Case No. B184025

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 8

DAVID PROKOP,
Plaintiff and Appellant,
v.
CITY OF LOS ANGELES,
Defendant and Respondent

Appeal from an Order of the Superior Court of the State of California, County of Los Angeles, Case No. BC 305 404, Granting Summary Judgment
The Honorable Rolf M. Treu, Judge Presiding

APPLICATION BY CALIFORNIA ASSOCIATION OF BICYCLING ORGANIZATIONS FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* AND PROPOSED BRIEF IN SUPPORT OF PLAINTIFF AND APPELLANT DAVID PROKOP

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APPLICATION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

The California Association of Bicycling Organizations ("CABO") requests leave to file a brief as *amicus curiae* in this case in support of Plaintiff and Appellant David Prokop, regarding whether Government Code section 831.4, subdivision (b), immunizes public agencies for suits arising from injuries occurring on a designated bike path.

CABO is the nonprofit state federation of California's bicycle clubs, organized in 1972 to protect bicyclists' interests statewide and to encourage, maintain, and improve bicycling conditions. CABO fosters and promotes a favorable climate for bicycling in California by serving as a forum and information clearinghouse for bicycle clubs and other bicycle groups, representing the interests of cyclists before governmental bodies to protect their rights and to promote laws, policies, and actions that treat cyclists equitably, and conducting other activities related to these purposes.

This case has highlighted a serious inconsistency in the protection afforded cyclists under California law from unsafe and inappropriate bicycle facility design, operation, and maintenance. If this decision is allowed to stand, bicyclists throughout the state of California will be denied recourse against agencies whose bicycle facilities fail to meet the minimum safety design criteria mandated by law, contrary to the Legislature's intent, and damaging the interests of CABO's membership.

The *Carroll* and *Farnham* decisions, and this case, have caused grave and continuing concern in the cycling community about the safety of public bicycle facilities. This result has repercussions beyond California's boundaries, as the state

has long served as a model for other states and has often set policies and standards for such facilities—for instance, the American Association of State Highway and Transportation Officials (AASHTO) *Guide for the Development of Bicycle Facilities*. This issue is therefore of national importance.

It is the purpose of this *amicus curiae* brief to assist the court by introducing supplemental legal arguments that have not been addressed in the parties' briefs, presented to this court in similar cases, or, for the most part, considered in prior case law. In particular, we will show how the statute in question fits within a larger regulatory framework. We thereby hope to clarify the issues involved and to help the court make a fully informed decision.

California Rules of Court do not specify a time limit for the submission of *amicus curiae* briefs. While it might have been desirable to provide this brief sooner, by submitting it at this time we are able to include a discussion of *Amberger-Warren v. City of Piedmont,* which was filed as a slip opinion only on October 6.

PROPOSED BRIEF OF *AMICUS CURIAE*

I. SUMMARY OF ARGUMENTS

We show in this brief that Government Code section 831.4, subdivision (b) (hereafter section 831.4), does not immunize public agencies for suits arising from injuries occurring on a designated Class I bikeway (bike path). We present the following arguments:

- Sections 890 *et seq* of the Streets and Highways Code unequivocally establish the Legislature's intent to create minimum safety design criteria for bike paths, as defined in that code and pertinent to this case, to mandate that public agencies adhere to these criteria, and to impose liability for noncompliance. We extend this argument beyond Appellant Prokop's Opening Brief by showing that this later, specific enactment supersedes the earlier, general provisions of section 831.4, and that the committee that developed the design criteria intended it to do so.
- The term "bike path," as defined in the Streets and Highways Code, cannot be construed as synonymous with "trail."
- Bike paths differ from trails in design and use, and are therefore not regulated by section 831.4 (or this is at most a triable issue of fact).
- Bike paths, so defined, are transportation facilities that fall outside the scope of section 831.4 recreational immunity (or this is at most a triable issue of fact).
- Public policy does not require the broad immunity of section 831.4. Local agencies can instead rely on design immunity for bike paths.

II. BACKGROUND

For ease of reference we recapitulate the statute in question and briefly summarize previous cases.

Government Code section 831.4 reads in relevant part:

> A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:
>
> (a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.
>
> (b) Any trail used for the above purposes.

In *Giannuzzi v. State of California* (1993) 17 Cal.App.4th 462 (*Giannuzzi*), the plaintiff motorcycle rider was injured while riding on a trail in a state vehicular recreation park. The court inferred that the plaintiff's purpose for being in the park was the recreational driving of his vehicle on the trail, and the record does not show that the plaintiff contested this point. Immunity therefore attached.

Armenio v. County of San Mateo (1994) 28 Cal.App.4th 413 (*Armenio)* applied this reasoning to injuries suffered by a bicyclist while riding on Sawyer Camp Trail, again for an undisputedly recreational purpose. *Armenio* extended immunity to paved as well as unpaved trails. The opinion does not specify whether Sawyer Camp Trail was designated as a bike path.

In *Carroll v. County of Los Angeles* (1997) 60 Cal.App.4th 606 (*Carroll*), a rollerblader was injured when her left rear wheel struck a crack on the paved South Bay Bicycle Path near Manhattan Beach and she fell, fracturing her elbow.

The plaintiff argued that the word "trail" in section 831.4 did not apply to a paved bicycle path. The court disagreed, finding that "the words 'trail' and 'path' are synonymous" and that a trail is "a marked or established *path* or route" (italics added by court to dictionary definition). (*Id.* at p. 609.) Citing *Armenio,* and declaring that the South Bay Bicycle Path "would allow any user access to view the Pacific Ocean" and "tak[ing] judicial notice that the Pacific Ocean certainly qualifies as a 'scenic area' within subdivision (a)," the *Carroll* court then concluded that the path fell within the scope of the immunity doctrine. (*Ibid.*)

In *Farnham v. City of Los Angeles* (1998) 68 Cal.App.4th 1097 (*Farnham*), a bicyclist suffered serious head and neck injuries when a portion of the pavement gave way on the Sepulveda Basin Bikeway, a paved path along the perimeter of Balboa Park in Los Angeles. In applying the doctrine of immunity, the court relied on *Carroll's* identification of "path" with "trail," and it also generalized immunity in passing to any bike path.

Treweek v. City of Napa (2000) 85 Cal.App.4th 221 (*Treweek*) found that a public boat dock ramp is not a trail for purposes of this immunity. Recently, *Amberger-Warren v. City of Piedmont* (October 6, 2006, A112886) ___ Cal.App.4th ___ (*Amberger-Warren*) held that a paved pathway in an urban dog park is also a trail subject to immunity.

III. SECTIONS 890 *ET SEQ* OF THE STREETS AND HIGHWAYS CODE CONTROL SECTION 831.4 IMMUNITY

A. The Legislature Intended That Bike Paths Utilize Minimum Safety Design Criteria and Specifications

Respondent's Brief acknowledges that the area in question is a bikeway, a Class I bikeway, and a bike path. (At p. 3.) But these terms (and the equivalent "bicycle path") are not merely informal or descriptive expressions. The California

Bicycle Transportation Act (Division 1, Chapter 8, Article 3 of the Streets and Highways Code) provides statutory definitions for, and regulates the purpose and design of, bicycle facilities. It includes the following sections (cited in part by Appellant Prokop):

> 890. It is the intent of the Legislature, in enacting this article, to establish a bicycle transportation system. It is the further intent of the Legislature that this transportation system shall be designed and developed to achieve the functional commuting needs of the employee, student, business person, and shopper as the foremost consideration in route selection, to have the physical safety of the bicyclist and bicyclist's property as a major planning component, and to have the capacity to accommodate bicyclists of all ages and skills.
>
> …
>
> 890.3. As used in this article, "bicycle commuter" means a person making a trip by bicycle primarily for transportation purposes, including, but not limited to, travel to work, school, shopping, or other destination that is a center of activity, and does not include a trip by bicycle primarily for physical exercise or recreation without such a destination.
>
> 890.4. As used in this article, "bikeway" means all facilities that provide primarily for bicycle travel. For purposes of this article, bikeways shall be categorized as follows:
>
> (a) Class I bikeways, such as a "bike path," which provide a completely separated right-of-way designated for the exclusive use of bicycles and pedestrians with crossflows by motorists minimized. …

The Legislature has also established statutory minimum safety design criteria for any facility designated as a bikeway, including Class I bikeways (bike paths):

> 890.6. The department [of Transportation], in cooperation with county and city governments, shall establish minimum safety design criteria for the planning and construction of bikeways and roadways where bicycle travel is permitted. The criteria shall include, but not be limited to, the design speed of the facility, minimum widths and clearances, grade, radius of curvature, pavement surface, actuation of automatic traffic control devices, drainage, and general safety. …

> 890.8. The department shall establish uniform specifications and symbols for signs, markers, and traffic control devices to designate bikeways, regulate traffic, improve safety and convenience for bicyclists, and alert pedestrians and motorists of the presence of bicyclists on bikeways and on roadways where bicycle travel is permitted.
>
> 891. All city, county, regional, and other local agencies responsible for the development or operation of bikeways or roadways where bicycle travel is permitted shall utilize all minimum safety design criteria and uniform specifications and symbols for signs, markers, and traffic control devices established pursuant to Sections 890.6 and 890.8.

It is important to recognize that while the *Farnham* court alluded to these statutes and briefly described several of them, it did so only in addressing Farnham's peripheral contention that a bike path should be considered a street or highway. (*Farnham*, *supra*, 68 Cal.App.4th at p. 1101 and fn. 4.) The *Farnham* decision was therefore incomplete. The broad liability implications of these statutes were never brought to the court's attention, and we ask that the earlier holding now be modified in that light.

B. Utilizing Bikeway Criteria Is a Mandatory Duty

Under Streets and Highways Code section 891, minimum safety design criteria and specifications are uniform throughout the state, and all agencies responsible for bikeways "shall utilize" them. Appellant Prokop contends that the City of Los Angeles caused him injury by failing to utilize these criteria and specifications for the Los Angeles River Bikeway, which is a triable issue of fact. Government Code section 815.6 provides that

> Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

Without such liability to enforce discharge of the public duty to observe minimum safety design criteria, bikeway users can have no assurance that facilities constructed and designated for their use, and for which the Legislature intended "to have the physical safety of the bicyclist … as a major planning component," are reasonably safe to travel on. The Legislature could not have meant agencies to be immune from observing the very safety design criteria it expressly obligated them to adhere to.

C. The Later, Specific California Bikeways Act Controls the Earlier, General Section 831.4

The legislative history of these provisions confirms that the Streets and Highways Code was meant to take precedence over the Government Code. The last relevant amendment to Government Code section 831.4 was in Statutes 1972, chapter 1200, which added "including animal and all types of vehicular riding" to subdivision (a). (*Giannuzzi*, *supra*, 17 Cal.App.4th at p. 466.) The California Bikeways Act was enacted in Statutes 1975, chapter 1235, and then renamed the California Bicycle Transportation Act, reenacted, modified, and renumbered in Statutes 1993, chapter 517. A later enactment controls an earlier enactment, and a special statute dealing expressly with a particular subject controls and takes precedence over a general statute covering the same subject. (*Simpson v. Cranston* (1961) 56 Cal.2d 63, 69.) The mandatory duty with respect to bikeways of the Bicycle Transportation Act's later, specific statutes must therefore supersede the earlier, general statute providing immunity on trails. To hold otherwise would defeat the Legislature's stated safety purpose and render its actions nugatory.

D. The History of Standards Development Demonstrates an Intent to Impose Liability

Streets and Highways Code section 890.6 directed the Department of Transportation to establish minimum safety design criteria for the planning and construction of bikeways. This task was carried out by a committee known as the Statewide Bicycle Facilities Committee. On March 2, 1978, the committee held a public meeting in Los Angeles to review a draft of the Planning and Design Criteria for Bikeways in California, as these guidelines were then called. (They are now distributed between Chapter 1000 of the California Highway Design Manual and the Manual on Uniform Traffic Control Devices and its California Supplement.) A summary of that meeting, prepared by Rick Knapp of the Department of Transportation, chairman of the committee, includes the following exchange with Pat Brodie, an engineer for the City of Los Angeles:

> Pat Brodie: Questioned whether a local agency was accepting increased liability when striping a bike lane.
>
> Committee Response: Additional responsibility to provide for bicycle safety is assumed when striping bike lanes, so they should not be striped unless they will meet minimum safety standards and are to be maintained consistent with bicyclists' needs.

This comment happened to concern bike lanes (Class II bikeways) rather than bike paths (Class I bikeways), but there is no reason to expect that the response would have differed by class of bikeway. It was clearly the committee's understanding and intent that local agencies are responsible for constructing bikeways in accordance with minimum safety standards, or else liability may result.

IV. THE LOS ANGELES RIVER BIKEWAY FALLS OUTSIDE THE SCOPE OF SECTION 831.4

Even supposing that section 831.4 immunity is pertinent to bike paths, the *Amberger-Warren* decision provides a convenient framework for deciding whether it applies to the Los Angeles River Bikeway:

> Whether the property is a trail depends on a number of considerations, including accepted definitions of the property [citations], the purpose for which the property is designed and used, and the purpose of the immunity statute [citation]. (*Amberger-Warren, supra*, A112886 at Slip Opn. p. 3.)

We consider each of these factors in turn, although they cannot be entirely separated from one another.

A. "Bike Path" Is Not Synonymous with "Trail"

Amberger-Warren's first criterion is "accepted definitions of the property." *Carroll* found that "the words 'trail' and 'path' are synonymous" (*Carroll, supra*, 60 Cal.App.4th at p. 609), but this holding is not so definitive as it might seem. *Carroll's* reasoning was justifiably criticized by *Treweek*:

> Apparently unable to find a dictionary definition of the term "trail" that did not also include a sense of a natural or unconstructed component, the *Carroll* court relied instead upon a synonym finder equating "trail" with "path" and a dictionary definition of "trail" as a "marked or established *path* or route . …" A strategic use of ellipses allowed the court to ignore the balance of that definition as "esp. through a forest or mountainous region." (*Treweek, supra,* 85 Cal.App.4th at p. 231.)

In fact, it is not even established that a path is a trail. A sidewalk is surely a type of path, but *Amberger-Warren* distinguished a paved park pathway from a sidewalk by noting that a sidewalk must be next to or part of a street or highway. (*Amberger-Warren, supra,* A112886 at Slip Opn. pp. 5–6.) *Treweek* stated facetiously that a definition of "trail" elastic enough to include a boat ramp, which after all is a kind of passageway, "could include a sidewalk or even an elevator

from which one might enjoy an ocean view," which "stretches the definition too far." (*Treweek, supra,* 85 Cal.App.4th at p. 232.) This criterion is therefore of limited value.

B. Bike Paths Differ from Trails in Design and Use

Farnham declared more pragmatically that "The design and use will control what an object is, not the name." (*Farnham, supra*, 68 Cal.App.4th at p. 1103.) *Treweek* accordingly determined, by examining its design and use, that a boat ramp is not a trail. (*Treweek, supra,* 85 Cal.App.4th at p. 232.) *Amberger-Warren* took the purpose for which the property is designed and used as its second qualification for a trail, and its test was whether this design and use were recreational. (*Amberger-Warren, supra*, A112886 at Slip Opn. p. 4.)

Although a bicycle path may superficially resemble a trail, its design and intended use control what it is. Bike paths differ from trails in both design and use.

1. Design

By legislative enactment in the Streets and Highways Code, facilities designated as bike paths are designed according to engineering principles, and these principles are set out in great detail in the California Highway Design Manual. Trails have no accepted engineering design or construction standards. The California Recreational Trails Plan (Phase 1, June 2002) describes " … an absence of any universally accepted trail construction standardization practices or policy guidelines."

Engineering design makes a bike path more nearly like a street or sidewalk than a trail. Bikeways are regulated under the Streets and Highways Code—not, for instance, the Public Resources Code. Responsibility for bikeway design

criteria, specifications, and symbols is vested in the Department of Transportation—not, for instance, the Department of Parks and Recreation.

2. Use

By use, bike paths are intended for transportation. The Streets and Highways Code establishes "a bicycle transportation system," including bike paths, "primarily for transportation purposes" but not including "a trip by bicycle primarily for physical exercise or recreation." (Sts. & Hy. Code, §§890, 890.3.)

The Los Angeles River Bikeway runs next to Interstate 5 and provides an alternative to it (again similar to a sidewalk next to a street), a transportation purpose. The Declaration of Prokop's expert John Forester describes this bikeway in the following terms:

> The Los Angeles River Bikeway is a transportational bikeway, a type which the City Plan names as commuter/utilitarian as opposed to recreational. The path runs alongside the Los Angeles River through the "slot" that has always formed the main transportation route between Los Angeles and the San Fernando Valley, a route now exemplified by the presence of Interstate-5. The path connects, at this time, only to three main boulevards: Victory (via Riverside), Los Feliz, and Fletcher, none of which is a recreational route. The area through which the path runs is unpleasant. Some users have commented: "Unfortunately the condition of the Los Angeles River (foul run-off water, trash, etc.) and the proximity of the 5 freeway make it unattractive, noisy and unpleasant." Another reviewer states: "I've ridden the LA River path and am very disappointed in it, particularly its location. Riding into the face of oncoming freeway traffic is not my idea of a good time. The exhaust fumes coming off the freeway are horrible." (http:/www.labikepaths.com/LARiver.html)

This is very far from a pleasant recreational opportunity.

Trails, on the other hand, are intended primarily for recreation. The pathway in *Amberger-Warren*, for instance, was located in a dog park where dog owners could allow their pets to play unleashed, and would have no apparent use for transportation. (*Amberger-Warren, supra*, A112886 at Slip Opn. p. 2.)

At most, whether a particular facility is recreational is in general a triable issue of fact. *Giannuzzi* found that "The purpose for which a trail is used is ordinarily viewed as a factual issue, but it becomes a question of law if only one conclusion is possible." Plaintiff Giannuzzi did not plead the relevant facts; therefore the judge determined that "plaintiff's purpose for being within the Carnegie State Vehicular Recreation Park was the recreational driving of his vehicle." (*Giannuzzi, supra,* 17 Cal.App.4th at p. 467.) There is no such agreement with regard to the Los Angeles River Bikeway.

The court should take special note that *Carroll* made a factual determination that the South Bay Bicycle Path served a recreational use, and therefore fell under section 831.4 immunity, on the basis of its scenic views of the Pacific Ocean. (*Carroll, supra*, 60 Cal.App.4th at p. 609.) *Farnham* extrapolated *Carroll* to all Class I bikeways, without examining the recreational character of the Sepulveda Basin Bikeway (or establishing that no such examination was needed). (*Farnham, supra*, 68 Cal.App.4th at p. 1099.) Recreational nature is an essential element not only in the definition of "trail" but of section 831.4 immunity as whole, as we discuss further below, and to this extent *Farnham* erred in taking as a matter of law what should have been a triable issue of fact.

As a Class I bikeway in an unpleasant environment, the Los Angeles River Bikeway lacks the recreational design and use that would make it a trail (or at most this is a triable issue of fact). In contrast, a finding that a bicycle facility *per se* is inherently recreational and therefore subject to immunity from due care in its design, maintenance, and operation would imply a fundamental reduction of freedom in our society. To deny the rights of travelers to safe passage based on

their mode of transportation would raise many difficult moral issues, and would open vast new territories for discrimination, preferential treatment, and abuse.

3. Bicycling is a Means of Transportation

Appellant Prokop's use of the Los Angeles River Bikeway was for bicycling. Bicycle riding is a means of transportation, like automobile driving, although under certain conditions it can also be a sporting activity. (*Childs v. County of Santa Barbara* (2004) 115 Cal.App.4th 64, 72; *Moser v. Ratinoff* (2003) 105 Cal.App.4th 1211, 1221.) Again this implies that use of the facility is at most a triable issue of fact.

C. Only Recreational Facilities Are Immunized

The recreational nature of a facility is critical for an additional reason. *Amberger-Warren* found that recreational character is an inherent qualification for determining that a facility is a trail. But supposing, for the sake of argument, that a non-recreational facility could also qualify as a trail, it would nonetheless fall outside the scope of section 831.4 immunity.

Section 831.4 does not explicitly describe the immunized activities as recreational, but the courts have taken this view for granted at great length. "[T]he 'above purposes' language of subdivision (b) simply picks up the recreational activities set forth in subdivision (a)." (*Giannuzzi*, *supra*, 17 Cal.App.4th at p. 465.) "Hunting, hiking, riding, etc.—the recreational activities listed in subdivision (a) …." (*Ibid*.) "… use of trails for certain recreational activities …." (*Id*. at p. 466.) "… enumerated recreational activities …." (*Armenio*, *supra*, 28 Cal.App.4th at p. 417.) "… a trail whose use itself is the object of the recreational activity." (*Carroll*, *supra*, 60 Cal.App.4th at p. 413.) These examples could be

multiplied many times over and are reinforced by the legislative history of the statute.

Nothing in any of these cases, in the language of section 831.4 itself, or in its legislative history, however, suggests that immunity would extend to a facility whose design, purpose, or use is for transportation, rather than recreation, and the opposite is implied by *Giannuzzi*'s inquiry into whether the activity was recreational. (*Giannuzzi, supra,* 17 Cal.App.4th at p. 467.)

D. Public Policy Does Not Require the Broad Immunity of Section 831.4

Amberger-Warren's third reason for treating a pathway as a trail is to fulfill the purpose of the immunity statute: "public entities could well be inclined to close dog parks if they were exposed to liability for accidents like the one here." (*Amberger-Warren, supra*, A112886 at Slip Opn. p. 4.) According to *Armenio*, this immunity is afforded "to encourage public entities to open their property for public recreational use, because 'the burden and expense of putting such property in a safe condition and the expense of defending claims for injuries would probably cause many public entities to close such areas to public use.' " (*Armenio, supra,* 28 Cal.App.4th at p. 417.)

The analogous prospect greatly upsets *Farnham*:

> In today's litigious society, it does not take a very large crystal ball to foresee the plethora of litigation cities or counties might face over bicycle paths, which are used daily by a variety of people (bicyclists, skateboarders, rollerbladers, rollerskaters, joggers and walkers) all going at different speeds. The actual cost of such litigation, or even the specter of it, might well cause cities or counties to reconsider allowing the operation of a bicycle path, which, after all, produces no revenue. (*Farnham, supra*, 68 Cal.App.4th at p. 1103.)

But this concern is misplaced, because third-party conduct alone cannot create a dangerous condition of public property. (*Amberger-Warren, supra*, A112886 at

Slip Opn. p. 9; *State of California v. Superior Court (Young)* (1995) 32 Cal.App.4th 325, 327.) Moreover, the doctrine that agencies must be relieved of the burden and expense of putting property in a safe condition and immunized against the consequences, on which section 831.4 immunity rests, is wholly inapplicable to designated bike paths. For recreational trails, access is paramount. It is encouraged even when safety cannot be reasonably assured, and users are expected to assume the risk of injuries. For bikeways, the situation is reversed. The Legislature intended that safety be paramount. (Sts. & Hy. Code, §890.) Access by means of bikeways can be provided only in compliance with detailed safety design criteria. (*Id*., §891.)

We do not need to delve here into the complex issue of design immunity. It should be enough to point out that public policy, in the form of Government Code section 830.6, is entirely sufficient to deal with these concerns:

> Neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved …. In the event that the public entity is unable to remedy such public property because of practical impossibility or lack of sufficient funds, the immunity provided by this section shall remain so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of the condition not conforming to the approved plan or design or to the approved standard ….

Compliance with Streets and Highway Code section 891 thereby provides local agencies with design immunity, promoting safety, advancing the public policy goal of encouraging agencies to construct such facilities, and addressing fears of potential litigation—just as compliance with design standards for streets and roads

encourages the construction of those facilities, which after all (with minor exceptions) also produce no revenue.

V. CONCLUSION

For the reasons enumerated above, we ask the court to find that bike paths (Class I bikeways) as defined in the Streets and Highways Code are not subject to the immunity of Government Code section 831.4(b), or that at most this is a triable issue of fact, and to return this case for trial.

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