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Via Federal Express

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

**Re: *McWilliams v. City of Long Beach*
Supreme Court of the State of California, Case No. S202037**

To the Honorable Chief Justice Cantil-Sakauye and Associate Justices of the Supreme Court:

Pursuant to rule 8.50(g) of the California Rules of Court, the California Special Districts Association, a California nonprofit public benefit corporation (hereinafter "CSDA") submits this letter in support of the petition for review which the City of Long Beach filed with the Supreme Court in the matter *McWilliams v. City of Long Beach*, Supreme Court of the State of California, Case No. S202037.

I. The Interest of CSDA

CSDA is a nonprofit association representing approximately 1,000 special districts throughout California. These special districts provide a wide variety of public services to both suburban and rural communities, including fire suppression and emergency medical services; water supply, treatment and distribution; sewage collection and treatment; recreation and parks; security and police protection; airport services; harbor and port services; solid waste collection, transfer, recycling and disposal; cemeteries; libraries; mosquito and vector control; road construction and maintenance; pest control and animal control services. California special districts routinely participate in the planning, design and construction of necessary public facilities and infrastructure and fund the provision of these critical public services. Special districts routinely fund the costs of such infrastructure and public services through the imposition of locally approved special

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taxes pursuant to Government Code section 50075 et seq., property related fees and charges consisting of fees for water, sewer, garbage disposal and other property-related services pursuant to their various enabling acts and the provisions of Article XIII C and D of the California Constitution (Prop. 218), and the provisions of the Proposition 218 Omnibus Implementation Act specified at Government Code section _____. Additionally, many non-enterprise special districts in California such as fire protection districts, recreation and park districts, airport services, harbor and port services districts and library districts fund their operations through the levying and collection of user fees from members of the public who utilize those services.

The analysis and decision in this case will directly impact CSDA's public agency members because each such member is a local government agency that is authorized to enact a local claims procedure under Government Code section 935. Some CSDA members have adopted local claims procedures by ordinance that does not permit the assertion of class claims. Other CSDA member agencies have adopted local claims ordinances that require each claimant to file a separate claim.

The present petition in *McWilliams* asks this Court to grant review to resolve a critical issue: Does Government Code section 905(a) except "claims under ... [a] statute prescribing procedures for the refund ... of any tax, assessment, fee or charge" from the scope of the Government Claims Act? Second, did the Legislature use the term "statute" in section 905(a) of the Government Code to include local legislation such as ordinances adopted by cities, counties and special districts? It is the contention of CSDA that it does. That is the principle issue raised by the instant petition for review which is whether the plaintiff was required to comply with the county's claims procedures which do not permit the assertion of class claims as opposed to complying with the claims process set forth in section 905 of the Government Code. In other words, does section 905(a)'s exception for claims under a statute prescribing procedures for the refund of any tax, assessment, fee or charge from the scope of the Government Claims Act authorize local legislation by counties, cities, and special districts to establish local claim requirements for refunds of local fees, as well as local special taxes? Section 905(a) itself makes no distinction between general taxes, special taxes, assessments, fees, or charges.

Several class action challenges have been filed with respect to fees and charges levied by special districts for utility services such as water and sewer service charges (See *BealeRst Borst et al v. City of El Paso Del Robles*, San Luis Obispo Superior Court Case No. CV 09-8117 (MJN at Exhibit G) and *Shanes v. City of San Diego*, San Diego Superior Court Case No. GIC 831539 (MJN at Exhibit H).)

This case raises the pressing question expressly reserved in this Court's recent decision in *Ardon v. City of Los Angeles* (2011) 52 Cal.4th 241 (hereinafter, "*Ardon*") — does the Government Claims Act preempt local claiming requirements as stated in special district ordinances? The answer to this question controls hundreds of millions of dollars of utility rate revenue, property related fees and user fees levied by special districts for the wide variety of public services which they provide throughout the state. Special districts

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are now being called upon to defend pending class actions for refunds of water and sewer rates which, if found permissible, may likely extend to class action refund claims for the wide variety of property related and user fees levied by special districts to fund the construction and operation of critical public infrastructure. An authoritative decision on this question is necessary to avoid needless uncertainty for local governments and the citizens those governments serve, as well as to avoid needless effort by many trial and appellate courts and uncertainty for plaintiffs.

II. Why This Court Should Grant Review

This case merits review to settle important questions of law and to secure uniformity of decision. (Cal. Rules of Court 8.500, subd. (b)(1).) The petition for review in this case asks the Court to grant review to resolve whether Government Code section 905(a)'s exception from the scope of the Government Claims Act for claims "under ... [a] statute prescribing procedures for the refund ... of any tax, assessment, fee or charge," authorizes local legislation including special district ordinances to establish claims requirements for refunds of locally enacted special taxes, property related fees and charges, and other user fees, and to limit the ability to pursue such refunds on a class basis. The fiscal stability of special districts is threatened by potential class claims for refunds of locally enacted special taxes, utility rates such as property related fees and charges, and user fees, which situations cannot be accounted for in the special district budgetary process because they are unforeseeable.

This Court should grant review for two additional reasons: first, the case law is in conflict on this question. In *Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65 (hereinafter, "*Batt*"), the First Appellate District held that a municipal code barring class claims for tax refunds was a "statute" within the meaning of section 905(a) and therefore was not preempted by the Government Claims Act. In *Ardon*, this Court distinguished, but did not overrule *Batt* and other cases in that line of precedent. Additionally, the Second Appellate District rejected *Batt*'s conclusion in *County of Los Angeles v. Superior Court (Oronoz)* (2008) 159 Cal.App.4th 353 (hereinafter, "*Oronoz*"), holding that a municipal code governing the presentation of a local tax refund was **not** a statute under section 905(a.) Review of this case is necessary to resolve a split of authority in the Courts of Appeal on this issue.

Second, CSDA contends that the Court of Appeal in this case failed to fully consider and address the limitations, statements and conclusions contained in the Recommendation and Study Relating to the Presentation of Claims Against Public Entities (January 1959) of the California Law Revision contained at 2 Cal. Law Revision Com. Rep. (1959) (hereinafter, the "Law Revision Report"). The Law Revision Report should be construed in this case as the definitive expressive of legislative intent with respect to those who drafted the Government Claims Act. With respect to section 905(a) of the Government Claims Act, comments of the California Law Revision Commission in the Report are quite clear as follows:

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A. The Government Claims Act was intended to exclude all claims relating to refunds of any tax, assessment, fee or charge, and was directed to specific limitation of contract, tort and inverse condemnation claims. The Report is quite clear as to its intended scope:

“This study relates exclusively to legal provisions governing claims in the foregoing categories. Excluded from the scope of the study, therefore, are such provisions as the following:

(1) Provisions governing claims for refund of taxes, assessments, fees, etc. Such provisions are frequently integrated with special procedures governing the assessment, levy and collection of revenue. They are separate and independent from the tort and contract claims provisions and do not create problems of the same nature and significance as the claims provisions embraced by the Report.” (See Report at A.17.)

In addition, the California Law Revision Commission indicated in its proposed new General Claims Statutes at section 703 that the intended scope of the chapter was to apply to all claims for money or damages against local public entities except “Claims under the Revenue and Taxation Code, or other provisions of law prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification, or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.”

B. The Report construes the word “statute” to include local “ordinances” as well. The Report states as follows:

“There seems to be no adequate generic word for referring collectively to statutes, city charters and ordinances. Since claims are governed by legal requirements of all three types, the phrases “claims statutes” and “claims provisions” are used interchangeably herein to refer to all forms of legal claims presentation requirements as a class.” (See Report at A.18.)

“The law of the state contains many statutes and county and city charges and ordinances which bar suit against a governmental entity for money or damages unless a written statement or “claim” setting forth the nature of the right asserted against the entity, the circumstances giving rise thereto and the amount involved is communicated to the entity within a relatively short time after the claimant’s cause of action has accrued. Such provisions are referred to in this Recommendation and Study as “**claim statutes.**”

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It is clear from this legislative history that the legislative intent in referencing the terms “other statute” in section 905(a) does in fact include city, county and special district ordinances.

In this case, Long Beach relied on the *Batt* case in demurring to a class claim for refund of its Telephone Users’ Tax (“TUT”) contending that applicable sections of its municipal code did not authorize class claims. The Second District Court of Appeal reversed the trial court’s dismissal of the first four classes of action and concluded that Long Beach “is not authorized under the Government Claims Act to establish its own claims procedure for TUT refunds.” (Opinion at p. 2.) The Court reasoned that a city ordinance is not a “statute” within the meaning of Government Code section 905(a) and section 811. On that basis, it concluded that section 905 therefore preempts local claiming requirements in the context of claims for refunds of taxes, fees, and assessments.

III. Conclusion

In light of the prevalence of special district claims procedures pertaining to class claims for refunds of special taxes, property related fees and charges, and other user fees, CSDA respectfully urges the Court to grant review in this case to definitively answer the question for all local agencies as to whether a local city or county charter or special district ordinance is a “statute” within the meaning of section 905(a) such that local claiming requirements preempt the Government Claims Act; and to provide guidance to all local governments with claiming ordinances similar to Long Beach’s who are facing increasingly common class challenges to local special taxes, property related fees and user fees; and to avoid the cost of unnecessary, duplicative litigation and the severe budget impacts to special districts that such repeated litigation may cause.

Special districts and other local governments throughout California urgently require resolution of this conflict and a clear statement of the law on their power to enact local ordinances governing refund claims for local special taxes, property related fees and user fees. For these reasons, CSDA respectfully urges this Court to grant the City of Long Beach’s petition for review.

Respectfully Submitted,

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Attorney for Amicus Curiae,
California Special Districts Association

DWM:sjm

Attachment: Proof of Service