

2d Civil No. B184205
L.A.S.C. Case No. BC 305404

In The Court of Appeal
State of California
SECOND APPELLATE DISTRICT
DIVISION 8

DAVID PROKOP,
Plaintiff and Appellant

v.

CITY OF LOS ANGELES
Defendant and Appellee

APPEAL FROM AN ORDER GRANTING SUMMARY JUDGMENT,
THE HONORABLE ROLF M. TREU, JUDGE PRESIDING

AMICUS CURIAE BRIEF BY JOHN FORESTER

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**Court of Appeal
State of California
Second Appellate District**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number B184025

Case Name: David Prokop v. City of Los Angeles

There are no interested entities or parties to list in this Certificate per California Rules of Court, Rule 14.5(d)(3)



Signature of Party Submitting Form

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INTRODUCTION

The issue in this appellate case is the legal validity of the safety design standards for bikeways, specifically for Class One Bikeways, otherwise statutorily named “bike paths”, that are required by Streets and Highways Code 890 and 891. David Prokop was injured while bicycling on the Los Angeles River Bikeway, which is part of the bikeway system of the City of Los Angeles. At the location of Prokop’s accident the bikeway failed to meet those safety design standards, and his accident was caused by these nonconforming characteristics. Los Angeles denies any responsibility for conforming to those standards, claiming that “bike paths” are the legal equivalent of dirt trails through unimproved property, a claim that is not consonant with the highly-engineered safety design standards for bike paths, nor with the general nature of the Los Angeles River Bikeway. At issue, in one sense, is the intent of the Legislature in enacting Streets and Highways Code sections 890 and 891, which defined and named three classes of bikeway and also required the California Department of Transportation to create safety design standards for the bikeways so defined. John Forester was very active as the representative of bicyclists to the two committees created to perform this work; he can provide a history of the Legislative direction under which these committees operated and the results they produced.

HISTORY OF THE BIKEWAY SAFETY STANDARDS

About 1970, the California Legislature decided that it needed both adequate traffic laws regarding bicycle traffic and adequate facilities for that traffic, including bikeways. The Legislature did four acts to implement this need. It contracted for standard designs of bikeways with the Institute of Transportation and Traffic Engineering of the School of Engineering of the University of California at Los Angeles. It established, by Senate Concurrent Resolution 47 of the 1973-74 session, a

Statewide Bicycle Committee to develop and recommend changes to the California Vehicle Code to suit these new bikeways. Later, because the UCLA product (delivered in April, 1972) was not deemed satisfactory, it established the California Bicycle Facilities Committee to produce a new set of safety design standards. The Legislature provided the statutory basis for these acts by enacting, in Statutes of 1975, Chapter 1235, the following sections of the Streets and Highways Code: 2373, 2374, 2375, 2376. These were later recodified as Streets and Highways Code 890 and 891.

Forester joined the Statewide Bicycle Committee at its second meeting, being accepted as the sole representative of bicyclists on that committee. The task of that committee, as assigned by Senate Concurrent Resolution 47, was to recommend to the Legislature the changes to traffic law needed to accommodate bikeways designed according to the design standards prepared by UCLA . The discussion regarding bikeways in that committee centered around two types of bikeway, named bike lanes and bike paths. The committee produced its final report 10 February 1975. Its recommendations concerning bike lanes were enacted as California Vehicle Code sections 21206, 21207, 21208. The committee decided that since bike paths were off-street facilities, there was no need for new laws concerning traffic on them or near them.

When the California Bicycle Facilities Committee was formed to produce a satisfactory set of bikeway safety design standards, it was operating under the Streets and Highways Code sections 2373, 2374, 2375, and 2376, which have now been renumbered as Streets and Highways Code sections 890 and 891. The official representative of cyclists on that committee was Forester's associate, Professor John Finley Scott of UC Davis. Scott had agreed to cooperate in this amicus curiae brief, but has recently disappeared, and is probably deceased. Forester, as the president of the California Association of Bicycling Organizations, worked closely with Scott,

attended almost all meetings, and provided much writing to the committee.

Senator James R. Mills, then President Pro-Tem of the Senate, instructed the committee on its task, and his staff performed oversight of the operation of the committee and transmitted further instructions to the committee. The committee members all clearly understood that there were three types of bikeway, each of which had both a technical name and an English language name. The three types of bikeway, and their names, were: Class One Bikeway, bike path; Class Two Bikeway, bike lane; Class Three Bikeway, bike route. The committee members understood that each pair of names were synonymous; each of the pair referred to the same entity. The committee members all understood that they were to create safety design standards for each type of bikeway, standards that were to provide for safe and efficient travel by those bicyclists using each type of facility. The committee members all understood that these safety design standards were required to apply to all bikeways built in California. There was never any discussion within the committee about these understandings; the only discussions concerned the design requirements that would best implement them. These understandings are in accordance with the Streets and Highways Code sections now numbered 890 and 891. The work of the committee was first published as a booklet, Planning and Design Criteria for Bikeways in California, dated 1 August 1976. This document, with some subsequent revisions, is now published as Chapter 1000 of the California Highway Design Manual.

The safety design standard for bike paths, Class One bikeways, is the longest and most detailed of those for the different types of bikeway. This is because it brings down to bicycling conditions the basic design standards for streets and highways. The different conditions are (among others) the smaller size of the vehicles, their lower top speed and power to weight ratio, their lower maximum braking and turning accelerations, and their greater susceptibility to road surface defects. The range of the

characteristics required is shown by the headings of the sections: Widths, Clearance to Obstructions, Striping and Signing, Intersections with Highways, Separation Between Bike Paths and Highways, Bike Paths in the Medians of Highways, Design Speed, Horizontal Alignment and Superelevation, Stopping Sight Distance, Length of Crest Vertical Curves, Lateral Clearance on Horizontal Curves, Grades, Structural Section, Drainage, Barrier Posts, Lighting. Each of these sections contains clearly stated specifications and, for many sections, tables, graphs, and illustrations detailing the requirements specified.

ARGUMENT

1: The phrase “bike path” specifically applies only to Class One Bikeways

This history shows that, from the very beginning of California’s bikeway program, both the Legislature and the technical experts who implemented the Legislature’s acts understood that the law required that every bikeway to be built in California would be one of three types, each of which types had both a technical name and an English language name. (S&H 890.4) The same bodies understood that the law required that safety design standards be created for each type of bikeway (S&H 890.6 and 890.8), and that the law required that every bikeway built in California conform to the standard for its type. (S&H 891)

The relevant class of bikeway in the Prokop case is that with the technical name of “Class One Bikeway”, and with the English language name of “bike path”. All bikeways are required to conform to the appropriate safety design standards. Therefore, when the phrase “bike path” is used in formal exposition in California, be it in engineering, legal, or judicial documents, it can only properly apply to a facility that is also a Class One Bikeway that is intended to be designed and constructed in accordance with the standards for bike paths contained in Chapter 1000 of the California Highway Design Manual. Any other use is a misuse of the English language, generally made by persons who are not familiar with the technical

requirements.

2: Bike paths are highly engineered facilities

The comprehensive and detailed design requirements for bike paths demonstrate that bike paths are almost as highly engineered facilities as are roads, which fact clearly distinguishes bike paths from trails and suchlike facilities.

3: Safety design standards are a public good

Design standards that provide for safe and efficient travel are intended to protect the traveling public from the hazards of travel, to the extent that this is reasonably practical. It was clearly the intent of the Legislature that all bikeways, of whatever type, be built in accordance with the appropriate safety design standards, in order to provide this degree of protection to the traveling public. Preservation of the legal validity of the safety design standards is clearly preservation of what the Legislature considered to be a public good.

CONCLUSIONS

1: Streets & Highways Code 890.4, 890.6, 890.8, and 891 together limit the proper use of the phrase “bike path” to Class One Bikeways that are intended to conform to the safety design requirements for them in Chapter 1000 of the California Highway Design Manual. All other uses of that phrase are merely colloquial misstatements.

2: Bike paths are highly engineered facilities for bicycle travel that are easily distinguishable from trails of any type.

3: The safety design standards for bike paths are a public good whose legal validity

should be preserved.

Dated: August 24, 2006

Respectfully submitted,

A handwritten signature in cursive script that reads "John Forester". The signature is written in black ink and has a long horizontal flourish extending to the right.

John Forester

CERTIFICATE OF COMPLIANCE

John Forester hereby certifies that pursuant to Rule 14(c)1 of the California Rules of Court, the enclosed brief of John Forester is produced using 13-point Roman type including footnotes and contains approximately 1492 words in pages 1 through 6, which is less than the total words permitted by the rules of court. Forester relies on the word count of the computer program used to prepare this brief.

Dated:

A handwritten signature in cursive script that reads "John Forester". The signature is written in black ink and is positioned centrally below the "Dated:" label.

Signed: _____

Print Name: John Forester

PROOF OF SERVICE

I, John Forester, certify that I have prepared for mailing via US Postal Service, First Class Mail, copies of my Amicus Curiae Brief in the case of David Prokop v. The City of Los Angeles. These will be deposited at the post office in Lemon Grove, CA, no later than 26 August 2006.

Copies have been addressed to those listed below.



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