C.A. Nos. 10-56787

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THOMAS LEE GOLDSTEIN,

Plaintiff/Appellant,

v.

COUNTY OF LOS ANGELES,

Defendant/Appellee.

On Appeal from the United States District Court
for the Central District of California

The Honorable A. Howard Matz, District Judge, Presiding
D.C. No. 04-cv-09692-AHM-E

MOTION FOR LEAVE TO FILE *AMICUS* BRIEF; *AMICUS* BRIEF ON BEHALF OF CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF DEFENDANT/APPELLANT COUNTY OF LOS ANGELES' PETITION FOR REHEARING AND REHEARING *EN BANC*

THOMAS E. MONTGOMERY, County Counsel
County of San Diego

By MORRIS G. HILL, Senior Deputy (Bar No. 97621)
1600 Pacific Highway, Room 355
San Diego, California 92101-2469
Telephone: (619) 531-4877
Attorneys for *Amicus Curiae* California State Association of Counties

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MOTION FOR LEAVE TO FILE *AMICUS* BRIEF

1. Interest of *Amicus*.

The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. 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.

2. Desirability And Relevance Of *Amicus* Brief To Disposition.

The reason why an *amicus* brief is desirable, and why the matters asserted are relevant to the disposition of the case, is that the opinion filed May 8, 2013 exposes California counties to unforeseen (and potentially vast) new financial liability under 42 U.S.C. § 1983 for inaction of former elected district attorneys (in this case, inaction over three decades ago) in failure to create an "index" of jailhouse informant "benefits" and "reliability," and in failure to train prosecutors to "use that [never-created] index."

> We find that, as to the policies at issue here, the district attorney was acting as a final policymaker for the County of Los Angeles. Goldstein's challenge focuses on the failure to create an index that includes information about benefits provided to jailhouse informants and other previous knowledge about the informants' reliability, and the failure to train prosecutors to use that index. Goldstein alleges that

> it was the lack of an index that allowed Fink to lie about the benefits he received for testifying against Goldstein, prevented prosecutors in Goldstein's case from knowing Fink's history, and prevented Goldstein's counsel from impeaching Fink.

Goldstein v. City of Long Beach, 2013 U.S. App. LEXIS 9333, *3-*4 (9th Cir. 2013) (emphasis added). The Supreme Court has held that a municipal entity can be liable under § 1983 for a relevant policymaker's one-time *decision*, if that decision represents a "deliberate choice" to follow a certain course of action, not merely official discretion to follow a certain course of action. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480-483 (1986). The opinion turns *Pembaur* inside-out by holding that counties may be liable for a district attorney's discretionary *failure* to decide whether to follow a certain course of action, exposing counties to liability over matters in which they lack power and authority.

3. Attempt To Obtain Consent Of Parties.

Pursuant to Circuit Rule 29-3, moving *amicus* endeavored to obtain the consent of all parties to the filing of the brief before moving the Court for permission to file the proposed brief. Consent of all parties has not been obtained.

DATED: June 3, 2013

Respectfully submitted,

THOMAS E. MONTGOMERY, County Counsel

By: s/ MORRIS G. HILL, Senior Deputy
Attorneys for *Amicus Curiae* California State Association of Counties
E-mail: morris.hill@sdcounty.ca.gov

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Attorneys for *Amicus Curiae* California State Association of Counties

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AMICUS BRIEF

I

INTRODUCTION

The opinion starts with the correct analytical framework: "the viability of Goldstein's claim turns on whether the Los Angeles District Attorney *acted* here as a policymaker for the state or for the county." *Goldstein v. City of Long Beach*, 2013 U.S. App. LEXIS 9333, *9-*10 (9th Cir. 2013) (Italics added.) But the opinion's ultimate outcome is reached by turning that framework inside out: *failure* to create and *failure* to train. A policymaker *decision* is the polar opposite of a policymaker's *failure* to make a decision. A deliberate choice to follow a certain course of *action* is the polar opposite of *inaction*, unless one rewrites the dictionary to give the word "action" exactly the same meaning as "inaction."[1]

The result for California counties will be unprecedented new liability to former State prisoners who claim that decades-old convictions partly resulted from false information from jailhouse informants who allegedly received benefits. Most (or all) eyewitnesses and contemporary records will be unavailable, or -- as in this case -- the principal eyewitness will be dead, making such lawsuits practically impossible for counties to effectively defend.

[1] In Act I of Gilbert and Sullivan's opera *Utopia Limited*, a lawyer is described as a "marvelous philologist who'll undertake to show, that 'yes' is but another and a neater form of 'no.'"

II

ARGUMENT

A. Jailhouse Informant Credibility Is Always Suspect.

The credibility of jailhouse informants -- often called "rats," "finks," "rat finks," "snitches," "squealers," or "stool pigeons" in popular culture -- is always open to serious question. Jailhouse informants invariably have criminal histories, and they can always be presumed to be looking for favors in return for ratting on their cellmates. Yet jailhouse informants have long been part of the criminal justice system.

> As Clarence M. Kelley, a former director of the Federal Bureau of Investigation once candidly observed, "without informants, we're nothing." . . . Indeed, it was information from a jailhouse informant, Virginia Graham, that put an end to the murderous rampage of the vile Manson family, a cabal of killers that terrorized Los Angeles, California in 1969. While Graham was housed in the Sybil Brand Institute for Women with Susan Atkins, a member of "Charlie's Family," Atkins told Graham how she had killed the actress Sharon Tate. Graham passed this information to the authorities, and the rest is history. . . . [I]t has long been clear beyond doubt to anyone in the criminal justice system that the word of a jailhouse informant alone -- any jailhouse informant -- is suspect . . . . Jailhouse informants can *always* be presumed to be looking for consideration in return for their information.

Garcia v. County of Merced, 639 F.3d 1206, 1210-1212 (9th Cir. 2011) (Italics in original).

B. The Opinion Misstates California Law Concerning Counties.

The opinion states that "counties are required to defend and indemnify the district attorney in an action for damages" under Cal. Gov. Code §§ 815.2 and 825. *Goldstein* at *23. However, neither of those two statutes mentions counties at all. They deal with public entities generally, not specifically with counties.

The opinion states that "the county's obligation to defend and indemnify the district attorney in an action for damages is a "crucial factor [that] weighs heavily" in favor of holding that district attorneys act for counties rather than the state," citing *Streit v. Cnty. of Los Angeles*, 236 F.3d 552, 562 (9th Cir. 2001). *Goldstein* at *23-*24 (9th Cir. 2013). In reality, California law makes *no* distinction based on whether a public employee is defended and indemnified against a lawsuit involving prosecutorial allegations (for example, malicious prosecution) versus a lawsuit involving administrative allegations (for example, failing to pay for office supplies). See Cal. Gov. Code § 825. By citing defense and indemnification as a "crucial factor" in whether district attorneys act for counties (*Goldstein* at *34), the opinion effectively opens counties to the equivalent of vicarious liability for immune prosecutorial conduct. District attorneys are entitled to request defense and indemnification regardless of immunity.

The opinion's defense-and-indemnification rationale is plainly at odds with reasoning of the United States Supreme Court's earlier opinion in this very same

case, *Van de Kamp v. Goldstein*, 555 U.S. 335 (2009). That opinion dealt with a district attorney's individual liability and immunity, and did not deem the district attorney's right to request defense and indemnification under California law to be a factor in the immunity analysis.

Judge Reinhardt's concurring opinion harshly suggests that the California Supreme Court "abdicated its judicial function" in its *Pitts v. County of Kern*, 17 Cal.4th 340 (1998) opinion by "adopting a rule that avoids a case-by-case inquiry into whether a particular function at issue is prosecutorial or administrative." *Goldstein* at *45, Reinhardt concurring opinion. But the main opinion's "crucial factor" rationale -- defense and indemnification responsibility -- is a far more extreme failure to distinguish between prosecutorial and administrative function than the California Supreme Court's rationale. The California statutes that relate to public employer defense and indemnification admit of no relevant distinctions between the prosecutorial and administrative functions.

C. The State Already Compensates Wrongly-Convicted Prisoners.

The opinion would require counties to compensate erroneously-convicted ex-prisoners, ignoring the fact that the State of California *already* compensates such persons on a no-fault basis. The California Legislature demonstrated a century ago that it does not expect counties to be financially burdened when a

wrongful conviction and imprisonment results from a district attorney's error or misconduct.

> A claim for "pecuniary injury sustained … through … erroneous conviction and imprisonment" may be presented pursuant to [California Penal Code] section 4900 if the claimant can show he or she is "innocent of the crime with which he or she was charged" because it was "not committed by him or her." (§ 4900.) Specifically, "[i]n order to receive favorable board action on a claim of erroneous imprisonment, claimant must prove three factual propositions. 'The claimant must prove the facts set forth in the statement constituting the claim, including [1] the fact that the crime with which he was charged was either not committed at all, or, if committed, was not committed by him, [2] the fact that he did not, by any act or omission on his part, either intentionally or negligently, contribute to the bringing about of his arrest or conviction for the crime with which he was charged, and [3] the pecuniary injury sustained by him through his erroneous conviction and imprisonment.' " (*Diola v. State Board of Control* (1982) 135 Cal. App. 3rd 580, 587 fn. 5, quoting § 4903.)

Tennison v. California Victim Comp. & Government Claims Bd., 152 Cal.App.4th 1164, 1182 (2007). If Goldstein could prove those three no-fault elements, he would merit compensation by the State of California. The State compensation system totally undermines any argument that California law requires compensation from counties.

D. The Opinion Misperceives the Nature of Prosecutorial Strategy.

The opinion states that:

> The conduct at issue here does not involve prosecutorial strategy, but rather administrative oversight of systems used to help prosecutors comply with their constitutional duties.

Goldstein at *35. Prosecutorial *strategy* is precisely the "conduct at issue here." In everyday parlance, *strategy* refers to a plan or method of achieving goals, and *policy* refers to a definite course of action chosen from among available alternatives. Policymaker liability involves a policymaker's decision embodying a deliberate choice to follow a certain course of action. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480-483 (1986).

Tactics implement strategy. Tactics also implement policy. Perhaps the opinion meant prosecutorial *tactics* when it referred to prosecutorial *strategy*, but the same problem arises either way. The relevant prosecutorial *tactics* consisted of using jailhouse informant Fink's allegedly-false testimony to help convict Goldstein. Why else would Goldstein have standing to bring this lawsuit? Whether one calls it prosecutorial *strategy*, or *policy*, or *tactics*, the "conduct at issue here" inevitably involves all of it.

E. The Opinion Disregards California Supreme Court Interpretations.

In a case involving § 1983 policymaker liability, the California Supreme Court held that "the district attorney represents the state, not the county, when preparing to prosecute and when prosecuting crimes, and when establishing policy and training employees in these areas." *Pitts*, 17 Cal.4th 340. The present opinion accurately recites the nature of the *Pitts* plaintiff's pertinent allegation; namely, that the district attorney "established a pattern, custom, and practice of procuring

false statements . . . by . . . bribery. . . .” and “failed to provide adequate training, procedures, guidelines, rules, and regulations to prevent such conduct . . . .” *Id*. at 927. *Goldstein* at *32-*33. But then the opinion reaches exactly the opposite ultimate outcome on the same sort of allegations involved in *Pitts*, while claiming not to “disrupt” the *Pitts* opinion’s conclusion. *Goldstein* at *32.

The present opinion involves *exactly* the same issue of an alleged practice of procuring false statements by bribery as encompassed by the *Pitts* opinion, and cannot genuinely be distinguished from *Pitts*, except as to ultimate outcome. According to the present opinion, the jailhouse informant received reduced prison sentences in Goldstein’s case (and earlier cases) in return for false information. Any practice of regularly exchanging corruption for value is bribery. A reduced prison sentence has greater value to a prisoner than cash. Prisoners do not need cash to pay for meals, clothing, lodging, medical care or transportation in prison, and are not even allowed to carry cash on their persons. To a prisoner, a hope of early freedom is a more valuable bribe than cash.

The opinion holds that the California Supreme Court’s “ultimate conclusion” interpreting California law is entitled to “no deference” when that Court held that under California law, a district attorney acts for the State, not a county, in certain matters. *Goldstein* at *31. Perhaps for that “no deference” reason, the opinion simply ignores the most recent on-point opinion of the California Supreme Court

on the same subject, *Venegas v. County of Los Angeles*, 32 Cal.4th 820 (2004). The *Venegas* opinion dealt with sheriffs, but concluded that the same body of relevant California law compels the conclusion that sheriffs act for the State of California rather than counties in law enforcement policymaking functions.

However, federal district judges in California have tried to reconcile the *Venegas* opinion with this Court's precedents. Judge Breyer of the Northern District of California accurately summed up the situation:

> Whether sheriffs are state or local officials for purposes of section 1983 suits challenging police practices is a somewhat open question. The answer to that question is important, because state actors acting in their official capacities are entitled to Eleventh Amendment immunity whereas actors for political subdivisions (like counties) are not. See *Pittman v. Oregon, Employment Dept.*, 509 F.3rd 1065, 1071 (9th Cir. 2007). In one view, adopted by Judge Seeborg and others and based on *Venegas v. County of Los Angeles*, 32 Cal. 4th 820 (2004), sheriffs are state actors entitled to Eleventh Amendment immunity at least where, as here, their activities relate to law enforcement duties within their jurisdictions. *Committee for Immigrant Rights of Sonoma Cty. v. Cty. of Sonoma*, No. C 08-4220-RS, 2010 U.S. Dist. LEXIS 58110, 2010 WL 2465030 at *3 (N.D. Cal. June 11, 2010). Other district courts continue to adhere to the Ninth Circuit's ruling in *Brewster v. Shasta County*, 275 F.3rd 803, 812 (9th Cir. 2001), which held that sheriffs are not immune from section 1983 suits when engaged in law enforcement duties because even in that context they act as the final policymaker for a county. See, e.g., *Fontana v. Alpine Cty*, __ F. Supp. 2nd— , 2010 WL 3834823 (E.D. Cal. 2010) ("To the extent the conduct at issue in this case constitutes 'law enforcement' duties, the court is bound by Ninth Circuit precedent, specifically, *Brewster*. . . ."). In this Court's view, Judge Seeborg has the more sensible position not because the *Venegas* case is binding but because "it represents the correct statement of the function of California sheriffs." *Committee for Immigrant Rights of Sonoma Cty.*, 2010 U.S. Dist. LEXIS 58110, 2010 WL 2465030 at *3 (citing *Walker v. Cty. of Santa Clara*, No. C

> 04-02211 RMW, 2005 U.S. Dist. LEXIS 42118, 2005 WL 2437037 at *4 (N.D. Cal. Sept. 30, 2005) ("[T]he Ninth Circuit's decision in *Brewster* is directly at odds with the California Supreme Court's subsequent holding in *Venegas* that California sheriffs are state officers while performing law enforcement duties, and although this court need not 'blindly accept' the *Venegas* court's decision, . . . the California Supreme Court's decision comports with this court's understanding of the function of California sheriffs.") (citation omitted).

Johnston v. County of Sonoma, 2011 U.S.Dist.LEXIS 25027 (N.D.Cal. March 9, 2011). By ignoring the *Venegas* opinion, this Court obviously has not "blindly accept[ed]" the California Supreme Court's interpretation of relevant California law, but instead has *blindly ignored* that interpretation -- by failing to acknowledge it exists. As a result of the present opinion, future plaintiffs suing California district attorneys (and sheriffs) over policymaking nonfeasance will have the unprecedented option of choosing between California law as interpreted by the California Supreme Court -- if they choose to sue in California courts -- or a diametrically-opposed interpretation of the same body of California law -- if they choose to sue in federal courts. Religious believers can choose from among various religions, and now California plaintiffs will be able to choose from among various interpretations of California law.

The opinion cites Cal. Gov. Code § 26526, which states that a district attorney is the "legal advisor" for the county, *if there is no county counsel*, to support its ultimate conclusion that district attorneys act for counties. *Goldstein* at

*23. But the inconvenient truth is that California counties (except San Francisco, with its unified city/county government) have long had county counsels.[2] Los Angeles County (the county involved in this case) has had county counsels continuously since A. J. Hill was appointed the first Los Angeles County Counsel in 1913, as can be verified by clicking on the "Office History" tab of the Los Angeles County Counsel's public website. The opinion speaks of a "California trend" for district attorneys to act for counties (*Goldstein* at *28) while ignoring a contrary century-old "California trend" of removing elected district attorneys from their former duties as county legal advisors and replacing them with appointed county counsels.

The opinion also minimizes the California Attorney General's powers over district attorneys (such as the power to step in and prosecute violations) by suggesting that "the Attorney General does not have those powers unless and until he or she steps in . . . ." *Goldstein* at *20-21. That is simply wrong. The Attorney General has the powers conferred by California law. A seldom-exercised or never-exercised power is still a power. Congress has the power to impeach and remove the President of the United States, but has never actually removed a President of the United States from office. Yet no one doubts that Congress has the constitutional power to remove the President of the United States from office. Nor

[2] In San Francisco's unified city/county government, the San Francisco City Attorney fills the county counsel's role.

would the failure of Congress to have ever removed any President of the United States from office demonstrate that some other branch of government must have that power, instead of Congress.

The opinion ignores the plain fact that counties *never* exercise the types of power that the Attorney General can exercise over district attorneys, because counties *simply have no such powers.* Who has heard of a murder case (like Goldstein's) being prosecuted by county counsel instead of the district attorney? Goldstein was prosecuted for violation of the State of California's law against murder, not for violation of some Los Angeles County ordinance. In California, counties simply do not prosecute murder cases.

The opinion cites a 2008 report of the statewide California Commission on the Fair Administration of Justice (created by a 2004 California State Senate resolution) recommending that "California District Attorney Offices adopt a written internal policy, wherever feasible, to govern the use of in custody informants" to support the opinion's conclusion that "district attorney office policies related to informants" have *not* been addressed "by the state." *Goldstein* at *25-*26. Why would a California *state* commission be making *statewide* recommendations dealing with *county* policymaking matters? The very fact that a statewide commission has made statewide recommendations undercuts the opinion's conclusion that county policymaking is involved.

F. The Opinion Is Inconsistent With U. S. Supreme Court Authority.

The opinion states that this Court should not "blindly follow" California cases interpreting California law. "Although we must consider the state's legal characterization of the government entities which are parties to these actions, federal law provides the rule of decision in § 1983 actions," and "no deference is due" to the California Supreme Court's "ultimate conclusion" on such California law interpretations. *Goldstein* at *31.

But this case does not involve a federal rule. It involves a district attorney's authority *under California law* to make county policy. This Court's holding cannot be reconciled with the United States Supreme Court's holding on precisely the same point: "'whether an official had final policymaking authority [for § 1983 purposes] is a question of state law.' [Citation.] *Thus the identification of policymaking officials is not a question of federal law . . . . The States have extremely wide latitude* in determining the form that local government takes. . . ." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988) (Italics added).

The United States Supreme Court's on-point *Praprotnik* opinion cannot be reconciled with the opinion's statement that "federal law provides the rule of decision," so the opinion treats the *Praprotnik* opinion the same way it treats the California Supreme Court's on-point *Venegas* opinion -- by ignoring it as if it does not exist.

G. The California Legislature Failed to Overrule *Pitts* or *Venegas*.

The present opinion cites earlier Ninth Circuit case law (preceding the California Supreme Court's *Venegas* opinion) holding that under California law, sheriffs act for counties (not for the State) in law enforcement matters. *Goldstein* at *16. The Supreme Court's holding in *McMillian v. Monroe Cnty.*, 520 U.S. 781 (1997) looked at Alabama law and reached the opposite conclusion -- that Alabama sheriffs act for the State (not counties) in law enforcement matters. The present opinion discusses the *McMillian* factors, and states:

> Most significant is the contrast between the steps that were taken in Alabama to increase the state's control over the sheriff in *McMillian* and the contrary California trend to categorize district attorneys as county officials. . . .

Goldstein at *28. But the California Supreme Court's *Pitts* opinion has been on the books for fifteen years, and its *Venegas* opinion has been on the books for nine years. If the California Legislature disagreed with how the California Supreme Court interpreted State policymaking authority in the *Pitts* and *Venegas* opinions, the Legislature had ample time to change California statutory law to legislatively overrule the California Supreme Court.

The California Legislature has legislatively overruled the California Supreme Court when it disagreed with that court's interpretation of California law. For example, the California Supreme Court's opinion in *Peterson v. City of Long Beach*, 24 Cal.3d 238 (1979), held that police officers could be presumed negligent

if they violated procedures set forth in their tactical manuals. The California Legislature responded by enacting California Evidence Code § 669.1, providing that police negligence cannot be presumed for violating policies that have not been formally adopted as statutes, ordinances or agency regulations. The California Legislature's intent was to overrule the California Supreme Court's *Peterson* opinion. See *Minch v. California Highway Patrol*, 140 Cal.App.4th 895, 907 (2006). If the California Legislature disagreed with California Supreme Court's interpretation of California statutory law reflected in the *Pitts* and *Venegas* opinions, it has had more than enough time to legislatively overrule those opinions. That would unmistakably reflect a "California trend," but it has not happened.

H. District Attorneys Are Politically Independent of Counties.

Judge Reinhardt observes in his concurring opinion that "counties should be held liable for their . . . hiring and firing . . . ." His concurring opinion further observes that there is "a vast swath of Section 1983 jurisprudence, in which counties are generally held liable for failure to hire or fire decisions." *Goldstein* at *42, Reinhardt concurring opinion. Perhaps Judge Reinhardt meant "hiring or firing" rather than "failure to hire or fire," but no matter; his point is well-taken. But having made that excellent point, Judge Reinhardt's concurring opinion, like the main opinion, fails to give proper weight to the inability of county governments to hire and fire district attorneys.

California counties are free to hire and fire their county counsels, who serve at the pleasure of their governing boards. By contrast, California district attorneys are elected by voters. *Goldstein* at *14. The only way to "fire" a district attorney (aside from electoral defeat) is by the method set forth in California Government Code section 3073. That statute requires a California Superior Court judge to appoint a prosecuting officer in the removal proceedings. California Superior Court judges act for the State rather than for counties. See Cal. Gov. Code §§ 71600-71675.

The opinion's slippery-slope suggestion (*Goldstein* at *17) that "taken to its logical extreme, *all* local law enforcement agencies in California would be immune[3] from prosecution for civil rights violation" (whatever is meant by "prosecution") is disconnected from objective reality. No California county has more than one district attorney and one sheriff. Most California counties (and particularly Los Angeles County) contain multiple municipal police agencies whose chiefs are almost always appointed to serve at the pleasure of municipal officials who can fire them at will. County governments have no power to hire or fire district attorneys or sheriffs at pleasure, and nonpolicymaking low-level

[3] The opinion does not explain why it equates immunity with policymaking liability; immunity was the issue on which the Supreme Court reversed this Court's earlier opinion in this case.

employees are typically insulated from at-will hiring and firing by significant civil service and due process protections.

III

CONCLUSION

The opinion's ultimate conclusion -- that Goldstein is suing the Los Angeles District Attorney over *administrative* policies, not over *prosecutorial* policies -- plainly clashes with the United States Supreme Court's reversal of this Court's earlier opinion *in this very same case on that very same issue*. Here is some relevant language from this Court's earlier overturned opinion:

> In this case, [Los Angeles District Attorney] Van De Kamp and Livesay contend that the challenged conduct was prosecutorial in function even if it may have been administrative in form. We disagree."

Goldstein v. City of Long Beach, 481 F.3d 1170, 1175 (9th Cir. 2007). The Supreme Court unanimously rejected that rationale:

> The management tasks at issue, insofar as they are relevant, concern how and when to make impeachment information available at a trial. They are thereby directly connected with the prosecutor's basic trial advocacy duties.

Van de Kamp v. Goldstein, 555 U.S. at 346-347. The present opinion avoids both the letter and spirit of the United States Supreme Court's opinion in this case to try to revive the corpse of a unanimously-rejected earlier opinion. The old saying about old wine in a new bottle does not

quite fit, because here the same policy wine is being offered up in the same section 1983 bottle, with a new county-policymaker-liability label pasted atop the old individual-policymaker-liability label.

The present opinion shows scant regard for on-point opinions of both the United States Supreme Court and the California Supreme Court. *Amicus*' concern is that the opinion, in pursuit of a desired result in a single case, exposes all California counties to new (and potentially vast) financial liability for matters that are beyond their lawful control. This Court should rehear this case and reach an opinion that follows the law reflected in controlling precedent.

DATED: June 3, 2013

Respectfully submitted,

THOMAS E. MONTGOMERY, County Counsel

By: s/ MORRIS G. HILL, Senior Deputy
Attorneys for *Amicus Curiae* California State Association of Counties
E-mail: morris.hill@sdcounty.ca.gov

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure, rule 32(a)(7)(C) and Ninth Circuit Rule 32-1, I certify that the attached *amicus curiae* brief is double spaced, typed in Times New Roman proportionally spaced 14-point typeface, the typeface contains 13 characters per inch, and the brief contains 3,983 words of text.

DATED: June 3, 2013

THOMAS E. MONTGOMERY, County Counsel

By: s/ MORRIS G. HILL, Senior Deputy
Attorneys for *Amicus Curiae* California State Association of Counties
E-mail: morris.hill@sdcounty.ca.gov

STATEMENT OF RELATED CASES

There are no related cases pending before this Court.

DATED: June 3, 2013

THOMAS E. MONTGOMERY, County Counsel

By: s/ MORRIS G. HILL, Senior Deputy
Attorneys for *Amicus Curiae* California State Association of Counties
E-mail: morris.hill@sdcounty.ca.gov

CORPORATE DISCLOSURE STATEMENT
[F.R.A.P. Rule 26.1(a), 29(c)]

The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. 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. No publicly-held corporation owns 10% or more of stock in CSAC.

DATED: June 3, 2013

THOMAS E. MONTGOMERY, County Counsel

By: s/ MORRIS G. HILL, Senior Deputy
Attorneys for *Amicus Curiae* California State Association of Counties
E-mail: morris.hill@sdcounty.ca.gov

Thomas Lee Goldstein v. County of Los Angeles;
Ninth Circuit Case Number 10-56787

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the following document(s): **Motion For Leave To File *Amicus* Brief; *Amicus* Brief On Behalf Of California State Association Of Counties In Support Of Defendant/Appellant County Of Los Angeles' Petition For Rehearing And Rehearing *En Banc*** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 3, 2013.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party comercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

Thomas J. Feeley, Esq.
100 W Broadway, #2710
Glendale, CA 91210

John J. Collins, Esq.
Collins Collins Muir + Stewart LLP
1100 El Centro Street
South Pasadena, CA 91030

Maria M. Rohaidy, Esq.
Taubman Simpson Young et al
1 World Trade Ctr., #400
Long Beach, CA 90831

By: s/ MORRIS G. HILL
E-mail: morris.hill@sdcounty.ca.gov