Supreme Court Case No. S208130

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

ANTONIO CORDOVA, et al.,

Plaintiffs and Appellants,

v.

CITY OF LOS ANGELES,

Defendant and Respondent.

After A Published Decision By The Court Of Appeal
Second Appellate District, Division One, Case No. B236195
Los Angeles County Superior Court Case Nos. BC442048, BC444004, BC443948

APPLICATION OF LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENT CITY OF LOS ANGELES; AND AMICI BRIEF

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APPLICATION OF LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENT CITY OF LOS ANGELES

The League of California Cities and California State Association of Counties request permission to file the attached Amici Curiae Brief pursuant to California Rules of Court, rule 8.520(f).

The League of California Cities (League) is an association of 467 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as having such significance.

The California State Association of Counties (CSAC) is a non-profit corporation with membership consisting 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 Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The League and CSAC, as representatives of local government entities throughout California, have a manifest and vital interest in how this Court answers the question on review in this case: "May a government entity be liable where it is alleged that a dangerous condition of public property existed and caused the injury plaintiffs suffered in an accident, but did not cause the third party conduct that led to the accident?" The case is all the more important to these prospective amici given that the accident at issue occurred on a public roadway. According to a comprehensive 2010 study of California's local street and road systems, "California's 58 counties and 480 cities own and maintain 141,235 center-line miles of local streets and roads," accounting for "82 percent of the state's total publicly maintained centerline miles." (California Statewide Local Streets and Roads Needs Assessment (2011) Background, p. 1, <http://dpw.lacounty.gov/gmed/slsr2/reports/2010/finalreport.pdf> [as of July 29, 2013].) The Court's resolution of this case thus has potentially enormous repercussions on the cities and counties comprising the prospective amici.

This amici brief will assist the Court in deciding the issue on review by explaining why, under the carefully tailored provisions of the Government Tort Claims Act governing liability of public entities for dangerous property conditions, there can be no such liability where no physical condition of the property causes the third party conduct—in this case criminal conduct—causing an accident on public property.

Amici will also demonstrate that plaintiffs' position that some aspect of the public property need only be a concurrent cause-in-fact of the injury—by virtue of supposedly constituting a substantial factor contributing to the injury—contravenes the law governing dangerous conditions of public property, which expressly requires proximate causation. Where, as here, the allegedly dangerous condition did not cause the third party conduct leading to the accident, the allegedly dangerous condition cannot constitute a proximate cause because of the public entity's lack of responsibility for causing the accident and for public policy reasons.

DATED: July 31, 2013

Respectfully submitted,

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AMICI CURIAE BRIEF

INTRODUCTION

"Every trip begins on a city street or county road." (California Statewide Local Streets and Roads Needs Assessment (2011) Executive Summary, p. iii, <http://dpw.lacounty.gov/gmed/slsr2/reports/2010/finalreport.pdf> [as of July 29, 2013].) "California's 58 counties and 480 cities own and maintain 141,235 center-line miles of local streets and roads," accounting for "82 percent of the state's total publicly maintained centerline miles." (*Id*., Background, p. 1.) Building and maintaining these thousands of miles of roadways are services that public entities must perform in their unique relationship with the public. Of the total paved miles, 79 percent are in urban areas. (*Id*. at p. 2.)

In this case, on an urban boulevard with a 35 mile-per-hour speed limit, two cars were driving at freeway speeds in the same direction in adjacent lanes. One car veered into the other and knocked it onto the boulevard's wide, grassy center median and into a tree in the middle of the median, killing some of the occupants of that car. This was a tragedy for the decedents and their survivors. And it was a crime, for which the driver who swerved his car into the decedents' car was convicted of vehicular manslaughter.

The question in this Court is whether the public entity may be held liable under Government Code section 835 for dangerous condition of public property in a wrongful death action alleging that the roadway was in

a dangerous condition causing the injuries but where all agree the alleged dangerous condition did not cause the criminal third party conduct that led to the "accident," i.e., did not cause the driver who committed vehicular manslaughter to swerve into the decedents' car.

The answer is no.

Public entity landowners are commonly targeted as quintessential "deep pocket" defendants and insurers of public safety. Their extensive land holdings and pervasive regulatory activities assure some link, however tangential or happenstance, to almost any incident that might give rise to a civil suit. Mindful of this, the Legislature abolished common law liability against public entities and limited their exposure to those duties specifically set forth in statute. Hence, claims based upon public entities' status as landowners are subject to the strict limitations of dangerous condition liability under the Government Tort Claims Act.

Motorists regularly and consistently encounter a number of physical objects along public streets: light posts, street signs, fire hydrants, utility boxes, and bus benches on or near sidewalks; trees in parkways and medians; adjoining retaining walls and buildings; cars parked in marked parking spaces; and so on. Under plaintiffs' view, every single one of these physical objects is a potential concurrent "cause" of injury for purposes of Government Code section 835. It is virtually impossible to think of any physical property that could not hurt someone if a third party knocked that person into the object with sufficient force, or even if the person did this to

himself or herself, or if some force of nature, like severe wind or an earthquake, were the impetus. That cannot and does not render every piece of publicly owned property in a dangerous condition under the statute.

Nonetheless, that is exactly what plaintiffs posit here. Contrary to plaintiffs' position, the salient inquiry under the statute in determining whether a physical property condition causes a substantial risk of harm when used with due care in cases like this one must focus on the probability of a dangerous condition causing the third party conduct leading to the accident, not the extent of any resulting injury. Accordingly, the Court should decline to impose dangerous condition liability in cases where the alleged dangerous condition did not cause the third party conduct that led to the accident.

In this case, the lack of a causal nexus is evident circumstantially (no history of accidents) and directly (the third party conduct leading to the "accident" was criminal conduct, and neither the third party nor the victims killed or injured by that conduct were even using the property with due care). The lower courts' rulings awarding and affirming summary judgment in favor of the public entity struck the proper balance under the statutorily prescribed rule of proximate causation.

The issue is not, as plaintiffs urge, simply a matter of concurrent causation. Rather, the Court must decide whether the public entity can be held liable at all for the alleged dangerous condition, such as it is, and whether, as a matter of law and policy, it constituted a proximate cause of

plaintiffs' harm within the strict statutory limitations on liability for dangerous conditions of public property.

If the Court agrees with plaintiffs, then every time a third party causes an accident that concludes with someone being hurt by any government-owned physical object or improvement along the over 80% of California roadways that cities and counties maintain, the unfortunate city or county will unfairly be put to the expensive and burdensome task of litigating whether there was some safer configuration of the roadway that might possibly have lessened the injury. Given that virtually any physical object, defective or non-defective, could, under plaintiffs' causation theory, concurrently "cause" an injury, the potential ramifications to cities and counties, and thus all California citizens, are staggering: cities and counties will be forced to remove or barricade any physical objects adjacent to a roadway—from trees to light posts to park benches—that someone could conceivably crash into or be knocked into by way of an accident triggered by third party conduct, even criminal conduct, or else be put to the task of defending, to at least the summary judgment phase or even trial, labor and expert intensive dangerous condition claims, with the attendant expenditure of public funds.

This would be bad law, and worse public policy. Plaintiffs' position must be rejected.

ARGUMENT

I.

THERE IS NO "DANGEROUS CONDITION OF PUBLIC PROPERTY" LIABILITY WHERE THE PHYSICAL CONDITION OF THE PROPERTY DOES NOT CAUSE THE THIRD PARTY CONDUCT LEADING TO AN ACCIDENT.

As this Court has explained, Government Code "section 815 abolishes common law tort liability for public entities." (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 899.) The intent of the Government Tort Claims Act is to "confine potential governmental liability, not expand it." (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1179.) Liability is confined to "rigidly delineated circumstances[,]" and sovereign "immunity is waived only if the various requirements of the act are satisfied." (*Williams v. Horvath* (1976) 16 Cal.3d 834, 838.)

Particularly in the context of dangerous conditions of public property, "an expansive view of governmental liability could undermine the balanced scheme set out in the Tort Claims Act." (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1132 (*Zelig*).) "In structuring Government Code section 835 to define the circumstances in which a public entity properly may be held liable for an injury caused by a dangerous condition of public property, the Legislature took into account the special policy considerations affecting public entities in their development and control of

public property and made a variety of policy judgments as to when a public entity should or should not be liable in monetary damages for injuries that may occur on public property." (*Ibid*.)

Accepting plaintiffs' concurrent-causation position here would contravene those policy considerations, and expose public entities to enormous and statutorily unwarranted potential liability arising from their vast networks of public roadways.

A. The Statutory Requirement That A Dangerous Public Property Condition Create A Substantial Risk Of Injury Permits Liability Only When A Property Condition Increases The Risk Of Third Party Conduct Causing An Accident, Not The Extent Of Any Resulting Injury.

The limited circumstances in which the Legislature has determined that public entities may be liable for dangerous condition of public property are stated in Government Code section 835, which provides:

> Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:
>
> > (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or
> >
> > (b) The public entity had actual or constructive notice of the dangerous condition under Section

> 835.2 [further defining actual and constructive notice] a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

(Gov. Code, § 835.) A dangerous condition is defined, as relevant here, as "a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used." (Gov. Code, § 830, subd. (a).)

Professor Van Alstyne—who "was the California Law Revision Commission's chief consultant and much of [whose] work gave rise to the present statutory system" (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 229 (conc. opn. of Baxter, J.))—explained that in requiring that the property create a substantial risk of injury in order to be dangerous, "[t]he Legislature was apparently concerned not with the extent of injury, but with the *probability* that an injury would occur." (Van Alstyne, Cal. Government Tort Liability Practice (Cont.Ed.Bar 1980) § 3.9.b., p. 191, italics added.) The reason goes to the heart of this case: "'The condition of the property involved should create a 'substantial risk' of injury, for an undue burden would be placed upon public entities if they were responsible for the repair of all conditions creating any possibility of injury however remote that possibility might be.'" (*Ibid*., quoting Recommendation Relating to Sovereign Immunity, 4 Calif. L. Rev'n Comm'n Reports 801, 822 (1963).)

Here, the statutorily-required hallmarks of dangerous condition liability—a substantial rather than insignificant risk of injury when the property is used with due care in a reasonably foreseeable manner—are sorely lacking:

- plaintiffs presented no evidence of prior serious accidents involving cars hitting the median tree, which was planted 50 years ago;
- the one accident that has happened—this one—certainly doesn't demonstrate a substantial risk of injury when the property was used with due care in a reasonably foreseeable manner, as the decedents and the other driver were excessively speeding and the other driver criminally veered his car into the decedents' car.

Plaintiffs do not contend a roadway condition or feature, such as a narrowing of lanes or sudden curve or pothole, caused the other driver to veer into the decedents' lane or that any prior accident history suggests any such condition or feature causes anyone else to veer over.

And while an accident resulting in a collision with the median tree may have been conceivable—and the same could be said of multitudes of other roadway objects—this possibility alone does not create a substantial risk of injury when the property is used with due care. As the Court of Appeal saliently observed, "[p]laintiffs do not contend the view of the median was in any way obscured such that the tree was a surprise obstacle

in the roadway, or that the median and trees caused cars to travel at unsafe speed (including the freeway speeds the plaintiffs' decedents were traveling here) such that persons using the roadway with due care would be hit by such vehicles." (Opinion, p. 14.)

No "dangerous condition"—a condition creating a *substantial* risk of injury when property is used with due care in a reasonably foreseeable manner—is even presented by the facts of this case. Public entity liability does not follow simply because third party criminal conduct led to a collision with a physical object that happened to be located on public property, particularly where there is no history of similar accidents and neither the third party nor the victim were using the property with due care.

B. In Cases Of Third Party Criminal Conduct, This Court's Precedents Teach That A Condition Of Public Property Must Increase The Likelihood Of That Conduct Before An Entity Can Be Held Liable.

In *Zelig*, this Court explained that "[a] public entity may be liable if it 'maintained the property in such a way so as to increase the risk of criminal activity' or in such a way as to 'create[] a reasonably foreseeable risk of . . . criminal conduct.'" (27 Cal.4th at pp. 1134-1135, quoting *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 812 [presence of trees with thick foliage near a parking lot and stairway facilitated criminal activity against students and risk of crime was reasonably foreseeable because district was aware of prior assaults].)

In *Zelig*, involving weapons brought into a courthouse, the Court concluded that "the risk of injury was not increased or intensified by the condition of the property, and the necessary causal connection between the condition of the property and [the] crime was not present." (*Id*. at p. 1137.) The Court has since "reiterate[d], moreover, the limitation [it] stated in *Zelig*: public liability lies under section 835 only when a feature of the public property has 'increased or intensified' the danger to users from third party conduct." (*Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 155.)

Plaintiffs dismiss *Zelig* as irrelevant, asserting that it only addresses instances where public property increases the likelihood of third party criminal activity whereas plaintiffs' theory of liability is that the public property condition resulted in greater injury from what they contend was foreseeable third party conduct. (Opening Brief on the Merits (OBM), pp. 26-27.) But criminal conduct by a third party is exactly what happened here. And in defining "dangerous condition" as one creating a substantial risk of injury when property is used with due care in a reasonably foreseeable manner, the Legislature focused on the reasonable *probability* of whether an injury would occur, not the extent of the injury. (Van Alstyne, Cal. Government Tort Liability Practice, *supra*, § 3.9.b., p. 191.)

Without showing any link between the physical condition of the roadway and the criminal conduct, plaintiffs' position essentially seeks to burden public entities with a duty to make their roadways safe from

criminal activity unrelated to any physical defect in the public property. But this cannot be the legislative intent. Multiple factors completely beyond the government's control—the criminal conduct of third parties and the happenstance of where, when, and how accidents occasioned by that criminal conduct will unfold—would make it virtually impossible for cities and counties to prevent being sued and potentially found liable for accidents similar to the one now before the Court.

C. This Court's Older Precedents That Plaintiffs Posit As "Concurrent Causation" Cases Do Not Eliminate The Statutory Requirement That A Public Property Condition Create A Substantial Risk Of Harm And Do Not Impose Liability Where No Dangerous Property Condition Contributes To Third Party Conduct Leading To An Accident.

This Court's dangerous condition precedents that plaintiffs' posit as "concurrent causation" cases involving third party conduct do not help plaintiffs. Those cases—unlike this one—arguably involved physical property conditions with a demonstrated history of increasing the risk of the third party conduct causing harm to the plaintiffs by making an accident more likely to occur:

- In *Ducey v. Argo Sales Co.* (1979) 25 Cal.3d 707, 714-718, the plaintiffs' car was struck on a freeway by another vehicle that had crossed the median strip with no median barrier on a stretch of the freeway where the state's own documents

showed numerous cross-median accidents had occurred, several fatal, and before the accident occurred the state had determined a barrier should be installed but had delayed doing so.

- In *Baldwin v. State of California* (1972) 6 Cal.3d 424, 428-429, the plaintiff was rear-ended while making a left-turn from a highway with a 55 miles per hour speed limit but with no special left-turn lane and there was an extensive history of rear-end collisions, many fatal, at the intersection.
- In *Bosqui v. City of San Bernardino* (1935) 2 Cal.2d 747, 761, decedents' car crashed through the guard rails of a viaduct crossing and into the street below after the plaintiff unsuccessfully navigated a curve in the crossing where "[t]he evidence show[ed] that many motor vehicle accidents, some of them involving deaths, had happened" before and that this history was "well known to the responsible officers of the city," and "[i]t was also known to the street superintendent that the planks and timbers forming the curbing were rapidly worn away by vehicles coming in contact with them."

The circumstances of those cases are a far cry from this one, and, notably, none of those cases involved criminal third party conduct like the vehicular manslaughter in this case.

When the alleged dangerous condition does not even contribute to the third party conduct leading to the accident, it cannot be said that any feature of public property "increased or intensified" the risk of danger to public property users, as this Court's more recent precedents involving third party criminal conduct require.

D. The Mere Fact Of This Accident Is Not Evidence That The Public Property Created A Substantial Risk Of Injury When Used In A Reasonable, Careful Manner.

The Legislature has specifically provided that "[e]xcept where the doctrine of res ipsa loquitur is applicable, the happening of the accident which results in the injury is not in and of itself evidence that public property was in a dangerous condition." (Gov. Code, § 830.5, subd. (a).) The Legislature did so because the rule that an accident's occurrence was evidence that public property was dangerous had "occasionally led to the imposition of liability on public entities for relatively trivial defects in, and unforeseeable uses of, public property." (*Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820, 831.) As this Court explained, this statutory provision "merely reinforced" that the Legislature had "eliminate[d] liability for trivial defects and unforeseeable uses by excluding them from the definition of 'dangerous condition'" in Government Code section 830, subdivision (a). (*Ibid*.)

Professor Van Alstyne pointed out that notwithstanding this rule, "the manner in which the property condition *caused the accident* has been regarded as a relevant circumstance, especially where it supports an

inference that other similar injuries are likely in the course of *reasonable careful use*." (Van Alstyne, Cal. Government Tort Liability Practice, *supra*, § 3.9.b., p. 192, citing *Cameron v. State of California* (1972) 7 Cal.3d 318, 323-324 [sudden, superelevated "S" curve without warning], italics added.) But that only reinforces what is absent in this case: any dangerous property condition causing the accident in the first place, let alone in the course of reasonable careful use.

II.

EVEN IF THE PUBLIC PROPERTY CONSTITUTED A CONCURRENT CAUSE IN FACT OF THE INJURY, THERE COULD BE NO PUBLIC ENTITY LIABILITY BECAUSE THE PUBLIC PROPERTY WOULD NOT CONSTITUTE A PROXIMATE CAUSE AS REQUIRED BY STATUTE.

A. The Statute Expressly Requires That "Proximate" Causation Be Used To Determine Dangerous Condition Liability.

The Legislature added an express proximate causation requirement in dangerous condition cases in Government Code section 835 when it enacted the Government Tort Claims Act in 1963. The predecessor statute governing dangerous conditions of public property, former Government Code section 53051, provided, in relevant part, that "[a] local agency is liable for injuries to persons and property resulting from the dangerous or defective condition of public property." In contrast, Government Code

section 835 expressly requires, in relevant part, that the plaintiff establish "that the injury was proximately caused by the dangerous condition."

Plaintiffs cite *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 968-969, for the proposition that "California has 'definitively adopted' the substantial factor test of legal or proximate cause." (OBM, p. 16.) As *Rutherford* explained, however, the substantial factor test is "for cause-in-fact determinations." (16 Cal.4th at p. 968.) Plaintiffs cite no dangerous condition of public property cases in which this Court has used the "substantial factor" test to determine public entity liability.

Equally unavailing is plaintiffs' attempt to fasten liability on the public entity on the theory that the "full extent" of the injury would not have otherwise occurred. (Reply Brief on the Merits (RBM), p. 1.) Without the magnolia tree, the decedents' car might just as well have crossed the median and struck an oncoming vehicle traveling in the opposite direction, and that outcome would have been even more likely if there were no center median at all. Even more important, as Professor Van Alstyne observed, the probability that an injury *will occur*, rather than the extent of the injury, was the Legislature's concern when requiring a substantial risk of injury for purposes of dangerous condition liability. (See Van Alstyne, Cal. Government Tort Liability Practice, *supra*, § 3.9.b., p. 191.)

B. Under Well-Established Proximate Causation Principles, The Court Must Assess Liability In Relation To The Public Entity's Responsibility For The Harm And In Light Of Public Policy.

Plaintiffs argue that the City "fails to give any logical reason why the statutory term 'proximately caused' should be construed to exclude normal principles of concurrent causation." (RBM, p. 10.) But one could even more cogently criticize plaintiffs for failing to explain why the statutory phrase "proximately caused" should be construed without reference to normal principles of *proximate* causation. Even if, as plaintiffs' position necessarily entails, an inert physical object such as a tree in the middle of a center median could be considered a concurrent cause-in-fact of an injury simply by being at the tail end of a collision where no condition of the property contributed to the third party conduct—in this case criminal—causing the accident, that would not satisfy the proximate causation requirement of Government Code section 835.

Proximate causation means more than mere causation-in-fact, concurrent or otherwise. As this Court has repeatedly explained, "[p]roximate cause involves two elements." (*PPG Industries, Inc. v. Transamerica Ins. Co.* (1999) 20 Cal.4th 310, 315.) "One is cause in fact." (*Ibid*.) "[T]he second element focuses on public policy considerations." (*Ferguson v. Lieff, Cabraser, Heimann & Bernstein, LLP* (2003) 30 Cal.4th 1037, 1045.)

"Because the purported causes of an event may be traced back to the dawn of humanity, the law has imposed additional 'limitations on liability other than simple causality.'" (*Ibid*., citation omitted.) "[P]roximate cause 'is ordinarily concerned, not with the fact of causation, but with the various considerations of policy that limit an actor's responsibility for the consequences of his conduct.'" (*PPG Industries, Inc. v. Transamerica Ins. Co., supra*, 20 Cal.4th at p. 316, quoting *Mosley v. Arden Farms Co.* (1945) 26 Cal.2d 213, 221 (conc. opn. of Traynor, J.).)

Prosser further underscored that ultimately the issue of proximate cause must be resolved with regard to legal responsibility and as a matter of policy:

> It is sometimes said to be a question of whether the conduct has been so significant and important a cause that the defendant should be legally responsible. But both significance and importance turn upon conclusions in terms of legal policy, so that this becomes essentially a question of whether the policy of the law will extend the responsibility for the conduct to the consequences which have in fact occurred.

(Prosser, Handbook of the Law of Torts (4th ed. 1971) § 42, p. 244.)[1/]

[1/] Even under the substantial factor test that plaintiffs urge, a cause must be more than merely metaphysical; it must reflect some element of responsibility, which is utterly lacking here. "The word 'substantial' is used to denote the fact that the defendant's conduct has such an effect in producing the harm as to lead reasonable men to regard it as a cause, using that word in the popular sense, in which there always lurks the idea of responsibility, rather than in the so-called 'philosophic sense,' which includes every one of the great number of events without which any happening would not have occurred." (Rest.2d Torts, § 431, com. a, p. 429.) "When the law says a person substantially contributes to the injury, the law is dealing with responsibility based on reasonable expectations and

(continued...)

Thus, the key policy issue in the question of proximate or legal causation is responsibility for the harm caused.

C. Imposing Liability Where A Public Property Condition Does Not Contribute To The Likelihood Of Third Party Criminal Conduct Causing An Accident Would Contravene Public Policy And Impose Unwarranted And Dire Financial Consequences On Cities And Counties.

It would strain the notion of responsibility beyond recognition to extend liability to a public entity for an alleged dangerous condition that did not even arguably cause the third party conduct—criminal conduct no less—that led to the accident causing the harm, i.e., the government conduct did not increase the risk of the harm occurring in the first place. It would be all the more wrong to do so given the clear policy of the Government Tort Claims Act to confine government liability, not expand it. (*Eastburn v. Regional Fire Protection Authority, supra*, 31 Cal.4th at p. 1179.)

No matter how well-maintained, public roadways will remain full of what plaintiffs view as potential concurrent "causes" of injury: light posts, bus benches, trees, mailboxes, utility boxes, and so on. Cities and counties already bear a heavy financial burden in maintaining roadways for the public's use. It would be prohibitively costly, and ultimately impossible, for cities and counties to relocate or barricade every roadside object so as to

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[1/](...continued)
a common sense approach to fault not physics." (*Whitton v. State of California* (1979) 98 Cal.App.3d 235, 243.)

make every user of public roads safe from third party conduct resulting in collisions with these objects.

Common sense and practicality dictate that there is no way to ensure a safe landing for all conceivable accidents caused by negligent, let alone, criminal, third party conduct. Rather, cities and counties provide roadways that accommodate the practical needs of pedestrians, bicyclists, automobile drivers, public transportation users, and others—day and night—requiring infrastructure, physical objects, and landscaping, any of which could conceivably become the ending point of an accident. However, unless a roadway feature is a proximate cause of an accident, and not merely an end point, there should be no public entity liability.

This case provides a glimpse of the sort of costly, labor intensive, and time consuming litigation that is required for dangerous condition cases to be resolved on summary judgment, let alone at trial. From a public policy standpoint, potential liability may not be extended to public entity landowners for accidents when common sense and longstanding proximate causation principles dictate the public entities bear no legal responsibility.

CONCLUSION

For the foregoing reasons, the League of California Cities and California State Association of Counties respectfully submit that the Court should affirm the Court of Appeal decision.

DATED: July 31, 2013

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that the attached AMICI BRIEF is proportionately spaced and has a typeface of 13 points or more. Excluding the caption page, tables of contents and authorities, application, signature block and this certificate, it contains 4,435 words.

DATED: July 31, 2013

Kent J. Bullard

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036-3697.

On July 31, 2013, I served the foregoing document described as **APPLICATION OF LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENT CITY OF LOS ANGELES; AND AMICI BRIEF** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

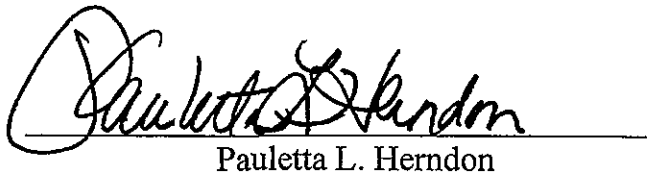
****** See Attached Service List ******

I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on July 31, 2013, at Los Angeles, California.

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



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Antonio Cordova, et al. v. City of Los Angeles
California Supreme Court Case No. S208130

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Clerk:
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The Honerable William F. Fahey
Stanley Mosk Courthouse
Department 78
111 North Hill Street
Los Angeles, California 90012-3117
[Case Nos. BC442048, BC444004, BC443948]

Clerk of Court
California Court of Appeal
Second Appellate District, Division One
300 South Spring Street, Floor 2, North Tower
Los Angeles, California 90013-1213
[Case No. B236195]