Case No. S266254

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

BRENNON B.,
Petitioner,

v.

THE SUPERIOR COURT OF CONTRA COSTA
Respondent;

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, etc., et al.,
Real Parties in Interest.

After a Decision by the Court of Appeal
First Appellate District, Division 1, Case No. A157026

APPLICATION OF AMICI CURIAE EDUCATION LEGAL ALLIANCE OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION AND THE CALIFORNIA ASSOCIATION OF JOINT POWER AUTHORITIES FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF REAL PARTY IN INTEREST WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT AND PROPOSED AMICI CURIAE BRIEF

Sue Ann Salmon Evans, SBN 151562
sevans@DWKesq.com
Dannis Woliver Kelley
444 W. Ocean Blvd., Suite 1070
Long Beach, CA 90802
Telephone: (562) 366-8500
Facsimile: (562) 366-8505

Keith J. Bray, SBN 128002
kbray@csba.org
Robert Tuerck, SBN 255741
rtuerck@csba.org
California School Boards Association
3251 Beacon Blvd.
West Sacramento, CA 95691
Telephone: (916) 669-3270
Facsimile: (916) 371-3407

Attorneys for the Education Legal Alliance
of the California School Boards Association
and the California Association of Joint Power Authorities

APPLICATION OF AMICI CURIAE EDUCATION LEGAL ALLIANCE OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION AND THE CALIFORNIA ASSOCIATION OF JOINT POWER AUTHORITIES FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF REAL PARTY IN INTEREST WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT AND PROPOSED AMICI CURIAE BRIEF

TO: THE HONORABLE CHIEF JUSTICE OF THE CALIFORNIA SUPREME COURT

I. INTRODUCTION

Pursuant to California Rules of Court, rule 8.520(f), the Education Legal Alliance of the California School Boards Association and the California Association of Joint Power Authorities (Amici Curiae) respectfully request permission to file the accompanying Amici Curiae brief (Amici Curiae Brief) in support of Real Party In Interest West Contra Costa Unified School District (Real Party in Interest or District.) By submitting this Amici Curiae Brief, the Amici Curiae assert their vital interest in the outcome of this matter and in this Court's review of the issues raised by this action.

II. INTEREST OF AMICI CURIAE

The California School Boards Association (CSBA) is a California non-profit corporation. CSBA is a member-driven association composed of nearly 1,000 K-12 school district governing boards and county boards of

education throughout California. CSBA supports local board governance and advocates on behalf of school districts and county offices of education.

As part of CSBA, the Education Legal Alliance (ELA) helps to ensure that local school boards retain the authority to fully exercise the responsibilities vested in them by law to make appropriate policy and fiscal decisions for their local educational agencies. The ELA represents its members by addressing legal issues of statewide concern to school districts and county offices of education. The ELA's activities include joining in litigation where the interests of public education are at stake.

The California Association of Joint Power Authorities (CAJPA) strives to provide leadership, education, advocacy and assistance to public-sector risk pools to enable them to enhance their effectiveness. Its membership consists of more than 80 joint power authorities representing municipalities, school districts, transit agencies, fire agencies and similar public entities throughout the State of California.

In the instant case, Amici Curiae represent the interests of its members. The ELA's members offer free public education to the students who reside in their geographic area and do not sell education services to students, their parents, or the public in general, and should therefore not be subject to the Unruh Act. The ELA seeks to highlight the costly impact of extending liability under the Unruh Act to school districts, and the policies which support that the Unruh Act does not apply to school districts.

CAJPA and its members will be directly affected by the decision of the District Court in this matter and, therefore, have a significant interest in the outcome of the case. The decision of this Court will affect not only the parties to this case, but will also affect other public entities throughout California who are subject to claims under the Unruh Act.

III. AMICI CURIAE BRIEF WILL ASSIST THE COURT

Amici Curiae have reviewed the parties' briefs and are familiar with the questions involved in this case and the scope of their presentation. Amici Curiae believes that its Amici Curiae Brief will assist the Court in the following key ways: (1) addressing relevant points of law and arguments relevant to the issues in this case; (2) further expanding and clarifying the authorities relied upon by the parties; and (3) illuminating the practical and legal consequences on school districts and county offices of education from any expansion of the Unruh Act to include public agencies.

IV. CONCLUSION

For the foregoing reasons, Amici Curiae respectfully requests that the Court accept the accompanying Amici Curiae Brief for filing in this case.

DATED: September 15, 2021

DANNIS WOLIVER KELLY
SUE ANN SALMON EVANS

By: _____
Sue Ann Salmon Evans, Attorneys for the Education Legal Alliance of the California School Boards Association and the California Association of Joint Power Authorities

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sevans@DWKesq.com
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444 W. Ocean Blvd., Suite 1070
Long Beach, CA 90802
Telephone: (562) 366-8500
Facsimile: (562) 366-8505

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Robert Tuerck, SBN 255741
rtuerck@csba.org
California School Boards Association
3251 Beacon Blvd.
West Sacramento, CA 95691
Telephone: (916) 669-3270
Facsimile: (916) 371-3407

Attorneys for the Education Legal Alliance
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and the California Association of Joint Power Authorities

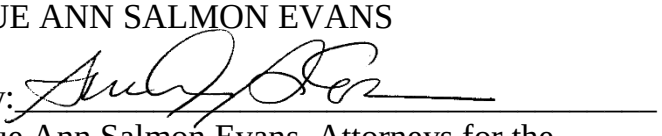
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

This is the initial certificate of interested entities or persons submitted on behalf of Amicus Curiae Education Legal Alliance of the California School Boards Association and the California Association of Joint Power Authorities in the case number listed above.

The undersigned certifies that there are no interested entities or persons that must be listed in this Certificate under California Rules of Court, rule 8.208.

DATED: September 15, 2021

DANNIS WOLIVER KELLY
SUE ANN SALMON EVANS

By: 

Sue Ann Salmon Evans, Attorneys for the Education Legal Alliance of the California School Boards Association and the California Association of Joint Power Authorities

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**PROPOSED AMICI CURIAE BRIEF OF
THE EDUCATION LEGAL ALLIANCE OF
THE CALIFORNIA SCHOOL BOARDS ASSOCIATION AND THE
CALIFORNIA ASSOCIATION OF JOINT POWER AUTHORITIES
IN SUPPORT OF
REAL PARTY IN INTEREST
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT**

COMES NOW Amici Curiae, the Education Legal Alliance of the California School Boards Association and the California Association of Joint Power Authorities, to offer the following argument regarding the above captioned matter. The Education Legal Alliance of the California School Boards Association and the California Association of Joint Power Authorities (Amici Curiae) submit this Amicus Curiae Brief in support of Real Party In Interest West Contra Costa Unified School District (Real Party in Interest or District), pursuant to California Rules of Court, rule 8.520 (Amici Curiae Brief). As part of California School Boards Association (CSBA), the Education Legal Alliance (ELA) helps to ensure that local school boards and county boards of education[1] retain the authority to fully exercise the responsibilities vested in them by law to make appropriate policy and fiscal decisions for their local education agencies.

The California Association of Joint Power Authorities (CAJPA) is a statewide association for insurance based risk-sharing pools and has served

[1] The arguments raised throughout this brief apply equally to school districts and county offices of education even where the brief refers only to school districts for brevity.

as an information and educational network for joint powers authorities since 1981. CAJPA strives to provide leadership, education, advocacy and assistance to public-sector risk pools to enable them to enhance their effectiveness. Its membership consists of more than 80 joint powers authorities representing municipalities, school districts, transit agencies, fire agencies and similar public entities throughout the State of California.

By submitting this Amici Curiae Brief, the Amici Curiae assert their vital interest in the outcome of this matter and in this Court's review of the issues raised by this action.

I. INTRODUCTION

Public agencies are created as part of a cost-benefit analysis, in order to accomplish a particular task at a cost to the tax payer. In creating these public agencies, the cost to the tax payer was weighed against the benefit provided. For school districts, that is the provision of a free and appropriate education to the students within its boundaries, a goal undoubtedly worth the cost. However, school districts are not given *carte blanche* to conduct their business. Instead, school districts must carefully manage a budget, which is well known to be exceedingly limited given the vital importance of its mission of public education.

California school districts are required to provide education to all students within their boundaries. However because school districts are funded by the public, like all other public entities, they are provided certain

privileges and immunities not available to the general public. Most notably, the Legislature has enacted the Government Claims Act which, among other privileges, insulates California public entities from lawsuits for general torts unless specifically authorized by statute. (Gov. Code, § 815.) California public entities enjoy these immunities and privileges not available to the general public because costs associated with liability "must ultimately be borne by the taxpayers." (*Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 907–08, as modified on denial of reh'g (Nov. 1, 2017.)) And while, again, school districts may not shirk responsibilities or breach their duties, the Legislature recognizes the necessity to ensure they, like all other public entities, may efficiently and judiciously manage their finances for the benefit of their constituents. This policy gets to the crux of this appeal.

In its opinion below, the Court of Appeal correctly held that the Unruh Act does not apply to school districts because school districts are not "business establishments" pursuant to the Unruh Act. That is because public schools offer free public education to the students who reside in their geographic area and do not sell education services to students, their parents, or the public in general.

This decision does not leave Petitioner, or others similarly situated, without recourse against school districts in the case of alleged discrimination. It does, however, limit the financial exposure to school districts in such instances and aligns with the policy behind the

Government Claims Act. Of note, there is law[2] almost identical to the Unruh Act which holds state agencies and local subdivisions, which are not business establishments such as school districts, specifically liable for discrimination. And while such an agency may be obligated to satisfy a judgment if found to have violated this discrimination statute, it will not pay a damages multiplier or statutory minimums such as it might under the Unruh Act. (Civ. Code, § 52(a).) This Court has recognized that exposing public schools to such punitive damages/penalties jeopardizes the ability of public schools to fulfill their vitally important public mission. (See, *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1194-97.)

For these reasons the Amici Curie submits this brief to highlight the costly impact of extending liability under the Unruh Act to school districts and other public agencies, and the policies which support that the Unruh Act does not apply to school districts and other public agencies.

A. FACTS AND PROCEDURAL HISTORY

Amici Curiae hereby adopts and incorporates by reference the factual background and procedural history set forth in the "Statement of the Case & Relevant Factual Allegations" at pages 3-5 of Real Parties in Interest Answer Brief on the Merits.

[2] See, e.g., Government Code section 11135.

B. ISSUE PRESENTED

This case presents the following issue: Are public school districts considered "business establishments" subject to liability under the Unruh Act even though they do not transact with the general public in the sale for access to the basic activities or services offered by school districts?

II. ARGUMENT

A. GOVERNMENT CODE SECTION 11135, NOT THE UNRUH ACT, CREATES LIABILITY AGAINST SCHOOL DISTRICTS FOR DISCRIMINATION

The Legislature has explicitly outlined a public school district's liability for discrimination through Government Code section 11135, undercutting Petitioner's attempts to suggest that the Unruh Act was intended to address the same issue. Petitioner attempts to extract legislative intent from vague language in unrelated statutes. (*See, e.g.* Petitioner's Opening Brief, pg. 30, 35.) However, the Legislature has clearly signaled its intent to create liability through Government Code section 11135, and so Petitioner's claims must fail.

The Legislature, in 1977, enacted a law to create liability against state agencies, including local subdivisions of the state, such as school districts, in instances of discrimination. Government Code section 11135 provides:

> (a) No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical

> disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.
>
> Similarly, the Unruh Act provides:
>
> (b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (Civ. Code, § 51)

Unquestionably, school districts deliver instructional services and other programs, subject to the direction of the Legislature, to further the purpose of education. (*See Wilson v. State Bd. of Educ*. (1999) 75 Cal.App.4th 1125, 1134–35.) And so clearly, Government Code section 11135 applies to public schools, as political subdivisions of the state that provide state mandated and funded programs, when a plaintiff alleges discrimination. As highlighted by this case, there is no clear applicability of the Unruh Act against school districts for the same misconduct because public schools are not business establishments.

Violation of the Americans with Disabilities Act also creates per se liability under both Government Code section 11135 and the Unruh Act. Of course, section 11135 specifically identifies Title II of the ADA, which

relates to discrimination by public entities, while the Unruh Act is more general. The provisions are as follows:

> Civ. Code section 51: "(f) A violation of the right of any individual under the federal Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section."
>
> Gov. Code section 11135: "(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions."

The unambiguous application of Government Code section 11135 against state agencies for the same misconduct as described in the Unruh Act demonstrates that the Legislature intended for it, not the Unruh Act, to apply to school districts.

When enacting or amending a statute, the Legislature is "deemed to be aware of statutes and judicial decisions already in existence, and to have enacted or amended a statute in light thereof. [citation omitted]" (*People v. Superior Court (I.R.)* (2019) 38 Cal.App.5th 383, 393.) The Unruh Act was made law in 1959, 18 years before section 11135 was enacted in 1977. The Legislature was aware of the existence of the Unruh Act at the time it enacted Government Code section 11135 and must have intended to create statutory liability for discrimination committed by state agencies, including

local subdivisions, because none existed at the time. Otherwise there would be no real or substantial effect in creating this new law. (S*ee United Cook Inlet Drift Ass'n v. Nat'l Marine Fisheries Serv*. (9th Cir. 2016) 837 F.3d 1055, 1064 [finding that when Legislature amends statutes, it is presumed to have intended real and substantial effect on statute].) Creating a new statute which creates the same liability established nearly two decades earlier would be tantamount to rendering the language of section 11135 to be mere surplusage. (*Fontana Unified Sch. Dist. v. Burman* (1988) 45 Cal.3d 208, 218 [such an interpretation of a statute should be avoided].) Finally, it is well established that a plaintiff should not be permitted to recover "double damages" by prevailing on claims under two statutes for the same discriminatory conduct. (*Burks*, *supra*, 57 Cal.2d at 470.) Although plaintiffs may at times plead multiple theories of liability in the alternative, it makes no sense to allow plaintiffs to plead nearly identical statutory theories of liability against a state agency when one specifically creates liability against such entities and the other does not.

Also, based on the Government Claims Act which limits the liability of public entities to those instances specifically authorized by statute, the Unruh Act, itself, prohibits the courts from construing that it confers any right to sue public entities which is otherwise "limited by law." (*See Harrison v. City of Rancho Mirage* (2015) 243 Cal.App.4th 162, 176 *citing* Gov. Code, § 51(c) ["This section shall not be construed to confer any right

or privilege on a person that is conditioned or limited by law..."].) Here where there is a more specific statute which determines the liability of public entities, and particularly state agencies, including local subdivisions, for discrimination, it must be applied instead of the more general Unruh Act. (*Ibid*.)

B. LEGISLATIVE POLICY SUPPORTS THE UNRUH ACT NOT APPLYING TO SCHOOL DISTRICTS

California public entities also enjoy certain immunities and privileges created by the State that are not available to the general public because costs associated with public entity liability "must ultimately be borne by the taxpayers." (*Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 907–08.) In the case of public schools, not only is it a matter of considering the implications to taxpayer money, but it is also a matter of depleting funds from an already severely underfunded school system. A study by the American Institutes for Research, and part of a larger group of studies by Stanford University and the Bill & Melinda Gates Foundation, found that public schools in California are underfunded by approximately $22 billion per school year[3]. Ensuring that school districts are not forced to

[3] Jesse Levin, Iliana Brodziak de los Reyes, et al., GETTING DOWN TO FACTS II: What Does It Cost to Educate California's Students? A Professional Judgment Approach, (September 2018) American Institutes for Research. (https://gettingdowntofacts.com/sites/default/files/2018-09/GDTFII_Report_Levin.pdf)

face liability beyond that which is statutorily defined is of the utmost importance.

California enacted the Government Claims Act to narrowly delineate the circumstances under which a public entity may be sued. "The intent of the Government Claims Act is not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances: immunity is waived only if the various requirements of the act are satisfied." (*Metcalf v. Cty. of San Joaquin* (2008) 42 Cal.4th 1121, 1129 *citing Williams v. Horvath* (1976) 16 Cal.3d 834, 838.) Further, the Legislature was concerned with public entities' ability to weigh the fiscal implications of legal claims made against them. (*J.M. v. Huntington Beach Union High School Dist*. (2017) 389 P.3d 1242, 1246 fn. 3.)

Petitioner's contention that the Unruh Act, which provides prevailing plaintiffs with up to three times actual damages and/or statutory minimum damages, and attorneys' fees, runs contrary to the intent of the Legislature in enacting the Government Claims Act. Although it has been found to apply to certain public entities in some circumstances, that application must be narrow.

This Court has rejected nearly identical attempts to expansively interpret statutes with treble damages as applying to public entities. (See, *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164.) In *Wells*,

this Court found that public entities were not "persons" subject to the California False Claims Act (CFCA) or unfair competition laws (UCL). Despite recognizing the expansive statutory definition of "persons" subject to the CFCA as including "any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust," this Court determined that school districts were not subject to claims under the CFCA. (*Id*. at 1190-91.) This Court found signification that while the statutory definition was broad enough to conceivably include public entities, the Legislature did not include words or phrases most commonly used to signify public school districts or public entities. (*Ibid*.) Ultimately, however, it was the public policy implications that led this Court to conclude school districts were not subject to the CFCA. (*Id*. at 1194-97.) The Court acknowledged the stringent fiscal constraints applicable to public school districts that would be significantly undermined if public schools were subject to treble damages available under the CFCA. (Id. at 1194-95.)

> [T]here can be no doubt that public education is among the state's most basic sovereign powers. Laws that divert limited educational funds from this core function are an obvious interference with the effective exercise of that power. Were the CFCA applied to public school districts, it would constitute such a law. If found liable under the CFCA, school districts, like other CFCA defendants, could face judgments—payable from their limited funds—of at least *two*, and usually *three*, times the damage caused by each false submission, *plus* civil penalties of up to $10,000 for each false claim, plus costs of suit. Such exposure,

> disproportionate to the harm caused to the treasury, could jeopardize a district financially for years to come. It would injure the districts' blameless students far more than it would benefit the public fisc, or even the hard-pressed taxpayers who finance public education.

(*Id*. at 1195.) Based on this reality, the Court refused to expansively read the CFCA to include school districts because the exposure to such punitive damages/penalties amounted to a "diversion of limited taxpayer funds would interfere significantly with government agencies' fiscal ability to carry out their public missions." (*Ibid*.)

Like the CFCA in *Wells*, the Unruh Act does not explicitly apply to school districts, nor can school districts *reasonably* be construed as business establishments. Therefore, a ruling which extends liability of the Unruh Act against a public school district would go against the policy of the State Legislature in enacting the Government Claims Act and would be an unwelcome burden on the taxpayers who may foot the bill if school districts have to pay three times actual damages in discrimination related cases.

C. THE APPELLATE COURT CORRECTLY DETERMINED THAT PUBLIC SCHOOL DISTRICTS ARE NOT "BUSINESS ESTABLISHMENTS" UNDER THE UNRUH ACT

The Unruh Act applies to entities which are found to reasonably constitute "business establishments" not where it is "reasonably possible" an entity may be considered a "business establishment." A "business

establishment," for purposes of the Act, is a public or private entity that transacts with the general public in the sale for access to the basic activities or services offered by the organization. (*Doe v. California Lutheran High School Assn.* (2009) 170 Cal.App.4th 828, 839.) School districts, by their very nature as political subdivisions of the state, do not transact with the public like a business and thus are not considered "business establishments" under the Act. Indeed, public schools do not have customers with whom they can transact business – the services offered by public school districts are provided to students without charge.

The Court of Appeal made a thorough review of the history of the Unruh Act, and correctly determined that public school districts do not fall under the definition of "business establishments" under the Unruh Act. From the history of public accommodation laws before the Unruh Act, the full legislative history of the Unruh Act itself, and the extensive case law set by this Court in reviewing the Unruh Act, the Court of Appeal synthesized two key points. First, while this Court has not directly addressed the issue presented here, the Court has, "considered both the historical genesis of our public accommodation laws and the legislative history of the Act…" and found that "our public accommodation laws, including in its most recent form, have been, and remain, directed at private, rather than state, conduct." (*Brennon B. v. Superior Court of Contra Costa County* (2020) 57 Cal.App.5th 367, 388.) Second, "many of

the high court's reasons for why it determined private entities were business establishments under the Unruh Act do not pertain to our public school districts." (*Id.*) Together, these two key points correctly emphasize why the Unruh Act should not be applied to public school districts.

As the Court of Appeal correctly noted, this Court's previous case law also treats the Unruh Act as only covering private parties. (*See Ibid.*, 57 Cal. App. 5th at 388.) Each of the cases described by the Court of Appeal assumes that the Unruh Act is targeted at private persons, which is supported by the historical purpose of the Unruh Act. In the *Civil Rights Cases*, the United States Supreme Court invalidated a federal statute which targeted discriminatory conduct by private persons. (*Civil Rights Cases*, (1883) 109 U.S. 3.) In response, California passed a state equivalent, again focused on discriminatory conduct by private persons. (*Warfield v. Peninsula Golf & Country Club* (1995) 10 Cal.4th 594, 607-608) The Unruh Act was a continuation of this trend, seeking to prohibit discriminatory conduct by private parties. And as the Court of Appeal notes, "by the time the Unruh Act was enacted, the United States Supreme Court had already held racial discrimination in the public schools unconstitutional and repudiated the pernicious notion that segregated schools provided a separate but equal education." (*Brennon B., supra*, 57 Cal. App. 5th at 378 [*Brown v. Board of Ed. of Topeka, Shawnee County, Kan.* (1954) 347 U.S. 483, 495.]) To suggest that the Unruh Act was

intended to apply to public agencies flies against the statute's historical purpose, and this Court's case law supports that.

In addition, the standards applied by this Court to determine whether the Unruh Act applies are inapplicable to public school districts. In *O'Connor v. Vill. Green Owners Assn.* (1983) 33 Cal.3d 790, 796, the Court determined that a professional property management company fell under the Unruh Act due to the "theme running throughout the description of the association's powers and duties is that its overall function is to protect and enhance the project's economic value." In *Isbister v. Boys' Club of Santa Cruz, Inc*. (1985) 40 Cal.3d 72, 76., the Court determined that the Unruh Act applied to an entity with the sole purpose of operating "recreational facilities [which] are open to the community generally but closed to members of a particular group." This Court has applied a variety of standards to determine when the Unruh Act applies. (Brennan B., *supra,* 57 Cal. App. 5th at 389.) In each case, the tests put forward by this Court simply do not apply to school districts because the tests were fundamentally not designed to interact with a public agency such as a school district. It is undoubtedly possible to squeeze public school districts into stray corners of these tests by narrowly focusing on one or two words. (See Petitioner's Opening Brief on the Merits, pg. 24.) But when viewed together, it is clear that 1) these standards were designed to target private persons, and 2) the standards are inapplicable to public school districts.

The Court of Appeal's historical review and analysis of this Court's past opinions was necessary because many previous cases have neglected this important step. Rather, many cases simply rely upon the analysis in *Sullivan By and Through Sullivan v. Vallejo City Unified School Dist.* (1990) 731 F.Supp. 947, 952. However, the court in *Sullivan* failed to conduct a thorough review of the historical background of the Unruh Act. As a result of this oversight, *Sullivan* misapplies the rule stated by this Court in *O'Connor* as follows: "it appears relatively certain that it is "reasonably possible" that "business establishments" as used in the statute includes public schools." (*Sullivan, supra,* 731 F. Supp. at 952.) This misapplication of California law by the district court has led to a series of federal cases that wrongfully concluded the Unruh Act applies to California public school districts. Of course, the proper interpretation of California law is within the province of the California courts, not federal courts. (See *Kairy v. SuperShuttle Intern.* (2011) 660 F.3d 1146, 1150.)

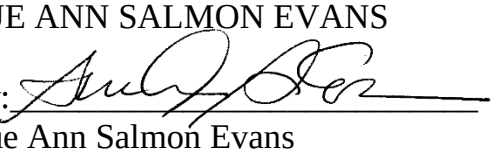
As the Court of Appeal correctly and thoroughly discusses, once the threshold question of whether or not an entity is a "business establishment" is answered in the negative, there is no further inquiry to determine if a violation of the American with Disabilities Act creates automatic liability under the Unruh Act, because the Unruh Act only applies to business establishments. (See *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493.)

III. CONCLUSION

For the foregoing reasons, Amici Curiae respectfully requests that the Court accept the accompanying brief for filing in this case.

DATED: September 15, 2021

DANNIS WOLIVER KELLY
SUE ANN SALMON EVANS

By: 

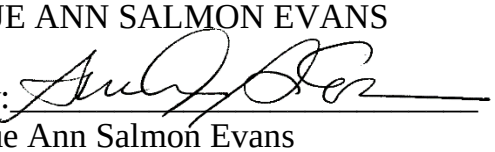
Sue Ann Salmon Evans
Attorneys for the Education Legal Alliance of the California School Boards Association and the California Association of Joint Power Authorities

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c) of the California Rules of Court, this Amici Curiae Brief Of The Education Legal Alliance Of The California School Boards Association and the California Association of Joint Power Authorities In Support Of Real Parties in Interest was produced using 13-point Roman type including footnotes and contains approximately 5742 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: September 15, 2021

DANNIS WOLIVER KELLY
SUE ANN SALMON EVANS

By: 
Sue Ann Salmon Evans
Attorneys for the Education Legal Alliance of the California School Boards Association and the California Association of Joint Power Authorities

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 444 W. Ocean Blvd., Suite 1070, Long Beach, CA 90802.

On the date set forth below I served the foregoing document described as **AMICI CURIAE BRIEF OF EDUCATION LEGAL ALLIANCE OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION AND THE CALIFORNIA ASSOCIATION OF JOINT POWER AUTHORITIES IN SUPPORT OF REAL PARTY IN INTEREST WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, ET AL.** on interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

☒ BY ELECTRONIC SERVICE: By filing the foregoing with the clerk of the California Supreme Court by using its True Filing system, which electronically serves counsel for each party.

☒ (VIA U.S. MAIL) I caused such document to be placed in the U.S. Mail at Redondo Beach, California with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 15, 2021, at Redondo Beach, California.

Shanti D. Friend

Shanti D. Friend

Service List

Via Electronic Service Micha Star Liberty Liberty Law 1970 Broadway, Suite 700 Oakland, CA 94612	Attorneys for Brennon B.: Petitioner Telephone: (510) 645-1000 Email: micha@libertylaw.com
Via Electronic Service Alan Charles Dell'Ario P.O. Box 359 Napa, CA 94559	Attorneys for Brennon B.: Petitioner Telephone: (707) 666-5351 Email: charles@dellario.org
Via Electronic Service Timothy Patrick Murphy Cody Lee Saal Edrington Schirmer & Murphy 2300 Contra Costa Boulevard, Suite 450 Pleasant Hill, CA 94523-3936	Attorneys for West Contra Costa Unified School District: Real Party in Interest Telephone: (925) 827-3300 Facsimile: (925) 827-3320 Email: TMurphy@esmlawfirm.com Email: CSaal@esmlawfirm.com
Via Electronic Service Alison Katherine Beanum Douglas J. Collodel Clyde & Co US LLP 355 South Grand Av, Suite 1400 Los Angeles, CA 90071	Attorneys for West Contra Costa Unified School District: Real Party in Interest
Via U.S. Mail Honorable Charles Treat Superior Court for Contra Costa County 1020 Ward Street Martinez, CA 94533	For Superior Court for Contra Costa County: Respondent
Via Electronic Service Sharon J. Arkin Arkin Law Firm 1720 Winchuck River Road Brookings, OR 97415	Attorneys for Consumer Attorneys of California : Pub/Depublication Requestor and Amici curiae

Via Electronic Service
Office of the Clerk
California Court of Appeal
First Appellate District, Division One
350 McAllister Street
San Francisco, CA 94102