



October 6, 2022

Honorable John L. Segal, Associate Justice
Honorable Dennis M. Perluss, Presiding Justice
Honorable Noel Wise, Acting Associate Justice
Second District Court of Appeal, Division Seven
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Re: Request to Publish *T. Roe v. Centinela Valley Union High School District*, et al., opinion filed September 16, 2022
Court of Appeal Case No. B311456
Los Angeles County Superior Court Case No. BC683738

Honorable Justices Segal, Perluss, and Wise:

Family Violence Appellate Project (FVAP) respectfully submits this request to partially publish the above-captioned case (*Roe*) pursuant to California Rule of Court, rules 8.1110 and 8.1120(a).¹ We are joined in this request by 12 organizations and professionals dedicated to addressing domestic and gender-based violence: ADZ Law, LLP; Calegislation; California Protective Parents Association; California Women’s Law Center; LACBA Counsel for Justice; Law Foundation of Silicon Valley; Legal Momentum; Los Angeles Center for Law and Justice; Next Door Solutions to Domestic Violence; Sanctuary for Families; Stopping Domestic Violence; and Professor Margaret B. Drew, UMass Law School (statements of interest of each are below).*

We are specifically seeking publication of Sections B(3), C, and D of the Discussion.² *Roe* would be the first published state court opinion substantively applying Civil Code section 52.4, and first to define “coercive

¹ Undesignated rule references are to the California Rules of Court.

² We are also seeking publication of the Introduction, Factual and Procedural Background, Disposition, and Section A of the Discussion, to “aid[] in the application or interpretation of the published part.” (Rule 8.1110(b).)

conditions” for the tort of gender-based violence. (Rule 8.1105(c)(1), (c)(4).) To do so, the opinion guides the bench and bar by explaining and using the rules of law from other contexts. (Rule 8.1105(c)(2), (c)(3).) The opinion’s application of these rules to the context of sexual abuse against a young man with disabilities raises “a legal issue of continuing public interest.” (Rule 8.1105(c)(6).) As *Roe* meets at least five of the criteria for publication, it “*should* be certified for publication.” (Rule 8.1105(c), italics added.)

1. *Roe* Would Be the First Published California Case Substantively Applying Civil Code Section 52.4.

Roe’s discussion of the plaintiff’s evidence being sufficient to create a triable issue of material fact as to liability under Civil Code section 52.4 (section 52.4), warrants publication as it would be the first California State case to substantively discuss this important civil rights statute. (Slip opn. at pp. 21-22.)³ Moreover, this would be the first published opinion to define “coercive conditions” for purposes of subdivision (b)(2) of section 52.4. (*Ibid.*)

In 2000, the U.S. Supreme Court struck down the private right of action in the 1994 Violence Against Women Act that allowed some survivors of gender-motivated violence to sue their abusers in federal court. (*United States v. Morrison* (2000) 529 U.S. 598.) Seeing a need for more protection for survivors, California began enacting a series of laws to create more state-law torts,⁴ including for those who have suffered gender violence. (Stats. 2002, ch. 842 (A.B. 1928), § 2, enacting Civ. Code, § 52.4)⁵ Other state and local

³ Undesignated page references are to this Court’s *Roe* slip opinion.

⁴ Hart & Sussman, *Civil Tort Suits and Economic Justice for Battered Women* (2004) 4 Victim Advocate 3, 5. Note that published cases interpreting section 52.4 can also be useful for those utilizing similarly worded tort statutes. (See Links, Cal. Civ. Prac. Civil Rights Litigation (2022) § 10:13; cf. Leg. Analyst, Report to the Assembly Floor, analysis of A.B. 1928 (2001-2002 Reg. Sess.), as amended June 29, 2002, p. 2.)

⁵ Leg. Analyst, Report to the Assembly Floor, analysis of A.B. 1928 (2001-2002 Reg. Sess.), as amended June 29, 2002, p. 2. Unfortunately, the case law under the VAWA remedy “has little or no value for anyone looking for assistance in interpreting section 52.4,” as the two statutes have “almost no language in common.” (Links, Cal. Civ. Prac. Guide (2022) § 10:12; see Leg. Analyst, Report to the Assembly Committee on Judiciary, analysis of A.B.

jurisdictions similarly acted.⁶ These lawmakers recognize the importance of tort remedies to survivors of abuse, who are often not justly compensated.⁷

As the first state court opinion to substantively apply section 52.4, and the first to define “coercive conditions,” *Roe* would provide significant guidance to the bench and bar on one of the “well-suited but underused [tort] remedies”⁸ available for survivors of gender violence. Other state court cases mentioning section 52.4 ultimately resolve around other issues. (*Doe v. Damron* (2021) 70 Cal.App.5th 684, 688, 690, 694 [personal jurisdiction]; *N.G. v. Cnty. of San Diego* (2020) 59 Cal.App.5th 63, 68, 71, 81 [Government Claims Act]; *Daza v. Los Angeles Cmty. Coll. Dist.* (2016) 247 Cal.App.4th 260, 263-264, 273 [scope of employment]; *Ventura v. ABM Industrial Inc.* (2012) 212 Cal.App.4th 258, 266, fn. 6, 265-275 [other torts, jury instructions, evidence, fees]; *RN Solution, Inc. v. Catholic Healthcare West* (2008) 165 Cal.App.4th 1511, 1516, fn. 6, 1522-1524 [arbitrability].) Same with the one reported federal court case. (*Harper v. Lugbauer* (2017) 709 Fed.Appx. 849, 849, 852 [anti-SLAPP, conspiracy].)

Two unreported federal court cases discuss section 52.4 in some substance, including one cited by this Court in *Roe* (p. 21), but both cases are distinguishable employment-related cases not involving allegations of a school instructional aide sexually abusing a young male adult with disabilities. (*Doe v. Starbucks, Inc.* (C.D. Cal., Dec. 18, 2009, No. SACV 08-0582) 2009 WL 5183773; *Greenwald v. Bohemian Club, Inc.* (N.D. Cal. June 4, 2008, No. C 07-05261 WHA) 2008 WL 2331947.) True, *Doe* briefly addresses “coercive conditions,” but it does not define the term or cite to

1928 (2001-2002 Reg. Sess.), as amended Apr. 4, 2002, pp. 3-4 [discussing the differences].)

⁶ Goldscheid & Kathawala, *State Civil Rights Remedies for Gender Violence: A Tool for Accountability* (2018) 87 U. of Cincinnati L.Rev. 171, 201-202 (collecting laws); see also Carey, *Domestic Violence Torts: Righting a Civil Wrong* (2014) 62 U. Kan. L.Rev. 695 716 (noting section 52.4 “largely mirrors the requirements of” Illinois’s tort statute).

⁷ See Anderson, *Twelve Years Post Morrison: State Civil Remedies and a Proposed Government Subsidy to Incentivize Claims by Rape Survivors* (2013) 36 Harvard J. of L. & Gender 223, 225-226; Goldscheid & Kathawala, *Accountability, supra*, 87 U. of Cincinnati L.Rev. at p. 175.

⁸ Carey, *DV Torts, supra*, 62 U. Kan. L.Rev. at p. 695.

analogous case law like *Roe*. (Compare *Doe*, at p. *17, with *Roe*, at pp. 20-22.) This is understandable since in *Doe*—not *Roe*—the alleged abuser admitted to the conduct; there the primary section 52.4 issue was whether lack of consent was a triable issue of fact. (Compare *Doe*, at pp. *7-*8, with *Roe*, at pp. 2, 14, 20-22.) And *Greenwald* concluded the threat to overload an employee’s schedule was not a threat of physical force, and did not analyze “coercive conditions” like in *Roe*. (Compare *Greenwald*, at p. *7, with *Roe*, at pp. 20-22.) Finally, of course, both *Doe* and *Greenwald* are only persuasive authority as federal district court opinions. (See *Barriga v. 99 Cents Only Stores LLC* (2020) 51 Cal.App.5th 299, 316, fn. 8.)

As a result, *Roe* would be a unique California decision in its application of section 52.4. *Roe* sets and explains a rule of law for section 52.4 (rule 8.1105(c)(1), (c)(4)), and applies similar rules of law to a new set of facts (rule 8.1105(c)(2), (c)(3)). As such, the opinion “should be certified for publication.” (Rule 8.1105(c).)

2. *Roe* Involves Sexual Abuse Against a Young Man with Disabilities, a Continuing Issue of Public Interest.

“Sexual violence is a pertinent health challenge, which . . . increase[s] the risk of various sexual and reproductive health problems[,] and impacts physical and mental health.”⁹ Unfortunately, the recent pandemic has increased rates and severity of sexual abuse and other forms of gender violence around the world.¹⁰ And certain populations, including people with disabilities, remain more vulnerable than others.

Across all ages, individuals with disabilities—about 15% of the global population—are twice as likely to be sexually abused.¹¹ They are uniquely susceptible “due to . . . social isolation, limited education, dependence on others including for intimate hygiene, reduced physical defenses, and

⁹ Borumadnia et al., *The Prevalence Rate of Sexual Violence Worldwide: A Trend Analysis* (2020) 20 BMC Public Health 1835, 1838.

¹⁰ World Health Organization, *Global Status Report on Preventing Violence Against Children 2020* (2020) pp. 14-15.

¹¹ Amborski et al., *Sexual Violence Against Persons with Disabilities: A Meta-Analysis* (2022) 23 Trauma, Violence & Abuse 1330, 1331, 1336.

communication barriers that prevent disclosure”¹² Many survivors with disabilities “lack the vocabulary to describe what has happened to them and the social skills to interact safely with others,”¹³ as seen in this case with one way Roe described what happened to him: “‘mean’ ” (p. 7).

In fact, young people “with special needs are at heightened risk of abuse at the hands of caregivers, including teachers, non-teaching aides, and other school personnel, particularly if the [youth]’s disability is one that makes them dependent on adults for intimate care.”¹⁴ Indeed, men and “[b]oys with disabilities are at greater risk of sexual abuse and less likely to disclose abuse than their non-disabled counterparts,”¹⁵ and are more likely to report when they are coerced into sexual activity, as in *Roe* (pp. 21-22), than when physically forced.¹⁶

Consequently, in applying section 52.4 to the specific setting of a school aide allegedly sexually abusing his young adult male student with disabilities, *Roe* “involves a legal issue of continuing public interest” and ought to be published. (Rule 8.1105(c)(6).)

* * *

“Existing state and federal laws do not adequately prevent and remedy gender-related violence” (Stats. 2002, ch. 842 (A.B. 1928), § 1, subd. (a).)¹⁷ Twenty years later, this remains true. Section 52.4 can be one useful

¹² Amborski et al., *Meta, supra*, 23 Trauma, Violence & Abuse at p. 1331.

¹³ Krohn, *Sexual Harassment, Sexual Assault, and Students with Special Needs: Crafting an Effective Response for Schools* (2014) 17 U. Pa. J. of L. & Social Change 29, 33, fn. omitted

¹⁴ Krohn, *Sexual Harassment, supra*, 17 U. Pa. J. of L. & Social Change at pp. 32-33, fn. omitted.

¹⁵ Chynoweth et al., *A Social Ecological Approach to Understanding Service Utilization Barriers Among Male Survivors of Sexual Violence in Three Refugee Settings: A Qualitative Exploratory Study* (2020) 14 Conflict & Health 43, 52, fn. omitted; see also Stats. 2022, ch. 842 (A.B. 1928), § 1, subd. (b) [“Sexual abuse . . . is often not reported”].)

¹⁶ Amborski et al., *Meta, supra*, 23 Trauma, Violence & Abuse at p. 1331.

¹⁷ See also Krohn, *Sexual Harassment, supra*, 17 U. Pa. J. of L. & Social Change at p. 32, (U.S. DOJ “estimates that ‘less than half’ ” of survivors with

tool to better “protect the civil rights of victims of gender-motivated violence and thereby to promote the public safety, health, and well-being of all persons within California.” (*Id.*, § 1, subd. (e).) If published, *Roe* can help grow the body of case law applying section 52.4. (See *People v. Garcia* (2002) 97 Cal.App.4th 847, 850-851 [an opinion warrants publication if it contributes to “the progressive development of the law”].)

For these reasons, we respectfully request this Court publish in part its *T. Roe v. Centinela Valley Union High School District* opinion.

Respectfully submitted,
FAMILY VIOLENCE APPELLATE PROJECT



Cory Hernandez, Staff Attorney

disabilities “ ‘will seek assistance’ of any kind—be it legal remedy or private treatment, after an assault”), fn. omitted.

*Statements of Interest

Family Violence Appellate Project (FVAP) is a California and Washington state non-profit legal organization whose mission is to ensure the safety and well-being of survivors of domestic violence and other forms of intimate partner, family, and gender-based abuse by helping them obtain effective appellate representation. FVAP provides legal assistance to survivors of abuse at the appellate level through direct representation, collaborating with pro bono attorneys, advocating for survivors on important legal issues, and offering training and legal support for legal services providers and domestic violence, sexual assault, and human trafficking counselors. FVAP's work contributes to a growing body of case law that provides the safeguards necessary for survivors of abuse and their children to obtain relief from abuse through the courts.

ADZ Law, LLP is a private law firm focused on the complex legal needs of families in transition with a special emphasis on representing victims in domestic violence cases. In addition to fighting for the rights of individuals and children in California family law matters, the attorneys of ADZ Law, LLP address the complex legal needs of victims of crime. We represent survivors of domestic violence, sexual assault, trafficking, and stalking seeking financial recovery in the civil court and navigating the criminal system as witnesses to hold perpetrators of crime accountable.

Calegislation provides resources and assistance to victims of domestic violence, stalking, and sexual assault. In addition to victim service providers, consumers, legislators, and governmental agencies, and is part of a national information network of domestic violence and privacy advocates.

California Protective Parents Association (CPPA) strives to protect children from incest and family violence through research, education and advocacy. CPPA seeks to improve and reform family court to ensure that children are not placed at risk because of unsafe custody and visitation decisions.

The **California Women’s Law Center** (CWLC) is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls. Since its inception in 1989, CWLC has placed a particular emphasis on eradicating all forms of discrimination and violence against women.

LACBA Counsel for Justice Domestic Violence Project (DVP) provides legal information, forms preparation assistance, and referrals to litigants in domestic violence cases. With locations in the downtown Los Angeles courthouse and the LAPD Central Bureau Family Justice Center, DVP assists over 3,000 domestic violence litigants each year.

The Law Foundation of Silicon Valley advances the rights of underrepresented individuals and families in our diverse community through legal services, strategic advocacy, and educational outreach. The Law Foundation, Santa Clara County’s largest legal services provider, has served people with mental health disabilities, children, individuals in housing crises, and a variety of other residents in its 40 years of existence. The Law Foundation serves as an umbrella organization for five programs serving distinct client populations: Fair Housing Law Project; Health Legal Services; Legal Advocates for Children and Youth; Mental Health Advocacy Project; and the Public Interest Law Firm.

Legal Momentum, the Women’s Legal Defense and Education Fund, is the nation’s oldest legal advocacy organization for women and girls. Legal Momentum advances the rights of women and girls by using the power of the law and creating innovative public policy. Legal Momentum was a leading advocate for the landmark Violence Against Women Act and its subsequent reauthorizations, which seek to redress the historical inadequacy of the justice system’s response to gender violence. Legal Momentum has a particular interest in ensuring that the judicial system adequately protects the rights of victims of sexual and domestic violence and their children.

The mission of **Los Angeles Center for Law and Justice (LACLJ)** is to secure justice for survivors of domestic violence, sexual assault and human trafficking and empower them to create their own future. Located in East Los Angeles, LACLJ is a 33-person non-profit law firm serving survivors throughout Los Angeles County. LACLJ's primary practice areas are family law and immigration. However, LACLJ strives to provide clients with holistic legal services and has both a robust criminal justice advocacy and appellate practice. Through our integrated legal/social worker service model, LACLJ Community Care Advocates provide supportive services such as education, safety planning, accompaniment, and linkages to other service providers as part of the legal team. LACLJ is committed to a trauma-informed and culturally-responsive workplace and service provision.

Next Door Solutions' mission is to end domestic violence in the moment... and for all time. Women receive free-of-charge, comprehensive, compassionate, woman-defined services designed to empower and address crisis, stability, and self-sufficiency.

Sanctuary for Families is New York's largest dedicated service provider and advocate for survivors of domestic violence, human trafficking, and related forms of gender violence. Every year, Sanctuary provides legal, clinical, shelter and economic empowerment services to over 15,000 survivors and their children. Sanctuary provides training on domestic violence and trafficking to community advocates, pro bono attorneys, law students, service providers and the judiciary. Sanctuary each year represents survivors—the vast majority of whom are low-income women—in connection with custody, visitation, child support, family offense, and child abduction cases.

With the overall goal of promoting non-abusive behavior in today's world, **Stopping Domestic Violence** is a California-based domestic violence victim service organization that provides free, no-cost, wide-ranging services (including shelter, transportation, health care, education, food, clothing, advice, support, guidance, technology, and communication) to all affected by domestic violence.

Professor Margaret B. Drew, UMass Law School. Having worked in the field of gender based abuse for forty years, the impact of coercion as abuse cannot be overstated. Many courts fail to recognize coercion as a form of abuse and publication of the requested section of the opinion would significantly enhance understanding of abuse through coercion.