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Supreme Court of California
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SUPREME COURT CASE NO. S267453

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

BETTY TANSAVATDI
Plaintiff and Appellant,

v.

CITY OF RANCHO PALOS VERDES
Defendant and Respondent,

REPLY IN SUPPORT OF PETITION FOR REVIEW

After a Decision by the Court of Appeal
Second Appellate District, Division Four Case No. B293670
(Los Angeles Superior Court Nos. BC633651/BC652435)

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

1.0. Introduction

Plaintiff Betty Tansavatdi's March 25, 2021 Opposition to Petition fails to address the conflict in District Court of Appeal published decisions outlined in the Petition for Review. Tansavatdi therefore fails to rebut the need for review.

The additional issue for review Tansavatdi tenders, on the other hand, is based on a purported conflict in authorities that does not exist. Tansavatdi tries to create the conflict by taking case law out of context.

The City respectfully requests that the Court grant review of the issue asserted in the Petition, and decline to reach Tansavatdi's additional issue.

2.0. Discussion

2.1. Tansavatdi's Challenge to Review Fails

2.1.1. Tansavatdi's Answer Ignores the Conflict in the Law on which the Petition Is Based

Tansavatdi's two-paragraph response to the City's petition argues that "there is no conflict in the law." (Opp:4.) She argues the lower appellate court's decision here "is a straightforward application of this Court's holding in *Cameron v. State of*

California (1972) 7 Cal.3d 318, 327 . . . ." (*Ibid.*) She accuses the City of "attempt[ing] to manufacture dispute . . . ." (*Ibid.*)

But she does not address the conflict between the Court of Appeal's decision here and the Court of Appeal decisions in *Compton v. City of Santee* (1993) 12 Cal.App.4th 591, and *Weinstein v. Department of Transportation* (2006) 139 Cal.App.4th 52, 61. She cannot deny that conflict. The decision below expressly declined to follow *Weinstein*, calling *Weinstein*'s analysis "mistaken." (*Tansavatdi v. City of Rancho Palos Verdes* (2021) 60 Cal.App.5th 423, 527.)

If Tansavatdi is implying that this Court's statements in *Cameron*, *supra* settled the matter, she is incorrect. Both *Compton* and *Weinstein* post-date *Cameron*.

Indeed, Tansavatdi ignores the decades of confusion and conflicting authority on Government Code section 830.6's interaction with Government Code section 830.8, set forth at pages 15-20 of the petition.

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An opposition to review that ignores the central reason for review should not be persuasive. An opposition that asserts "there is no conflict in the law" and then ignores the conflict in the law should be disregarded.

2.1.2. Remand Does Not Fix the Conflict in the Law

Tansavatdi also makes a single-sentence argument that because the Court of Appeal remanded the failure to warn claim for the trial court to consider, "there is no issue worthy of this Court's review." (Opp.:4.) She cites no authority for this proposition. She makes no attempt to square it with the standards for Supreme Court review prescribed in rule 8.500(b) of the California Rules of Court. She does not explain it at all.

The City agrees that Tansavatdi's failure-to-warn claim is weak. Remand is likely to resolve that claim in the City's favor. But that is not this Court's focus. (See *People v. Davis* (1905) 147 Cal. 346, 348.) A trial court decision in the City's favor will not clear up the conflict in the law. It will not secure uniformity of decision. Only this Court's grant of review can do that. Tansavatdi's conclusory argument cannot succeed.

2.2. Tansavatdi Bases the Additional Issue She Presents for Review on Out-of-Context Case Language

A page after she incorrectly accuses the City of attempting to manufacture a dispute in the law (Opp.:4), Tansavatdi herself tries to manufacture a conflict between the lower court decision here and *Grenier v. City of Irwindale* (1997) 57 Cal.App.4th 931, 940. (Opp.:5.)

Tansavatdi asserts that in the past, the City removed a bicycle lane; and that the City must therefore document the purported decision to remove the lane to obtain design immunity. (Opp.:5-7.) The Court of Appeal correctly ruled that this contention was wrong. Because a discretionarily-approved design showed a bicycle lane on other portions of Hawthorne Boulevard, but did not show one on the portion the decedent was riding on when he crashed, and there was substantial evidence that the absence of a lane there was reasonable, the appellate court correctly ruled that every element of Government Code section 830.6 immunity was met—regardless of whether a bike lane had been there before. (*Tansavatdi*, *supra*, 60 Cal.App.5th at pp. 521-526 and fns. 8 & 16.)

Tansavatdi asserts that this conclusion conflicts with a sentence in *Grenier*, *supra*, 57 Cal.App.4th at p. 940: "Design immunity does not immunize decisions which were not made." (Opp.:5, 6.)

But Tansavatdi leaves out the context in which the *Grenier* court made that pronouncement. The statement does not mean that a court considering design immunity probes the subjective intent of the decisionmakers, and analyzes what they did or did not decide.

Instead, the *Grenier* court merely held that the alleged injury-producing feature must be included in the approved plan or design:

> "A detailed plan, drawn up by a competent engineering firm, and approved by a city engineer in the exercise of his or her discretionary authority, is persuasive evidence of the element of prior approval. [Citation.] *Design immunity does not immunize decisions which were not made.* (*Cameron v. State of California*, *supra*, 7 Cal.3d at p. 326, 102 Cal.Rptr. 305, 497 P.2d 777.) Thus, the injury-producing feature must have been a part of the plan approved

by the governmental entity. [Footnote and citation.]." (*Grenier*, *supra*, 57 Cal.App.4th at pp. 940-941 [emphasis added].)

The portion of *Cameron*, *supra*, that the *Grenier* court cited in the excerpt above discusses the lack of evidence from the defendant entity that the injury-causing feature at issue in that case—the superelevation, or bank, of a curve—was the result of or conformed to a design approved by the entity vested with discretionary authority. (*Cameron*, *supra*, 7 Cal.3d at p. 326.) "Thus, there would be no reexamination of a discretionary decision in contravention of the design immunity policy because there has been no such decision proved." (*Ibid.*)

That was not an issue in this case. The alleged injury-causing feature was the absence of a bicycle lane leading up to the intersection where the accident occurred. (*Tansavatdi*, *supra*, 60 Cal.App.5th at p. 517.) That absence was shown in the approved design. (*Id.* at pp. 517, 521.)

The design decision at issue was not having a bicycle lane on a particular stretch of roadway. The design

reflected that decision. The design was approved. That is all that *Grenier*, *supra*, 57 Cal.App.4th at p. 940 requires.

Tansavatdi fails to show that the portion of the opinion affirming design immunity creates any conflict in California law.

3.0. Conclusion

Tansavatdi has failed to rebut the petition's showing that review is necessary. She has also failed to demonstrate that the Court of Appeal's decision raises any further issues for review. The City respectfully asks the Court to grant review.

DATED: April 1, 2021

POLLAK, VIDA & BARER

/s/ Daniel P. Barer

By: _____

Daniel P. Barer
Attorneys for Defendant and Respondent City of Rancho Palos Verdes

Certificate of Compliance

Counsel of record certifies that, in accordance with rule 8.504(d)(1) of the California Rules of Court, the attached Reply in Support of Petition is produced using 13-point Roman type, including footnotes, and contains 1,094 words, which is less than the total words permitted by rule 8.504(d)(1). Counsel relies on the word count of the computer program used to prepare this brief.

DATED: April 1, 2021

POLLAK, VIDA & BARER

/s/ Daniel P. Barer

By: _____

Daniel P. Barer
Attorneys for Defendant and Respondent City of Rancho Palos Verdes

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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 11500 West Olympic Boulevard, Suite 400, Los Angeles, California 90064.

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s/ Jennifer Sturwold
Jennifer Sturwold

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STATE OF CALIFORNIA
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Date

/s/Daniel P. Barer

Signature

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