the state negligently destroyed the plaintiff's goods, which breached its contract with the plaintiff. (*Id.* at p. 695.) Just like here, the state was legally responsible for the damage when it occurred. (*Id.* at p. 696) At the time, however, "there was . . . no law giving to the plaintiff's assignors the right to sue" for the violation: instead, they had to present their claim to a state board or the legislature, which would simply decide whether to pay it. (*Id.*) The legislature later passed a law that allowed people to sue the state for breach of contract. (*Id.*) As here, the state argued that the new cause of action was unconstitutionally retroactive and violated the Gift Clause. (*Id.*) The Supreme Court disagreed. As the Court put it there, "[t]he state was always liable"; the new law "merely gave an additional remedy for the enforcement of such liability[.]" (*Id.*) That the plaintiff previously lacked the right to sue did "not establish that he ha[d] no claim against the state, or that no liability exists from the state to him. It only show[ed] that he [could not] enforce against the state his claim." (*Id*.) Because the new law just allowed the plaintiff to recover what the state already owed him, it was not a "gift."[1]

[1] *Chapman* noted that the new law could not have provided the plaintiff with a new tort claim (as opposed to a contract claim) against the state because, under the substantive law as it existed at the time, the state was not liable in tort for the negligence of its employees unless they breached a contract

The Court reached a similar conclusion in *Gilman v. Contra Costa County* (1856) 6 Cal. 676, 676, holding that the plaintiff could use a retroactive statutory right-of-action to sue the county for an earlier breach of contract, even though sovereign immunity barred the suit when the breach occurred. Thus, since *Chapman* and *Gilman*, it has been "well settled" that the legislature may constitutionally create "a new means of enforcing an existent right." (*Maguire v. Cunningham* (1923) 64 Cal. App. 536, 551.)

Chapman and *Gilman* compel affirmance. Here, as in those cases, the District has always been liable for Jane's damages—she just lacked the right to sue for them. (*See Dailey v. Los Angeles Unified Sch. Dist.,* 2 Cal. 3d 741, 747 (1970) ["[A] school district is vicariously liable for injuries proximately caused by [its] negligence" in supervising students.]; Gov't Code § 815.2 [providing that "[a] public entity is liable" for the tortious acts of its employees].) As the California Supreme Court has held, a claim "for childhood sexual molestation generally accrues"—meaning liability arises—"at the time of the alleged molestation," not when the plaintiff later presents her claim to the municipality. (*Rubenstein v. Doe No. 1* (2017) 3 Cal. 5th 903, 910; *see also V.C. v. Los Angeles Unified Sch. Dist.* (2006) 139 Cal. App. 4th 499, 508 [A claim accrues "'when, under the substantive law, the wrongful act is done,' or the wrongful result occurs, and the consequent 'liability arises.' [Citation.]"]) Here, then, the District was liable to Jane when it let her guidance counselor sexually abuse her, regardless of whether she

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(*Chapman*, *supra*, 104 Cal. at p. 693, citing *Bourn v. Hart* (1892) 93 Cal. 321, 328 [explaining that at the time, "the doctrine of *respondeat superior*" did not make the state liable for the acts of public employees, an exception based "on grounds of public policy which deny its liability for such damages" and not on sovereign immunity]). That distinction does not matter here, however, because a post-*Chapman* 1963 California statute made the District liable for its agents' negligence when it occurred. (*See* Gov't Code § 815.2).

formally presented her claim to the District. And that makes sense: were it otherwise, no victim would have any claim to present in the first place.

Indeed, this case is easier than *Chapman* and *Gilman*. Here, the legislature has *not* created an entirely new right to sue the government for past legal violations, as it did in *Chapman* and *Gilman*. Instead, it simply waived a "condition precedent" to a lawsuit. (Pet. 24.) If creating a whole new right-to-sue for a past violation does not violate the Gift Clause (as the Court held in *Chapman* and *Gilman*), then simply removing a "condition precedent to filing suit," as AB 218 does (Pet. 24), cannot violate it either.

In arguing otherwise, the District wrongly suggests that it never owed Jane anything because the claim-presentation requirement was an "element" of her "cause of action." (Pet. 19.) But this confuses the elements of the District's *liability*—the facts that make it "obliged by law or equity" to compensate Jane (*Liable*, Oxford English Dict. (July 2023))—with the elements of Jane's "cause of action, which is the right to relief in court." (*Klopstock v. Superior Ct. for City & Cnty. of San Francisco* (1941) 17 Cal. 2d 13, 18; *Cause of Action*, Black's Law Dict. (11th ed. 2019) ["[A] factual situation that entitles one person to obtain *a remedy in court* from another person" (italics added)].) The claim presentation requirement is one of the latter: a plaintiff must plead it to show she has a "cause of action"—an entitlement to relief in court. (*California v. Superior Ct.* (2004) 32 Cal. 4th 1234, 1240 [explaining that the claim-presentation requirement is an "element[ ] of the plaintiff's *cause of action*" that must be pled under Cal. R. Civ. P. 430.10 because it "condition[s] the *right to sue* . . . upon timely filing of claims" (italics added)]; *Thomas v. Regents of Univ. of California* (2023) 97 Cal. App. 5th 587, 612 [To survive a demurrer, the complaint must plead a "right to relief."].) But just like in *Chapman*, that Jane lacked the right to judicial relief "does not establish that [s]he ha[d] no claim against the state, or that no liability exist[ed] from the state to [her]." (104 Cal. at p. 696.)

This case thus differs from the *Lochner*-era case law the District cites, in which the state never violated any pre-existing law and thus never owed compensation to the victim. (*See Conlin v. Bd. of Sup'rs of City & Cnty. of San Francisco* (1893) 99 Cal. 17, 23-24 [holding that the city could not appropriate money to pay a specific contractor because it never had any "legal claim or obligation" to the contractor, who had agreed that the city would not be liable for the work]; *Bourn v. Hart* (1892) 93 Cal. 321, 327 [holding that payment to plaintiff injured in state service was a gift because under then-existing common-law principles, "the state was under no legal liability to compensate [someone] for any loss which he may have sustained while thus in the discharge of his duties"]). Along the same lines, in *Heron v. Riley* (1930) 209 Cal. 507, 517, the court upheld a law that made the state liable for its employees' negligent driving when, at common law, the state was not previously liable for the negligent acts of employees (*see supra* n.1). In upholding the law, the Court simply stated *in dicta* that the state may not retroactively create such "liability" where none existed before. (*Heron*, *supra*, 209 Cal. at p. 517.) None of these cases denied that the state could create a *remedy* to enforce a liability that already existed, as AB 218 does.

Accordingly, AB 218 does not give childhood sexual abuse victims a "gift" under the Constitution.

II. AB 218 is Constitutional Because It Serves the Public Interest in Allowing Sexual Abuse Victims Access to Justice

But even if AB 218 were a gift on its face, it would still be constitutional because it serves a public purpose. The Gift Clause was designed to ban "private statutes" that made "direct appropriations to *individuals*"—not to hobble laws that serve the public interest. (*Jarvis v. Cory* (1980) 28 Cal. 3d 562, 577, quoting *Stevenson v. Colgan* (1891) 91 Cal. 649, 651.) So money that serves a "public purpose" is not a "gift." (*City of Oakland v. Garrison* (1924) 194 Cal. 298, 302; *see also Atl. Richfield Co. v.*

County of Los Angeles (1982) 129 Cal. App. 3d 287, 298 ["[I]t is well established that a relinquishment of rights by the state—if made for a public purpose—will not violate the constitutional prohibition."]). The legislature's determination that something serves a "public purpose" should "not [be] disturbed by the courts so long as it has a reasonable basis." (*Alameda County v. Janssen* (1940) 16 Cal.2d 276, 281; *20th Century Ins. Co. v. Superior Ct.* (2001) 90 Cal. App. 4th at 1263–64 ["[I]t is the Legislature, not the courts, which is the proper forum for resolving the competing policy interests involved in the decision to revive a time-barred claim."]).

The California legislature enacted AB 218 to serve a foundational public purpose: to give a whole class of the public—victims of childhood sexual abuse—access to justice. It recognized that childhood sexual abuse is a "systematic" problem, not a private one limited to a few individuals. Plaintiff's Request for Judicial Notice ("PRJN") Ex. 2, Sen. Rules Com., Analysis of A.B. 218 (2019-2020 Reg. Sess.), at p.5. It considered the "horrific damage and life-long trauma" that victims carry with them into adulthood. PRJN Ex. 5, Sen. Judiciary Com., Analysis of A.B. 218 (2019-2020 Reg. Sess.) as amended March 25, 2019, at p. 8 (detailing the "depression, guilt, shame, self-blame, eating disorders, somatic concerns, anxiety, dissociative patterns, repression, denial, sexual problems, and relationship problems" that haunt victims). And it sought to overcome the psychological, social, and institutional forces that have historically silenced abuse victims and left them without remedies against those responsible for the harm. Recognizing the "stigma" and the "complex psychological effects" that have stifled and delayed reports of abuse, the legislature concluded that "the systematic incidence of childhood sexual assault in numerous institutions in this country and the cover-ups that accompanied them arguably make both a revival period and an extended statute of limitations warranted." PJRN Ex. 2, Sen. Rules Com., Rep. on A.B. 218 (2019-2020 Reg. Sess.), at

p.5. As the Senate Rules Committee put it: "This bill provides another chance for victims, who are currently barred from pursuing claims based solely on the passage of time, to seek justice." (*Ibid.*)

This Court has already held giving sexual abuse victims access to justice serves an "important state interest." (*Liebig v. Superior Ct.* (1989) 209 Cal.App.3d 828, 834.) In *Liebig*, the Court held that AB 218's predecessor—which also revived claims for childhood sexual abuse—was constitutional in part because even if a defendant had a protected "vested right" to be free from a time-barred claim, "the law is clear" that "retroactive laws" may take away vested rights "when an important state interest is at stake." (*Ibid.*) Critically here, the Court held that laws meant to "maximize claims of sexual-abuse minor plaintiffs for as expansive a period of time as possible" serve an "important state interest." (*Id.*) Although *Liebig* involved a due process challenge, its reasoning applies equally to the Gift Clause: laws like AB 218 could only serve an "important state interest"—and could only authorize the state to take someone else's vested rights—if they served "public purpose." Under *Liebig*, then, AB 218 serves a public purpose.

The legislature had more than one "reasonable basis" to conclude that AB 218 served such a purpose. (*Janssen*, *supra*, 16 Cal.2d at p. 281.) First, like its predecessor, AB 218 provides a path to relief for a large class of people—childhood sexual abuse victims—to help them recover from the long-lasting psychological and financial costs of abuse. And second, by giving victims resources they need to recover and contribute more fully to society, AB 218 helps relieve the public from costs it would otherwise bear due to the long-term damage inflicted by sexual abusers and their enablers.

A. AB 218 Relieves a Large Class of the Public—Childhood Sexual Abuse Victims—from Undeserved Hardship

As the California Supreme Court has repeatedly held, appropriations that help relieve a class of the public from undeserved hardship serve a public

purpose—even when the state did not owe any pre-existing debt. "[A] wide variety of welfare and other social programs have been upheld against constitutional challenge" for this reason. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 746; *City and County of San Francisco v. Collins* (1932) 216 Cal. 187, 190 [holding that expenditures for relief for the indigent poor served a "public purpose" and were not gifts]; *Scott v. State Bd. of Equalization* (1996) 50 Cal.App.4th 1597, 1605 ["A relief of hardship to a taxpayer is a valid public purpose[.]"]; *Janssen*, *supra*, 16 Cal.2d at p. 282 [holding that the release of tax liens for indigent taxpayers served a public purpose because it relieved them from hardship, even though the municipality had a vested right to the lien and no obligation to release it].) Were it otherwise, the Gift Clause would threaten scores of government programs meant to aid victims of crime and relieve other common hardships simply because their beneficiaries had no pre-existing claim to the funds. (*See*, *e.g.*, Cal. Gov't Code § 13950 [creating the California Victim Compensation Board, which provides crime victims with financial assistance based on the declared "public interest to assist residents of the State of California in obtaining compensation for the pecuniary losses they suffer as a direct result of criminal acts"]; California Victim Compensation Board, About the Board, CA.gov, https://victims.ca.gov/board/.)

By reopening the path to compensate victims for the damages caused by sexual abuse, AB 218 helps relieve lasting emotional and financial hardships borne by thousands of Californians. Recent data confirms this. An estimated 3.7 million American children experience sexual abuse each year. (Ctrs. for Disease Control, *Preventing Child Sexual Abuse*, CDC.gov, at p. 2 https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf [citing peer-reviewed studies]). It affects 1 in 4 girls and 1 in 13 boys. (*Ibid.*)

As the legislature found, victims of childhood sexual abuse are more likely to develop both psychological and physical health issues than other

kids: they are more likely to develop serious anxiety, depression, PTSD, and borderline personality disorder; more likely to abuse drugs; more likely to experience obesity, eating disorders, and poor overall health; more likely to struggle with family relationships, get divorced, and have difficulty parenting; and more likely to experience further abuse. (Darkness to Light, *The Issue of Child Sexual Abuse* (2023), at pp. 12-13, https://www.d2l.org/wp-content/uploads/2023/03/Child-Sexual-Abuse-Updates.pdf). When the abuse includes penetration, victims are "nearly twelve times more likely to commit suicide." (Karen M. Matta-Oshima et al., *The Influence of Childhood Sexual Abuse on Adolescent Outcomes: The Roles of Gender, Poverty, and Revictimization* (2014) 23 J. Child Sexual Abuse, 367, 369-70.) And they are less likely to finish high school, attend college, or complete college. (*Id.* at 370.)

This all leads to crippling financial costs that snowball well into adulthood. As the legislature recognized, "[t]he flip side of the burden of the cost of these claims on schools, churches, and athletic programs that protected sexual abusers of children is the lifetime damage done to those children." (PRJN Ex. 8, Assemb. Judiciary Com., Analysis of A.B. 218 (2019-2020 Reg. Sess.) at p. 11). Women with a history of childhood sexual abuse require healthcare with costs 16% higher than those who were not abused. (Amy E. Bonomi et al., *Health Care Utilization and Costs Associated with Childhood Abuse* (2008) 23 J. Gen. Internal Med. 294, 298.) At the same time, female sexual abuse victims earn 20.3% less than other women. (Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States* (2018) 79 Child Abuse & Neglect 413, 416.) Studies have put the average lifetime cost of childhood sexual abuse at $282,734 as of 2015 for women ($14,357 in childhood healthcare costs, $9,882 in adulthood medical costs, $223,581 in lost earnings, $8,333 in child welfare costs, $2,434 in violence and crime costs, $3,760 in special education costs,

and $20,387 in suicide death costs) and $74,691 for men—a conservative estimate due to insufficient data. (*Id.* at 417.) These studies estimate a loss of quality of life equal to around $41,001 per victim. (*Id.*)

Without AB 218, scores of victims would be forced to bear these psychological and financial hardships without compensation. Most abuse victims do not disclose their abuse (let alone file a lawsuit) within the typical limitations period. As the legislature recognized, children face well-researched psychosocial barriers to reporting abuse. (*See* PRJN Ex. 8, Assemb. Judiciary Com., Analysis of A.B. 218 (2019-2020 Reg. Sess.), at p. 2 [recognizing the "uniqueness of childhood sexual abuse and the difficulty that younger victims may have fully understanding the abuse, coming to terms with what has occurred, and then coming forward in a timely fashion"].) Trauma responses, repressed memories, guilt, shame, and fear all discourage disclosure, effects that compound in institutional settings. (Andrew Ortiz, *Delayed Disclosure*: *CHILD USA 2023 Fact Sheet* (2023), at pp. 2-3, https://childusa.org/wp-content/uploads/2023/08/Delayed-Disclosure-2023_FINAL.pdf; Dafna Tener & Sharon B. Murphy, *Adult Disclosure of Child Sexual Abuse: A Literature Review* (2025) 16 Trauma, Violence, & Abuse 395.) As a result, approximately 70-75% of survivors of child sexual abuse do not report within five years of the abuse. (Delphine Collin-Vèzina et al., *A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse* (2015) 43 Child Abuse & Neglect 123, 124.) In fact, one study found that 44.9% of male victims and 25.4% of female child sex abuse victims first disclosed their abuse *more than twenty years* after it occurred. (Patrick J. O'Leary & James Barber, *Gender Differences in Silencing following Childhood Sexual Abuse* (2008) 17 J. Child Sex Abuse 133.) This translates to a harsh reality: more victims first disclose their child sex abuse between ages *fifty and seventy* than during any other age. (CHILD USA, *History of Child Sex Abuse Statutes of*

Limitation Reform in the United States: 2002 to 2021 (June 21, 2022) at p. 3, https://childusa.org/6-17-2022-2021-sol-report-final/; *see also* Ortiz, *supra*, at 2-3 [noting that in a study of sexual abuse in the Boy Scouts of America, researchers found that over half of survivors first disclosed their abuse at age fifty or older].) As a result, most victims cannot bring their claims within the short timeframes historically allotted by statutory deadlines.

AB 218 serves a public purpose by allowing the children (now adults) who faced these common barriers to disclosure to seek compensation needed to help them recover from the abuse. Indeed, the California Constitution itself recognizes the strong public policy favoring compensation for victims of crime. (*See* Cal. Const. art I, § 28(b)(13) [providing that crime victims have the right to restitution]. And here, after weighing the potential financial ramifications for municipalities, the legislature reasonably decided to shift the costs of sexual abuse from the victims to the specific government institutions responsible for the abuse. As the U.S. Supreme Court has recognized in the federal civil rights context, it is often "fairer to allocate any . . . financial loss" resulting from a municipality's violation "to the inevitable costs of government borne by all the taxpayers, than to allow its impact to be felt solely by those whose rights . . . have been violated." (*Owen v. City of Independence* (1980) 445 U.S. 622, 655.) So too here.

B. AB 218 Helps Relieve the Public At Large from the Heavy Economic Burden Sexual Abuse Exacts on Society

In any event, the public already bears significant costs that result from childhood sexual abuse, which ripple far past its immediate victims. The lasting psychological and physical impacts don't just raise healthcare costs for survivors—they raise insurance premiums for employers and other consumers, and the government "bears the remaining costs through lost tax revenues and Medicare and Medicaid payments." (Ted. R. Miller et al., Nat'l Inst. of Just., *Victim Costs and Consequences: A New Look* (1996) at pp. 19,

21. As of 1993, insurance payments associated with child sexual abuse totaled **$600 million.** (*Id*. at 21) When victims require child welfare services, special education, and drug and alcohol abuse treatment, those costs fall on the public, too. (Letourneau, *supra*, at p. 416.) When they struggle to complete degrees and find good jobs, their families lose earnings, the economy loses their contributions, and the government loses tax dollars. (*Id.* at p. 422.) Studies put the total lifetime economic burden of child sexual abuse at **$9.3 billion**. (*Id.* at p. 419.)

Compensation that helps victims obtain the therapy, job training, education, and other services they need thus lightens the load on the public at large. Courts have held such relief serves a public purpose. In *Janssen*, the Supreme Court held that the state could constitutionally aid an indigent citizen by releasing a lien it held on his property because, in releasing the lien, the state could save money it might otherwise have paid to support him. (16 Cal. 2d at p. 282 ["The release of a lien which facilitates the sale of property or loans thereon serves the same public purpose of aiding the indigent aged as a direct grant of money. It may remove the necessity for additional direct aid to the owner."]). Indeed, the U.S. Tax Code provides tax benefits to charities based on the same theory: they serve a "public purpose" because, by aiding those in need, they "compensate[ ] [the government] for the loss of revenue" by relieving it "from financial burdens which would otherwise have to be met by appropriations from other public funds, and by the benefits resulting from the promotion of the general welfare." (*Bob Jones Univ. v. United States* (1983) 461 U.S. 574, 590.) AB 218 does the same thing: it allows victims to seek compensation that will enable them to pay for resources and services that would otherwise be funded by the public.

C. Thirty-Three United States Jurisdictions Have Recognized the Public Interest in Reviving Claims of Sexual Abuse

Finally, legislatures around the country have recognized the

compelling public interest in opening courthouse doors once shut on sexual abuse victims by unreasonably short statutes of limitations and claim presentation deadlines. To date, at least 33 U.S. jurisdictions have enacted laws that have revived previously expired child sex abuse claims. (*See Revival Laws for Child Sex Abuse Since 2002*, CHILD USA, https://childusa.org/windowsrevival-laws-for-csa-since-2002/; CHILD USA, *2024 SOL Tracker, National Overview of Statutes of Limitation (SOLs) for Child Sex Abuse*, https://childusa.org/2024sol/.)[2] Appellate courts asked to consider the reasonableness of such statutes have overwhelmingly held they serve valid public purposes.[3] And no other state has invalidated a revival

[2] *See* Ariz. Rev. Stat. Ann. § 12–514 (2019), H.B. 2466, 54th Leg., 1st Reg. Sess. (Ariz. 2019); Ark. Code Ann. § 16-118-118 (2021, 2023), S.B. 676, 93rd Leg., 1st Reg. Sess. (Ark. 2021); S.B. 204, 94th Leg., 1st Reg. Sess. (Ark. 2023); Colo. Rev. Stat. § 13-20-1202 (2021); Conn. Legis. Serv., P.A. 02-138 (2002); Del. Code tit. 10, § 8145 (2007); 2018 D.C. Law 22-311, § 3; Fla. Sess. Law Serv. Ch. 92-102, § 2 (1992); Ga. Code Ann. § 9-3-33.1 (2015), Ga. Laws Act 97 (2015); Haw. Rev. Stat. § 657–1.8 (2012, 2014, 2018); Ind. Code Ann. § 34-11-2-4 (2023); Kan. Sess. Laws Ch. 28 (2023); HB 472, 2021 Leg. Reg. Sess. (Ky. 2021); H.B. 492, La. Sess. Law Serv. Act 322 (La. 2021); Md. Code Ann., Cts & Jud. Proc. § 5-117 (2024); 14 M.R.S. § 752-C (Me. 2023); Mass. Gen. Laws Ann. ch. 260 § 4C (2014), 2014 Mass. Legis. Serv. Ch. 145 (H.B. 4126); Mich. Comp. Laws Ann. § 600.5851b (2018); Mo. Rev. Stat. § 537.046 (1989); Minn. Stat. Ann. § 541.073 (1989), 2013 Minn. Sess. Law Serv. Ch. 89 (H.F. 681); Mont. Code Ann. § 27–2–216 (1989, 2019); N.J. Stat. Ann. § 2A:14-2B (2019), S. 477 2019 Gen. Assemb., Reg. Sess. (N.J. 2019); N.Y. C.P.L.R. § 214-g (2019); N.C. Gen. Stat. Ann. § 1-52 (2019), S 199, 2019 Leg., Reg. Sess. (N.C. 2019); SB 203, 81st Leg. Reg. Sess. (Nev. 2021); 2009 Or. Laws Ch. 879 (H.B. 2827); R.I. Gen. Laws Ann. § 9-1-51 (1996, 2019); S.C. Code Ann. § 15-3-555 (2001); Utah Code Ann. § 78B-2-308 (2016); Vt. Stat. Ann. tit. 12, § 522 (2019); Va. Sess. Law Serv. Ch. 674 (1991); W. Va. Code Ann. § 55-2-15 (2020); Wyo. Sess. Laws Ch. 215 (1993); 7 G. Comp. Ann. § 11301.1 (2016).

[3] *See Doe v. Hartford Roman Catholic Diocesan Corp.* (Conn. 2015) 119 A.3d 462, 496, 517 (rejecting due process challenge because the revival law "is a rational response by the legislature to the exceptional circumstances and potential for injustice faced by adults who fell victim to sexual abuse as a

window on the grounds that it was an unconstitutional gift of public funds.

That so many other legislatures have recognized the need for such laws confirms that they serve a compelling public interest.

CONCLUSION

Because AB 218 provides needed relief consistent with the California Constitution, the Court should deny the petition for a writ of mandate.

Respectfully submitted,

/s/Sean Ouellette

Sean Ouellette
Adele P. Kimmel, SBN 126843
PUBLIC JUSTICE
1620 L Street NW, Suite 630
Washington, DC 20036
Telephone: (202) 797-8600
souellette@publicjustice.net
akimmel@publicjustice.net

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child" and the "revival of child sexual abuse victims' previously time barred claims serves a legitimate public interest and accomplishes that purpose in a reasonable way"]; *Sliney v. Previte* (Mass. Ct. App. 2015) 41 N.E.3d 732, 741-42 [rejecting due process challenge to revival statute because it was "tied directly to the compelling legislative purpose" of opening access to justice for child sex abuse survivors who do not process their injuries until well into adulthood]; *Cosgriffe v. Cosgriffe* (Mont. 1993) 864 P.2d 776, 779–80 [rejecting due process challenge because statute reviving expired abuse claims had "a reasonable relation to the legitimate purpose of the State"]; *K.E. v. Hoffman* (Minn. 1990) 452 N.W.2d 509, 514 [rejecting due process challenge to revival statute because "the statute has a reasonable relation to the state's legitimate purpose of affording sexual abuse victims a remedy"].

CERTIFICATE OF COMPLIANCE

This brief is set using 13-point Times New Roman font. According to Microsoft Word for Office 365, this brief contains 5,118 words, excluding the cover, tables, signature block, and this certificate. I certify that this brief complies with Rules 8.204(b) and 8.487(e) of the California Rules of Court.

/s/ Sean Ouellette
Counsel for Amici Curiae

PROOF OF SERVICE

I am over 18 years of age. My business address is 1620 L. St. NW, Suite 630, Washington, D.C. 20036. On April 11, 2024, I caused this Application to File Amici Curiae Brief and Brief of Public Justice, CHILD USA, Equal Rights Advocates, and National Center for Victims of Crime to be served electronically via TrueFiling (at https://www.truefiling.com) on the interested parties listed in the Service List below.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 11, 2024
New York, NY

Respectfully submitted,

/s/ Sean Ouellette
Sean Ouellette
Counsel for Amici Curiae

SERVICE LIST

West Contra Costa Unified School District v. Contra Costa County Superior Court

(A169314 | C22-02774)

Roy A. Combs, Esq. David R. Mishook, Esq. FAGEN FRIEDMAN & FULFROST, LLP 70 Washington Street, Suite 205 Oakland, CA 94607 Telephone: (510) 550-8200 Email: rcombs@f3law.com dmishook@f3law.com	***Attorneys for Petitioner*** West Contra Costa Unified School District
Rami B. Noeil, Esq. FAGEN FRIEDMAN & FULFROST, LLP 1525 Faraday Avenue, Suite 300 Carlsbad, California 92008 Telephone: (760) 304-6000 Email: rnoeil@f3law.com	***Attorneys for Petitioner*** West Contra Costa Unified School District
David M. Axelrad, Esq. Peder K. Batalden, Esq. HORVITZ & LEVY LLP 3601 West Olive Avenue, 8th Floor Burbank, CA 91505 Telephone: (818) 995-0800 Email: daxelrad@horvitzlevy.com pbatalden@horvitzlevy.com	***Attorneys for Petitioner*** West Contra Costa Unified School District
Hon. John P. Devine CONTRA COSTA COUNTY SUPERIOR COURT Wakefield Taylor Courthouse, Dept. 9 725 Court Street Martinez, CA 94553	***Respondent (via U.S. mail only)***

Raymond Boucher, Esq.
Shehnaz M. Bhujwala, Esq.
Amanda Walbrun, Esq.
BOUCHER LLP
21600 W. Oxnard Street, Suite 600
Woodland Hills, CA 91367
Telephone: (818) 340-5400
Email: ray@boucher.la
bhujwala@boucher.la
walbrun@boucher.la

Attorneys for Plaintiff and Real Party in Interest
Jane Doe A.M.M.

Holly Boyer
ESNER, CHANG, BOYER, & MURPHEY
234 E. Colorado Blvd. Suite 975
Pasadena, CA 911101
Telephone: (626) 535-9860
Email: hboyer@ecbm.law

Attorney for Plaintiff and Real Party in Interest
Jane Doe A.M.M.

Kristin Lindgren, Esq.
CALIFORNIA SCHOOL BOARDS ASSOCIATION
3251 Beacon Blvd.
West Sacramento, CA 95691
Telephone: (800) 266-3382
Email: klindgren@csba.org

Attorneys for Amicus Curiae
California School Boards Association