

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT

**GAVIN NEWSOM, in his official  
capacity as Governor of the  
State of California,**

Petitioner,

v.

**THE SUPERIOR COURT OF  
THE STATE OF CALIFORNIA  
FOR THE COUNTY OF  
SUTTER,**

Respondent,

**JAMES GALLAGHER and  
KEVIN KILEY,**

Case No. C093006

[Related Case No. C092070]

On Petition for Writ of Mandate to the Sutter County Superior  
Court, Case No. CVCS20-0912 (Hon. Sarah Heckman)

**APPLICATION OF THE CALIFORNIA STATE  
ASSOCIATION OF COUNTIES AND THE  
LEAGUE OF CALIFORNIA CITIES TO FILE  
AMICUS CURIAE BRIEF IN SUPPORT OF  
PETITIONER GOVERNOR GAVIN NEWSOM**

JAMES R. WILLIAMS (SBN 271253)

*County Counsel*

HANNAH M. KIESCHNICK (SBN 319011)

STEPHANIE L. SAFDI (SBN 310517)

KARUN TILAK (SBN 323939)

*Deputy County Counsels*

OFFICE OF THE COUNTY COUNSEL

COUNTY OF SANTA CLARA

70 W. Hedding St.  
East Wing, 9th Floor,  
San José, CA 95110  
Tel. (408) 299-5900  
Fax. (408) 292-7240

Corrie Manning (SBN 278073)  
General Counsel  
LEAGUE OF  
CALIFORNIA CITIES  
1400 K Street, Suite 400  
Sacramento, CA 95814  
Tel: (916) 658-8200  
Fax: (916) 658-8240  
[cmanning@cacities.org](mailto:cmanning@cacities.org)

Jennifer Henning (SBN 193915)  
Litigation Counsel  
CALIFORNIA STATE  
ASSOCIATION OF COUNTIES  
1100 K Street, Suite 101  
Sacramento, CA 95814  
Tel: (916) 327-7535  
Fax: (916) 443-8867  
[jhenning@counties.org](mailto:jhenning@counties.org)

*Attorneys for Amici Curiae*

## **APPLICATION FOR LEAVE TO FILE**

Pursuant to California Rule of Court 8.487(e)(2), the California State Association of Counties (“CSAC”) and League of California Cities (“Cal Cities”) respectfully request leave to file the attached amicus brief in support of Petitioner, Governor Gavin Newsom.<sup>1</sup>

## **INTEREST OF AMICI CURIAE**

CSAC is a non-profit corporation whose members are California’s 58 counties. CSAC’s primary purpose is to represent the interests of county government and secure counties’ ability to provide vital public programs and services. 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.

Cal Cities is an association of 477 California cities dedicated to protecting and restoring local control to provide for

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<sup>1</sup> Pursuant to Rule of Court 8.200(c)(3), amici certify that no party or counsel for a party in this appeal authored the proposed amicus brief in whole or part. Further, no party, counsel for a party, or person or entity other than amicus curiae made a monetary contribution intended to fund the preparation or submission of the brief.

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 24 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.

During states of emergency, such as the present COVID-19 pandemic or still-ravaging wildfires, local governments—including amici’s member counties and cities—often work in concert with or with direction from the state government. In particular, local governments may rely on Executive Orders issued pursuant to the authority granted to the Governor under the California Emergency Services Act (“CESA”) (Gov. Code, §§ 8550–8669.7), in order to obtain relief from various statutory requirements that would otherwise impede their ability to govern or interfere with conducting, or rapidly allocating necessary resources for, an emergency response.

Amici therefore have a manifest interest in ensuring a clear, coordinated response under CESA to present and future emergencies. The Superior Court’s vague and overbroad statement of decision in this case undermines this interest by contradicting established law and historical practice and disturbing settled expectations regarding Executive Orders issued under CESA. The deeply flawed decision throws into doubt numerous already-issued Executive Orders upon which local governments continue to rely to govern during the COVID-

19 pandemic. And it undermines the authority granted to the Governor under CESA to issue Executive Orders to take necessary actions – sometimes at the request of state lawmakers or local governments – to ensure that local governments have the flexibility to respond to future crises, while interjecting damaging uncertainty into governance during moments of crisis.

Amici’s proposed amicus brief will assist the Court in deciding this matter by highlighting the grave real-world effects of the trial court’s sweeping and unintelligible injunction on local governments’ ability to maintain continuity of operations, achieve certainty and clarity in regulatory requirements during states of emergency, and appropriately allocate resources to emergency responses.<sup>2</sup>

Dated: December 18, 2020

Respectfully submitted:

/s/

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JENNIFER HENNING  
Litigation Counsel  
California State Association  
of Counties

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<sup>2</sup> For the reasons laid out in the Petition for Writ of Mandate and Reply, amici further agree with Petitioners that the present dispute is moot.