IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

PLAINTIFFS IN JCCP 5108, IN RE NORTHERN CALIFORNIA CLERGY CASES, Plaintiffs and Petitioners, v. SUPERIOR COURT OF CALIFORNIA FOR ALAMEDA COUNTY, Respondent.	B349706 (Case No. JCCP 5108 Hon. S. Raj Chatterjee)
ALL INSTITUTIONAL DEFENDANTS IN JCCP 5108, Defendants and Real Parties in Interest.	

APPLICATION FOR PERMISSION TO FILE AMICUS BRIEF and BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA and THE AMERICAN TORT REFORM ASSOCIATION AS AMICI CURIAE SUPPORTING REAL PARTIES IN INTEREST

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Application for Permission to File Amicus Brief

The Civil Justice Association of California (CJAC) and the American Tort Reform Association (ATRA) apply for permission to file an amicus brief pursuant to California Rules of Court, rule 8.487(e), supporting the Institutional Defendants in JCCP 5108.

CJAC is a nonprofit organization whose members are businesses from a broad cross section of industries. CJAC's principal purpose is to educate the public and its governing bodies about how to make laws determining who gets paid, how much, and by whom when the conduct of some causes harm to others – more fair, certain, and economical. Toward this end, CJAC regularly appears as amicus curiae in numerous cases of interest to its members. CJAC and its members are particularly interested in the application of Proposition 51, the Fair Responsibility Act of 1986. Under its former name, the Association for California Tort Reform (ACTR), CJAC was a driving force behind the efforts to get Proposition 51 passed, as the Supreme Court recognized in its opinion upholding the constitutionality of Proposition 51. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1212, fn. 16 (acknowledging ACTR's statement "that it sponsored the legislation that was 'the precursor to and model for Proposition 51' and that its chairman 'was the official proponent who filed Proposition 51 with the California Attorney General requesting preparation of a title and summary for placement on the ballot'").)

ATRA is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than three decades, ATRA has filed amicus briefs in cases involving important liability issues, such as this one.

The amicus brief submitted by CJAC and ATRA will assist the Court by providing a broader perspective on the issue before the Court than that provided by the parties involved in the pending appeal.

No party to this appeal nor any counsel for a party authored the proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief.

No person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than CJAC and its members.

March 30, 2026

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Amicus Brief

A Introduction

Over the 40 years that Proposition 51 has been in effect, businesses, local governments, religious institutions, and the trial courts have become accustomed to the comparative fault principles that it established. As the Supreme Court has explained, Proposition 51 was designed to eliminate the unfairness of joint and several liability:

> In sum, by 1986 the courts had eliminated certain inequities of the former tort recovery system, but so-called "deep pocket" defendants whose fault was slight could still be saddled with large damage awards mainly attributable to the greater fault of others who were able to escape their full proportionate contribution. [Citation omitted.] Proposition 51 sought to modify this system of recovery.
>
> Proposition 51 first codified its purpose by adding section 1431.1 to the Civil Code. This statute decries the unfairness and cost of the "deep pocket" rule to both "governmental and private defendants" (*id.*, subds. (a)-(c)) and cites the exploitation of relatively blameless defendants who "are perceived to have substantial financial resources or insurance coverage …." (*Id.*, subd. (b).) Section 1431.1 declares that in order to remedy these inequities and avoid "catastrophic" financial consequences to public and private individuals and entities, "defendants in tort actions shall be held financially liable in closer proportion to their degree of fault." (*Id.*, subd. (c).)

(*DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 599.)

With their writ petition, the plaintiffs in JCCP 5108 are asking the Court to grant an exemption from those principles to a select group of plaintiffs whose claims are based on pre-1986 conduct. The rule they propose would ignore the will of the voters who adopted Proposition 51 and impose unfair and irrational additional damages exposure on defendants who already face millions in unforeseen exposure because of AB 218's lifting of the statute of limitations. The Court should deny their petition, just as the trial court denied their motion to bar application of Proposition 51:

> Given that status quo, the Legislature in 2019 would not by mere silence and omission have indicated that defendants in the revived cases would be subject to the "deep pocket" rule that the California voters had eliminated over 30 years earlier. [Fn. omitted] Reviving the joint and several liability rule that had been dead for over 30 years and essentially overriding the will of the voters who passed Proposition 51 would have been a significant matter for which the Court concludes the Legislature would have made specific findings if that was the Legislature's intent.

[Exhibits in Support of Petition, pp. 354-355.]

B Neither the text of Proposition 51 nor the text of AB 218 supports the plaintiffs' argument that joint and several liability should be revived for claims based on pre-1986 conduct.

Proposition 51 provides: "Each defendant shall be liable only for the amount of non-economic damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be rendered against that defendant for that amount." (Civ. Code, § 1431.2, subd. (a).) That rule applies to "any action for personal injury, property damage, or wrongful death." Nothing in the language of Proposition 51 suggests that it should not be applied in actions filed after AB

218 took effect over 30 years later. Therefore, absent some intervening legislative enactment, it should be applied to lawsuits authorized by AB 218 just as it is applied to other lawsuits.[1]

- In a childhood sexual assault case to apportion liability between a school district and the perpetrator. (See *K.M. v. Grossmont Union High School Dist.* (2022) 84 Cal.App.5th 717, 732-733.)
- In a case alleging negligence in the supervision of a minor in foster care. (*Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125.)
- In an action for harm resulting from mislabeled drugs. (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 188.)
- In an action for medical malpractice. (*Rashidi v. Moser* (2014) 60 Cal.4th 718, 720.)
- In an action for harm from asbestos-related mesothelioma. (*Buttram v. Owens-Corning Fiberglas Corp.* (1997) 16 Cal.4th 520, 524.)
- In third-party actions by injured employees. (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 604.)

[1] The Judicial Council's California Civil Jury Instructions provide a plain English explanation of the rule for jurors in CACI Nos. 405-407 (which are applicable to all causes of action based on negligence), and a sample verdict form in CACI No. VF-402.

- In an action for unauthorized disclosure of medical information. (*Doe v. County of Orange* (2025) 113 Cal.App.5th 1276.)
- To limit a defendant's liability to his or her proportionate share of *all* fault responsible for the plaintiff's injuries, not just that of defendants in the lawsuit. (*Watts v. Pneumo Abex, LLC* (2024) 106 Cal.App.5th 248, 265.)

AB 218 did not say anything about the application of comparative fault principles to the childhood sexual assault claims that it revived. Since 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,"[2] one should assume that the Legislature did not intend to alter the rules governing liability for non-economic damages that were in effect when it passed AB 218.

The point is reinforced by the fact that the Legislature knew that it could alter a potential defendant's damages exposure if it wished to do so. AB 218 included a provision that imposed treble damages on anyone whose cover up of a sexual assault led to a sexual assault on another minor. (Code Civ. Proc., § 340.1, subd. (b)(1).) Because that provision "imposed new and significant liability," it was a substantive change in the law that required "an express statement that treble damages can be pursued retroactively." (*K.M.*, *supra*, 84 Cal.App.5th at p. 742.)

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[2] *People v. Scott* (2014) 58 Cal.4th 1415, 1424, quoting *People v. Yartz* (2005) 37 Cal.4th 529, 538.

Because AB 218 did not contain such a statement, the treble damages provision could not be applied retroactively.

If the increase in liability that the Legislature purposefully included in AB 218 cannot be applied retroactively, then the enactment certainly should not be invoked to authorize the substantial increase in damages exposure that would result from barring application of comparative fault principles to the lawsuits that it brought into existence.

C Selecting claims based on pre-1986 conduct for special treatment is unfair and lacks a rational basis.

Shortly after Proposition 51 took effect, the Supreme Court ruled in *Evangelatos* that it should not apply to causes of action that accrued before the effective date. The Court was concerned that applying Proposition 51 to causes of action that accrued earlier "could result in placing individuals who had acted in reliance on the old law in a worse position than litigants under the new law." (44 Cal.3d at p. 1215.) Those whose claims had accrued before Proposition 51 might have decided about whom to sue based on the old rule that made any defendant who was the slightest bit negligent liable for *all* the plaintiff's damages. There would have been no need to join additional defendants. They might not have been able to join additional defendants after Proposition 51 took effect, because the statute of limitations had run. There is no such concern in this case. Any attorney who filed a lawsuit during AB 218's revival period would have known that comparative liability for non-economic damages was a fixture of California tort law that should be considered as part of any litigation strategy.

The *Evangelatos* Court was also concerned that applying Proposition 51 retroactively might defeat the expectations of parties who entered into settlement agreements in reliance on the old rule. Had they known that comparative liability would apply, they might have insisted on higher settlements. (44 Cal.3d at p. 1216.) This case does not raise that concern. Victims whose claims were revived by AB 218 would not have entered into settlement agreements under the joint and several liability rule.

When *Evangelatos* was decided, there might have been unanticipated adverse consequences for settling defendants as well. Under the old rule, a nonsettling tortfeasor would have to absorb any shortfall resulting from the insolvency of a tortfeasor pro rata with other tortfeasors. After Proposition 51, the settling defendant would have to absorb the shortfall. (44 Cal.3d at pp. 1216-1217.) Again, that concern is not present here. There are no existing defendants who settled a case in reliance on the pre-1986 rule who would be prejudiced today.

Several years later, the Supreme Court was called upon to explain what it meant when it stated in *Evangelatos* that Proposition 51 did not apply to claims that had "accrued" before its effective date. In *Buttram*, *supra*, it explained that causes of action "may be viewed in the eyes of the law as 'accruing' for different purposes on different dates, depending on the purpose for which the accrual determination is being sought." (16 Cal.4th at p. 530.) Drawing on its *Evangelatos* decision, the Court ruled that, to determine accrual for purposes of applying Proposition 51, the "parties' reasonable reliance on the laws governing recovery for personal injuries was of paramount concern." (16 Cal.4th at p. 531.)

Buttram addressed the applicability of Proposition 51 to a claim for asbestos-related pleural mesothelioma. The plaintiff had been exposed to asbestos-containing materials from 1964 to 1968 but did not know that he had contracted mesothelioma until a chest x-ray revealed it during an annual physical examination in 1991. He probably had subclinical cancer cell formation at least seven years earlier, before Proposition 51 took effect. Although the plaintiff would have benefited from application of the pre-Proposition 51 rule, the Court ruled that his claim had accrued in 1991. No party could have relied on the old rule, because neither the plaintiff nor the asbestos manufacturer "had any occasion to calculate potential liability under the former rule of unrestricted joint and several liability."

> Without awareness or discovery of the manifestation of actual harm or injury, no litigation has been contemplated, no lawsuit filed, no potential tortfeasors targeted as defendants, no reliance placed on the joint and several liability rule for noneconomic damages, and no settlements contemplated or agreed to. Nor would the statute of limitations have run on any cause of action against any potential defendant, given the applicability of the "discovery rule" noted above. [Citation omitted.] And from the defendants' perspective, no potential defendant would have made any settlement decisions or contemplated equitable indemnity actions against nonsettling cotortfeasors.

(16 Cal.4th at p. 535.)

Likewise, here, because any pre-1986 childhood sexual assault claim would have been barred by the statute of limitations long before AB 218 became effective in 2020, no potential party could have made a decision about filing a lawsuit, choosing a defendant, or settling a claim based on the old rule.

The *Buttram* decision also counters the plaintiffs' contention in this case that the Court should follow the principle that applies the law in effect when the defendant's misconduct inflicted injury:

> The short answer is that we are not in this case fashioning an accrual rule that defines liability in the latent injury context or otherwise determines the point at which a defendant will become legally liable for the plaintiff's injuries. We are instead simply devising an appropriate rule of accrual to be applied for the specific and limited purpose of determining whether Proposition 51 can be prospectively applied in a latent injury case, a rule that will effectuate rather than thwart the will of the voters who overwhelmingly passed Proposition 51's tort reform measures over a decade ago, while remaining fair to the parties, consistent with the rationale of our holding in *Evangelatos*.

(16 Cal.4th at p. 536.) Likewise, here, the Court is not being asked to determine which rule makes the defendant legally liable for the plaintiffs' injuries, but rather to adopt a rule that will effectuate the will of the voters in a way that is consistent with the holding in *Evangelatos*.

Applying Proposition 51 to the claims revived by AB 218 is also consistent with the common understanding of accrue, which is "to come into existence as a legally enforceable claim." (*City of Pasadena v. Superior Court* (2017) 12 Cal.App.5th 1340, 1349, quoting Webster's Seventh New Collegiate Dictionary (1969) page 6.) The actions before the Court did not exist—could not have existed—before AB 218 opened its three-year revival window on

January 1, 2020. The predecessor statute of limitations had run. The plaintiffs did not have viable causes of action until AB 218 created a fresh right to sue. In other words, the plaintiffs' allegations of wrongdoing came into existence as legally enforceable claims on January 1, 2020. That is when they accrued for purposes of Proposition 51.

Changing the apportionment rule after it had been in effect for over 30 years "does not accord with fundamentally fair process." (*Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1028.) It would be particularly unfair to do so through enactment of AB 218. That law dealt extensively with childhood sexual assault claims. It extended the statute of limitations. It created a three-year window to revive time-barred claims. It authorized treble damages against defendants who engaged in cover-ups. It modified the Government Claims Act obligations in litigation arising from those revived claims. But it did not say a word about Proposition 51 or Civil Code section 1431.2.

That silence is conclusive under basic principles of statutory construction. When the Legislature enacted AB 218 in 2019, Proposition 51 had been the law for over 30 years, had been interpreted by the Supreme Court and the Courts of Appeal in multiple decisions, and had been applied in the very category of personal injury litigation that AB 218 addressed. When the Legislature legislates against that backdrop and says nothing about modifying the apportionment framework, the Court should presume it intended to leave that framework intact. As the

Supreme Court has declared, it is "aware of no authority that supports the notion of legislation by accident." (*In re Christian S.* (1994) 7 Cal.4th 768, 776 (rejecting an argument that when the Legislature abrogated one defense "it must have acted, albeit silently and perhaps inadvertently, to eliminate [another defense] as well"). See also *Jurcoane v. Superior Court* (2001) 93 Cal.App.4th 886, 894 ("we should not read statutes to omit expressed language or include omitted language").)

Evangelatos and *Buttram* were animated by concern for parties who had relied on the old rule—litigants who had made litigation decisions, chosen defendants, or entered settlements based on a legal landscape that existed before Proposition 51 changed it. Treating a select group of revived claims as though they exist in a pre-1986 legal universe—exempt from rules that have governed California tort law for four decades—is not consistent with any rational basis for differentiation. It is unfair to defendants who structured their affairs in reliance on Proposition 51, unfair to the voters who enacted it, and unfair to the many other plaintiffs in comparable personal injury litigation who are proceeding under the comparative fault framework. The Court should decline the plaintiffs' invitation to carve out a special liability regime that neither the Legislature nor the voters authorized.

Conclusion

When the voters adopted Proposition 51, they declared:

> Some governmental and private defendants are perceived to have substantial financial resources or insurance coverage and have thus been included in lawsuits even though there was little or no basis for finding them at fault. Under joint and several liability, if they are found to share even a fraction of the fault, they often are held financially liable for all the damage. The People—taxpayers and consumers alike—pay for these lawsuits in the form of higher taxes, higher prices and higher insurance premiums.

(Civ. Code, § 1431.1, subd. (b).)

The Court should honor the voters' intent by denying the plaintiffs' petition to reinstate joint and several liability for their claims to non-economic damages. Doing so would unfairly saddle defendants who already face millions of dollars in damages claims with many times the exposure they assumed they would face under the comparative fault allocation required by Proposition 51.

March 30, 2026

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Certificate of Compliance

Counsel of Record hereby certifies that, pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed Respondents' brief is produced using 13-point Roman type including footnotes and contains approximately 3,500 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.

s/ Calvin House