B267613

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION TWO

JACOBO G. GARCIA, a minor, by and through his Guardian ad Litem, ANA PAVON; and ANA PAVON,

Plaintiffs / Appellants,
vs.

AMERICAN GOLF CORPORATION; and CITY OF PASADENA,
Defendants / Respondents

Appeal from the Superior Court for the County of Los Angeles
Honorable Howard L. Halm, Case No. GC050056

AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENT CITY OF PASADENA

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I.

Introduction

The importance of recreation cannot be overstated. Recreational areas and the recreational facilities located within recreational areas – like the trail involved in this case – provide incredible and far reaching societal benefits. (See The Health and Social Benefits of Recreation, An Element Of The California Outdoor Recreation Planning Program (California State Parks Planning Division 2005).)[1] As such, government entities have a responsibility to encourage recreation and to provide access to public property for recreational use. Recognizing this, the Legislature enacted Government Code section 831.4 to immunize government entities for all injuries resulting from a "condition of" a trail.[2]

As the case law discussed in this brief establishes, section 831.4 provides a broad, powerful, and absolute immunity for

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[1] https://www.parks.ca.gov/pages/795/files/benefits%20final%20online%20v6-1-05.pdf.

[2] All statutory references are to the Government Code. Section 831.4 is commonly known as the "trail immunity" or "recreational trail immunity."

injuries to one using a trail, whether the injury results from poor maintenance, design, or, as is the important and central issue in this case, the trail's location next to other property posing potential hazards to those using a trail.[3]

As demonstrated by the City in its brief and as Amici demonstrate here, holding the City immune under section 831.4 from liability for the injuries sustained by Jacobo Garcia – injuries sustained while Jacobo was using the Rose Bowl Loop and was struck by a golf ball coming from the adjacent Brookside Golf Course – furthers both the legislative intent and strong public policy underlying section 831.4.

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[3] Appellate court decisions prove the broad, powerful, and absolute nature of section 831.4 immunity. Since 1993, there have been 12 reported appellate decisions addressing section 831.4 immunity. Eleven found application of the immunity proper. (*Burgueno v. Regents of Univ. of Cal.* (2015) 243 Cal.App.4th 1052; *Montenegro v. City of Bradbury* (2013) 215 Cal.App.4th 924; *Hartt v. County of Los Angeles* (2011) 197 Cal.App.4th 1391; *Prokop v. City of Los Angeles* (2007) 150 Cal.App.4th 1332; *Amberger-Warren v. City of Piedmont* (2006) 143 Cal.App.4th 1074, 1078; *Astenius v. State of California* (2005) 126 Cal.App.4th 472; *Farnham v. City of Los Angeles* (1998) 68 Cal.App.4th 1097, 1103; *Carroll v. County of Los Angeles* (1997) 60 Cal.App.4th 606; *State of California v. Superior Court* (1995) 32 Cal.App.4th 325; *Armenio v. County of San Mateo* (1994) 28 Cal.App.4th 413; *Giannuzzi v. State of California* (1993) 17 Cal.App.4th 462.) Only one did not. (See *Treweek v. City of Napa* (2000) 85 Cal.App.4th 221.)

Jacobo's attempts to distance this case from the ambit of section 831.4 immunity fall flat. For example, Jacobo argues that the Rose Bowl Loop is not a trail under section 831.4 because making the golf course "safer" will not impact use of the Rose Bowl Loop or pose a financial burden on the City. Whether or not true, neither point is relevant. Determining whether the Rose Bowl Loop is a trail under section 831.4 involves analyzing accepted definitions of the Rose Bowl Loop, its design and use, and whether treating the Rose Bowl Loop as a trail fulfills section 831.4's overarching purpose of encouraging government entities throughout the state to provide access to public property for recreational use without having to ensure trails are completely safe and without exposure to liability for injuries sustained to one using a trail. (*Amberger-Warren v. City of Piedmont* (2006) 143 Cal.App.4th 1074, 1078-1080 (*Amberger-Warren*).) And what Jacobo critically ignores in erroneously asserting that his injury was not caused by a condition of the Rose Bowl Loop, (*Id.* at 1083-1084), is that: (1) he was injured when struck by a golf ball while using the Rose Bowl Loop; and (2) he would not have been struck by the golf ball had he not been using the Rose Bowl Loop, which by design was located adjacent to a golf course.

II.

Basic Factual And Procedural Background

Jacobo sustained significant injuries after being struck by a golf ball coming from Brookside Golf Course while being pushed in a stroller by his mother on the Rose Bowl Loop. (2 CT 240-245, 458-472; 3 CT 473-480.)

The Rose Bowl Loop is a 3.3 mile "paved recreational loop" within Brookside Park encircling the Rose Bowl and the Brookside Golf Course. (1 CT 132, 133, 139, 167, 229; 2 CT 237.) Almost two-thirds of the Rose Bowl Loop is adjacent to Brookside Golf Course and the two are separated by an approximately eight-foot high stone and chain link fence. (1 CT 145, 229, 230.)

The Rose Bowl Loop accommodates cars, bikers and pedestrians and provides both a means to recreate and access to recreational facilities and areas within Brookside Park, such as the Rose Bowl, the Brookside Golf Course, a children's museum, an aquatic center, equestrian facilities, tennis courts, soccer fields, baseball fields, and open park space. (1 CT 132, 133, 139, 167, 229.)

The trial court granted the City summary judgment under section 831.4. (6 CT 1379-1400.) Jacobo appeals arguing section

831.4 does not apply because his injury was caused not by a condition of the Rose Bowl Loop but rather a dangerous condition existing on the adjacent Brookside Golf Course.[4] Jacobo accordingly necessarily argues that the Rose Bowl Loop was dangerous because of its location next to the dangerous Brookside Golf Course.[5]

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[4] Jacobo also argues that the Rose Bowl Loop is not a trail within the meaning of section 831.4. Because the City has easily demonstrated in its brief why the Rose Bowl Loop is a trail under section 831.4, Amici do not repeat the City's arguments.

[5] Jacobo continuously asserts in his briefing that he does not contend that the Rose Bowl Loop constituted a dangerous condition of public property. By doing so, Jacobo ignores that his complaint alleges the Rose Bowl Loop (or as he said the sidewalk) constituted the dangerous condition of public property. (1 CT 010.) Jacobo also ignores that when one asserts liability for an injury on public property because "a condition on adjacent property exposes those using the public property to a substantial risk of harm" the public property on which the injury was sustained is properly considered dangerous. (Government Code § 835; see *Bonanno v. Cent. Contra Costa Transit Auth.* (2003) 30 Cal.4th 139, 148-149 (bus stop dangerous because of proximity to crosswalk).)

III.

Section 831.4 Provides A Broad, Powerful, And Absolute Immunity For Injuries To Those Using Trails And The Legislative Intent And Strong Public Policy Underlying Section 831.4 Compel Applying The Immunity To Instances Where One Using A Trail Suffers An Injury That Would Not Have Occurred But For The Trail Being Located Adjacent To Property Posing Potential Hazards To One Using The Trail

A. General Principles Of Government Entity Liability

Government entity liability is statutory. (Gov. Code, § 815, subd. (a); *B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 179 (*B.H.*).) Section 835 provides the exclusive statutory basis for liability against a government entity for conditions of property. (*Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 439.)

Under section 835, a condition of the property is not limited to actual physical defects on the property where the plaintiff is injured. Liability under section 835 can exist despite the absence of a physical defect on the property where the injury was sustained when the property becomes dangerous due to its location near other dangerous property. (*Bonanno v. Cent. Contra Costa Transit Auth.* (2003) 30 Cal.4th 139, 148-149.)

However, liability under section 835 cannot exist where another statute provides for governmental immunity. (See Gov. Code, § 835 ("*Except as provided by statute*," a government entity "is liable for injury caused by a dangerous condition of its property..." (Emphasis added).) Section 831.4 is one such statute, and the absolute immunity it provides prevails over section 835. (*Montenegro v. City of Bradbury* (2013) 215 Cal.App.4th 924, 929 (*Montenegro*); *Prokop v. City of Los Angeles* (2007) 150 Cal.App.4th 1332, 1337-1338 (*Prokop*); see *B.H., supra*, 62 Cal.4th at 179 (statutory immunities prevail over liability statutes).)

B. Section 831.4

Section 831.4 provides, 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.

Section 831.4, subdivision (a) is concerned with trails providing access to recreational areas.[6] (*Giannuzzi v. State of California* (1993) 17 Cal.App.4th 462, 466.) In contrast, subdivision (b) is more encompassing. It provides immunity for injuries occurring not only on trails used to access recreational areas but also on trails used for recreational purposes (e.g., biking, walking, running, skating, site-seeing). (*Id.* at 466-467; *Amberger-Warren, supra,* 143 Cal.App.4th at 1078; *Armenio v. County of San Mateo* (1994) 28 Cal.App.4th 413, 416-417 (*Armenio*).)

C. Appellate Courts Have Uniformly Recognized That The Legislative Intent And Strong Public Policy Underlying Section 831.4 Is To Encourage Government Entities To Provide Access To Public Property For Recreational Use By Eliminating All Liability For All Injuries Sustained By One Using A Trail

"The plainly stated purpose of immunity for recreational activities on public land is 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

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[6] Under section 831.4, a trail and path are synonymous. (*Amberger-Warren, supra,* 143 Cal.App.4th at 1079.)

many public entities to close such areas to public use.'" (*Armenio, supra*, 28 Cal.App.4th at 417 (quoting legislative history); accord *Burgueno v. Regents of Univ. of Cal.* (2015) 243 Cal.App.4th 1052, 1059 (*Burgueno*); *Amberger Warren, supra*, 143 Cal.App.4th at 1078; see *Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829, 833 ("The legislative policy underlying the immunity is clear. It is desirable to permit public use of governmental property but governmental agencies might prohibit such use if they were put to the expense of making the property safe, responding to tort actions, and paying damages.").)

"Because provision of parks and recreational opportunities is a more peripheral function of government when compared to more fundamental functions of law enforcement, prevention and control of disease, fire or other natural or manmade disasters (5 Cal. Law Revision Com. Rep. (1963) pp. 490-493) and because it is a function which often brings in little, if any, revenue, it is not unreasonable to fear that the mere specter of liability might persuade public entities to close trails now open to the public if the immunity provided under section 831.4 did not apply . . . .' (5 Cal. Law Revision Com. Rep., supra, at p. 490." (*Treweek v. City of Napa* (2000) 85 Cal.App.4th 221, 232-233 (footnote omitted).)

Indeed, "[a] large portion of the activities comprising modern public park and recreation programs, however, might well be curtailed, deferred or even completely eliminated if the risk of tort liability were to impose unduly large obligations upon the public treasury. To forestall such adverse consequences, it would not be unreasonable to expect those persons who voluntarily participate in the public recreation program to assume a portion of the risk of injuries arising therefrom (albeit tortiously) as part of the price to be paid for benefits received." (5 Cal. Law Revision Com. Rep., supra, at p. 490.)." (*Id.* at 234 fn.9.)

As this Court observed some time ago, "[i]n 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 [and other recreational trails], 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 [and other recreational trails], which, after all, produces no revenue." (*Farnham v. City of Los Angeles* (1998) 68 Cal.App.4th 1097, 1103.) "While we would like to live in a world

of resources sufficient to guarantee reasonable safety at all times, users of recreational trails or bike paths generally understand the risk of injury inherent in the use of such pedestrian ways, and recognize that a large portion of the activities comprising modern public park and recreation programs might well be curtailed, deferred or even completely eliminated if the risk of tort liability were to impose unduly large obligations upon the public treasury." (*Amberger-Warren, supra*, 143 Cal.App.4th at 1085 (internal quotes, cites, edits omitted).)

D. To Honor The Legislative Intent And Strong Public Policy Underlying Section 831.4, Appellate Courts Broadly Construe And Apply Section 831.4 To Hold The Immunity Applicable To All Injuries Sustained To One Using A Trail Resulting From The Trail's Maintenance, Design, Or Third Party Conduct Unrelated To The Trail's Maintenance Or Design

Appellate courts broadly construe and apply section 831.4 to further its purpose of encouraging government entities to provide access to property for recreational use. Again, "[t]he whole point of Government Code section 831.4 is to encourage public entities to keep recreational areas open, sparing the expense of putting undeveloped areas in a safe condition, and preventing the specter of endless litigation over claimed injuries." (*Hartt v. County of Los Angeles* (2011) 197 Cal.App.4th 1391,

1399 (*Hartt*).) And "[t]he only way to further that purpose is for courts to refrain from second-guessing the merits of the Legislature's decision on immunity. Only the Legislature is the coordinate branch of government for determining social policy through the immunity of Government Code section 831.4, subdivision (b)." (*Hartt, supra,* 197 Cal.App.4th at 1399.)

Accordingly, "[c]ourts have [ ] concluded section 831.4 applies to any trail or path specifically put aside and developed for recreational uses, without regard to its unnatural condition or urban location, and have consistently defined paved, multipurpose paths located in metropolitan areas as 'recreational trails for purposes of section 831.4, subdivision (b) immunity.'" (*Montenegro, supra*, 215 Cal.App.4th at 931 (citing cases).) Section 831.4 immunity precludes liability for injuries sustained on all trails caused by design or maintenance of the trail, (*Prokop, supra,* 150 Cal.App.4th at 1341; *Amberger-Warren, supra*, 143 Cal.App.4th at 1084-1085), as well as injuries caused by third parties unrelated to the design or maintenance of the trail. (*Hartt, supra*, 197 Cal.App.4th at 1393, 1396, 1398-1400 (biker struck by car); *State of California v. Superior Court* (1995)

32 Cal.App.4th 325, 326-327 (horseback rider injured when horse spooked by biker).)

E. To Honor The Legislative Intent And Further The Public Policy Underlying Section 831.4, Immunity Must Exist For Injuries To One Using A Trail That Result From Hazardous Conditions On Adjacent Property Because A Trail's Location Is Part Of Its Design And Is An Integral Feature Of The Trail And Thus Is A Condition Of The Trail

Section 831 immunity precludes liability for injuries sustained by one using a trail when the cause of the injury is related to the trail's location. Alternatively stated, section 831 immunity applies where injury to one using a trail results from dangerous conditions on adjacent property because the trail becomes a dangerous condition of property by virtue of its location, and its location, which is part of its design, is a "condition of" the trail under section 831.4. Indeed, it is the existence and location of the trail that exposes one using a trail to potential dangers on adjacent property. In other words, and specific to this case, but for the existence and location of the Rose Bowl Loop and Jacobo's use of the Rose Bowl Loop for recreation, Jacobo would not have been struck by a golf ball coming from the adjacent golf course. Section 831.4 immunity must apply in such a case.

This Court need not write on a blank slate to reach the conclusion that a trail's location is an integral part of a trail and section 831.4 thus immunizes government entities from liability for injuries sustained to one using a trail even when the injury results from hazards on adjacent property.

In *Amberger-Warren*, the plaintiff was injured when she fell in a dog park owned by the City of Piedmont. (*Amberger-Warren, supra*, 143 Cal.App.4th at 1077.) The trial court granted Piedmont summary judgment under section 831.4. On appeal, plaintiff argued – like Jacobo argues here – that section 831.4 did not apply because her injury was not caused by a condition of the trail but rather the trail's location next to a dangerous area. (*Id.* at 1083, 1085.) *Amberger-Warren* rejected this argument concluding that the location of a trail is a condition of the trail and a contrary conclusion would run afoul of the public policy underlying section 831.4, noting that the trail is what exposed the plaintiff to the dangers of the adjacent property. (*Amberger-Warren, supra,* 143 Cal.App.4th at 1085.) As *Amberger-Warren* aptly observed, "location, no less than design, is an integral feature of a trail, and both must be immunized for the same reasons. To accept plaintiff's argument would be to require

installation of [protective netting] or other safety devices on trails, or relocation of trails whenever the surroundings could otherwise be considered unreasonably dangerous. The likely and unacceptable result, which the immunity was created to avoid, would be the closure of many trails in areas that could be deemed at all hazardous." (*Id.* at 1085; see also *Montenegro, supra*, 215 Cal.App.4th at 926, 932 (applying section 831.4 immunity when plaintiff was injured on a recreational path after tripping over a tree trunk protruding into the path from adjacent property); *Prokop, supra*, 150 Cal.App.4th at 1341-1342 (applying section 831.4 immunity where plaintiff was injured when he struck a gate after leaving a bike trail, and rejecting argument that injury was caused not by the condition of the bike path but rather the design of the gate because a gateway to the bike path is an integral part of the bike path).)

Amberger-Warren's logic is sound and this Court should adopt it. (*The MEGA Life & Health Ins. Co. v. Superior Court* (2009) 172 Cal. App. 4th 1522, 1529 (While one appellate court is not bound by the decision of another, "'respect [for] stare decisis, however, which serves the important goals of stability in the law and predictability of decision [dictates that] we ordinarily follow

the decisions of other districts without good reason to disagree.' [Citation]."); *People v. Gipson* (2013) 213 Cal.App.4th 1523, 1529 ("It is true that we typically follow the decisions of other appellate districts or divisions, but only if we lack good reason to disagree.").)

Government entities must be immune from liability for injuries to one using a trail even if the injury is caused by conditions on (or use of) property adjacent to the trail. Due to urban sprawl, increased populations and limited public lands in urban areas, multi-use and multi-facility recreational areas, like Brookside Park and the Rose Bowl Loop, are and will continue to be the norm. These multi-use recreational areas are increasingly located in urban areas and are purposefully designed to offer a variety of recreational activities within one area, thus allowing the broadest possible use by the most people in one centralized location. And by design necessity, recreational trails, like the Rose Bowl Loop, are very often located adjacent to or near other recreational facilities like baseball, softball and soccer fields, volleyball and tennis courts or, like in this case, a golf course. It takes no imagination to recognize that balls often leave the confines of a field, court or course and, occasionally, like in this

case, strike someone using an adjacent or nearby trail. It is necessary and appropriate to immunize government entities from liability under section 831.4 in such situations because the injury would not have occurred but for the existence of the trail and its location adjacent to potentially hazardous property, and but for use of the trail by the one injured. Concluding otherwise runs counter to the legislative intent and strong public policy underlying section 831.4 immunity which, again, is to encourage government entities to open and keep open public lands for public recreational use without having to take safety precautions to ensure one using a trail is not injured and without fear of liability for injuries to one using a trail regardless of the specific cause of the injury. Absent immunity under section 831.4 for injuries sustained under the circumstances presented in this case, government entities could very reasonably decide to close down existing multi-use recreational areas (or at least limit the available activities) and could also very reasonably decide not to develop multi-use recreational areas in the future. This, of course, is detrimental to the public and would undermine the legislative intent and strong public policy underlying section 831.4.

IV.

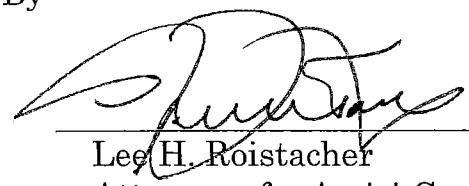
Conclusion

The trial court properly granted the City summary judgment under section 831.4. This Court should affirm.

Dated: October 13, 2016

Daley & Heft, LLP

By:



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Dated: October 13, 2016

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Jacobo G. Garcia, et al. v. American Golf Corporation, et al.
Court of Appeals Case No. B267613
Superior Court Case No. GC050056

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, whose address is 462 Stevens Avenue, Suite 201, Solana Beach, CA 92075, certify:

That I am, and at all times hereinafter mentioned was, more than 18 years of age and not a party to this action;

That on October 14, 2016, I served the within:

AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENT CITY OF PASADENA

on all interested parties in said action: SEE ATTACHED SERVICE LIST

[ ] (VIA U.S. MAIL) I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

[X] (VIA OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[ ] (BY CERTIFIED MAIL) I placed a true copy thereof enclosed in a sealed envelope(s) addressed as stated on the attached mailing list and placing such envelope(s), certified mail, return receipt requested

postage thereon fully prepaid, in the United States Mail at San Diego on this date following ordinary business practices.

[ ] (BY ELECTRONIC MAIL TRANSMISSION) I transmitted a true copy thereof via electronic mail transmission on all interested parties to the action for immediate delivery to SEE ATTACHED SERVICE LIST.

[ ] (BY FACSIMILE TRANSMISSION) I transmitted a true copy thereof via facsimile on all interested parties to the action for immediate delivery to SEE ATTACHED SERVICE LIST.

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

Dated: October 14, 2016

Maria E. Kilcrease

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Supreme Court of California
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