

**Case No. C101902**

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

MARIPOSA COUNTY, et al.,  
Petitioner,

v.

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES  
Respondent,

MARIO DE JESUS  
Real Party in Interest

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On Appeal From Sacramento County Superior Court  
Case Number: 34-2023-800004068-CU-WN-GDS  
Honorable Jennifer K. Rockwell

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**APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE  
BRIEF IN SUPPORT OF MARIPOSA COUNTY, ET AL.;  
PROPOSED AMICUS CURIAE BRIEF OF CALIFORNIA STATE  
ASSOCIATION OF COUNTIES**

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**CERTIFICATE OF INTERESTED ENTITIES OR PARTIES**

**(Cal. Rules of Court, Rule 8.208)**

Amicus Curiae California State Association of Counties knows of no entity or person other than the named parties that must be listed under subsections (1) or (2) of Rule 8.208(e) of the California Rules of Court.

Dated: December 31, 2025

By: *Jennifer E. Takehana*  
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**APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE  
BRIEF IN SUPPORT OF MARIPOSA COUNTY, ET AL.**

Pursuant to Rule 8.200 of the California Rules of Court, Amicus Curiae the California State Association of Counties (“CSAC”)<sup>1</sup> submits this Application to file the Amicus Curiae brief attached herein with this Third Appellate District Court of Appeal of California, Case No. C101902 [Superior Court case no. 34-2023-80004068-CU-WM-GDS (Judgment denying Petitioner’s writ of mandamus in support of the position of California Department of Human Resources “CalHR” or “Respondent”) in the instant matter (*Mariposa County et al. v. California Department of Human Resources*, Respondent, *Mario DeJesus*, Real Party in Interest.)].

CSAC is a California non-profit corporation whose membership consists of all 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 from throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting many or all counties.

CSAC believes its perspective on this case is worthy of the Court’s consideration and that it will assist the Court in deciding the matter. Counsel has examined the briefs on file and is familiar with the issues involved and the scope of their presentation, and does not seek to duplicate the briefing. However, CSAC believes there is a need for additional briefing on the impact of decisions such as the one made by CalHR in the

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<sup>1</sup> No party or counsel for a party authored the attached brief, in whole or in part. No one made a monetary contribution intended to fund the preparation or submission of this brief.

instant case, and hereby requests that leave be granted to file this Amicus Curiae Brief.

**AMICUS CURIAE BRIEF OF CALIFORNIA STATE  
ASSOCIATION OF COUNTIES**

**I. INTRODUCTION**

CalHR determined that Mario DeJesus engaged in severe and pervasive sexual harassment of two coworkers, and that he was likely to do so again. Nevertheless, CalHR ordered DeJesus's employer, the County of Mariposa ("County"), to return him to work, overriding the County's decision to terminate his employment. CalHR's decision is contrary to public policy and extremely short-sighted, placing the County in a legally and ethically untenable position and exposing County employees and taxpayers to unnecessary risk and liability. While administrative agencies are generally entitled to broad discretion in determining levels of discipline, their discretion is not absolute. CSAC respectfully urges this Court to consider the public policy implications of CalHR's decision and the negative ramifications it will have for the County of Mariposa, the public, and all employers striving to maintain safe and respectful workplaces.

**II. STATEMENT OF CASE AND SUMMARY OF SIGNIFICANT  
FACTS**

Amicus curiae joins in Petitioner County of Mariposa's statement of the case and summary of significant facts at pages 8-13 of Petitioner's Opening Brief.

In addition, it is important to contextualize CalHR's role in the employee discipline process in this case and in the disciplinary processes of other public agencies throughout the State of California to understand the potential statewide impact. This case involves CalHR's administration of the Merit System Services Program (MSS) and the Local Agency Personnel System (LAPS). CalHR established LAPS in accordance with Government Code sections 19800 et seq., to provide

... merit systems for local government agencies where merit systems of employment are required by statute or regulation as a condition of a state-funded program or a federal grant-in-aid program established under federal laws, including, but not limited to: the Social Security Act, as amended; the Public Health Service Act; and the Federal Civil Defense Act, as amended.

(Gov. Code, § 19800; see also California Department of Human Resources, MSS Program History, available at <https://www.calhr.ca.gov/about-calhr/divisions-programs/selection-division/mss-program-history/>, (as of 12/31/2025) (“MSS Program History”).)

While many of the more populous counties of the state have their own personnel systems that CalHR has determined meet the federal requirements,<sup>2</sup> approximately 25 counties—mostly smaller and rural—do not have their own state-approved personnel system. (See MSS Program History; Gov. Code, § 19802; California Department of Human Resources, MSS Program Transition Frequently Asked Questions, available at <https://www.calhr.ca.gov/about-calhr/divisions-programs/selection-division/mss-frequently-asked-questions/>, (as of 12/31/2025) (“MSS FAQ”).) These counties, including Mariposa, must participate in LAPS to be eligible for critical state and federal grant funding. (See Gov. Code, § 19803; Cal. Code Regs., tit., 2, § 17030; MSS FAQ; Exhibit 32, Administrative Record (“AR”) 669.)

Unlike private employers or public agencies with their own Approved Local Merit Systems, LAPS counties are beholden to CalHR and have more limited autonomy in disciplinary matters. A LAPS county is permitted to take initial disciplinary action against a covered employee for

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<sup>2</sup> These counties are referred to as Approved Local Merit Systems (ALMS) counties. (See MSS Program History.)

performance or conduct that violates its local standards, but that decision is subject to review by CalHR. (Cal. Code Regs., tit. 2, §§ 17044, 17045.) Thus, CalHR can have a tremendous impact on workplaces across the state in their implementation of the LAPS program. Disciplinary decisions – like whether to dismiss an employee who has engaged in severe and pervasive sexual harassment and been deemed likely to harass again – directly affect the operational stability of the public agency and the safety and well-being of its employees. It is therefore imperative that CalHR exercise its discretion in a reasoned and legally sound manner, and in alignment with clearly established public policy.

### **III. STANDARD OF REVIEW**

The Parties have thoroughly briefed the standard of review. This Court of Appeal reviews the underlying decision of CalHR under the same abuse of discretion standard as the Superior Court applied when it reviewed the Petition for Writ for Administrative Mandate. (See *County of Santa Cruz v. Civil Service Commission of Santa Cruz* (2009) 171 Cal.App.4th 1577, 1581-1582, citing *Talmo v. Civil Service Commission* (1991) 231 Cal.App.3d 210, 227.) “Reversal is warranted when the administrative agency abuses its discretion, or exceeds the bounds of reason. While the agency has discretion to act, that discretion is not unfettered.” (*County of Santa Cruz, supra*, 171 Cal.App.4th at 1582, citing *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 217–218.) Public policy is an important consideration when analyzing abuse of discretion. (Code Civ. Proc., § 1085; *Skelly, supra*, 15 Cal.3d at p. 218 (the overriding consideration in the abuse of discretion analysis is the extent to which the conduct results in, or if repeated is likely to result in, ‘harm to the public service’) (citations omitted).)

#### IV. ARGUMENT

##### **A. Preventing Workplace Sexual Harassment Is a Clearly Defined and Compelling Public Policy.**

CalHR's decision to require County to reinstate Mr. DeJesus, despite findings of severe and pervasive harassment and likelihood to reoffend, violates long-standing public policy against workplace sexual harassment. Workplace sexual harassment is unequivocally prohibited by law and public policy, reflecting public consensus that harassment is incompatible with a safe and equitable working environment. This policy is one of the strongest and most clearly established principles impacting the employer-employee relationship. It is explicitly codified in state and federal law, confirmed by countless court decisions, and is the subject of extensive legislative findings.

The California Legislature declared its stance against sexual harassment in the Government Code, finding that discrimination (which includes sexual harassment) "foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advancement, and substantially and adversely affects the interests of employees, employers, and the public in general." (Gov. Code, § 12920; see Gov. Code, § 12923, subd. (a); Cal. Code Regs., tit. 2, § 11008, subd. (h)(3).) It further declared that "harassment creates a hostile, offensive, oppressive, or intimidating work environment and deprives victims of their statutory right to work in a place free of discrimination..." (Gov. Code, § 12923, subd. (a).) Our State's robust regulatory scheme requires employers to "take all reasonable steps to prevent harassment" and respond decisively when it occurs. (Gov. Code, § 12940, subd. (j)(1).) Employers must train employees, investigate complaints, and take prompt corrective action that is reasonably calculated to stop the conduct. (Gov. Code, §§ 12950.1, subd.

(a), 12940, subd. (k); Cal. Code Regs., tit. 2, § 11023; see *Swenson v. Potter* (9th Cir. 2001) 271 F.3d 1184, 1192.) An employer's failure to meet these obligations exposes it to significant liability for both the harassment itself and the failure to prevent or adequately correct it. (Gov. Code, §§ 12940, subd. (k), 12965, subd. (c)(6) (attorney's fees and costs to prevailing party); see, e.g., *State Dept. of Health Services v. Super. Ct.* (2003) 31 Cal.4th 1026, 1042 ["under the FEHA, an employer is strictly liable for *all* acts of sexual harassment by a supervisor"].)

**B. CalHR's Decision Is Contrary to Public Policy and Forces the County into an Untenable and Legally Compromised Position.**

CalHR's decision requiring the County to return DeJesus to the workplace is fundamentally at odds with both the law and the underlying public policies prohibiting sexual harassment. Notably, CalHR found that DeJesus's conduct "was sufficiently severe and pervasive to alter the terms and conditions of two of [County's] female employees." (Exhibit 32, AR686.) CalHR underscored the impact DeJesus's conduct had on the victims (Exhibit 32, AR684-686), his lack of remorse (Exhibit 32, AR678, AR687), and made the specific finding that DeJesus was extremely likely to harass again (Exhibit 32, AR687 ["the likelihood of recurrence is extremely high"]). Despite these findings, CalHR ordered the County to return DeJesus to work "because all of the bad acts were either not plead, or not proven." Putting a harasser back to work under these circumstances is completely indefensible in the face of decades of legislative, judicial, and institutional efforts to eradicate sexual harassment from the workplace, and it places the County in a legally compromised position.

Notably, CalHR offers no explanation as to how this outcome aligns with the County's legal duties or the public policy it is bound to uphold. Given CalHR's own findings about DeJesus's conduct, reinstating DeJesus

sends the deeply troubling message that the County does not protect employees from abuse. It sends the message that the County does not comply with the law by prohibiting sexual harassment, taking reasonable steps to prevent harassment, or taking reasonable action to correct the conduct and prevent it from recurring. Rather, CalHR's decision compels the County to violate the law, prioritize the rights of the proven harasser over those of his victims and the larger County workforce, and exposes County employees to further harm. It represents a drastic departure from well-established public policy of protecting workers from sexual harassment. A decision so misaligned with public policy cannot stand.

### **C. CalHR's Decision Has Broad Impact.**

For the County of Mariposa, the consequences of CalHR's decision to return DeJesus to the workplace extend beyond the individual victims in the case. The outcome has broad operational, financial, and reputational impacts to the County. Returning a known harasser to the workplace will undoubtedly have a negative effect on morale. In turn, reduced employee morale can lead to reduced productivity and increased turnover, thereby undermining the County's ability to create a safe and productive working environment for its employees and to deliver essential public services. (See, e.g., Gov. Code, § 12920; *Harris v. Forklift Systems, Inc.* (1993) 510 U.S. 17, 22 [under Title VII, "[a] discriminatorily abusive work environment... can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers"]; accord *Bailey v. San Francisco Dist. Attorney's Off.* (2024) 16 Cal.5th 611, 628 [same harassment concerns and standards under FEHA], citing *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 130 (plur. opn. of George, C. J.), disapproved on other grounds, and *Miller v. Dept. of Corrections* (2005) 36 Cal.4th 446, 462; see also *Ellison v. Brady*

(9th Cir. 1991) 924 F.2d 872, 880, fn.15 [highlighting significant costs from sexual harassment, including emotional costs, and losses in productivity, sick leave costs, and employee replacement costs].) Of course, by reinstating a known harasser who is extremely likely to harass again, the County will also be subject to increased liability for claims by employees under state and federal laws relating to discrimination and harassment. These include the potential costs associated with litigating, settling, and/or paying judgments associated with those claims.

The public demands local government agencies be models of ethical, lawful behavior. Perceptions that the government keeps wrongdoers on the payroll or places employees in unsafe working environments not only erodes the public's trust but makes it difficult to conduct business and to recruit, hire and retain employees, again having a negative effect on the delivery of public services. And of course, the taxpayers themselves bear the ultimate burden of increased settlements, judgments, and other costs associated with defending sexual harassment cases.

The impact of this decision will not stop at the Mariposa County line. Almost half of the counties in the State are bound by CalHR's disciplinary review decisions. If left unchecked, CalHR's disregard for settled public policy in this case could result in a pattern of future decisions that put public employees at risk of abuse and directly undermine California's commitment to eradicating workplace sexual harassment.

## **V. CONCLUSION**

CalHR's finding that DeJesus engaged in severe and pervasive sexual harassment and was extremely likely to engage in harassing behaviors in the future is wholly incompatible with its decision to return DeJesus to the workplace. CalHR disregarded not only the County's legal and ethical responsibilities to maintain a safe workplace, but also the

fundamental rights of all employees to be free of harassment. The decision is a clear abuse of CalHR's discretion and will have a detrimental impact on long-standing state and federal efforts to eliminate workplace sexual harassment. For these reasons, CSAC respectfully requests this Court reverse the Superior Court's judgment and direct the Superior Court to issue a new order granting the County's writ of mandate.

Date: December 31, 2025

Respectfully submitted,

By: Jennifer E. Takehana  
Jennifer E. Takehana  
Allison K. Pierce

Attorneys for Amicus Curiae  
California State Association of Counties

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**CERTIFICATE OF WORD COUNT**

**(Cal Rules of Court, Rule 8.504(d)(1))**

The text of this brief consists of 2012 words, including footnotes, and the text of the accompanying application consists of a further 299 words, including footnotes, as counted by the Microsoft® Word for Microsoft 365 MSO word processing program used to generate the brief.

Dated: December 31, 2025

By: *Jennifer E. Takehana*  
Jennifer E. Takehana  
Allison K. Pierce

Attorneys for Amicus Curiae  
California State Association of Counties

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PROOF OF SERVICE

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF TULARE )

I am employed in the County of Tulare, State of California. I am over the age of eighteen (18) years and not a party to this action; and my business address is 2900 West Burrel Avenue, Visalia, CA 93291.

On December 31, 2025, I served the foregoing document(s) described as  
**APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF MARIPOSA COUNTY, ET AL.; PROPOSED AMICUS CURIAE BRIEF OF CALIFORNIA STATE ASSOCIATION OF COUNTIES.**, in the manner checked below on all the interested parties in this action addressed as follows:

<b><u>VIA EMAIL</u></b> <b>Attorneys for Defendant/Respondent</b> <b>CALIFORNIA DEPARTMENT OF HUMAN RESOURCES.</b> David Villalba Frolan R. Aguilin <b>CalHR</b> 1515 S Street, North Building, Suite 500 Sacramento, California 95811 Telephone: (916) 324-0512 Email: david.villalba@calhr.ca.gov Email: frolan.aguilin@calhr.ca.gov	<b><u>VIA U.S. MAIL ONLY</u></b> <b>SACRAMENTO SUPERIOR COURT</b> Gordon D. Schaber Sacramento County Courthouse <b>720 9<sup>th</sup> Street</b> <b>Sacramento, CA 95814</b>
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(BY MAIL) I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Tulare, California, in the ordinary course of business. I am aware that on motion of the party served that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date more is than one day after date of deposit for mailing in affidavit.



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**I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

Executed on December 31, 2025 at Visalia, CA.

  
JORGE GUTIERREZ ESPARZA

JIG//12/31/2025/20251345/2495698