S290435

CASE NO. S290435

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

K.C.,
Plaintiff and Appellant,

v.

COUNTY OF MERCED,

Defendants and Respondent.

On Review from the Court of Appeal for the
Fifth Appellate District
5th Civil No. F087088

After an Appeal of the Superior Court of California
for Merced County, Hon. Brian L. McCabe, Judge
Case No. 22-CV-02896

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF RESPONDENT COUNTY OF MERCED; AND PROPOSED BRIEF OF *AMICI CURIAE*

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The League of California Cities ("Cal Cities") is an association of 472 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. Cal Cities is advised by its Legal Advocacy Committee, comprised of 25 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 California State Association of Counties ("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 is a matter affecting all counties.

These *Amici* write to address the importance to their members of the discretionary-acts immunity provided in Government Code section 820.2 ("section 820.2"). In this action, Respondent County of Merced ("County") demurred to the complaint of a plaintiff who claims to have reported child sexual abuse concerns to social workers

during the 1970s that were not investigated. The Court of Appeal affirmed the demurrer, finding it appropriate to decide the County's claim of immunity on the pleadings.

The *Amici* write to support the procedure by which this matter was decided. They address the unique difficulties their members face in managing increased litigation and exposure since 2019 Assembly Bill 218 ("AB 218").[1] Cities and counties struggle to gather evidence and find witnesses regarding events from so long ago. Their efforts to challenge abrogation of Government Claims Act presentation in these cases have not been successful. Against this backdrop, it is critical that agencies may continue to rely on their Government Code immunities.

The *Amici* write specifically to address one such immunity, provided in section 820.2, which immunizes exercises of governmental discretion. They detail how defenses invoking this statute are properly raised by demurrers, allowing for a prompt and effective resolution on the pleadings. The *Amici* discuss how this Court's and other California appellate precedent endorses the use of demurrers for this purpose.

The *Amici* ask that the Court respect and affirm this precedent. The *Amici*'s members, cities and counties that are litigating or may

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[1] References to AB 218 within refer to the principal bill allowing the revived child sexual abuse claims and include subsequent amendments to the statute, including 2023's Assembly Bill 558. These bills codified provisions that have appeared in or now appear in Code of Civil Procedure sections 340.1 and 340.11.

litigate future AB 218 claims, have a strong interest in preserving the viability of their immunity defenses.

No party in this action authored this brief in whole or in part. Nor did any party or person contribute money toward the research, drafting, or preparation of this brief, which was authored entirely on a pro bono basis by the undersigned counsel.

Dated: December 22, 2025 COLE HUBER, LLP

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BRIEF OF *AMICI CURIAE* IN SUPPORT OF RESPONDENT

I. INTRODUCTION

AB 218 creates massive litigation exposure for California cities and counties.[2] The statute revives claims that arose long ago. (See generally Code Civ. Proc. §§ 340.1, subd. (q), 340.11, subds. (q)-(r).) Little if any evidence remains concerning these claims, and witnesses often cannot be identified, let alone found.

This case involves the application of an immunity provided in the Government Claims Act, which applies equally to claims arising long ago and last year. Codified in section 820.2, this immunity provides:

> "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the *exercise of the discretion* vested in him, whether or not such discretion be abused." (Emphasis added.)

As this Court held in its seminal decision, *Johnson v. State* (1968) 69 Cal.2d 782, section 820.2 immunizes "discretionary" decisions as

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[2] AB 218's "aim [is] 'to expand the ability of victims of childhood sexual abuse to hold to account individuals and entities responsible for their injuries.'" (*West Contra Costa Unified School Dist. v. Superior Court* (2024) 103 Cal.App.5th 1243, 1265, quoting *Los Angeles Unified School Dist. v. Superior Court* (2023) 14 Cal.5th 758, 777. See also Matt Hamilton, A long-overdue reckoning with child sexual abuse of the past is straining California classrooms today, L.A. Times, Dec. 19, 2025 [noting California school districts have paid $700 million in settlements under AB 218 since 2020 and projections estimate schools will pay $3 billion in total].)

distinct from "ministerial" decisions. (*Id*. at p. 793.) The section immunizes "planning" decisions versus "operational" ones. (*Id*. at p. 794.) The immunity recognizes agencies must be free to make and implement "basic policy decisions." (*Id*. at p. 796.)

As this Court has observed, "it is not a tort for government to govern." (*Caldwell v. Montoya* (1995) 10 Cal.4th 972, 981.) Section 820.2 thus "leaves public officials free of unseemly judicial interference against them personally when they debate and render those basic policy and personnel decisions entrusted to their independent judgment." (*Id.* at p. 988.)

Below, the Court of Appeal followed this Court's precedent in affirming the County's section 820.2 defense. The plaintiff, who brought her claim under AB 218, alleges she was assaulted in foster care placements in the 1970s, had given notice of this abuse to the County, and County employees did not investigate or take corrective action. The Court of Appeal correctly upheld the County's demurrer.

The *Amici* write not to restate the County's arguments, but to emphasize the role the pleadings should have in cases such as this. The *Amici* highlight the procedural aspects of how the case was decided. They urge this Court to recognize that the demurrer has an essential role in resolving section 820.2 defenses. This Court's own precedent—particularly its 1995 *Caldwell* decision—confirms that the defense may be decided on the pleadings when there is no need for fact development. Courts of appeal have faithfully followed this

precedent in deciding section 820.2 issues by demurrer. The Court of Appeal correctly did the same here.

Affirming the decision below would ensure the demurrer will remain an appropriate vehicle for resolving immunity issues. The *Amici* do not ask for the adoption of any new standard. They ask this Court, rather, to affirm the separation-of-powers principles that underlie section 820.2. When defendants' immunities are clear from the pleadings, and no amendments could cure the defects, cities and counties should be promptly dismissed from suit. The Court should ensure these agencies continue to have an early and cost-effective means for presenting—and securing decisions regarding—their defenses.

II. ARGUMENT

The enactment of AB 218 has put a considerable premium on the proper application of immunities and the early resolution of claims for cities and counties. Understandably, AB 218 cases stir emotions and juror passions. Awards well into the eight figures are not uncommon.[3] The amounts awarded can be far more than the exposure cities or counties would likely have faced had the cases been brought years ago, near the time of the alleged abuses. Agencies have

[3] See, e.g., Ian James, *Moreno Valley school district hit with $135 million verdict in molestation case,* Los Angeles Times (Oct. 11, 2023); Ed Vasquez, *Marin County Jury Awards $10 Million to Survivor of Tamalpais High School Sex Abuse,* Business Wire (May 18, 2022).

great reason to be concerned about the impact the statute will have on programs and services.[4]

At the same time, cities and counties' abilities to effectively respond to the revived claims have greatly diminished. Especially in cases going back to the 1960s, 1970s, or 1980s, records relevant to child sexual abuse allegations rarely exist or have been destroyed per historic records-destruction practices. Even when potential witnesses can be identified, they may be deceased, have no contact information, or may no longer have any recollection of such long ago events. Cities and counties often have scant evidence to marshal in defense of allegations of abuses from years ago.

Given these realities, cities and counties must be able to continue to rely on Government Code immunities in AB 218 cases. Defenses on the merits have, as noted, proven exceedingly difficult and carry the risk of massive exposure to "nuclear" verdicts. And thus far, California courts have rejected agency challenges to the legislative abrogation of Government Claims Act presentation. (See *R.L. v. Merced City School Dist.* (2025) 114 Cal.App.5th 89, 98; *O.B. v. Los Angeles Unified School Dist.* (2025) 113 Cal.App.5th 930, 933; *West*

[4] See *Childhood Sexual Assault: Fiscal Implications for California Public Agencies*, Fiscal Crisis & Management Team, Jan. 31, 2025, at p. 2 ("Even with missing details, we can conclude the fiscal impact is and will continue to be significant and will affect programs and services"), available at www.fcmat.org/publicationsreports/child-sexual-assault-fiscal-implications-report.pdf (visited Dec. 22, 2025).

Contra Costa Unified School Dist. v. Superior Court (2024) 103 Cal.App.5th 1243, 1252.)

The AB 218 cases present issues of historic hiring, employee supervision, and reporting practices, and other issues that inherently tread into the historic "policy decisions" of "coordinate branches of government." (*Johnson*, *supra*, 69 Cal.2d at p. 793.) Because section 820.2 is intended to immunize local agencies from such intrusions, section 820.2 defenses are viewed as increasingly important to agencies.

The demurrer, moreover, is often employed as the procedural vehicle for raising such defenses. The *Amici* do not suggest this requires that a new standard be created. But in enacting AB 218, the Legislature expressly declared that "nothing in the [statute] shall be construed to constitute a substantive change in negligence law." (Code Civ. Proc. 340.11, subd. (c).) It follows that the procedures available to cities and counties for responding to negligence lawsuits *also* should not change. These agencies should be just as capable of asserting immunity defenses *after* AB 218 as they were before.

To this end, demurrers have long served as the means for raising immunities. A demurrer allows defendants to challenge whether a complaint states a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) The court examines the allegations stated in the complaint, the complaint's exhibits, and matters judicially noticeable to determine the complaint's sufficiency. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) The

demurrer "searches the complaint" in assessing whether the plaintiff states a proper claim. (*Banerian v. O'Malley* (1974) 42 Cal.App.3d 604, 610–611.) In doing so, the court reads the complaint as a whole and each part in its context. (*Speegle v. Board of Fire Underwriters of the Pacific* (1946) 29 Cal.2d 34, 42.) The demurrer allows the court to determine "if the complaint fails to state a cause of action under any possible legal theory." (*Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 998.)

Demurrers allow courts in many cases to fully consider immunity defenses. Importantly, in considering a demurrer, the court must consider all the complaint's material allegations to be true. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 617.) Even the truth of improbable allegations must be accepted. (*Hacker v. Homeward Residential, Inc.* (2018) 26 Cal.App.5th 270, 280.) Indeed, the court may not question the plaintiff's ability to prove the allegations or consider the difficulty the plaintiff may have in proving them. (*Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496.)

Further, when the court sustains a demurrer, that usually is not the end of the case. If the court cannot discern a cause of action, it must give the plaintiff a reasonable opportunity to cure any defects by granting leave to amend. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 39.) Leave to amend must be freely given. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747.) When there is a reasonable possibility a defect could be cured by

amendment, denial of such leave is abuse of discretion. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

Under these standards, plaintiffs have ample opportunity to detail the legal and factual bases for their claims, and this is often sufficient to allow courts to decide the merits of immunity defenses at the outset. A leading opinion is this Court's *Caldwell* decision. In *Caldwell*, this Court considered the sufficiency of a complaint for damages against school board members who voted to terminate a school superintendent's contract. The Court explained:

> "A fair reading of the instant complaint reveals allegations that the Board made an *actual, conscious, and considered* collective policy decision to replace plaintiff as superintendent. The complaint admits of no theory that the Board acted unconsciously or failed to weigh pros and cons. On the contrary, it asserts that Board members *did* purposefully employ standards they deemed relevant, but that the standards employed were wrong and impermissible. For reasons already stated, claims of *improper* evaluation cannot divest a discretionary policy decision of its immunity." (10 Cal.4th at p. 984, emphasis in original.)

Based on this rationale, this Court affirmed the sustaining of a demurrer.

Even before *Caldwell*, this Court had resolved a section 820.2 defense on the pleadings in *Thompson v. County of Alameda* (1980) 27 Cal.3d 741. There, a county released a juvenile offender to his mother. Shortly after release, the offender killed the plaintiffs' child. The Court held the release and custodial decisions were discretionary

under section 820.2 aand sustained the demurrers.[5] (*Id.* at pp. 748-749.)

Several Court of Appeal decisions have followed *Caldwell* in similarly resolving Section 820.2 defenses at the demurrer stage. These include:

- *San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, in which the court held a county was not liable for its treasurer's investments in securities with a bankrupt financial services firm. The court upheld demurrers to causes of actions for violation of a statutory "prudent investor" standard and county investment policies. (*Id.* at pp. 434, 439.)

- *Krolikowski v. San Diego City Employees' Retirement System* (2018) 24 Cal.App.5th 537, where the court reviewed the allegations of a complaint for damages related to a retirement board's decisions to require retired employees pay back overpaid retirement payments. The court determined these decisions involved the exercise of discretion based on "careful

[5] Another pre-*Caldwell* case that upheld a Section 820.2 defense on the pleadings is *Teresi v. State of California* (1986) 180 Cal.App.3d 239. In that case, a state department's orders to quarantine and fumigate plaintiff's crops were found to be discretionary acts. The court resolved the case based on the allegations contained in the pleadings and upheld the demurrer. (*Id.* at p. 244.)

evaluation of the issues" at a public meeting. It accordingly affirmed the demurrer. (*Id*. at p. 551.)

- *Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, which concerned allegations of fraud in a county's handling of the bidding process for its jail chaplaincy. Reviewing the allegations of the complaint, the court determined the bidding process involved discretionary decisions and determined the county was immune under section 820.2. It thus upheld demurrers to causes of action alleging fraud and related claims. (*Id.* at p. 649.)

- *Freeny v. City of San Buenaventura* (2013) 216 Cal.App.4th 1333, where the court held city council members were immune from suit for damages concerning their denial of a land use application. In upholding the sustaining of a demurrer, the court observed that the "threat of harassment and personal liability is precisely what the immunity in sections 820.2 [and two other code sections] was enacted to prevent." (*Id.*, at p. 1344.)

In these cases, the courts ruled against the plaintiffs only *after* they had been given full opportunities to outline their legal theories and the facts they sought to prove. Consistent with the standards previously described, the courts were required to assume the truth of all the material facts alleged, even if improbable, and the plaintiffs

were given reasonable opportunity to amend their pleadings to cure any defects found in their initial pleadings. Both sides received fair and just procedures. The plaintiffs were given ample opportunities to state claims that could proceed to discovery and potentially trial. Only after it became clear they could not state such claims were the defendants afforded the benefits of immunity. And when dismissal was ordered, the defendants were rightly relieved of the burdens and expenses of further litigation over the types of policy-based decisions section 820.2 immunizes.

So is the case here. The plaintiff was given extensive opportunity to amend her claims—filing two amended complaints. The trial court and Court of Appeal properly assumed the truth of the plaintiff's claims that, in response to notice of alleged abuse, the social worker failed to take appropriate investigatory and corrective actions. Nothing suggests this was an unconscious decision; the plaintiff alleges only that it was the wrong one.

To be sure, California precedent is also clear that when plaintiffs sufficiently plead facts that give rise to liability, section 820.2 defenses should not be decided by demurrer. In these cases, courts have determined the pleading stage does not allow for adequate determination whether public employees "consciously exercised discretion" to justify immunity under the controlling *Johnson* standard. (See *Elton v. County of Orange* (1970) 3 Cal.App.3d 1053, 1058.)

This Court's decision in *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, is such a decision. There, a transportation district was sued for injuries sustained during a fight that broke out on one of its buses. This Court held the district's section 820.2 defense could not be resolved by demurrer. The district argued its bus driver had exercised discretion in deciding whether and how to intervene in the altercation. This Court determined a demurrer could not test whether the employee had "consciously exercised discretion" under these circumstances. (*Id.* at p. 794.)

Zuniga v. Housing Authority (1995) 41 Cal.App.4th 82, employed similar reasoning. In that case, the plaintiffs were the victims of arson to their housing project, which caused the deaths of some of their family members. The housing authority demurred on the ground that its employees' responses to the plaintiffs' reports of threats of violence and vandalism and requests to be transferred involved exercises of discretion protected by section 820.2. The court found the immunity defense could not be determined on these pleadings. (*Id.* at p. 1112.)

Lopez and *Zuniga* illustrate that in some cases, the pleadings will not allow for a determination whether a section 820.2 defense is proper. When courts have found it unclear from complaints whether employees were consciously acting to further agency policies, they have overruled demurrers asserting immunity defenses. (See *Johnson v. County of Los Angeles* (1983) 143 Cal.App.3d 298, 313–314 [complaint affirmatively contradicted allegations county employee exercised conscious discretion in failing to warn family of release of temporarily

conserved schizophrenic, so section 820.2 defense could not be decided on demurrer].)

This is not such a case. As the Court of Appeal, following *Caldwell*, recognized, a "fair reading" of the complaint alleges the County's social workers received complaints of sexual abuse that they failed to investigate. (*K.C. v. County of Merced* (2025) 109 Cal.App.5th 606, 620.) The court observed that longstanding case law holds that decisions whether to investigate or take corrective action are the types of "discretionary" decisions section 820.2 immunizes. (*Id*. at p. 619.) Because the defect in the plaintiff's pleading was plain on the face of her complaint, the court concluded it was proper to affirm the demurrer. (*Id*. at p. 620.) In a footnote, the court confirmed it reached this result because of the defect *in the pleading*, rejecting the notion that dismissal would only be proper through summary judgment. (*Id*. at p. 620 fn. 9.)

This Court should affirm. In doing so, the Court would assure cities and counties they may continue to raise section 820.2 defenses by demurrer in proper cases. Just as AB 218 declares it makes no substantive change to tort law, this Court should conclude it equally warrants no change in litigation procedure.

The demurrer has long been considered a means of deciding section 820.2 defenses when—as has often been the case—the pleadings have allowed the sufficiency of the defense to be determined. In affirming the Court of Appeal, this Court would validate and reinforce *Caldwell* and assure cities and counties they

may continue to assert section 820.2 immunity on the pleadings. At the same time, courts following this longstanding practice would retain the ability to overrule demurrers when, consistent with *Lopez*, they determine the immunity defense cannot be determined on the pleadings.

In sum, in deciding this case, the Court should acknowledge the role demurrers have had in resolving section 820.2 defenses and allow their continued use in cases in appropriate cases. Nothing about AB 218 compels that city and county immunity claims should be decided differently than they have historically been.

III. CONCLUSION

The Court should affirm the decision below. In doing so, it should be mindful of—and affirm—the important role demurrers have in the resolution of section 820.2 defenses. This Court should follow its *Caldwell* precedent and conclude the County's immunity is clear from the pleadings.

Dated: December 22, 2025 COLE HUBER, LLP

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to California Rules of Court, rule 8.204, the attached brief is proportionately spaced, has a typeface of Book Antigua 13-point. I further certify that the brief contains 3,013 words as calculated by the Microsoft Word word processing program, which is within the authorized word limitation.

Dated: December 22, 2025

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PROOF OF SERVICE

K.C. v. County of Merced
In the Supreme Court of California, Case No. S290435

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Placer, State of California. My business address is 2281 Lava Ridge Court, Suite 300, Roseville, CA 95661.

On December 22, 2025, I served true copies of the following document(s) described as

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF RESPONDENT COUNTY OF MERCED; AND PROPOSED BRIEF OF *AMICI CURIAE*

on the interested parties in this action as follows:

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

Executed on December 22, 2025, at Roseville, California.

Sandra M. Kraft

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