CASE NO. B327413

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION TWO

CITY OF NORWALK,
Plaintiff and Appellant,

v.

CITY OF CERRITOS,
Defendant and Respondent.

APPEAL FROM LOS ANGELES SUPERIOR COURT
CASE NO. 22STCV33737
MICHAEL P. LINFIELD, JUDGE

APPELLANT'S REPLY BRIEF

ALVAREZ-GLASMAN & COLVIN
BRUCE T. MURRAY (BAR NO. 306504)
BTMURRAY@AGCLAWFIRM.COM
ERIC G. SALBERT (BAR NO. 276073)
ESALBERT@AGCLAWFIRM.COM
STEPHEN T. OWENS (BAR NO. 82601)
SOWENS@AGCLAWFIRM.COM
13181 CROSSROADS PARKWAY NORTH, SUITE 400 – WEST TOWER
CITY OF INDUSTRY, CALIFORNIA 91746
PHONE: (562) 699-5500 • FAX: (562) 692-2244

ATTORNEYS FOR PLAINTIFF AND APPELLANT
CITY OF NORWALK

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PROCEDURAL BASES OF THIS APPEAL 4

A. Standard of Review 4

B. Abuse of Discretion...5

C. This Court May Review All Arguments Norwalk Has Presented – Either at the Trial Level or for the First Time on Appeal 6

III. ARGUMENT.. 7

A. Cerritos Illicitly Shifted its Traffic Burdens onto Norwalk, Thereby Violating Numerous Provisions of the California Vehicle Code...7

1. Respondent Defies Logic in Its Attempt to Harmonize the Cerritos Ordinances with the California Vehicle Code..........................8

2. Cerritos' Actions Impacted Streets Beyond Its Exclusive Jurisdiction – and Cerritos Mis-Defines the Statutory Term 10

3. Cerritos' Restrictions on Boundary Streets Are Directly Contrary to Statute and Caselaw 13

4. Cerritos Failed to Obtain Caltrans' Authorization for Its Ordinances That Placed Restrictions on the I-5, SR 91, and Other Roads Not Under Its Exclusive Jurisdiction 15

B. Cerritos Is Not Immune from the Nuisance It Created and Imposed on Its Neighbors .. 17

1. By Its Plain Language and Statutory Interpretation, California Civil Code Section 3482 Does Not Immunize Cerritos' Actions 17

2. Cerritos' Avoidance of Acknowledging What It Caused Defies Basic Legal Principles 19

3. Cerritos Cannot Claim Immunity Its Own Inapposite Cases 19

4. Analogous Cases Show that Cerritos Is Not Immune from Liability for the Nuisance That It Created 22

5. Cerritos' Claim of Immunity from Nuisance Laws Defies Doctrine Laid Out by the Supreme Court 24

C. Cerritos' 'Self-Enablement' Is Illicit and Unconstitutional 26

1. Enabling Law as Distinguished from General Statutory Law or Ordinance 27

2. Cerritos' Interpretation of the Enabling Laws and the Civil Code Defies Basic Logic 29

3. Cerritos' 'Self-Enablement' Is Unconstitutional 30

D. Separation of Powers Not Breached by This Matter 32

IV. CONCLUSION 34

CERTIFICATE OF COMPLIANCE 35

PROOF OF SERVICE 36

TABLE OF AUTHORITIES

Cases

B & P Development Corp. v. City of Saratoga, 185 Cal.App.3d 949 (1986) 4

Careau & Co. v. Security Pacific Business Credit, Inc., 222 Cal.App.3d 1371 (1990) 5, 6

Chapman v. Skype Inc., 220 Cal. App. 4th 217 (2013) 5

City of Hawaiian Gardens v. City of Long Beach, 61 Cal. App. 4th 1100 (1998) 22

City of Sausalito v. Cnty. of Marin, 12 Cal. App. 3d 550 (1970) . 26

Farmers Ins. Exchange v. State of California, 175 Cal.App.3d 494 (1985) 21

Friends of H St. v. City of Sacramento, 20 Cal. App. 4th 152 (1993) 32

Gomillion v. Lightfoot, 364 U.S. 339 (1960) 23

Greater Westchester Homeowners Assn. v. City of Los Angeles, 26 Cal.3d 86 (1979) 18

Hale v. Morgan, 22 Cal.3d 388 (1978) 25

Las Lomas Land Co., LLC v. City of Los Angeles, 177 Cal. App. 4th 837 (2009) 6

Marbury v. Madison, 5 U.S. 137 (1803) 32

McCammon v. City of Redwood City, 149 Cal.App.2d 421 (1957) 13

Otay Land Co., LLC v. U.E. Ltd., L.P., 15 Cal. App. 5th 806 (2017) 18

Pacific Redi-Mix, Inc. v. City of Palo Alto, 236 Cal.App.2d 357 (1968) 11
Palsgraf v. Long Island R. Co., 248 N.Y. 339 162 N.E. 99 (1928)19
Schifando v. City of Los Angeles, (2003) 31 Cal.4th 1074 (2003) .. 5
Serv. by Medallion, Inc. v. Clorox Co., 44 Cal. App. 4th 1807 (1996) 4
S*kyline Materials, Inc. v. City of Belmont,* 198 Cal.App.2d 449 (1961) 13, 14
Taylor v. California State Auto. Assn. Inter-Ins. Bureau, 194 Cal. App. 3d 1214 (1987) 6
Varjabedian v. City of Madera, 20 Cal.3d 285 (1977) 21
Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252 (1977) 25
W. Union Tel. Co. v. Hopkins, 160 Cal. 106 (1911) 30
Washington v. Davis, 426 U.S. 229 (1976) 25
Williams v. Moulton Niguel Water Dist., 22 Cal. App. 5th 1198 (2018) 20, 21
Wilson v. City of Alhambra, 158 Cal. 430 (1910) 31
Wilson v. Southern California Edison Co., 234 Cal.App.4th 123 (2015) 21

Statutes

California Civil Code § 3479 21
California Civil Code § 3480 .... 17, 28
California Civil Code § 3482 .... 17, 27
California Civil Code § 789.3 25
California Constitution article XI, § 7 29

Code of Civil Procedure section 472c 6
Health & Safety Code section 116270 20
Vehicle Code section 21101 .... 7, 10, 22, 27
Vehicle Code section 35701 .... 8, 15
Vehicle Code section 35702 2

Treatises

2 Cal. Jur. 3d Administrative Law § 234 28

Other Authorities

Introduction to Logic, Irving M. Copi, Carl Cohen and Kenneth McMahon (Pearson Education Ltd., 14th ed., 2014)................ 29

Opinion of the Attorney General, WL 469707 (April 14, 1992)..... 3

I. INTRODUCTION

The City of Cerritos imposed substantial restrictions on major crosstown and cross-city throughfares; and in doing so, Cerritos imposed an undue burden – indeed, a nuisance – on neighboring cities. By failing to designate numerous streets and highways as truck routes, Cerritos diverted traffic into Norwalk. In particular, Cerritos' ordinances removed Bloomfield Avenue as a designated truck route. This removal impacted Norwalk and all of the numerous cities through which Bloomfield Avenue passes, in addition to inhibiting access to Interstate 5 (I-5) and California State Route 91 (SR 91) – which have entrances and exits on Bloomfield.

Cerritos' first ordinance added a half-mile block of Shoemaker Ave., between Alondra Blvd. and 166th St., as a designated truck route. The second ordinance removed Shoemaker, while leaving Bloomfield undesignated. The adding and subtracting of a small portion of Shoemaker Avenue is suspicious and unexplained. Respondent's Brief begins by stating that Cerritos passed the ordinances "in response to public health and safety concerns," but it never explains those health and safety concerns, nor does it specify exactly who was concerned or why.

In fact, the removal of Bloomfield Avenue, a major thoroughfare, as a designated truck route is substantially disruptive to Norwalk and other surrounding cities. The effect of Cerritos' ordinance was to divert and squeeze major commercial traffic into Norwalk through residential streets. Thus, a nuisance ensued.

But perhaps more important than Bloomfield and Shoemaker avenues are the many other streets unnamed in Cerritos' ordinances. (AA 0071-0074 & 0076-0079.) Where the streets are unnamed in the ordinances, they are removed as designated truck routes in the city. The logic of this statutory construction is analyzed below.

In addition to the unnamed city streets, both of the Cerritos ordinances somehow fail to name the 605 (the San Gabriel River Freeway) and SR 91 (the Artesia Freeway) – freeways that both pass through Cerritos – as designated truck routes. This failure clearly violates California Vehicle Code section 35702, which requires that any such restrictions on state or interstate highways first be submitted to the state Department of Transportation for approval. Cerritos obtained no such approval. The Cerritos ordinances also violate the same section of the Vehicle Code, which obligates Cerritos to designate alternate routes for its restricted routes.

Furthermore, the ordinances effectively restrict access to 91 and the I-5. The Artesia Freeway has two southbound exits onto Bloomfield Avenue in the City of Cerritos. Even more substantially, I-5 has northbound exits (exit 102B) onto Rosecrans Avenue and Bloomfield Avenue in the City of Norwalk. Placing restrictions on Bloomfield Avenue substantially restricts access to these freeways – inside and outside Cerritos. Cerritos' ordinances go far beyond its "exclusive jurisdiction." Cal. Veh. Code § 35702.

Throughout Respondent's Brief, it claims that Cerritos regulated a road – a single road (Bloomfield Ave.) – within its

"exclusive jurisdiction," and thus somehow it is in compliance with Vehicle Code section 35702. Respondent repeats the phrase "exclusive jurisdiction" 14 times in its brief, as if repeating it will somehow make it true. But the repetition only reveals the fiction. In fact, Bloomfield Avenue stretches 13 miles and passes through six cities before it turns into Santa Fe Springs Road and enters Whittier. Cerritos does not have exclusive jurisdiction of this major thoroughfare; and placing restrictions on Cerritos' portion of Bloomfield Avenue affects all connecting cities. Therefore, Cerritos violated the Vehicle Code section 35702.

The effect of Cerritos' ordinances was to construct a major dam on Bloomfield Avenue, and then a minor dam on Shoemaker Ave., thus restricting the flow of traffic on major inter-city thoroughfares. In constructing these dams, Cerritos created a nuisance – and it is in no way exempt from this nuisance, as the Respondent's Brief erroneously argues.

The California Attorney General summed it up succinctly: "A city may close street in its jurisdiction where it intersects with another city's boundary **if the street is not part of regionally significant roadway** and if closing street is necessary to implement circulation element of city's general plan." 75 Op.Atty.Gen. 80, WL 469707 (April 14, 1992). (Emphasis added.)

This Reply Brief will clarify the law and disentangle Respondent's selectively spun "facts." This Reply will show how the statutes and case law support Norwalk.

II. PROCEDURAL BASES OF THIS APPEAL

A. Standard of Review

Like granting a motion for summary judgment or a motion to dismiss, sustaining a demurrer without leave to amend is an extreme action. "It is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory, and it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." *Serv. by Medallion, Inc. v. Clorox Co.,* 44 Cal. App. 4th 1807, 1808 (1996).

Here, Respondent's Brief simply concludes, "[t]he trial court correctly sustained Cerritos' Demurrer, and it was well within the court's sound discretion to deny leave to amend" (Respondent's Brief ("RB") at 35, pt. IV); but nowhere does Respondent state the standard or the scope of review. Filling in the blanks in the Respondent's incomplete analysis, "a general demurrer presents the same question to the appellate court as to the trial court—namely, whether the plaintiff has alleged sufficient facts in the complaint to justify relief on any legal theory. *B & P Development Corp. v. City of Saratoga* (1986) 185 Cal.App.3d 949, 953. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded … The judgment must be affirmed if any one of the several grounds of demurrer is well taken." *Medallion,* 44 Cal. App. 4th at 1811–12 (1996). Also see *Chapman v. Skype, Inc.,* 220 Cal.App.4th 217, 226 (2013).

In this case, the trial court strayed beyond the standard. Norwalk's initial complaint provided a valid cause of action and avenue for relief from the nuisance Cerritos created by diverting its heavy truck traffic into Norwalk. At the demurrer stage, Norwalk certainly could have added more law and facts to amend its complaint to further bolster its case, but the trial court cut it short, without proper legal justification. Therefore, Appellant asks this Court to reverse and remand.

B. Abuse of Discretion

"It is an **abuse of discretion** to sustain a demurrer without leave to amend if there is a reasonable probability that the defect can be cured by amendment. *(Schifando v. City of Los Angeles,* (2003) 31 Cal.4th 1074, 1082.) The burden is on the plaintiff to demonstrate how the complaint can be amended to state a valid cause of action. *(Ibid.)* The plaintiff can make that showing for the first time on appeal. *(Careau & Co. v. Security Pacific Business Credit, Inc*. (1990) 222 Cal.App.3d 1371, 1386." *Chapman v. Skype Inc.,* 220 Cal. App. 4th 217, 226 (2013). (See more on "first time on appeal," below.)

With little support, Respondent simply concludes, "The trial court properly exercised its discretion to deny Norwalk leave to amend its complaint, as **the only issues are legal ones** and the trial court ruled against Norwalk as a **matter of law**." (RB at 32; pt. III C). (Emphasis added.)

To the contrary, the trial court abused its discretion by sustaining Defendant's demurrer without leave to amend. Respondent's triumphant "matter of law" assertion is false. The

facts that Norwalk presented are more than sufficient to state a cause of action; but if the court wanted more, Plaintiff certainly could have added more in an amended complaint. But the lower court denied Norwalk that opportunity. In so denying Plaintiff leave to amend, the court abused its discretion.

C. This Court May Review All Arguments Norwalk Has Presented – Either at the Trial Level or for the First Time on Appeal

Although Respondent only vaguely suggests that Appellant can't present its arguments for the first time on appeal (RB at 27, pt. III B), Appellant properly presents all disputed issues to this court at this time; and certainly, Appellant is entitled to rebut all points in Respondent's Brief.

In many instances, the Court allows new evidence and issues to be raised on appeal: "Where the opposing party was given the opportunity to present evidence on the factual issue raised by the new ground on appeal in response to an attack on the complaint by the motion for summary judgment, the appellate court will consider the new ground on appeal." *Taylor v. California State Auto. Assn. Inter-Ins. Bureau,* 194 Cal. App. 3d 1214, 1216 (1987).

Furthermore, "the failure to request leave to amend in the trial court ordinarily **does not prevent** a plaintiff from making such a request **for the first time on appeal**. (Code Civ. Proc., § 472c, subd. (a);17 *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1386, 272 Cal.Rptr. 387.)" *Las Lomas Land Co., LLC v. City of Los Angeles,* 177 Cal. App. 4th 837, 861 (2009). (Emphasis added.)

Of course, Plaintiff requested leave to amend in its opposition to Defendant's demurrer; and now, on appeal, Appellant argues those same issues and more.

To summarize the procedural bases for this appeal: The trial court erred in granting Cerritos' demurrer without leave to amend; and Norwalk may now raise all arguments refuting the trial court's decision and Respondent's position.

III. ARGUMENT

By enacting Ordinance Nos. 1030 and 1031, Cerritos violated numerous provisions of the California Vehicle Code; and in so doing, Cerritos created a nuisance in violation of California Civil Code section 3479 et seq. In its Brief, Cerritos denies all of this by substantially skewing the facts and attempting to insert its desired ruling into non-analogous, inapposite cases. This brief will set the facts straight and refute all of Cerritos' denials.

A. Cerritos Illicitly Shifted its Traffic Burdens onto Norwalk, Thereby Violating Numerous Provisions of the California Vehicle Code

This issue involves three intertwined vehicle codes – key portions are excerpted as follows:

> "Local authorities, for those **highways under their jurisdiction**, may adopt rules and regulations by ordinance or resolution [by] … (c) Prohibiting the use of particular highways by certain vehicles." Cal. Veh. Code § 21101. (Emphasis added.)

> "Any city, or county for a residence district, may, by ordinance, prohibit the use of a street by any commercial

vehicle or by any vehicle exceeding a maximum gross weight limit. Cal. Veh. Code § 35701(a) (Note the statutory language: "a street," but not "any street.")

"No ordinance proposed under Section 35701 is effective with respect to any highway which is **not under the exclusive jurisdiction** of the local authority enacting the ordinance …" Cal. Veh. Code § 35702. (Emphasis added.) ("Exclusive jurisdiction" is analyzed further below.)

Here, Cerritos' ordinances place restrictions on both an interstate highway and a state route by omitting Interstate 605 and California State Route 91 from their list of designated truck routes. Cerritos' ordinances also place restrictions on Bloomfield Avenue, Shoemaker Avenue, 166th Street and numerous other streets that are either undesignated or not designated as truck routes in its ordinances. (AA 0071-0074 & 0076-0079.) These streets extend far beyond Cerritos' exclusive jurisdiction, and thus are beyond any one city's power to block or restrict. And even the portions of the streets that Cerritos purports to permissibly regulate do not place Cerritos actions within the permissible meaning of the statutes. (More on exclusive jurisdiction below.)

1. **Respondent Defies Logic in Its Attempt to Harmonize the Cerritos Ordinances with the California Vehicle Code**

In disentangling Respondent's arguments, it is important to examine the language and logic of the city ordinances in question. Both ordinances contain this same paragraph:

"Pursuant to the provisions of Section 35701 of the Vehicle Code, no person, corporation, or any other organization shall use or operate any commercial vehicle or any vehicle exceeding 6,000

pounds on or over any street, road, or public right of way within the city **except** the following streets which are designated as truck routes …" Cerritos' Ordinance Nos. 1030 and 1031 (AA 0071-0074 & 0076-0079.) (Emphasis added.)

The first ordinance names nine streets – or portions thereof – as designated truck routes; then the second ordinance names eight streets. (Shoemaker Avenue is removed.) Thus, as the ordinance is constructed, the streets that are **not named** are as important as the streets that are listed. The named streets are only included in the "except" category in the ordinance.

In terms of the logical construction of the statute, if placed in a conditional format, one could say:

- If a street is named in this ordinance, then it is a designated truck route.

And then the contrapositive:

- If a street is not designated as a truck route, then it is not named in the ordinance.

By basic logic, **not** designating a street is sufficient to cause a necessary result; just as naming a street is sufficient to designate it as a truck route.

Respondent seeks to evade and confuse this logic. The heading for Respondent's part III(B)(1) proclaims, "The Ordinances Did Not Violate Vehicle Code Section 35702 Because They Only Declassified A Portion Of A Single Street Which Is Under The Exclusive Jurisdiction At Cerritos." [Sic] (RB at 27). Then, "The only effect of the Ordinances was to declassify as a truck route a portion of a single street which is within the exclusive

jurisdiction of Cerritos-- Bloomfield Avenue between Artesia Boulevard and Alondra Boulevard." (RB at 28; pt. 3 B 1).

If these statements were part of a trick question on the LSAT, not only has the Respondent confused sufficiency and necessity, but Respondent has ignored logical sufficiency altogether. By statutory construction, it is clear in these ordinances that **not** designating a street as a truck route is as important as naming a street. Cerritos' omissions of many streets from its ordinances, including even the 91 and the 605, are sufficient to cause a necessary result: Non-designation of these streets and highways as truck routes. And by further syllogistic reasoning, the omission of many streets as designated truck routes caused a nuisance to the neighboring city of Norwalk. (The nuisance issue is discussed further below.)

2. Cerritos' Actions Impacted Streets Beyond Its Exclusive Jurisdiction – and Cerritos Mis-Defines the Statutory Term

The statutory meaning of the terms "jurisdiction" (Cal. Veh. Code § 21101) and "exclusive jurisdiction" (Cal. Veh. Code § 35702) – if not obvious in plain English[1] – are repeatedly defined, illustrated, and strictly construed by the courts.

"A proper interpretation of the term 'jurisdiction' as used in section 21101, subdivision (f) is a *narrow* one which recognizes that one local authority's actions within its own jurisdiction may not

[1] "Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words, that it would seem the ingenuity of man could not evade them ..." *Ex parte Milligan,*71 U.S. 2, 120, 18 L. Ed. 281 (1866). (Emphasis added.)

infringe upon the rights of other citizens of the greater metropolitan area to travel from community to community on publicly owned and controlled streets and highways." *City of Poway v. City of San Diego,* 229 Cal. App. 3d 847, 866, 280 (1991).

Cerritos repeatedly and misleadingly claims that its "Ordinances did not impose any weight limits on streets outside of its exclusive jurisdiction" (RB at 27, pt. III B); and then it triumphantly declares, "Norwalk does not, and cannot, allege that **the portion of Bloomfield** which was de-classified by the Ordinances is not within the exclusive jurisdiction of Cerritos." (RB at 29; pt. III B). (Emphasis added.) This statement is a strawman argument. In a similar vein, one could say, the state of California does not, and cannot allege that portions of I-5 within Oregon are within the jurisdiction of California. Of course it is true, and that is not the point. Respondent's argument is a strawman, in circular shape.

Repeatedly, the courts illustrate the meaning of exclusive jurisdiction in this context. Respondent's own featured case illustrates what exclusive jurisdiction is, and what it is not. In *Pacific Redi-Mix, Inc. v. City of Palo Alto,* the city of Palo Alto adopted an ordinance imposing vehicle weight restrictions on the Oregon Avenue Expressway. The Plaintiff in that case argued that since the Expressway was constructed in part upon a former city street that the City of Palo Alto had voluntarily relinquished to the county, the city lacked the exclusive jurisdiction necessary to regulate the expressway. *Pacific Redi-Mix, Inc. v. City of Palo Alto,* 236 Cal.App.2d 357, 359 (1968). The court ruled that if a highway

that is otherwise entirely within an incorporated city happens to extend into unincorporated territory, that does not vitiate the city's exclusive jurisdiction in order to regulate the road. *Id.* at 361. Thus, when the highway is otherwise "wholly within the boundaries of the city, it would appear to be of no moment whether the ordinance affects a city street or a county highway." *Id.* at 359.

Here, Bloomfield Avenue passes through six cities before it turns into Santa Fe Springs Road and extends into Whittier. Shoemaker Avenue passes through three cities. All of the many other streets impacted by Cerritos' ordinances are connected to neighboring cities. These are hardly isolated highways, like Palo Alto's Oregon Avenue Expressway, which happens to extend into unincorporated territory. Cerritos' own featured case cuts against it. The Court's opinion in *Pacific Redi-Mix* is highly illustrative of the meanings of jurisdiction and exclusive jurisdiction in a differing context. Respondent attempts to use that and other cases in its favor, but those cases actually make Norwalk's case. Another non-analogous case from northern California covers the points succinctly:

"Since Ralston Avenue originates west of the city limits of Belmont, and runs for some distance east before entering the city, it is claimed to be within this prohibition and thus beyond the jurisdiction of a restrictive ordinance. However, once Ralston does enter Belmont, it is wholly within that city … We see no reason to hold that the prohibition extends to a highway which, running … through **unincorporated territory**, enters a city and from the point of such entrance is wholly within the city. A like situation

was presented in *McCammon v. City of Redwood City,* 149 Cal.App.2d 421, 149 (1957) … *McCammon* clearly held that truck traffic originating on a road in **unincorporated territory** was subject to a city ordinance limiting truck weights on the portion of the road lying within the city." *Skyline Materials, Inc. v. City of Belmont,* 198 Cal.App.2d 449, 458 (1961). (Emphasis added.)

This case does not involve a street within a city that happens to veer into unincorporated territory, but rather major city thoroughfares that pass through multiple municipalities. Respondent's featured cases are non-analogous on that point, but they still define the meaning of exclusive jurisdiction – and what it is not. Cerritos operated outside of its exclusive jurisdiction and therefore violated the Vehicle Code.

3. Cerritos' Restrictions on Boundary Streets Are Directly Contrary to Statute and Caselaw

In interpreting the term "exclusive jurisdiction," the Court of Appeal explained that a "boundary street separating one city from another or from unincorporated territory and lying partially in each" is outside the "exclusive jurisdiction" of a municipality. "Such a boundary street doubtless would be within the prohibition."[2] S*kyline,* 198 Cal.App.2d at 458. (Appellant's Brief at 19).

[2] "No ordinance proposed under Section 35701 … may prohibit the use of a street by any commercial vehicle or by any vehicle exceeding a maximum gross weight limit, except …" Cal. Veh. Code §§ 35701-02.

Respondent attempts to jump around the boundary street issue. Quoted, and briefly countered:

"Norwalk falsely claims that the Ordinances imposed weight limits on 166th Street." (RB at 27; pt. III B). In fact, Cerritos' ordinances did impose weight limits on 166th Street, as will be detailed below. Then, Respondent denies that its ordinances failed to designate the 91 and 605 freeways as truck routes. (RB at 33, pt. III C). In fact, Cerritos' ordinances do fail to name the 91 and the 605 as designated truck routes. And finally, "As such, the Ordinances which are the subject of this litigation have nothing to do with imposing any weight restrictions on any portion of 166th Street, which Norwalk alleges is in a shared jurisdiction." (RB at 29; pt. III B1). In fact, the Cerritos' ordinances fail to designate 166th Street as a designated truck route. And in fact, 166th Street is a boundary street between Norwalk, Artesia and Cerritos. (166th Street continues into Bellflower on the west.)

In *Skyline,* the court clearly defined the effect of a boundary street and non-boundary street in the context of that fact pattern: "Once Ralston Avenue does enter Belmont, it is wholly within that city. It is not a boundary street separating one city from another or from unincorporated territory and lying partially in each. **Such a boundary street doubtless would be within the prohibition**." *Skyline Materials,* 198 Cal. App. 2d at 458 (1961). (Emphasis added.)

The California Attorney General unambiguously defined the effect of a boundary street, regardless of the varying fact pattern: "A city may close street in its jurisdiction where it intersects with

another city's boundary **if the street is not part of regionally significant roadway** and if closing street is necessary to implement circulation element of city's general plan." 75 Op. Atty. Gen. 80, 1992 WL 469707 (April 14, 1992). (Emphasis added.)

In attempt to defy both the rule and the logic, Respondent states – and then states again – that "[t]he portion of 166th Street within the exclusive jurisdiction of Cerritos was already weight restricted prior to the adoption of the Ordinances" (RB at 30 and 33; pt. III B1 and C); and thus, "[t]he status quo of 166th was not affected or changed by the Ordinances." (RB at 29; pt. III B1).

As set out above, the logic of Cerritos' ordinances causes this result: By **not** designating 166th Street as a truck route, that non-action was sufficient to cause a necessary result – to divert traffic into Norwalk, and thereby create a nuisance.

Cerritos placed restrictions on streets that are part of regionally significant roadways, and therefore Cerritos violated the Vehicle Code and the Civil Code, Cal. Civ. Code § 3480.

4. Cerritos Failed to Obtain Caltrans' Authorization for Its Ordinances That Placed Restrictions on the I-5, SR 91, and Other Roads Not Under Its Exclusive Jurisdiction

"No ordinance adopted pursuant to this section … shall apply to any state highway which is included in the National System of Interstate and Defense Highways, except an ordinance which has been approved by a two-thirds vote of the California Transportation Commission." Cal. Veh. Code § 35701(c).

"No ordinance proposed under Section 35701 is effective with respect to any highway which is not under the exclusive jurisdiction of the local authority enacting the ordinance, or, in the case of any state highway, **until the ordinance has been submitted** by the governing body of the local authority to, **and approved in writing by, the Department of Transportation**." Cal. Veh. Code § 35702. (Emphasis added.)

As analyzed above, the roads Cerritos restricted in its ordinances were not under Cerritos' exclusive jurisdiction, and therefore Cerritos was required to submit its plans to the Department of Transportation (DOT) for approval. But it did not. Furthermore, since the I-5 and SR 91 were omitted as designated truck routes, the ordinances also required DOT approval on that basis.

Throughout Respondent's Brief, it repeatedly and wrongly denies that its ordinances went beyond Cerritos' jurisdiction, and Respondent claims it is "fully within the exculpatory language of Civil Code section 3482." (RB at 17; pt. II C). Then, "The same is true for the 91 and 605 Freeways. Norwalk preposterously claims that the Ordinances purport to restrict truck traffic from traveling over those freeways, and pursuant to section 35702, Cerritos must seek permission from Caltrans to adopt the restrictions." (RB at 31; pt. III B 1).

Indeed, it is the Respondent's claims that are preposterous. Ordinances 1030 and 1031 clearly omit SR 91 and I-605 as designated truck routes. (AA 0071-0074 & 0076-0079.) Here, the sin of omission is sufficient to place Cerritos under the ambit of

Cal. Veh. Code §§ 35701, 35702. In the regime that Cerritos created, it was required by statute to submit its ordinances to the Department of Transportation for approval. It failed to do so. Norwalk's complaint shows this, and an amended complaint could make that even more clear.

B. Cerritos Is Not Immune from the Nuisance It Created and Imposed on Its Neighbors

By purposely diverting traffic from Cerritos to Norwalk, Cerritos created a nuisance. Respondent repeatedly claims that it is immune from nuisance liability, while never actually denying that it created a nuisance, which it did. Respondent cites non-analogous case-after-inapposite-case in attempt to avoid discussing the negative effects of Cerritos' ordinances. (RB 12, p. II B, et seq.) But Respondent cannot get out of it "as a matter of law," as it so wishes. (RB at 32, 33, pt. III C). As a matter of fact, Cerritos created a nuisance; and as a matter of law, it is not immune.

1. By Its Plain Language and Statutory Interpretation, California Civil Code Section 3482 Does Not Immunize Cerritos' Actions

"A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." Cal. Civ. Code § 3480.

"Nothing which is done or maintained under the **express authority** of a statute can be deemed a nuisance." Cal. Civ. Code § 3482. (Emphasis added.)

First of all, as plainly stated, the statute says "express authority," not implied authority, not construed authority, not delegated authority, not enabled authority. Like the terms "jurisdiction" and "exclusive jurisdiction" in the Vehicle Code, "express authority" is narrowly and strictly construed by the courts:

"A narrow construction applies to section 3482. *(Greater Westchester Homeowners Assn. v. City of Los Angeles* (1979) 26 Cal.3d 86, 100. Specifically, 'a statutory sanction cannot be pleaded in justification of acts which by the general rules of law constitute a nuisance, **unless the acts complained of are authorized by the express terms of the statute** under which the justification is made, **or by the plainest and most necessary implication** from the powers expressly conferred, so that it can be fairly stated that **the legislature contemplated the doing of the very act which occasions the injury**.'" (*Id.* at p. 101.) *Otay Land Co., LLC v. U.E. Ltd., L.P.,* 15 Cal. App. 5th 806, 846 (2017) (Emphasis added.)

In Respondent's Brief, Cerritos claims over and over again (seven times) that it had the "express authority" to pass its ordinances that diverted traffic into Norwalk, and thereby created a nuisance. But Cerritos did not act under the specific express authority of a traffic management statue passed by the California State Assembly. Cerritos acted on its own. Cerritos is not immune from the nuisance it created. (See more on Cerritos' illicit "self-enablement," section C below.)

2. Cerritos' Avoidance of Acknowledging What It Caused Defies Basic Legal Principles

Learned Hand, Benjamin Cardozo, and William S. Andrews teach us about causation: "Harm to someone being the natural result of the act … Without that, the injury would not have happened … The proximate cause, involved as it may be with many other causes, must be, at the least, something without which the event would not happen. [cause-in-fact; "but for"] … The court must ask itself whether there was a natural and continuous sequence between cause and effect. [sufficient cause] Was the one a substantial factor in producing the other? Was there a direct connection between them?" *Palsgraf v. Long Island R. Co.,* 248 N.Y. 339, 350, 353, 162 N.E. 99 (1928). (Andrews, J, dissenting.)

Throughout its long dissertation of inapposite cases, Respondent somehow avoids dealing with causation, a core concept across the law. Respondent simply sweeps it all under the rug under the auspices of "immunity." (RB at 8; pt. I).

Respondent conveniently avoids discussion of the effects of its actions. In an analysis of causation – cause-in-fact (necessary cause) and proximate cause (sufficient cause) – Cerritos did cause a nuisance to Norwalk. Analogous and non-analogous caselaw demonstrate that Cerritos is not immune from the nuisance that it caused.

3. Cerritos Cannot Claim Immunity Its Own Inapposite Cases

Cerritos' leading case actually demonstrates why it is not immune from the harmful consequences of ordinances 1030 and 1031. In *Williams v. Moulton Niguel Water District,* the factual

scenario is clearly distinguished, but the point is not. In that case, the Water District, like "one third of all major American utilities, and over half of California's major water utilities … [treat water with] chloramine as a secondary disinfectant to reduce disinfection byproducts with the object of protecting human health." *Williams v. Moulton Niguel Water Dist.,* 22 Cal. App. 5th 1198, 1202, 1205 (2018). The use of chloramine was expressly and specifically approved by the California Department of Health Services ("DHS"). The use of a water disinfectant was further mandated by the federal Safe Drinking Water Act and the state Safe Drinking Water Act ("SDWA"), Health & Saf. Code, § 116270 et seq. In initiating their complaint, "Homeowners brought putative class action against water districts, alleging copper piping in homes was damaged by water districts' addition of chloramines to tap water." *Id.* at 1198.

That court held that the Water District was immune from any harm that may have been caused by the chloramines. Therefore, Cerritos should be immune from the nuisance it created by diverting traffic from its streets to Norwalk, Respondents contend. No, their reasoning does not hold. First of all, the use of chloramine was expressly and specifically approved by the state. The Water District didn't simply rely on a broad statute that enabled it to treat water. (See discussion of enabling statutes, below.) Then, more importantly, the court parsed out act and consequence, cause and effect, and exactly how immunity is assigned:

"It is helpful to distinguish the act or condition constituting the nuisance from the consequences of the act or condition, such as being 'injurious to health,' or 'indecent or offensive to the senses,' or constituting an 'obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property' (Civ. Code § 3479). Civil Code section 3482 immunizes liability for the acts that are 'done or maintained' pursuant to the **express terms of a statute**. Thus, in *Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, the act that was 'done or maintained' was allowing the odors to escape. That act was not authorized by statute, so Civil Code section 3482 **did not immunize nuisance liability**. In *Wilson v. Southern California Edison Co.* (2015) 234 Cal.App.4th 123, the act that was 'done or maintained' was allowing the stray voltage to exist. That act was likewise not authorized by statute, so Civil Code section 3482 **did not immunize nuisance liability**. But in *Farmers Ins. Exchange v. State of California* (1985) 175 Cal.App.3d 494, the act that was 'done or maintained' was the spraying of the pesticide. That act was expressly authorized by statute, so Civil Code section 3482 immunized nuisance liability for that conduct." *Williams v. Moulton Niguel Water Dist.,* 22 Cal. App. 5th 1198, 1207 (2018). (Emphasis added.)

That court succinctly distinguished different acts and conditions. The key point here is that no statute gave Cerritos the specific authorization to restrict the traffic flow on Bloomfield Ave., or any other particular street. Although Cerritos – or any city in California – is enabled by the state to regulate traffic within its jurisdiction, the State Assembly has not passed legislation

creating a street-by-street traffic plan for Cerritos – or streets that pass through Cerritos. Cerritos has the broad power to regulate its streets, but it is not exempt from acts that cause a nuisance to neighboring cities. Under these facts, it is likely that the *Williams* court would not rule that Cerritos is not immune.

4. Analogous Cases Show that Cerritos Is Not Immune from Liability for the Nuisance That It Created

The rulings in *City of Hawaiian Gardens v. Long Beach* and *City of Poway v. City of San Diego* are more closely analogous cases in that they dealt with the Vehicle Code, not water safety or the spraying of pesticides. In *Hawaiian Gardens* and *Poway,* the court found no immunity for the abuse of municipal powers under the auspices of Cal. Veh. Code § 21101.

As the court summed up succinctly in *Hawaiian Gardens:* "Since the street closure was likely to have a significant negative effect in the neighboring city; under Veh. Code, § 21101, subd. (f), a municipality must take into account the effect of a closure on nonresident members of the public in the surrounding area. The record established a significant negative effect on a street in the neighboring city." *City of Hawaiian Gardens v. City of Long Beach,* 61 Cal. App. 4th 1100 (1998). Hence, no immunity.

The *Poway* court also summed it up succinctly: "In this case we must determine whether a city may close a portion of a regional roadway that continues beyond its city limits. We conclude Vehicle Code section 21101, subdivision (f) confers no such authority upon city government … [T]he city's refusal to reopen the road was not

authorized under Veh. Code, § 21101, subd. (f); that subdivision cannot be interpreted to allow one municipality to close its portion of a regionally significant, safely designed and maintained roadway for reasons of self-interest, to the detriment of those other members of the motoring public who seek to travel the entirety of the road." *City of Poway v. City of San Diego,* 229 Cal. App. 3d 847, 851–52 (1991).

Further, "one local authority's actions within its own jurisdiction may not infringe upon the rights of other citizens of the greater metropolitan area to travel from community to community on publicly owned and controlled streets and highways … **Regionally significant streets** or highways perform a regional, not a municipal function. The fact that some hardship is created by the intensive use of a road upon those whose homes or businesses are located along the roadway is not dispositive in light of these well-established principles. A parochial decision that goes beyond the scope of section 21101 to close part of a functional regional road that crosses two or more jurisdictions, by means of a general plan or its amendment, is inconsistent with settled law." *Id.* at 280.

The *Hawaiian Gardens* court quoted *Poway* extensively. In *Hawaiian Gardens,* not only is the fact-pattern analogous, but that case even involved a specific street, Pioneer Blvd., that passes through both Cerritos and Norwalk. In 1990, residents in a Long Beach neighborhood asked the city council to close Pioneer Boulevard at the Long Beach border. *City of Hawaiian Gardens,* 61 Cal. App. 4th at 1104. The Long Beach City Council passed an

ordinance closing Pioneer Blvd. *Id.* The resolution claimed that Pioneer Blvd. was in the city's jurisdiction, and that the road "is not a regionally significant street, highway or thoroughfare." *Id.* at 1105. The Court of Appeal disagreed: "Long Beach takes a narrow view, focusing only on traffic problems within its borders, and arguing that the Pioneer/Ritchie/Claremore corridor is not regionally significant because it is designated for local use in the Long Beach Transportation Element of the general plan … We conclude that the trial court acted within its discretion in preventing Long Beach from constructing a barrier across Pioneer Boulevard at its border with Hawaiian Gardens." *Id.* at 1110, 1112.

Based on the reasoning and rulings of these analogous cases involving the Vehicle Code, Cerritos had no right to infringe on the rights of Norwalk citizens by restricting shared and regionally significant streets. No immunity.

5. Cerritos' Claim of Immunity from Nuisance Laws Defies Doctrine Laid Out by the Supreme Court

The U.S. Supreme Court has analyzed cause and effect/ acts and consequences at the municipal level. In *Gomillion v. Lightfoot,* 364 U.S. 339 (1960), the Court, led by Justice Felix Frankfurter, ruled that the **effect of an act** that redrew the voting districts in the City of Tuskegee was discriminatory and therefore invalid. Initially, the mayor of Tuskegee was successful in persuading the District Court that the city was empowered to do what it did, and that the court had no right to scrutinize municipal operations. The Court of Appeals for the Fifth Circuit agreed. The Supreme Court reversed. The intent of the act was not the deciding factor, the

court ruled; it was the consequences that mattered. "The **essential inevitable effect** of this redefinition of Tuskegee's boundaries is to remove from the city all save four or five of its 400 Negro voters while not removing a single white voter or resident. The **result** of the Act is to deprive the Negro petitioners discriminatorily of the benefits of residence in Tuskegee, including, inter alia, the right to vote in municipal elections."[3] *Gomillion,* 364 U.S. at 340–41 (1960) (Frankfurter, J, delivering the opinion of the Court).

In the case at hand, Respondent runs away from cause and effect/ act and consequences. Respondent is immune, it says (RB at 33; pt. III C). Yes, Cerritos is immune, just like Tuskegee should have been immune from the force of Felix Frankfurter. Not. (See discussion of the separation of powers doctrine, below.)

Perhaps Cerritos might feel a sense of identification with the Village of Arlington Heights, Illinois, which in 1970 refused to rezone a particular parcel to R-5, a multiple-family housing classification. As a result of the village's non-action, the developer, which planned to create racially integrated subsidized housing, was unable to proceed. In *Arlington Heights,* the Supreme Court did not find a discriminatory *mens rea* behind the act. "Our decision last term in *Washington v. Davis,* 426 U.S. 229 (1976), made it clear that official action will not be held unconstitutional solely because it **results** in a racially disproportionate impact. 'Disproportionate impact is not irrelevant, but it is not the sole

[3] The High Court's ruling sweeps away Respondent's "separation of powers" argument in one fell swoop (RB at 18, pt. II E). This issue is discussed further below.

touchstone of an invidious racial discrimination.' *Id.,* at 242, 96 S.Ct., at 2049. Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.,* 429 U.S. 252, 264–65 (1977).

Justice Byron White dissented, and Justice Thurgood Marshall said the case should be remanded, and the lower court should rule consistently with *Washington v. Davis*. *Id.* at 271. In subsequent decades, it is likely that White and Marshall would have been the majority.

Here, this case belongs back in the Superior Court.

C. Cerritos' 'Self-Enablement' Is Illicit and Unconstitutional

Although "self-help" and "enablement" are viewed positively in popular culture; in a legal context, self-help is sometimes prohibited. For example, a landlord may not willfully deprive a tenant of utility services for the purpose of evicting the tenant. Such practice is "prohibited self-help." Cal. Civ. Code § 789.3; *Hale v. Morgan,* 22 Cal.3d 388, 584 (1978). There are many other instances where acting in a willful manner is highly problematic, if not prohibited.

In this context, the restrictions Cerritos put on Bloomfield Avenue and many other streets were acts of illicit self-help. But Respondent maintains that its "adoption of the Ordinances was done under the express authority of a statute and that Cerritos is therefore immune from nuisance liability." (RB at 8; pt. I). Respondent's argument plays hop-scotch around the law. Going

back to square one, Cerritos, like all municipalities in California, is enabled to exist, operate and "legislate" (pass ordinances) by the authority of the state legislature and the state constitution. However, this enabled power is broad; it does not provide specific street-by-street provisions that direct Cerritos to place restrictions on Bloomfield Ave., or any other street. Respondent's Brief confuses the enabling doctrine with general legislation. Respondent attempts to fuse enabling law with statutory law. The formula for this fusion is as follows:

1. Enabling Law as Distinguished from General Statutory Law or Ordinance

Black's Law Dictionary provides the following basic definitions:

> **Enabling statute**: A law that permits or creates new powers.
>
> **General statute**: A law relating to an entire community or all persons generally. Also termed a public statute.

A city, like a county, is "a creature of limited powers, having only those powers which are delegated to it by the Constitution or the Legislature. And when a [city, or] county acts as it does here under authority derived from a statute, it must strictly follow the statutory provisions; the mode of the power is also the measure of the power." *City of Sausalito v. Cnty. of Marin,* 12 Cal. App. 3d 550, 567 (1970).

Here, Cerritos pretends that the enabling statutes, Cal. Veh. Code § 21101 and Cal. Civ. Code § 3482, are general statutes that give it the specific power to regulate particular streets, and thus

give it the authority to divert the city's traffic from one city to another. No statute gives Cerritos such power, and the civil code does not exempt Cerritos from straying beyond its delegated authority and creating a nuisance.

Respondent nonetheless persists in pretending that it is immune because it "adopted the Ordinances under the express authority of a statute." (RB at 33; pt. 3 C). No, enabling statutes did not give Cerritos the specific mandate to limit traffic on Bloomfield Ave. or any other particular street; and Cerritos is not immune from liability for the nuisance it created.

In a similar fashion, executive agencies may not promulgate offensive administrative law in the name of their enabling statutes. "Although generally whenever a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific, or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose. Additionally, while the enabling statute may be general in scope … the governing statutory provisions may be specific in prescribing the nature, purpose, or character of the regulations the agency has the power to adopt, such as the power and duty to adopt rules and regulations to effectuate the statutory provisions." 2 Cal. Jur. 3d Administrative Law § 234.[4]

---

[4] More on the scope of enabling law: "A regulation cannot restrict or enlarge the scope of a statute even as a matter of administrative interpretation of its governing statutes. In particular, if a regulation is not within the scope of the authority conferred by the governing statute or case law, the regulation is void. An administrative agency may not: [1] alter, amend, or (continued...)

The municipalities of California operate under the same enabling principles and parameters. Cerritos went beyond its enabled power.

2. Cerritos' Interpretation of the Enabling Laws and the Civil Code Defies Basic Logic

Like its fanciful attempt to harmonize its offending ordinances with the Vehicle Code, Cerritos' claim of authority to act with immunity under Cal. Civ. Code § 3480 defies basic logic. From the textbook on logic:

"The notions of necessary and sufficient conditions provide formulations of conditional statements, [i.e., "if this, then that."] … A *sufficient condition* for the occurrence of an event is a circumstance in whose presence the event must occur. The presence of oxygen is a **necessary condition** for combustion, as we noted, but it is not a sufficient condition for combustion to occur—because it is obvious that oxygen can be present without combustion occurring." Irving M. Copi, Carl Cohen and Kenneth McMahon, *Introduction to Logic,* 325, 515 (Pearson Education Ltd., 14th ed., 2014).[5]

---

extend its statutory powers; [2] take action not consistent with the provisions and purposes of the enabling legislation, or otherwise promulgate a regulation inconsistent with controlling law; [4] substitute its judgment for that of the legislature; [6] compel that to be done that lies outside the scope of the statute. An agency may not remedy an omission in the enabling act resulting from an oversight by the legislature. Administrative rules or regulations that alter or amend the statute or enlarge or impair its scope are void, and courts not only may but are also obliged to strike down such regulations." 2 Cal Jur 3d Administrative Law § 269

[5] More from Copi: "A deductive argument is valid when it succeeds in linking, with logical necessity, the conclusion to its premises. Its validity

(continued...)

Here, Cerritos makes the classic reversal of necessity and sufficiency: It claims that its enabling ordinances are *sufficient* to empower it to divert its traffic into Norwalk; when, in fact, the enabling ordinances are **necessary**, but not *sufficient* for the Cerritos City Council to enact ordinances regulating city streets. Cerritos' ploy is the oldest trick on the LSAT, and no one who has since been admitted to the Bar should fall for it.

3. Cerritos' 'Self-Enablement' Is Unconstitutional

"A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Cal. Const. art. XI, § 7. Counties and cities; ordinances and regulations; authority

Cerritos' ordinances declassifying truck routes and diverting traffic into Norwalk exceed the city's power, as granted in the Constitution of California, and as interpreted by the courts. In a landmark case, the California Supreme Court ruled that one governmental entity – in this case the federal government – may not preclude the state government's ability to tax property, which the federal government had licensed ("franchised") for use by a telegraph company. "A grant **from one government cannot abridge any property rights of a public character created by the authority of another sovereignty** … It is universally

---

refers to the relation between its propositions—between the set of propositions that serve as the premises and the one proposition that serves as the conclusion of that argument. If the conclusion follows with logical necessity from the premises, we say that the argument is valid. Therefore, validity can never apply to any single proposition by itself, because the needed relation cannot possibly be found within any one proposition." (p. 27.)

recognized that **the state in its sovereign capacity has the original right to control all public streets and highways**, and that except in so far as that control is relinquished to municipalities by the state, either by provision of the state constitution or by legislative act not inconsistent with the Constitution, it remains with the state Legislature to be exercised in any manner not prohibited by the state Constitution." *W. Union Tel. Co. v. Hopkins,* 160 Cal. 106, 118–19, 116 P. 557, 561-562 (1911). (Emphasis added.)

In that case, the Court ruled that the federal government cannot take taxable property from the state without compensation; and the state has control over its streets and highways. By the stronger argument, Cerritos may not infringe on the property of Norwalk by diverting traffic there. Furthermore, it is the state, not Cerritos, that has ultimate control of these streets. Cerritos' power is delegated.

In another landmark case, involving the nearby city of Alhambra, the California Supreme Court ruled that the city's powers to regulate its roads are not unlimited, and its ordinances must be **reasonable**. "The power of the city to legislate and to pass reasonable regulations touching this subject-matter is, of course, not questioned." *Wilson v. City of Alhambra,* 158 Cal. 430, 431–32 (1910). In that case, the ordinance prohibited a local property owner from connecting a private street with a public street. This ordinance "was unreasonable, [and] an unwarranted interference with the rights of private property." *Id.* Initially, the Los Angeles Superior Court had granted Warren Wilson's request for an

injunction restraining Alhambra from enforcing the ordinance against him *Id.* The California Supreme Court upheld the lower court's ruling against the City of Alhambra, stating that the court "may maintain an injunction against the municipality to restrain it from enforcing such ordinance." *Id.*

Similarly here, Norwalk should be fully entitled to amend its complaint to state a cause of action seeking a traditional writ of mandate compelling Cerritos to follow the requirements of Vehicle Code section 35702 by submitting its ordinances to Caltrans and obtaining Caltrans' written approval. (Appellant's Opening Brief at 20).

D. Separation of Powers Not Breached by This Matter

Determining the constitutionality of legislative enactments is a fundamental role of the courts. Breathtakingly, Respondent claims that this matter may not be brought "because Cerritos' legislative act of adopting the Ordinances is not subject to judicial review due to the separation of powers doctrine." (RB at 18; pt. II E). To the contrary:

"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound on and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each … This is of the very essence of judicial duty." *Marbury v. Madison,* 5 U.S. 137, 177–78 (1803).

Based on Respondent's upside-down position, James Madison would have been mandated to deliver William Marbury's commission as a justice of peace for the county of Washington, as

so commissioned by the outgoing president John Adams. This would be an interesting counter-factual, but that is not what happened. That was not the opinion of Justice John Marshall, and that is not the law of the United States.

In terms of the law of California, as it happens, the Court of Appeal declined to assume jurisdiction in a case involving the Vehicle Code, based on the separation of powers doctrine. *Friends of H St. v. City of Sacramento,* 20 Cal. App. 4th 152 (1993). Respondent cites this case as essentially denying this court's jurisdiction to hear this case. (RB at 18; pt. II E). Three critical distinctions between that case and this one need to be made:

First, the Friends of H Street were residents and members of a homeowners' association, not a governmental entity, like Norwalk. Then, factually, the Friends wanted the court to mandate that Sacramento reduce the traffic speed and volume on H Street. "More importantly, the prayer for relief, if granted, would effectively compel the City to modify H Street's 'through street' designation, and reduce traffic volume." *Friends,* 20 Cal. App. 4th at 164–65 (1993). Essentially, the Friends were asking the court to legislate from the bench, which is what the separation of powers doctrine seeks to prevent. Norwalk asks this court to do no such thing.

Factually, the situation here is the opposite of *Friends of H St.:* Cerritos undesignated Bloomfield Avenue and many other "through streets" that connect to Norwalk and neighboring cities. Norwalk, as a governmental entity, appropriately challenges this action. Furthermore, Cerritos' actions interfered with Norwalk's

legislative power to regulate traffic within its jurisdiction. The separation of powers doctrine does not prevent the court from intervening based on Norwalk's complaint. The *Friends* case in no way conflicts with this case, and Norwalk appropriately asks for the case to be remanded to the Superior Court.

I. CONCLUSION

Because Cerritos ignored the requirements of the Vehicle Code, and because Cerritos created a nuisance in the process, Norwalk respectfully requests that this Court reverse the trial court's decision to terminate this case at the demurrer level. Norwalk requests that the Court of Appeal remand this case, with instructions to permit Norwalk to file an amended complaint if necessary.

November 15, 2023 Respectfully submitted,

ALVAREZ-GLASMAN & COLVIN

By: ______________________
Bruce T. Murray
Counsel for Appellant
CITY OF NORWALK

CERTIFICATE OF COMPLIANCE

Cal. Rules of Court, rule 8.520(c)

Appellant's Counsel of Record hereby certifies that pursuant to Rule 8.520(c) of the California Rules of Court, the enclosed Opening Brief of Appellant City of Norwalk is produced using 13-point Roman type, Century Schoolbook font, including footnotes, and contains approximately 8,400 words (excluding the tables and this certificate), as counted by the Microsoft Word 365 version word processing program used to generate the brief, which is less than the total words permitted by the rules of court.

DATED: November 15, 2023

Bruce T. Murray
Counsel for Appellant
CITY OF NORWALK

CERTIFICATE OF SERVICE

Case Name: City of Norwalk v. City of Cerritos
Case No.: B327413

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 13181 Crossroads Parkway North, Suite 400, City of Industry, CA 91746.

On November 27, 2023, I served the foregoing documents described as **APPELLANT'S REPLY BRIEF** on the interested parties to this action as follows:

Via TrueFiling Robert O. Owen, Esq. RUTAN & TUCKER, LLP 18575 Jamboree Road, 9th Floor Irvine, California 92612 Email: bowen@rutan.com *Attorneys for Defendant, City of Cerritos*	***Via U.S. Mail*** Honorable Michael P. Linfield, Los Angeles County Superior Court Stanley Mosk Courthouse, Dept. 34 111 North Hill Street Los Angeles, California 90012

By Electronic Service Via Truefiling Based on a court order, I caused the above-entitled document(s) to be served through TrueFiling at https://www.truefiling.com addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the TrueFiling Filing Receipt Page/Confirmation will be filed, deposited, or maintained with the original document(s) in this office.

By Mail (C.C.P. 1013(a)): By placing a true copy thereof enclosed in a sealed envelope(s), with postage prepaid, addressed in the service list, for collection and mailings at City of Industry, California following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of the document for mailing. Under that practice, the document is deposited with the United States Postal Service on the same day

in the ordinary course of business. I am aware that upon motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after date of deposit for mailing contained in this affidavit.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 27, 2023, at City of Industry, California.

Liza Lu Slaughter	/S/ Liza Lu Slaughter
Declarant	Signature

4885-4477-8600, v. 57