

S234269

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

DOE NO. 1,
Defendant and Petitioner,
v.

LATRICE RUBENSTEIN,
Plaintiff and Respondent

SUPREME COURT
FILED

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ANSWER TO AMICUS CURIAE BRIEF



After a Decision From the Court of Appeal of California, Fourth
Appellate District, Division One,
Case No. D066722

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I.

Amici's Public Policy And Fairness Arguments Are Irrelevant To The Issues Presented To This Court Because The Legislature Considered Them When It Declined To Exempt From The Government Code's Claim Presentation Requirement And Deadline Those Childhood Sexual Abuse Claims Based On Repressed Memories Of Pre-January 1, 2009 Sexual Abuse

With Senate Bill No. 1339 (2007-2008 Reg. Sess.), the Legislature considered exempting all childhood sexual abuse claims from the Government Code's claim presentation requirement because of the points Amici raises. It weighed them against the potential fiscal ramifications to government entities and struck a balance between these competing public policies, exempting only those claims based on post-January 1, 2009 conduct. (See Sen. Appropriations Com., Analysis of Sen. Bill No. 1339 (2007-2008 Reg. Sess.), as amended Feb. 20, 2008); Government Code section 905, subdivision (m).) In doing so, the Legislature knew it was holding all victims of pre-January 1, 2009 childhood sexual abuse to the six-month deadline whether or not memories were repressed during the six month claim presentations period. (See Opening Brief, pp. 41-50; Reply Brief, pp. 31-37.)

An instructive example of legislative intent is found in an Assembly Committee on Judiciary analysis of Senate Bill 640, which noted the key issue as follows: “Since victims of child sex abuse may not recognize or report their abuse until years later, should these claims brought against local public entities, such as cities and school districts, be exempted from the requirement that they first be presented to the public entity within six months of occurrence?” (Ass. Com. On Judiciary, Analysis of Sen. Bill No. 640 (2007-2008 Reg. Sess.), as amended June 9, 2008, p.1 (all capitals omitted).) Thus, the Legislature recognized victims of childhood sexual abuse repress memories of the abuse, but for policy reasons, chose not to exempt from the claim presentation requirement those claims based on repressed memories of pre-January 1, 2009 abuse. It did so even though some might be denied a remedy without the exemption.

Although policy reasons and fairness might compel providing such an exemption, this Court’s role is not to “sit in judgment of the Legislature's wisdom in balancing such competing public policies. Instead, due respect for the power of the Legislature and for the separation of powers requires [this Court] to follow the public policy choices actually discernible from

the Legislature's statutory enactments.” (*Los Angeles County Metro. Transp. Auth. v. Alameda Produce Mkt., LLC* (2011) 52 Cal.4th 1100, 1113-1114 (internal quotes and cites omitted); see also *Jordache Enters., Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 756, (court cannot “devis[e] expedients that extend or toll the limitations period”).)

II.

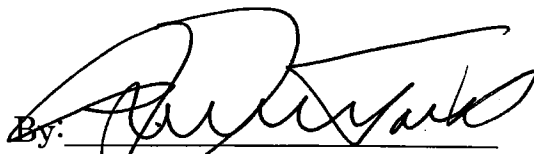
Conclusion

Amici make potentially viable public policy and fairness arguments supporting exemption from the government claim presentation requirements and deadline *all* childhood abuse claims. However, the Legislature already considered them and ultimately chose not to do so. The place for Amici’s advocacy is the Legislature, not this Court.

Respectfully submitted,

DATED: January 18, 2017

Daley & Heft, LLP

By: 
Lee H. Roistacher
Richard J. Schneider
Attorneys for
Defendant and Petitioner
Doe No. 1

CERTIFICATE OF WORD COUNT

The text of this brief consists of 484 words as counted by the Microsoft Office 2010 word-processing program used to generate this document.

DATED: January 18, 2017

Daley & Heft, LLP

By: 

Lee H. Boistacher
Richard J. Schneider
Attorneys for
Defendant and Petitioner
Doe No. 1

CASE NAME: <i>Doe No. 1 v. Latrice Rubenstein</i>	CASE NUMBER: S234269 Court of Appeal Case No. D066722 Superior Court Case No.: ECU08107
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- 6.b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (specify one):
- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (2) placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's 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 fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (city and state):
Solana Beach, California

- c. **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*
- e. **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f. **By electronic service.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed in item 5.

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

Date: January 20, 2017

Maria E. Kilcrease
(TYPE OR PRINT NAME OF DECLARANT)

Maria E. Kilcrease
(SIGNATURE OF DECLARANT)

(If item 5d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

- By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (date):

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

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

CASE NAME: <i>Doe No. 1 v. Latrice Rubenstein</i>	CASE NUMBER: S234269 Court of Appeal Case No. D066722 Superior Court Case No.: ECU08107
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ATTACHMENT TO PROOF OF SERVICE - CIVIL (PERSONS SERVED)

Name, Address, and Other Applicable Information About Persons Served:

<u>Name of Person Served:</u>	<u>Where Served:</u> <i>(Provide business or residential address where service was made by personal service, mail, overnight delivery, or messenger service. For other means of service, provide fax number or electronic notification address, as applicable.)</i>	<u>Time of Service:</u> <i>(Complete for service by fax transmission or electronic service.)</i>
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CASE NAME: <i>Doe No. 1 v. Latrice Rubenstein</i>	CASE NUMBER: S234269 Court of Appeal Case No. D066722 Superior Court Case No.: ECU08107
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