Case No. C099205

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

RHONNA TINDALL ET AL.,
Plaintiff and Appellant

vs.

COUNTY OF NEVADA
Defendant and Respondent

Appeal from May 15, 2023 Court Order Granting Summary Judgment
Superior Court of California, County of Nevada
Case No. CU20085052; Hon. Judge S. Robert Tice-Raskin

CALIFORNIA STATE ASSOCIATION OF COUNTIES' APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND PROPOSED *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENT COUNTY OF NEVADA

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Cal. Rules of Court, Rule 8.208)

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

DATED: December 30, 2024

Respectfully submitted,

By: /s/ John A. Castro
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CALIFORNIA STATE ASSOCIATION OF COUNTIES' APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to California Rules of Court, rule 8.200, subdivision (c), the California State Association of Counties (CSAC) applies to the Court for leave to file an *amicus curiae* brief. A copy of the proposed brief is included with this application.

CSAC is a non-profit mutual benefit corporation, which does not offer stock and which is not a subsidiary or affiliate of any publicly owned corporation.

CSAC's membership comprises all 58 California counties. All of CSAC's member counties bear responsibility for preserving the public health, safety, and welfare within their borders. Each of these counties has a unique geography, and a diverse set of industries. Regardless of each member county's differing set of circumstances, every member county of CSAC maintains the same interest in the orderly development and administration of their communities.

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 Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The Respondent in this matter is the County of Nevada, a political subdivision of the State of California. The Court's decision in this matter will significantly impact CSAC's interests, and the interests of counties generally. This appeal concerns the application and limits of governmental immunity under Government Code section 831, providing for immunity from injuries resulting from certain weather conditions arising from the use

of streets or highways, particularly whether that immunity extends to parking facilities. The outcome of this appeal will significantly affect all counties as many counties (perhaps every county) owns parking facilities. The outcome of this appeal will also impact the law of dangerous conditions under the Government Claims Act, a statutory scheme applicable to all counties.

Given the foregoing, CSAC is uniquely situated to offer context for the Court and provide insight into the issues in the case at bar. Because CSAC's member counties will be affected by this Court's decision, and may assist the Court through its unique perspective, CSAC respectfully requests permission of the Honorable Presiding Justice to file its proposed brief.

Pursuant to Rule 8.200, subdivision (c)(4), the proposed brief is combined with this application, and commences below.

DATED: December 30, 2024

Respectfully submitted,

By: */s/ John A. Castro*
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

PROPOSED AMICUS CURIAE BRIEF

I. INTRODUCTION

Government Code section 831, sometimes referred to as "weather immunity," provides immunity to public entities, including counties, who are subject to the Government Claims Act from liability for injuries caused by certain weather conditions arising out of the use of public streets and highways. The statute states in full:

> Neither a public entity nor a public employee is liable for an injury caused by the effect on the use of streets and highways of weather conditions as such. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such effect if it would not be reasonably apparent to, and would not be anticipated by, a person exercising due care. For the purpose of this section, the effect on the use of streets and highways of weather conditions includes the effect of fog, wind, rain, flood, ice or snow but does not include physical damage to or deterioration of streets and highways resulting from weather conditions.[1]

In this matter Plaintiffs/Appellants Rhonna and Joshua Tindall (collectively, "Appellant") suffered injuries when Rhonna Tindall fell in a public parking lot owned by the County of Nevada ("County" or "Respondent") due to snowy and/or icy conditions caused from recent weather events. The trial court granted the County's motion for summary judgment on the ground that the public parking lot fell within the definition of "streets and highways" under Section 831.

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[1] Gov. Code § 831; *See also Rumford v. City of Berkeley*, 31 Cal.3d 545, 550 (1982) (holding that "street" and "highway" are synonymous).

The California State Association of Counties (CSAC) agrees with the trial court's decision in this matter and submits this *amicus curiae* brief in support of the County. All counties maintain a significant number of streets and highways, which can include parking facilities, making this issue important for CSAC and all its member counties.

This brief submits to the Court the proposition that parking facilities are already included within the definition of "streets and highways" under the plain text of the relevant statutes and court opinions that have reviewed, interpreted, and applied them.

Importantly, Appellant has failed to demonstrate that parking facilities are excluded from the purview of Section 831 because it is impractical to draw a bright line between where the street or highway ends and a parking facility begins, since parking facilities can be integrally intertwined with streets and highways. This has only become truer as the design of public transportation infrastructure has evolved since the enactment of Section 831 in 1963. Other public policy considerations—including the fact that public entities are no better equipped to protect the public from weather events at parking facilities than they are on the roadway, as well as reasonable safeguards relating to the application of immunity—also counsel in favor of affirming the trial court's judgment. Therefore, even if the Court disagrees with the proposition that parking facilities are already included within streets and highways, the Court should still affirm the judgment.

Further guidance is also provided by multiple out-of-state authorities that have addressed the issue of whether parking facilities are encompassed by similar immunity statutes and they persuasively support the trial court's judgment that parking facilities are within the scope of Section 831.

If the Court is not persuaded that Section 831 provides blanket immunity for parking facilities, then the Court should observe the evolution

of trail immunity under Section 831.4. There, courts have held facilities that are integrally related to trails fall within the scope of that immunity statute, and a similar analysis could apply to parking facilities under Section 831's weather immunity for streets and highways.

Finally, the Court should affirm the trial court's judgment on the ground that there is nothing in the record demonstrating that Appellant has established that a transient weather condition such as a snow or ice, standing alone, rises to the level of an actionable dangerous condition under the Government Claims Act. The Court of Appeal's recent ruling in *Maksimow v. City of South Lake Tahoe* touches upon this issue and supports the trial court's decision in this matter.

II. ANALYSIS

A. Standard of Review

In this matter the judgment results from the trial court's granting of summary judgment in favor of the County of Nevada. On appeal, an order granting summary judgment is reviewed *de novo*.[2]

B. Parking Facilities are Included in Government Code Section 831's Definition of "Streets and Highways"

No single definition for "streets and highways" is used in Government Code section 831 and the definition of "streets and highways" in existing statutory enactments is inclusive of parking facilities. Although parking facilities are not enumerated in the statutes defining streets and highways, the plain statutory language is clear that—by the Legislature's inclusion of catchall language—the failure to enumerate parking facilities does not mean they are excluded from the definitional scope for streets and highways. Further, the Legislature acknowledged the impracticability (perhaps impossibility) of exhaustively enumerating the components

[2] *Guz v. Bechtel National, Inc.*, 24 Cal.4th 317, 334 (2000).

comprising the construction, improvement, and maintenance of streets and highways.

In 1935, the Legislature enacted the definition of "highway" under Streets and Highways Code section 23, which states: "As used in this code, unless the particular provision or context otherwise requires, 'highway' includes bridges, culverts, curbs, drains, **and all works incidental to highway construction, improvement, and maintenance.**" (Emphasis added.) The Legislature understood that it could not enumerate an exhaustive list of the components of a "highway" because they vary widely in design, location, application, environment, and other factors. The Legislature therefore recognized that inclusion of a catchall phrase—"all works incidental to highway construction, improvement, and maintenance"—struck a reasonable balance in providing a definition for use by courts, public entities, and the traveling public, as a statute that exhaustively enumerated the components of a highway would likely be incomplete and only operate to amplify confusion with potentially conflicting results. Here, and as illustrated in Section C.2, *infra*, a parking facility qualifies as a work incidental to highway construction and improvement because parking facilities support the smooth operation of the roadway and flow of traffic by removing congestion and preventing stopped vehicles from becoming traffic hazards.

Indeed, the catchall language in Streets and Highways Code section 23 is integral to the definition of "highway" precisely because it is impractical or impossible to exhaustively enumerate all of its components. This is illustrated in Section 27's definition of "maintenance," which includes components not enumerated in Section 23 but which are undisputably part of a "highway," such as "safety or convenience device, planting, illumination equipment, **and other facilit[ies]** …" (Emphasis added.) Like Section 23, Section 27 also includes similar catchall language

including other facilities not enumerated therein. Further, Section 27 acknowledges that there exist countless types of highway designs and incidental facilities such that their maintenance cannot be exhaustively defined. Therefore, the type and scope of maintenance is generally left within the discretion of the public entity having jurisdiction: "The degree and type of maintenance for each highway, or portion thereof, shall be determined in the discretion of the authorities charged with maintenance thereof, taking into consideration traffic requirements and moneys available therefor."[3]

In 1959, the Legislature enacted Vehicle Code section 360, defining "highway" to mean "**a way or place of whatever nature**, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street."[4] (Emphasis added.) A publicly maintained parking lot that facilitates vehicular travel and is open to public use falls within this definition.

Section 360's definition of "highway" should be read together with Streets and Highways Code section 23, in that Vehicle Code section 360 defines the concept of a highway (a way or place of whatever nature intended for vehicular travel) while Streets and Highways Code section 23 extends the definition to non-exhaustively list what is included in a "highway" for the purposes of the Streets and Highways Code.[5] But for the same reasons discussed above regarding the catchall language in Streets

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[3] Streets and Highways Code § 27; *See also Marino v. County of Tuolumne*, 118 Cal.App.2d 675, 678 (1953) (holding that around-the-clock maintenance by a public entity is untenable).

[4] The Vehicle Code defines "street" in the same manner: "Street" is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Street includes highway." (Veh. Code § 590.)

[5] *See, e.g.*, Civ. Code §§ 3534 ("Particular expressions qualify those which are general."), 3541 ("An interpretation which gives effect is preferred to once which makes void."), 3542 ("Interpretation must be reasonable.").

and Highways Code sections 23 and 27, the failure of Vehicle Code section 360 to enumerate parking facilities does not mean that parking facilities are excluded from "highways." Vehicle Code section 2 supports this interpretation: "The provisions of this code, insofar as they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments."

In 1951, the Legislature enacted Government Code section 65002. Amended once in 1965, Section 65002 now reads: "'Street' includes street, highway, freeway, expressway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement and right-of-way, **and other ways**." (Emphasis added.) While Section 65002 serves a different purpose (i.e., in the planning and development context, as opposed to the regulation of streets and highways), of note the Legislature again declined to exhaustively enumerate all the components of a street, implicitly acknowledging that doing so would likely result in excluding relevant components.

Thereafter, in 1966 (three years after the enactment of the weather immunity statute under Government Code section 831), the Court of Appeal in *People v. Belanger* confirmed that—notwithstanding Vehicle Code section 360's failure to enumerate parking facilities or include catchall language in its definition of "highway"—the parking facility comprised of the strip between the roadway and the curb (colloquially referred to as "street parking") is included within its definition.[6]

Finally, for purposes of right-of-way vacation, in 1980 the Legislature enacted Streets and Highways Code section 8308, defining "street" and "highway" to include:

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[6] *People v. Belanger*, 243 Cal.App.2d 654, 657 (1966).

> [A]ll or part of, or any right in, a state highway or other public highway, road, street, avenue, alley, lane, driveway, **place**, court, trail, or other public right-of-way or easement, or purported public street or highway, and rights connected therewith, including, but not limited to, restrictions of access or abutters' rights, sloping easements, **or other incidents to a street or highway**. (Emphasis added.)

Once again, in taking the legislative action to define a street or highway, the Legislature acknowledged that all the components of a street cannot be exhaustively enumerated and that elements may be integrally intertwined and/or incidental to the road component of the highway.

Parking facilities are covered by the definition of "streets and highways" under California's statutory law, and are therefore covered under Government Code section 831 because they fall within the scope of "streets and highways" for the purpose of weather immunity. Clearly, Section 831 does not prohibit the inclusion of parking facilities. In the absence of any prohibition, the following sections discuss why, separate from the clear legal direction, parking facilities should be included in Section 831 in furtherance of sound government operations and public policy.

C. Public Policy Favors Including Parking Facilities Within Streets and Highways Under Government Code Section 831

1. The Government Claims Act Rigidly Limits Claims Against Public Entities and Appellant Failed to Demonstrate Parking Facilities are Excluded from Weather Immunity

"The Government Claims Act (Gov. Code §§ 810, *et seq.*) is a comprehensive statutory scheme governing the liabilities and immunities of

public entities and public employees for torts."[7] The purpose of the Act is "not to expand the rights of plaintiffs against government entities," but "to confine potential government liability to rigidly delineated circumstances."[8]

Under Government Code section 815, subdivision (a), "direct tort liability of public entities must be based on a specific statute declaring them to be liable, or at least creating some specific duty of care, and not on the general tort provisions of Civil Code section 1714."[9] Here, Appellant alleged that snow in the parking lot was a dangerous condition of public property. While that is a statutory claim,[10] statutory immunities defeat statutory claims.[11]

Appellant argues that "[s]tatutory exceptions are to be narrowly or strictly construed," but none of the cited authorities involved a public entity or addressed Government Code immunities.[12] In fact, the opposite is true, and Appellant must establish that her "cause of action lies outside the breadth of any applicable statutory immunity."[13] Appellant has failed to make this demonstration.

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[7] *Quigley v. Garden Valley Fire Prot. Dist.*, 7 Cal.5th 798, 803 (2019). Some case law refers to the Government Claims Act by its prior appellation, the "Tort Claims Act." *See Leon v. County of Riverside*, 14 Cal.5th 910, 917-918 (2023).

[8] *DiCampli-Mintz v. County of Santa Clara*, 55 Cal.4th 983, 991 (2012).

[9] *Eatburn v. Regional Fire Prot. Auth.*, 31 Cal.4th 1175, 1183 (2003).

[10] Gov. Code § 835.

[11] Gov. Code § 815(b) ("The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute[.]").

[12] See AOB, p. 16. In *Smart Corner Owners Assn. v. CJUF Smart Corner LLC*, 64 Cal. App. 5th 439 (2021), an owners' association filed construction defect action against the developers of a residential condominium tower, and the court addressed whether the owners authorized filing of the suit. *Carter v. Cohen*, 188 Cal. App. 4th 1038 (2010) involved private parties and addressed whether a guesthouse was subject to rent control. *Maracich v. Spears*, 570 U.S. 48 (2013) did not involve California law and addressed an attorney's efforts to solicit clients.

[13] *Lopez v. Southern Cal. Rapid Transit Dist.*, 40 Cal.3d 780, 796 (1985).

2. It Is Impractical or Impossible to Segregate Parking Facilities from Streets and Highways Because They Are Integrally Intertwined

If the dangerous condition statute (Government Code section 835) applies equally to streets and parking facilities, then weather immunity should apply to both as well. Parking facilities are integrally related to streets and highways because they are in furtherance of the overarching function to support the orderly movement of vehicular and pedestrian traffic on public rights of way such that they should fall within the scope of weather immunity in Section 831.

In 1965, or two years after the enactment of Government Code section 831, the Court of Appeal in *Jeffrey v. City of Salinas*[14] acknowledged that public parking facilities are integrally related to, and a component of, public streets and highways. While that case did not involve governmental immunity or personal injury—and instead concerned challenging assessments under a parking district improvement—the logic also applies in the immunity context. Specifically, in interpreting the Improvement Act of 1911 (Streets and Highways Code sections 5000, *et seq*.), the *Jeffrey* court noted:

> Public offstreet parking lots are obviously "works and improvements of a local nature." In *City of Whittier v. Dixon* (1944) 24 Cal.2d 667 … the court stated, "Respondent contends that public parking places are not public improvements. * * * Just as public streets can be used for the parking of motor vehicles, property can be acquired for the same use. **Moreover, public parking places relieve congestion and reduce traffic hazards and therefore serve a public purpose."** … **In *City of Whittier* … it was held that parking places tend to stabilize a business section and**

[14] 232 Cal.App.2d 29 (1965).

> **thereby benefit the property in its vicinity so as to justify the levy of a special assessment. This, in effect, may be a holding that parking places are portions of the public streets. If they are not, they are so similar in use and purport as to come within the same rule.**[15]

(Emphasis added.)

The *Jeffrey* court acknowledged the difficult task in drawing a bright line between where streets and highways end and where parking facilities begin. Parking areas facilitate vehicular travel by reducing traffic congestion. For example, if there is no off-street parking then the road itself becomes the parking facility, and this can create traffic congestion and other operational hazards. Parking facilities thus directly impact the safety of streets and highways in that they allow the removal of traffic hazards from the road, including the very vehicles traversing the roadway. The parking lot is also where vehicular travelers become pedestrians and vice versa—it is the place where a vehicular traveler can transition to and from the vehicle while being protected from the traffic patterns of the roads. While the *Jeffrey* court was concerned with special assessments for a parking district, the logic that parking facilities are integrally related to streets and highways such that they are, in essence, a component of them also applies in the immunity context.

One example of how parking facilities are integrally intertwined with streets and highways is the commuter ride share program administered by multiple public entities, including the California Department of Transportation, typically called "Park and Ride" programs. Park and Ride facilities encourage—through the use of parking facilities—drivers to become pedestrians and passengers. The programs serve multiple public

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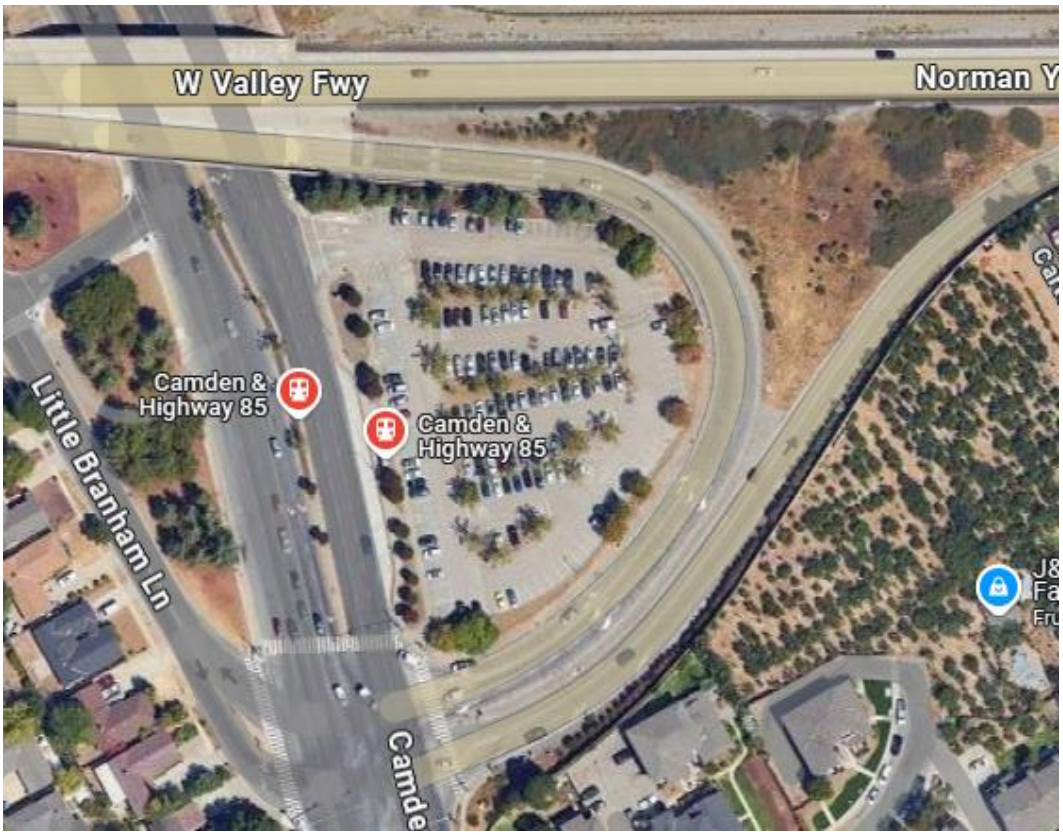
[15] *Jeffrey v. City of Salinas*, 232 Cal.App.2d 29, 49-50 (1965).

purposes, including reducing vehicular congestion on roads, increasing ridership of public transit, improved access to transit, reduction of parking demand in the destination areas, lengthening of the time between required maintenance of roads, and reduction of greenhouse gas emissions.[16] While Park and Ride facilities can be designed in countless ways, to illustrate their intertwined relationship below is a picture of a Park and Ride facility in Santa Clara County, California where the street and highway surround, encompass, and integrate the parking facility:[17]



[16] Park and Ride programs also provide multiple private benefits, including savings on fuel and parking/toll fees.

[17] Request for judicial notice is not being made to admit the pictures because they are not being offered for the truth of the matter asserted, but instead to illustrate the many different ways that parking facilities are integrally intertwined with streets and highways.

Similarly, the below pictures are of Lexington Reservoir County Park in Santa Clara County, California. In contrast to the traditional shoulder parking depicted in the pictures, the parking facility across the street is designed to be quasi-seamless with the road (e.g., one way traffic entrance and exit) so as to facilitate vehicular traffic on a two-lane rural highway and to increase the safety of pedestrians transitioning into and out of their vehicles on a public right of way:

As design trends and modes of transportation continue to evolve parking facilities will only become more integrally intertwined with streets and highways. As noted above, in the planning context the Legislature acknowledged in Government Code section 65002 the inability to codify a definition of "streets and highways" without the use of broad catchall language. This is playing out now as public entities across California look to grow the State in a sustainable and resilient manner that promotes affordable housing and a mix of uses, where many modern general plans call for the development of infill sites that will be adjacent to streets and highways, including parking facilities.

3. Other Public Policy Considerations Favor Including Parking Facilities Within Streets and Highways for Purposes of Weather Immunity

Practically, in enacting the weather immunity statute the Legislature acknowledged that public entities cannot fully prevent weather impacts to areas of public travel. The impacts of weather from snow, ice, and other natural events are the exact same whether they occur on the roadway or parking component of the highway. Both areas accommodate the traveling public, including vehicles, pedestrians, cyclists, and other modes of transportation. Public entities are not better equipped to keep parking facilities free from weather impacts than they are keeping roads free from same.[18]

Importantly, there is already a safeguard in Section 831 to prevent an overly broad application of weather immunity to parking facilities. Section 831 states in part: "Nothing in this section exonerates a public entity or

[18] *See, e.g., Erfurt v. State of California*, 141 Cal.App.3d 837, 846 (1983) (acknowledging legislative purpose of weather immunity statute is to immunize against weather conditions "which no amount of human care or foresight can fully protect against").

public employee from liability for injury proximately caused by such effect if it would not be reasonably apparent to, and would not be anticipated by, a person exercising due care." This guard rail prevents public entities from being immune from weather related dangerous conditions that would not be reasonably perceived by a person exercising due care. For example, if black ice routinely occurred during the winter on a patch of road because improper drainage caused routine ponding, depending on the surrounding circumstances, an injury resulting from this condition may be actionable against the public entity. This reasonableness standard makes sense given the many types of public facilities that exist, coupled with the equally countless ways weather may impact them. The fact that the facility being utilized by the traveling public is a road as opposed to a parking facility makes no difference.

Public policy favors reading Section 831 to include parking facilities because it is impossible or impractical (1) to disentangle parking facilities from streets and highways, and (2) for public entities to better protect parking facilities from weather related impacts compared to roads. The existing exception in Section 831 already operates to prevent weather immunity from being overly broad.

D. Out of State Authorities Counsel Toward Finding Parking Facilities are Included in Streets and Highways Under Government Code Section 831

Other states have come to the same conclusion as the trial court did in this matter, i.e., that statutory governmental immunity for weather conditions for streets and highways also applies to parking facilities. As noted in Appellant's Opening Brief, in a matter of first impression like here, it is appropriate to consult non-California authorities when relevant

and persuasive.[19] Pursuant to California Rules of Court, rule 8.252 and Evidence Code sections 452 and 459, copies of those authorities are attached to CSAC's request for judicial notice, filed concurrently with this brief.

Foremost, Appellant cites the Supreme Court of New Hampshire case of *Johnson v. City of Laconia* for the proposition that parking facilities should not be protected by weather immunity.[20] However, that opinion is distinguishable from the case at bar. The court's rationale in *Johnson* was that a "parking lot" is not a commonly accepted meaning of "highway, bridge, or sidewalks" and the fact that a parking lot may at times be functionally related to those facilities at best creates a statutory ambiguity whereby the court should refrain from presuming what the legislative body there intended and reading it into the statute.[21] However, *Johnson* is distinguishable because the immunity statute in that case did not include the word "streets," like in California Government Code section 831. Further, as discussed above, California also has a more comprehensive body of statutory and case law such that the interpretation of "streets and highways" in California is not informed by New Hampshire's plain reading of "highways, bridges, or sidewalks." In any event, other courts have either reached the same conclusion as the trial court did here and/or have distinguished between publicly accessible versus restricted parking facilities as a demarcation of when to apply immunity.

In *Ellerman v. City of Manitowoc*,[22] the Court of Appeals of Wisconsin held that Wisconsin Statutes section 81.15 operated to bar

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[19] AOB, p. 19, citing *Aydin Corp. v. First State Ins. Co.*, 18 Cal.4th 1183, 1190 (1998); *RSL Funding, LLC v. Alford*, 239 Cal.App.4th 741, 746 (2015).
[20] AOB, pp. 19-29, citing *Johnson v. City of Laconia*, 684 A.2d 500, 501 (1996).
[21] *Id*.
[22] 671 N.W.2d 366 (2003).

plaintiff's personal injury claim when she slipped and fell on a parking lot owned and operated by the City of Manitowoc on the ground that the term "highway" encompassed a public parking lot.[23] (Like in California, in Wisconsin prior case law had extended the definition of "highway" to include roads, streets, bridges, sideways, and shoulders.[24]) A material fact that weighed in favor of the *Ellerman* court including parking facilities within the scope of immunity is that the parking lot was publicly owned and available to the community for vehicular travel. The court also found relevant the fact that parking lots serve dual purposes that serve both pedestrian and vehicular traffic.[25] These facts are also true in the case at bar.

In *Rossi v. Borough of Haddonfield*, following a winter snowstorm the plaintiff fractured her ankle traversing a public parking facility.[26] The trial court denied the public entity's motion for summary judgment on the ground that the public entity waived sovereign immunity because its parking facility was revenue generating, and therefore akin to a private business or market participant.[27] The Superior Court of New Jersey overturned the trial court's ruling and remanded the case to have the trial court enter judgment in favor of the public entity.[28] While that matter involved the application of common law snow removal immunity—as

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[23] *Id*. at 367. Since the *Ellerman* opinion was published, Section 81.15 has been renumbered to Section 893.83. Also, while the language of the statute has slightly changed, the language at issue in that case remains substantially the same. Section 81.15 used the language: "No action may be maintained to recover damages for injuries sustained by reason of an accumulation of snow or ice upon any bridge or highway, unless the accumulation existed for 3 weeks." Today, Section 893.83 reads: "No action may be maintained against a city, village, town, or county to recover damages for injuries sustained by reason of an accumulation of snow or ice upon any bridge or highway, unless the accumulation existed for 3 weeks."
[24] *Ellerman*, *supra*, 671 N.W.2d at 370.
[25] *Id*. at 370-371.
[26] 688 A.2d 643, 644 (1997).
[27] *Id*. at 645.
[28] *Id*. at 647.

opposed to statutory immunity—the logic supporting its application equally applies here, i.e., that "[t]he unusual traveling conditions following a snowfall are obvious to the public. Individuals can and should proceed to ambulate on a restricted basis, and if travel is necessary, accept the risks inherent at such a time."[29]

Finally, in *Jones v. City and County of Denver*, the Colorado Court of Appeals read into that state's weather immunity statute the reasonable guard rail that—for immunity to apply—the parking facility must be open to the public, whereas in that case the parking facility was restricted to employees.[30]

In short, Appellant's reliance on *Johnson* is misplaced and there are examples from multiple other jurisdictions that counsel toward finding that parking facilities should be encompassed by Government Code section 831.

E. In the Alternative of Blanket Immunity for Parking Facilities, Government Code Section 831.4 Regarding Trail Immunity Provides Guidance as that Statute Includes Integrally Related Facilities

If the Court is not persuaded that Government Code section 831 provides blanket coverage of parking facilities, then Section 831.4—relating to trail immunity—provides guidance for establishing a test when parking facilities should be included under weather immunity. In interpreting Section 831.4, California courts have been persuaded by the fact that a piece of property or a facility may be so integrally related to a trail such that "even if a property is not 'in and of itself' a trail, it might nonetheless be immune because it is 'integrated to' and 'essential' to an immunized trail."[31]

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[29] *Id*. at 645-646.
[30] 833 P.2d 870 (1992).
[31] *Lee v. Dep't of Parks & Recreation*, 38 Cal.App.5th 206, 211 (2019), citing *Treweek v. City of Napa*, 85 Cal.App.4th 221 (2000).

In determining what "integral components" fall within the trail immunity statute, the Court of Appeal held in *Farnham v. City of Los Angeles* that "[a]n object is what it is. For example, an adjacent parking lot does not become a trail by the simple expedient of calling it a trail. The design and use will control what an object is, not the name."[32] The test is a fact-based analysis as to what the trail-adjacent facility is and how it supports the immunized trail. This logic could apply to the definition of "streets and highways" in Government Code section 831 for parking facilities. As discussed above, parking facilities are usually integrally related to the roads they mutually support such that they are part of the street or highway. In the event a parking facility does not squarely fall under the definition of street and highway then consistent with the guidance in Section 831.4 for trail immunity, a fact-based analysis should be performed to determine whether the parking facility is integrally related to the street it serves.

F. Appellant Has Not Demonstrated Snow and/or Ice is a Defect Rising to the Level of a Dangerous Condition

Even if the Court is not persuaded that parking facilities should be included, at all, in the weather immunity statute in Government Code section 831, the Court should still uphold the trial court's summary judgment in favor of Respondent. An appellate court generally does not consider new arguments raised on appeal by *amicus curiae*.[33] However, the Supreme Court has recognized two exceptions to this rule: "First, under the theory that an appeal should be affirmed if the judgment is correct on any theory, *amicus curiae* may raise an issue which will support affirmance. Second, *amicus curiae* may assert jurisdictional questions which cannot be

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[32] *Farnham v. City of Los Angeles*, 68 Cal.App.4th 1097, 1103 (1998).
[33] *Costa v. Workers' Comp. Appeals Bd.* (1998) 65 Cal.App.4th 1177, 1187–1188.

waived even if not raised by the parties."[34] Here, *Amicus Curiae* seeks to rely on the first exception in that the trial court's judgment should be affirmed on the ground that Appellant failed to demonstrate that the snow and/or ice that caused her injury was a defect rising to the level of an actionable dangerous condition.

Foremost, weather such as snow, ice, and rain are transient weather conditions. Standing alone, weather conditions do not render a piece of public property defective nor dangerous. In opposing Respondent's summary judgment motion, Appellant argued that weather conditions coupled with other factors such as shade from solar panels and failure to inspect and/or treat the parking lot for ice accumulation coalesced with typical winter weather conditions to create a dangerous condition.[35] However, there is no evidence to support these allegations.

Regarding the solar panels, Appellant did not submit any evidence indicating that the County's installation of solar panels created the alleged dangerous condition. Appellant only asserted two facts: (1) the County's facilities director opined that shade plays a factor as to how long ice or snow will linger, and (2) the two rows of solar panels in the parking lot created ample amounts of shade.[36] However, as Respondent noted in its summary judgment reply brief: (1) Appellant did not reference solar panels during discovery, and (2) any shade created by the solar panels is negated by the fact that Appellant testified in deposition that the area of the parking lot where she fell was an area in the middle of the parking lot (i.e., no

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[34] *Id.*

[35] CT, pp. 656-657 (Plaintiff's Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment, pp. 8:27-9:19).

[36] *Id.*

shade), and where vehicles travels (i.e., an area of travel by vehicles that disrupted the ability of snow/ice to linger).[37]

Further, a public entity can be liable for a dangerous condition only "if it has (1) 'actual knowledge of the existence of the condition' and (2) 'knew or should have known of its dangerous character.'"[38] To establish actual notice, there must be "some evidence" the public entity's employees "had knowledge of the particular dangerous condition in question."[39] It is not enough to show they had "'a general knowledge' that the condition can sometimes occur."[40]

In November 2024 the Court of Appeal issued its opinion in *Maksimow v. City of South Lake Tahoe*.[41] There, the plaintiff slipped and fell on ice in a public parking lot and sued the City of South Lake Tahoe alleging a dangerous condition of public property. Applying the above principles, the Court of Appeal affirmed the order granting summary judgment:

> Here, though City employees may have had a "general knowledge" that snow sometimes turns to ice, which may be hazardous to pedestrians, and abandoned cars may interfere with snow removal operations, nothing suggests they had actual notice of the "particular dangerous condition [or conditions] in question"; namely, the ice patch near the Mitsubishi that caused Maksimow's injuries. The trial court correctly found no triable issue as to actual notice.[42]

Like the plaintiff in *Maksimow*, here Appellant has not shown "general knowledge," which falls short of the requisite "actual notice." Regarding

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[37] CT, p. 748 (Defendant's Reply Memorandum of Points and Authorities in Support of Motion for Summary Judgment, p. 4:2-17.)
[38] *Martinez v. City of Beverly Hills*, 71 Cal.App.5th 508, 519, 286 (2021), quoting Gov. Code § 835.2, subd. (a).
[39] *State of California v. Superior Court*, 263 Cal.App.2d 396, 399 (1968) ("*Rodenhuis*").
[40] *Martinez, supra*, 71 Cal.App.5th at p. 519.
[41] (Cal. Ct. App., Nov. 4, 2024, No. C098705) (2024 WL 4662777).
[42] *Id*. at p. 6.

Appellant's allegation that Respondent failed to adequately inspect and maintain the parking lot—a constructive notice argument—as Respondent noted in its summary judgment reply brief, under Streets and Highways Code section 27 maintenance is discretionary for streets and highways.[43]

The record confirms that, at most, Appellant has established a minor, trivial, or insignificant risk, whereby Government Code section 830.2 states:

> A condition is not a dangerous condition within the meaning of this chapter if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.

Here, when viewing the record in a light most favorably to Appellant, the existence of snow and/or ice on the parking lot does not rise to the level of a dangerous condition. A reasonable person traversing outside the day of or after a winter storm would do so with a heightened sense of caution for many reasons, including the possible presence of snow or ice on the ground.[44] When that appropriate level of due care is applied to the surrounding circumstances—traversing an outdoor parking lot—it cannot be said that the weather conditions alone transformed the parking lot into an environment where a substantial risk of injury was likely to occur.

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[43] CT, pp. 751-752 (Defendant's Reply Memorandum of Points and Authorities in Support of Motion for Summary Judgment, pp. 7:26-8:11, citing Streets and Highways Code § 27).

[44] *See Rossi*, *supra*, 688 A.2d at 645-646.

In short, even if the Court is not persuaded that parking facilities fall within the scope of weather immunity under Government Code section 831, the Court should still affirm the judgment on the ground that Appellant has failed to show an actionable defect in the parking lot.

III. CONCLUSION

The trial court's granting of Respondent County of Nevada's motion for summary judgment should be affirmed. Under current law, parking facilities are included within the definitions of "streets and highways" as used in the Government Code, Streets and Highways Code, Vehicle Code, and case law interpreting same. Therefore, the trial court's application of weather immunity in Government Code section 831 was proper.

Even if the Court is not persuaded that parking facilities are already included in the definition of "streets and highways," the Court should interpret Section 831 so as to apply to parking lots because public policy favors such an interpretation. Foremost, it is Appellant's duty to demonstrate that the causes of action fall outside the purview of Section 831 and Appellant has not done so. This is likely because Appellant cannot do so, as parking facilities are many times integrally intertwined with streets and highways making it impractical—or impossible—to affirmatively establish a bright line segregating them. This is in part because modern and evolving trends in planning, development, and transportation continue to blur the lines between what is strictly "parking" as opposed to a more holistic perspective of transportation infrastructure. Further, like roads, public entities are no better equipped to protect the public against transient and many times unpredictable weather conditions at parking facilities than they are with regard the roads themselves. Moreover, interpreting Section 831 to encompass parking facilities would not lead to an overbroad interpretation because Section 831 already contains a guard rail in that immunity does not apply if the injury would not

have been reasonably apparent to, and would not be anticipated by, a person exercising due care.

Contrary to Appellant's distinguishable out of state authority, multiple other out of state authorities have reached the same conclusion as the trial court did here in that they have interpreted the same or similar scenarios and found that public parking facilities are part of the street or highway.

If the Court is not persuaded that parking facilities are wholly covered by the weather immunity statute, then in the alternative the guidance provided from trail immunity in Government Code Section 831.4 and its case law progeny should instruct the court's analysis in determining whether a parking facility is integrally intertwined with the streets and highways so as to be covered by weather immunity. Parking facilities are integrally intertwined with roads as they synergistically work with all components of the street or highway to accomplish the larger task of establishing holistic public transportation infrastructure.

Finally, even if the Court is not persuaded that parking facilities should be encompassed within weather immunity at all, the judgment should still be affirmed as Appellant has not demonstrated that the transient weather conditions she experienced rise to the level of an actionable dangerous condition against Respondent. While Appellant argues that the weather conditions combined with other factors so as to comprise a dangerous condition, the record does not support this contention. Analyzing similar factual circumstances, the Court of Appeal recently

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upheld the trial court's ruling in *Maksimow v. City of South Lake Tahoe* that—without more—snow/ice on a parking lot are not actionable dangerous conditions.

DATED: December 30, 2024

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I hereby certify that this brief has been prepared using proportionately spaced 13-point Times New Roman typeface. According to the word count feature in Microsoft Word, this brief contains 6,392 words. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 30th day of December, 2024 in San José, California.

DATED: December 30, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Appellate District by using the appellate TrueFiling system.

Participants in the case who are registered TrueFiling users will be served by the appellate TrueFiling system.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

/s/ Kimberly Ide
Kimberly Ide

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