

No. 128602

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In the  
**Supreme Court of Illinois**

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CLARK ALAVE,

*Plaintiff-Appellee,*

v.

CITY OF CHICAGO,

*Defendant-Appellant.*

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On Petition for Leave to Appeal from the Appellate Court of Illinois,  
First Judicial District, No. 1-21-0812.  
There Heard on Appeal from the Circuit Court of Cook County, Illinois,  
County Department, Law Division, No. 19 L 010879.  
The Honorable **Gerald Cleary**, Judge Presiding.

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***AMICUS CURIAE BRIEF OF RIDE ILLINOIS  
IN SUPPORT OF PLAINTIFF-APPELLEE CLARK ALAVE***

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### **THE NATURE OF THE ACTION**

The underlying action stems from personal injuries sustained by the individual plaintiff-appellee while bicycling on a roadway owned and maintained by the municipal defendant-appellant. Plaintiff-Appellee alleged that he was injured by a defect within the municipal defendant-appellant's roadway.

The Circuit Court of Cook County granted the defendant-appellant's motion to dismiss and held that the municipal defendant-appellant was immune from liability as provided by Section 3-102(a) of the Illinois Local Governmental and Governmental Employees Tort Immunity Act ('The Tort Immunity Act). The Circuit Court of Cook County held that plaintiff-appellant did not demonstrate that bicycling was both permitted and intended on the area of the roadway where he was injured.

The First District reversed the Circuit Court's holding and found that physical circumstances surrounding the area demonstrated an area where bicyclists were both permitted and intended. The Illinois Supreme Court granted the municipal defendant-appellant's leave to appeal the First District's holding.

Ride Illinois, formerly known as the League of Illinois Bicyclists, filed a motion to file an amicus curiae brief in the instant action.

### **ISSUE PRESENTED**

Whether the trial court erred in dismissing the plaintiff's action.

### **JURISDICTION**

This court has jurisdiction pursuant to Illinois Supreme Court Rule 315.

**INTEREST OF THE *AMICUS CURIAE***

Ride Illinois, formerly known as the League of Illinois Bicyclists, is a non-profit statewide organization dedicated to improving Illinois through bicycling. Ride Illinois is the state affiliate of the national League of American Bicyclists. Ride Illinois advocates on the state and local levels for all Illinois bicyclists by promoting bicycle access, education on bicycling, and bicycling safety. The decision of this court will impact our membership and, more importantly, bicyclists throughout Illinois and Illinois citizens at large to a very significant extent.

This amicus brief will assist the court by providing analysis of the legislative history regarding the rights of bicyclists in Illinois and provide context that bicyclists were always meant to be both permitted and intended users of the state's roadways. In addition, this amicus brief will assist the court in an understanding of the bicycling plans implemented by the City of Chicago and State of Illinois that were in effect at the relevant times.

## ARGUMENT

### **I. THE ILLINOIS LEGISLATURE HAS ENACTED CONTEMPORARY LAWS THAT BICYCLISTS ARE ENTITLED TO ALL OF THE RIGHTS OF OTHER VEHICLE OPERATORS**

The Illinois Legislature has enacted legislation that reflects an intention for bicycles to be a key component of this modern transportation scheme in the state. The actions of the Illinois Legislature are in contrast to much of the existing precedent in Illinois caselaw regarding the use of bicycles. Moreover, the 1998 majority decision in *Boub v. Township of Wayne*, 183 Ill. 2d 520 (1998) is factually inconsistent with the contemporary usage rates and utilization of bicycling as a part of a modern transportation scheme. Specifically, the bicycle use at issue in this matter is a part of these larger bicycle transportation plans within Chicago and throughout the entire state of Illinois. To accept the arguments of defendant-appellant would be in contrast to the City of Chicago's own plans and contrary to the Illinois legislature's recent legislation. For these reasons, the opinion of the Appellate Court must be upheld.

Ride Illinois therefore submits this *amicus curiae* brief to support not only plaintiff-appellee Clark Alave, but all bicyclists in the State of Illinois. The central issue of the applicability of Section 3-102(a) of the Illinois Tort Immunity Act in contemporary times and conditions must be viewed with more recent legislation and bicycling usage in mind. The combination of this legislation and the practical realities of current bicycling rates in Illinois supports this court upholding the appellate court's holding.

Section 3-102(a) of the Illinois Tort Immunity Act provides:

“A local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property in a manner which and at such times was reasonably foreseeable that it

would be use, and shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition.”

See: 745 ILCS 10/3-102(a).

The Illinois Supreme Court issued its ruling in *Boub v. Wayne County* on October 22, 1998. *Boub v. Township of Wayne*, 183 Ill. 2d 520 (1998). The bicycle crash at issue in the underlying litigation occurred on September 8, 1992. Government agencies and society at large now consider bicycles as not only a leisure activity but as a valuable and serious method of transportation that provides major benefits to municipalities. In the 31 years since the underlying crash and the 25 years since *Boub* was decided, bicycle use has increased dramatically and crucial legislation has been enacted by the Illinois legislature and signed into law.

**A. 2016 Clarification of Bicycles as Vehicles Under Illinois Vehicle Code**

In 1998 the *Boub* court held that when it comes to intended use, “highways, streets, roads and bridges in Illinois are primarily designed and intended for use by **vehicles**.” *Boub*, 183 Ill. 2d at 531 (emphasis added). Defendant-Appellant in its brief to the court incorrectly states that bicycles were not vehicles under Illinois law when Clark Alave crashed in 2019. In fact, the standing of bicycles as vehicles under the Illinois Vehicle Code was clarified in 2016 and went into effect in 2017 under the legislation commonly known as “Dennis’ Law.” The Court here has an opportunity to further clarify the application of §3-102(a) to bicycling in this contemporary context and incorporate the intentions of the Illinois Legislature.

On August 12, 2016, Illinois Governor Bruce Rauner signed Public Act 99-785 that clarified that Illinois bicyclists are to receive all the same rights in traffic situations

involving the right-of-way as the drivers of motor vehicles as provided in Section 11-1502 of the Illinois Vehicle Code. See: 625 ILCS 5/11-1502. This clarification went into effect on January 1, 2017 and made the legislative intent absolutely clear that bicycles are “vehicles” as defined in the Illinois Vehicle Code and that motorists must provide the right-of-way to bicycles when the bicyclist is entitled to that right-of-way as would any other vehicle.

As a result at the time of Clark Alave’s crash on June 8, 2019, Section 11-1502 of the Illinois Vehicle Code read as follows:

(625 ILCS 5/11-1502) (from Ch. 95 1/2, par. 11-1502)  
 Sec. 11-1502. Traffic laws apply to persons riding bicycles. **Every person riding a bicycle upon a highway shall be granted all of the rights, including, but not limited to, rights under Article IX of this Chapter, and shall be subject to all of the duties applicable to the driver of a vehicle by this Code**, except as to special regulations in this Article XV and those provisions of this Code which by their nature can have no application.  
 (Source: P.A. 99-785, eff. 1-1-17.)(emphasis added).

**B. 1981 Implementation of Bicycles as Vehicles Under Illinois Vehicle Code**

This relatively recent clarification is of Section 11-1502 – “Traffic laws apply to persons riding bicycles” of the Illinois Vehicle Code. Section 11-1502 was first incorporated into the Illinois Rules of the Road on August 12, 1981, when signed into law by Governor James R. Thompson as Public Act 82-132. The legislative history reflects an actual legislative intention to include bicycles within the Illinois Vehicle Code.

This legislative intention is reflected in the Illinois Senate floor debate in Springfield that occurred before Gov. Thompson signed the bill into law. Public Act 82-132 was originally Senate Bill 0462 and was sponsored by State Senator Mark Rhoades. This change in the law to include bicycles within the Rules of the Road was brought on



behalf of the Illinois Secretary of State's Safety Advisory Committee and was also endorsed by the Illinois Motor Vehicle Laws Commission.

When the bill was presented for debate for a final vote on the floor of the Illinois Senate on May 21, 1981, Senator Rhoades presented the bill and specifically noted that the purpose of the bill was to update Illinois laws to conform to the Uniform Vehicle Code. The Uniform Vehicle Code is a privately prepared set of traffic laws which are prepared by the National Committee on Uniform Traffic Laws and Ordinances, a private non-profit organization. There was no debate on the bill and no opposition was noted on the record. Taking this record into context of bicycling in an immediate historical context could on its own be a basis for the court to take a new look at the decision in *Boub*. *Transcript of Illinois Senate Debate on Senate Bill 0462, May 21, 1981*. Retrieved from: <https://www.ilga.gov/senate/transcripts/strans82/ST052181.pdf>.

A review of *Boub* does not reflect an analysis of this legislative history and therefore the court did not analyze the plain language of Section 11-1502 other than briefly in the dissent. Nonetheless, through our duly elected legislature and governors, the fact is that Illinois law since 1981 has specifically provided that bicyclists are to be entitled to “all of the rights” of motorists. Any confusion on that legislative intent to include bicycles as “vehicles” within Section 11-1502 of the Illinois Vehicle Code behind was clarified with the passage of Public Act 99-785 in 2016.

## **II. PRECEDENT HAS NOT CAUGHT UP TO THE CURRENT BICYCLE CLIMATE IN THE UNITED STATES AND ILLINOIS**

Bicycling in Illinois has increased exponentially since 1998. In trying to demonstrate that all bicyclists were necessarily intended users of Illinois' roadways, the plaintiff and amici in *Boub* argued that bicyclists have “customarily and traditionally” used

the roadways. The court disagreed and distinguished bicyclists not only from motorists, but also from pedestrians whose use of parkways for walking was accepted as an intended use. The court considered the “customary and traditional” use of roads to be a reflection of the permitted nature of bicycling, but not a reflection of any intention by local public entities to have bicycles on their roadways.

This argument was fragile in 1998, but today defies any reasonable understanding of the scope and scale by which the roadways in Illinois are used by bicyclists. There are multiple reasons for why this change should occur, and not just legal ones. The construction of hundreds of miles of bicycle lanes in Illinois since *Boub* on its own should be satisfactory to demonstrate that bicycles are intended throughout Illinois.

Defendant-Appellant’s argument that a person should walk a bicycle from an implanted bike share station until they reach a designated bicycle lane is ridiculous. This argument would also then have ANY bicyclist having to walk their bicycle from their home or work or anywhere else until they reach a designated bicycle lane. This argument fails on its face.

Through programs such as “Bike to Work Week,” the installation of bike racks, and the implementation of new bike rental programs, many municipalities now encourage its citizens to use bicycles as a method of transport. Defendant-Appellant’s own brief references bike share programs in Chicago, Aurora, Grayslake, Canton and Rock Falls. In addition, the Divvy bike share program extends into Evanston, Illinois. Divvy Bike Map. Retrieved from: <https://account.divvybikes.com/map>. There is also the Veo bike sharing program in Champaign, Illinois in collaboration with the University of Illinois, the City of Champaign and the City of Urbans. “Bike Share with Veo.” Retrieved from:

<https://icap.sustainability.illinois.edu/project/bike-share-veo>. These pro-bicycle programs clearly indicate that many townships not only intend for bicyclists to use public roads, but take a step even further by encouraging bicycling.

The number of bicycle riders in Illinois continues to soar. In the decade and a half after the 1998 *Boub* decision there was a 61% growth of bicycle commuting in Illinois between 2005 and 2014. United States Census Bureau. (2014, May); McLeod, Ken. League of American Bicyclists. (2015, October). “Where We Ride: Analysis of Bicycling in American Cities.” Retrieved from: [http://www.bikeleague.org/sites/default/files/ACS\\_report\\_forweb.pdf](http://www.bikeleague.org/sites/default/files/ACS_report_forweb.pdf).

Chicago’s development of bike lanes is guided by the Streets for Cycling Plan 2020, a plan to build a continuous network of 645 miles of on-street bikeways throughout Chicago. The overall system consists of three smaller systems: Neighborhood Bike Routes that utilize residential streets, Crosstown Bike Routes that use collector and arterial roadways, and Spoke Routes that connect all corners of the City to Downtown. City of Chicago – Department of Transportation “*Chicago Streets for Cycling Plan 2020*.” Retrieved from: <http://www.chicagobicycles.org/pdf/2012%20Projects/ChicagoStreetsforCycling2020.pdf>

**A. Illinois Bike Transportation Plan’s Incorporation of “Complete Streets”**

In 2014, the Illinois Department of Transportation (IDOT) released the Illinois Bike Transportation Plan, the first statewide bike plan in Illinois, as a component of The Illinois Long Range Transportation Plan published in 2012. The Illinois Bike Transportation Plan explains how the term “Complete Streets” is used within the plan. IDOT’s own document states as follows:

**ILLINOIS COMPLETE STREETS** Complete Streets in the context of this plan most often refers to the requirements of Section 4-220 of the Illinois Highway Code, commonly known as the Complete Streets law of 2007, which states: The passage of this law represented a monumental shift in the support of pedestrian and bicycle transportation statewide. In general, projects with start dates after 2008 have been required to facilitate bicycle and pedestrian transportation where warranted. See: *Illinois Bike Transportation Plan, Section 2 - Research and Findings Existing Conditions, Benefits of Bicycling, and Analysis*, Pg. 18.

The Illinois Bike Transportation Plan’s fundamental goal is “to provide a framework for the state to address the changing transportation trends while enhancing safe and sustainable transportation options in Illinois.” (*Id.* at 17). The Plan focuses on developing regional connections and corridors based on user demand, missing links between points of interest and extensions to current bikeways/trails in Illinois. (*Id.* at 12-14).

### **III. BICYCLING PROVIDES DIRECT AND TANGIBLE BENEFITS TO MUNICIPALITIES**

The Illinois Bike Transportation Plan includes a “Benefits and Impact Analysis” that takes into account “Livability Benefits,” “Economic Benefits,” Health and Safety Benefits” and “Environmental Benefits” to the citizens of Illinois. *Id.* at 19. Bicycling provides economic benefits to communities, beyond simple the recreational enjoyment of bicycling. These benefits are in the forms of economic impact, community access, and reduction in traffic and pollution.

“Livability Benefits” as assessed by the plan would include “Bicycle promotion through infrastructure and educational programs will increase the state’s quality of life by expanding Illinois residents’ mobility options.” Safe and efficient bicycle facilities allow residents to spend less money on automobile operation and maintenance costs which allows spending to shift to other consumer purchases.

“Economic Benefits” would include lower costs to Illinois citizens and including bicycling in infrastructure plans would reduce overall costs for the state. *Id.* at 20. “Health and Safety Benefits” are twofold. First, bicycling is an exercise that lowers the risk of disease and increase overall well-being. Second, bicycle infrastructure “can reduce the likelihood of crashes” which lowers the burden on first responders, hospitals, and increases the overall well-being of the state’s citizens. *Id.* at 20. The state’s analysis of “Environmental Benefits” are obvious. The investment by the State of Illinois in bicycling reduces traffic congestion and “results in the reduction of smog and ground level ozone, which are both large contributors of greenhouse gases.”

The state also assessed in its plan that bicycling simply reduces overall traffic congestion. *Id.* at 20. Cycling provides a low-cost mobility option that places fewer demands on local roads. Safe transportation alternatives can result in reduced traffic congestion and the preservation of existing roadways by reducing the average daily traffic counts.

Published studies demonstrate that bicycle networks create jobs, increase economic activity, and can provide cost savings to municipalities. In the United States, the 60 million annual recreational bicyclists spend \$46.9 billion on meals, transportation, lodging, gifts and entertainment. One study estimates that the spill-over effects of all bicycling-related activities nationally could be as large as \$133 billion, supporting 1.1 million jobs and generating \$17.7 billion in federal, state, and local taxes. (McLeod, Ken. League of American Bicyclists. (2015, October). “*Where We Ride: Analysis of Bicycling in American Cities*” citing “*The Active Outdoor Recreation Economy*,” The Outdoor Industry Foundation, 2006.

By their very design, modern bicycle lanes, paths, and routes combine to form a functional network that connects neighborhoods and communities in ways that would otherwise not be available. Areas that otherwise would only be accessible via motor vehicle can be accessed by bicycle.

**A. Risk of a “Chilling Effect”**

When a range of transportation options are provided, people of all ages and abilities will have access to appropriate transportation services and choices. Safe routes provide options for children to transport themselves to community destinations. This can also help citizens lead more active and independent lives.

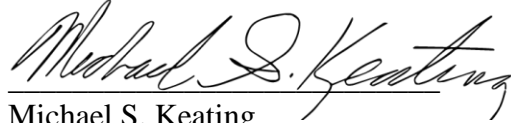
If this court continues to hold that bicycles are “permitted but not intended” unless specifically allowed there would be a “chilling effect” that ripples through municipalities throughout Illinois. Ride Illinois is concerned that municipalities, faced with the notion that bicycles are an exception within the law, may lose the motivation to continue the state’s path of increasing bicycle infrastructure.

*Boub* and its progeny are an anachronism that have weighed down the advancement of bicycling in Illinois for decades despite the changes made to the Illinois Vehicle Code by the Illinois Legislature. Contemporary bicycling in Illinois has evolved to the point that the precedent relied on by the appellant is simply factually inapplicable. Moreover, the precedent relied upon against the specifics of this matter are easily distinguishable due to the nature of the City of Chicago’s and State of Illinois’ own cycling plans. Thus, for all the reasons set forth herein, in the briefs of amici, and in the Plaintiff-Appellee’s brief on appeal, this Court should affirm the decision of the Appellate Court.

**CONCLUSION**

This court should uphold the appellate court's judgment.

Respectfully submitted on behalf of the  
Amicus Curiae, Ride Illinois,

A handwritten signature in black ink that reads "Michael S. Keating". The signature is written in a cursive style with a horizontal line underneath the name.

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a), (b), Rule 315(h) and 345. The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), contains 12 pages.

*/s/ Michael S. Keating*

\_\_\_\_\_  
Michael S. Keating



**NOTICE OF FILING and PROOF OF SERVICE**

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In the Supreme Court of Illinois

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CLARK ALAVE,	)	
	)	
<i>Plaintiff-Appellee,</i>	)	
	)	
v.	)	No. 128602
	)	
CITY OF CHICAGO,	)	
	)	
<i>Defendant-Appellant.</i>	)	

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The undersigned, being first duly sworn, deposes and states that on March 22, 2023, there was electronically filed and served upon the Clerk of the above court the *Amicus Curiae* Brief of Ride Illinois in Support of Plaintiff-Appellee. On March 22, 2023, service of the Brief will be accomplished electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that thirteen copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Michael S. Keating  
Michael S. Keating

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Michael S. Keating  
Michael S. Keating