S267453

IN THE SUPREME COURT OF CALIFORNIA

BETTY TANSAVATDI,

Plaintiff and Appellant,

v.

CITY OF RANCHO PALOS VERDES,

Defendant and Respondent.

On Review from the Court of Appeal
for the Second Appellate District, Division Four,
Case No. B293670

After an Appeal from the Superior Court of California,
County of Los Angeles, Case Nos. BC633651/BC652435

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES, CALIFORNIA SPECIAL DISTRICTS ASSOCIATION, CALIFORNIA ASSOCIATION OF JOINT POWERS AUTHORITIES, AND INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT CITY OF RANCHO PALOS VERDES; AMICUS CURIAE BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no entities or persons that must be listed in this certificate under California Rules of Court, rule 8.208.

DATED: October 15, 2021 HANSON BRIDGETT LLP

By: *s/ Alexandra V. Atencio*

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APPLICATION TO FILE AMICUS CURIAE BRIEF

INTRODUCTION

Pursuant to rule 8.520(f) of the California Rules of Court, the League of California Cities, California State Association of Counties, California Special Districts Association, California Association of Joint Powers Authorities, and Independent Cities Risk Management Authority respectfully request permission to file an amicus curiae brief in support of Respondent City of Rancho Palos Verdes. This application is timely made within 30 days after the filing date of the City's reply brief on the merits.

No party or counsel for a party in this proceeding authored the proposed amicus brief in any part, and no such party or counsel, nor any other person or entity other than the amicus curiae, made any monetary contribution intended to fund the proposed brief's preparation or submission. (See Cal. Rules of Court, rule 8.520(f)(4).)

IDENTITY OF AMICUS CURIAE AND STATEMENT OF INTEREST

The League of California Cities is an association of 479 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. It is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and

identifies those cases that have statewide or nationwide significance.

The California State Association of Counties is a non-profit corporation. The membership consists of the 58 California counties. It 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 Litigation Overview Committee monitors litigation of concern to counties statewide.

The California Special Districts Association is a non-profit corporation with a membership of over 900 special districts throughout California that was formed to promote good governance and improve core local services through professional development, advocacy, and other services for all types of independent special districts. Independent special districts provide a wide variety of public services to urban, suburban, and rural communities. CSDA is advised by its Legal Advisory Working Group, composed of 25 attorneys from all regions of the state with an interest in legal issues related to special districts. CSDA monitors litigation of concern to special districts and identifies those cases that are of statewide significance.

The California Association of Joint Powers Authorities is an association of joint-powers authorities in California, formed to meet the need for communication and cooperation among the newly formed JPAs. It provides leadership, education, advocacy, and assistance to public-sector risk pools to enable them to

enhance their effectiveness, and it advocates both in court and in the Legislature on behalf of JPAs. Its amicus advocacy is guided by a Legal Affairs Committee that reviews amicus requests from public entities throughout the state.

The Independent Cities Risk Management Authority is a California joint-powers authority that delivers risk management and cost stabilization services to its membership, consisting of 16 cities located in southern California. Through a blend of self-insurance and reinsurance, it provides coverage to its members for third-party losses, including tort liability. It is governed by a board, comprised of representatives from each of its members.

Amici and their respective legal-affairs committees have determined that this case raises important issues that affect their members and all public agencies in California. Specifically, the rule articulated by the Court of Appeal would undermine separation of powers in California by allowing judges and juries to second guess the design decisions of elected public-agency boards. In addition, the Court of Appeal's rule would dramatically increase public agencies' litigation costs. These consequences are inconsistent with the Government Claims Act's language and the policy goals the Legislature sought to achieve through its enactment. Amici's members accordingly have an interest in the resolution of this case.

Amici believe they can aid this Court's review by providing a broader policy framework for this issue. Their counsel have examined the parties' petition and merits briefs and are familiar with the issues and the scope of the presentations. Amici

respectfully submit that their brief will help illuminate the policy implications of recognizing potential liability—as the Court of Appeal's Opinion would—based on a claim that an agency should have warned of some open and obvious danger inherent in a public agency's otherwise immune design.

Therefore, Amici respectfully request leave to file the brief combined with this application.

DATED: October 15, 2021 HANSON BRIDGETT LLP

By: *s/ Alexandra V. Atencio*

ALEXANDRA V. ATENCIO
Attorneys for Amicus Curiae

BRIEF OF AMICUS CURIAE LEAGUE OF CALIFORNIA CITIES, ET AL.

INTRODUCTION

As the City has argued, the answer to the question the Court posed for review is indisputably, "no." A public agency cannot be held liable under Government Code section 830.8[1] for failure to warn of an allegedly concealed dangerous condition that is subject to design immunity under section 830.6. Upholding a contrary rule—as does the Court of Appeal's decision below—will undermine separation of powers and increase public agencies' litigation costs. Those results directly contradict the purposes the State Legislature sought to establish when it enacted the Government Claims Act and chose to immunize public agencies from liability for certain kinds of tort claims. This Court should accordingly reverse the Court of Appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Amici adopts the Summary of Material Facts and Procedural History set forth in the City's Opening Brief. (OB 14-21.)

[1] All further undesignated statutory references are to the Government Code.

ARGUMENT

Allowing plaintiffs to hold public agencies liable for failing to warn of dangers inherent in an otherwise immune design undermines the legislative and policy aims of the Government Claims Act's design-immunity provisions.

As the City observes, section 830.6 sets forth a broad immunity for public entities from liability for an allegedly dangerous condition set forth in an approved design. (OB 21-22.) As with all governmental immunities, section 830.6 overrides any statute imposing liability, and can only be lost under express statutory exceptions. (OB 22-25, citing *Gates v. Superior Court (Hirata)* (1995) 32 Cal.App.4th 481, 510.)

Importantly, liability for failure to warn of a dangerous condition pursuant to section 835 only potentially arises if the exception to sign immunity under section 830.8 applies—nothing in the plain text of the relevant statutes or their legislative history supports a conclusion that the narrow exception to sign immunity also applies to the broad immunity provided under design immunity. (OB 25-34, comparing § 830.8 [sign immunity] with § 830.6 [design immunity].) That is because section 830.8 does not *create* public entity liability at all; it only establishes—and circumscribes—immunity based on the failure to provide warning signs described in the Vehicle Code. That much is undisputed by the parties in this case. (RB 8 [emphasizing Respondent's concession at page 25 of her answering brief that: "The trap exception (section 830.8) is not an exception to design immunity."]; OB 34-40, citing *Compton v. City of Santee* (1993) 12

Cal.App.4th 591, 600, and *Weinstein v. Department of Transportation* (2006) 139 Cal.App.4th 52, 61.)

To vindicate the express statutory language granting public entities broad immunity from liability for designs deemed reasonably adoptable—statutory language that does not include any exception for failure to warn of concealed dangerous conditions included within the approved design—this Court should reverse the decision of the Court of Appeal. Doing so would protect the delicate separation of powers principles the Legislature sought to preserve in the Government Claims Act while avoiding an otherwise inevitable and significant increase in public agencies' litigation costs that the Government Claims Act seeks to avoid.

I. The Court of Appeal's decision in this case allows plaintiffs, judges, and juries to second guess agency-approved designs, violating separation-of-powers principles the Legislature sought to preserve in the Government Claims Act.

The Government Claims Act establishes the basic rule that public entities are immune from liability except as provided by statute. (*Caldwell v. Montoya* (1995) 10 Cal.4th 972, 980.) The Act sets forth various statutory bases for public entity liability, as well as numerous, express immunities to that liability. (§ 815 et seq.)

As relevant here, section 830.6 codifies so-called "design immunity," precluding public agencies from being held liable for injuries arising out of an allegedly dangerous condition of public property that is the subject of a plan or design approved by the

agency's governing body. (*Sutton v. Golden Gate Bridge, Highway & Transportation Dist.* (1998) 68 Cal.App.4th 1149, 1157 (*Sutton*).) That statutory immunity is expressly predicated upon and intended to further constitutional separation of powers. (*Id.* at p. 1158.) In other words, "the judicial branch through court or jury should not review the discretionary decisions of legislative or executive bodies, to avoid the danger of impolitic interference with the freedom of decision-making by those public officials in whom the function of making such decisions has been vested." (*Ibid.*, quotations omitted.)

It is also inefficient to ask juries to reweigh the same factors considered by the governmental entity that approved the design. (*Ibid.*) As this Court has explained: "The rationale for design immunity is to prevent a jury from second-guessing the decision of a public entity by reviewing the identical questions of risk that had previously been considered by the government officers who adopted or approved the plan or design." (*Cornette v. Dept. of Transp.* (2001) 26 Cal.4th 63, 69 (*Cornette*), citing *Baldwin v. State of California* (1972) 6 Cal.3d 424, 432, fn. 7, 434 (*Baldwin*); see also *Cameron v. State of California* (1972) 7 Cal.3d 318, 326 [observing that permitting re-examination of discretionary decisions would interfere with the freedom of decision making made by public officials vested with that discretion].) Traditional reliance on a jury verdict to assess government entity liability is misplaced where a duly authorized public body has entertained and passed on the very same

question of risk as would ordinarily go to the jury. (*See Baldwin*, *supra,* 6 Cal.3d 424 at pp. 434-435.)

In contrast with those legislative aims, the Court of Appeal's decision would allow plaintiffs, judges, and juries to second guess agency-approved designs that are otherwise immunized from liability under section 830.6, by importing an inapplicable limitation on *traffic-warning* immunity from section 830.8 and applying it to limit *design* immunity under section 830.6. And it does so in the face of the Legislature's choice to create a limitation in section 830.8, while omitting it from section 830.6. To preserve the separation of powers and legislative purposes this Court recognized in *Baldwin*, the Court of Appeal's decision must be reversed. (See 6 Cal.3d at p. 434.)

II. By creating a new path for plaintiffs to avoid summary judgment otherwise justified by design immunity, the decision will significantly increase public agencies' litigation costs, undermining the Government Claims Act's policy objectives.

One of the primary purposes of the Government Claims Act is to give public entities the opportunity to avoid costly litigation. (See *Eaton v. Ventura Port Dist.* (1975) 45 Cal.App.3d 862, 867 [a primary responsibility of all government entities is "guarding the public treasury" by avoiding litigation where possible].) Consistent with that purpose, the design immunity provided by section 830.6 is intended to give public entities a complete defense at the summary judgment stage so that agencies can avoid having to incur the additional—and often, exorbitant—costs of litigating through trial. (See Younger & Bradley,

Younger on California Motions (2d ed., Nov. 2020 Update) § 8:21 [noting that the Government Claims Act's immunity provisions present advantageous summary judgment situations not suitable for other, triable, issues]; see also *Wells Fargo Bank v. Kincaid* (1968) 260 Cal.App.2d 120, 123 ["The purpose of the summary judgment (tool) is to dispose of cases and defenses which are unmeritorious in substance and fact which . . . might remain in court to the harm or harassment of parties and to the disadvantage and expense of the public . . . ."].)

The Court of Appeal's opinion undermines these policy objectives, just as it undermines separation of powers. Under that opinion, plaintiffs can prevent summary judgment by alleging that an agency should have warned of dangers inherent in an otherwise immune design. It bears noting that, in response to this holding, plaintiffs will simply plead this allegation as a matter of course. Indeed, Amici's members report that plaintiffs have already begun doing so in cases throughout the state.

In turn, public entities, like Amici's members, will ultimately bear the inevitable increased litigation expenses resulting from this litigation tactic if the Court of Appeal's opinion is allowed to stand. Accumulated reporting suggests that the cost of taking a case to trial is four to five times that of litigating to summary judgment.

With the Court of Appeal's opinion calling into question the protections of section 830.6 design immunity at the summary judgment stage, Amici and its members expect litigation expenses to balloon exponentially. That result cuts directly

against the policy goals of the Government Claims Act, and is a result that can, and should be, reversed.

CONCLUSION

Amici agree with the City that section 830.8 does not create public entity liability for failure to warn of an allegedly concealed dangerous design of public property that is subject to design immunity under section 830.6. The two immunities are distinct and an exception to one cannot be construed to limit the other. As has been shown, doing so not only contravenes standards of statutory construction, it also upends the statutes' purposes. Accordingly, Amici urge this Court to reverse the portion of the Court of Appeal's decision vacating in part the trial court's summary judgment and direct that the Court of Appeal affirm the judgment in toto.

DATED: October 15, 2021 HANSON BRIDGETT LLP

By: *s/ Alexandra V. Atencio*

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WORD CERTIFICATION

I, Alexandra V. Atencio, counsel for amicus curiae, hereby certify, in reliance on a word count by Microsoft Word, the program used to prepare the foregoing "Application of the League of California Cities, California State Association of Counties, California Special Districts Association, California Association of Joint Powers Authorities, and Independent Cities Risk Management Authority to File Amicus Curiae Brief in Support of Respondent City of Rancho Palos Verdes; Amicus Curiae Brief," that it contains 2,065 words, including footnotes (and excluding caption, certificate of interested entities or persons, tables, signature block, and this certification).

DATED: October 15, 2021 HANSON BRIDGETT LLP

By: *s/ Alexandra V. Atencio*

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California Supreme Court Case No.: S267453
County of Los Angeles, Case Nos. BC633651/BC652435

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 425 Market Street, 26th Floor, San Francisco, CA 94105.

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Grace M. Mohr

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10/15/2021

Date

/s/Grace Mohr

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