

STATE OF MICHIGAN  
IN THE SUPREME COURT

HELEN YONO,

Plaintiff-Appellee,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellant.

Supreme Court No. \_\_\_\_\_

Court of Appeals No. 308968

Court of Claims No. 11-000117-MD

Publ Opn  
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MICHIGAN DEPARTMENT OF TRANSPORTATION'S  
APPLICATION FOR LEAVE TO APPEAL

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**STATEMENT OF QUESTION PRESENTED**

1. This Court has narrowly construed the highway exception to governmental immunity to encompass only defects located within the travel lanes of a highway. The Court of Appeals deviated from this construction when it broadly interpreted the highway exception to include defects in marked parallel-parking lanes and held that MDOT is liable for such a defect. Did the Court of Appeals err in denying immunity to MDOT?

MDOT's answer: Yes.

Yono's answer: No.

Court of Appeals' answer: No.

## STATUTE INVOLVED

### MCL 691.1402(1):

Each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. The liability, procedure, and remedy as to county roads under the jurisdiction of a county road commission shall be as provided in section 21 of chapter IV of 1909 PA 283, MCL 224.21. *Except as provided in section 2a, the duty of a governmental agency to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel.* A judgment against the state based on a claim arising under this section from acts or omissions of the state transportation department is payable only from restricted funds appropriated to the state transportation department or funds provided by its insurer. [Emphasis added.]

## STATEMENT OF ORDER APPEALED FROM AND RELIEF SOUGHT

Defendant-Appellant Michigan Department of Transportation (MDOT) seeks relief from the Court of Appeals' September 23, 2014 opinion and order on remand, in which the Court of Appeals again denied governmental immunity to MDOT based on the highway exception to immunity, MCL 691.1402(1). MDOT respectfully requests that this Court either: (1) grant MDOT's Application for Leave and hold that a parallel-parking lane is not designed for vehicular travel; or (2) vacate the Court of Appeals' decision and remand to the Court of Claims for further proceedings consistent with this Court's precedents.

## INTRODUCTION

This case finds itself before the Court a second time, having previously been remanded to the Court of Appeals for two limited purposes: (1) to explain how a court should determine whether a portion of a highway is “designed for vehicular travel”; and (2) to decide whether Plaintiff-Appellee Helen Yono pleaded sufficient facts to survive summary disposition. In attempting to answer those questions, the Court of Appeals ignored precedent and set forth new law that is at odds with this Court’s interpretation of the highway exception to governmental immunity.

Despite this Court’s repeated admonitions that exceptions to governmental immunity are to be narrowly construed and strictly applied, the Court of Appeals defined certain statutory terms (including “designed”) in a way that expands the scope of the exception. Specifically, even though the court recognized that a portion of a highway is designed for vehicular travel when it is *intended* for vehicular travel, it extended the State’s liability to any portion that was originally *engineered* or *constructed* to support vehicular travel, even if the design as a whole shows a clear intent, such as by markings, that the portion is *not* intended to be a travel lane. In doing so, the Court of Appeals expanded MDOT’s tort liability well beyond the legislative mandate.

MDOT now asks this Court to reaffirm the principles of governmental immunity laid out in *Nawrocki v Macomb County Road Commission*, 463 Mich 143; 615 NW2d 702 (2000), and *Grimes v Department of Transportation*, 475 Mich 72; 715 NW2d 275 (2006), and hold that a marked parallel-parking lane is not designed for vehicular travel.

This Court should grant MDOT's application for leave because:

- This case seeks relief from a State agency and has significant public interest. In addition to affecting MDOT, this case affects all public agencies charged with maintaining highways and all Michigan citizens whose tax dollars fund those efforts. MCR 7.302(B)(2).
- This case involves legal principles of major significance to the State's jurisprudence because it addresses the scope of governmental liability for alleged highway defects, an issue that this Court addressed in *Nawrocki* and *Grimes*. MCR 7.302(B)(3).
- The Court of Appeals' published decision conflicts with this Court's decisions in *Nawrocki* and *Grimes* and with this Court's general approach to evaluating the State's exceptions to immunity from tort liability. MCR 7.302(B)(5).

### STATEMENT OF FACTS

On July 31, 2011, Yono allegedly injured her ankle while stepping into a pothole or crumbled asphalt near M-22 in Suttons Bay. (Compl, ¶ 13.) Yono averred that the alleged highway defect was located "at the edge of the roadway of the east side of M-22, abutting the concrete gutter and curb," which she described as being "on the improved portion of M-22 . . . designed for vehicular travel." (9/2/11 Notice of Intent, ¶¶ 1, 4.) She provided several photographs depicting the location of the alleged defect. (*Id.* at 5-19.)

MDOT moved for summary disposition under MCR 2.116(C)(7), attaching the affidavit of Gary Niemi, an MDOT Development Engineer. Niemi further described the area in question:

- M-22 consists of two traffic lanes (northbound and southbound) and two parallel-parking lanes. (MDOT's Br in Support of Mot for Summary Disposition, Attachment 3, Niemi Aff, ¶ 5.)

- The two travel lanes measure 22 feet wide—11 feet per lane—and comply with federal and state design standards for this type of highway. (Niemi Aff, ¶¶ 6-9.)
- MDOT does not take the parallel-parking lanes into account when measuring the traveled way and/or measuring individual lane widths. (Niemi Aff, ¶ 17.)
- The buffer zone between the northbound travel lane and the parallel-parking lane is 8.3 feet wide. (Niemi Aff, ¶ 11.)
- The alleged defect is located between the edge of the asphalt of parallel-parking lane and the concrete gutter pan—neither of which is designed as a travel lane. (Niemi Aff, ¶¶ 11, 19.)

The Court of Claims denied MDOT's motion.

### PROCEEDINGS BELOW

**The Court of Claims denied governmental immunity to MDOT.**

Yono filed suit in the Court of Claims on November 7, 2011, relying on the “highway exception” to governmental immunity, MCL 691.1402, as the basis for MDOT's liability.

On November 28, 2011, MDOT moved for summary disposition, arguing that the location of the alleged injury—a marked parallel-parking lane abutting the curb—did not fall within the “improved portion of the highway designed for vehicular travel.” MCL 691.1402(1). The trial court denied the motion “[b]ecause in order for a vehicle to get to the parking spot, they have to drive there.” (2/1/12 Hr'g Tr, p 31 lines 9-15.)

**The Court of Appeals affirmed.**

MDOT appealed the denial of immunity. On December 20, 2012, the Court of Appeals affirmed in a published opinion, distinguishing the marked parking lanes from highway shoulders and other installations not designed for vehicular travel. *Yono v Dep't of Transportation*, 299 Mich App 102; 829 NW2d 249 (2013) (“*Yono I*”). Judge Talbot dissented, concluding that *Grimes* compelled a finding that the parking lanes fell outside the area designed for vehicular travel. (*Id.* at 120 (Talbot, J., dissenting).)

**This Court remanded to the Court of Appeals for further proceedings.**

MDOT filed an application for leave to appeal on January 29, 2013. This Court requested supplemental briefs addressing “whether the parallel parking area where the plaintiff fell is in the improved portion of the highway designed for vehicular travel within the meaning of MCL 691.1402(1).” *Yono v Dep't of Transportation*, 495 Mich 859; 836 NW2d 686 (2013). On January 16, 2014, the Court heard argument on the application, and on April 1, 2014, the Court remanded the case to the Court of Appeals to consider two questions:

(1) [W]hat standard a court should apply in determining as a matter of law whether a portion of highway was designed for vehicular travel, as used in MCL 691.1402(1); and (2) whether the plaintiff has pled sufficient facts to create a genuine issue of material fact under this standard. [*Yono v Dep't of Transportation* 495 Mich 982; 843 NW2d 923, 924 (2014).]

On remand, the Court of Appeals again held that MDOT was not entitled to immunity.

After remand, the Court of Appeals accepted supplemental briefs and issued a published opinion again denying governmental immunity to MDOT.<sup>1</sup> (9/23/14 Slip op (attached as Ex. A).)

After stating that this Court's remand order was "unclear" (*id.* at 3), the court reviewed Yono's complaint, concluding that she facially pleaded in avoidance of governmental immunity by placing MDOT on notice that she was invoking the highway exception. (*Id.* at 6.) Alternatively, the court suggested that Yono would have been entitled to amend her complaint had she deficiently pleaded. (*Id.* at 6-7.)

The court next addressed whether MDOT provided sufficient evidence to rebut Yono's allegations that the marked parallel-parking lane was designed for vehicular travel. The court began by defining the statutory terms "designed" and "vehicle." (*Id.* at 8.) It then rendered its understanding of the exception, but remonstrated that "[w]e are not, however, writing on a clean slate." (*Id.* at 8-9.) Rather, the court observed that it was required to follow this Court's "limited understanding" of the statutory language. (*Id.* at 10.)

Further lamenting that "we are no longer free to give MCL 691.1402(1) its ordinary meaning," the court concluded that MDOT's duty to maintain is not limited "to that portion of the highway used as a thoroughfare." (*Id.*) Instead, MDOT is obligated to keep in reasonable repair "any part of the highway that was

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<sup>1</sup> On remand, Judge Borrello replaced Judge Talbot, due to Judge Talbot's interim appointment to the Court of Claims.

specifically designed—that is, planned, purposed, or intended—to support travel by vehicles (manpowered, animal powered, or motorized), . . . .” (*Id.* at 10-11.) Thus, to be entitled to immunity, MDOT would need to show that the parallel-parking lanes “fell outside the improved portion of the highway that was planned, purposed, or intended to support regular travel by vehicles.” (*Id.* at 11.)

The court proceeded to review the Niemi affidavit under these standards. Despite Niemi’s reliance on state and federal design standards, the court noted that he did not participate in the *actual* design of the highway, and it rejected what it perceived as Niemi’s assumption that the highway exception applies only to the “portion of the highway designed to sustain the heaviest regular travel.” (*Id.*) As such, Niemi’s opinions were “irrelevant” and therefore inadmissible. (*Id.* at 11-12.) Consequently, the court held that MDOT failed to rebut Yono’s allegations and affirmed without addressing Yono’s competing affidavit. (*Id.* at 12-13.)

MDOT now requests leave to appeal this decision.

### STANDARD OF REVIEW

This Court reviews motions for summary disposition and questions of statutory interpretation *de novo*. See, e.g., *Grimes*, 475 Mich at 76.

## ARGUMENT

### **I. The Court of Appeals' decision is incompatible with this Court's highway-exception jurisprudence.**

Michigan law has long confirmed that “[t]he State, as sovereign, is immune from suit save as it consents to be sued, and any relinquishment of sovereign immunity must be strictly interpreted.” *Manion v State*, 303 Mich 1, 3; 5 NW2d 527 (1940). The Court of Appeals strayed from this rule (and from binding Supreme Court precedent) when it broadly construed the highway exception to governmental immunity to include defects in marked parallel-parking lanes.

#### **A. Statutory exceptions to governmental immunity, including the highway exception, are to be narrowly construed.**

“[A]n act of the legislature, conferring jurisdiction upon the courts in the particular case, is the usual mode by which the state consents to submit its rights to the judgment of the judiciary.” *Michigan State Bank v Hastings*, 1 Doug 225, 236 (Mich 1844). The Government Tort Liability Act (GTLA), 1964 PA 270, MCL 691.1401 *et seq.*, provides one such legislative relinquishment of this immunity. The GTLA retains immunity for the State and its political subdivisions when engaged in governmental functions, subject to six statutory exceptions.

The highway exception to immunity, MCL 691.1402, relevant here, exposes governmental agencies to tort liability if they do not keep their highways “in reasonable repair” so they are “reasonably safe and convenient for public travel.” MCL 691.1402(1). But this obligation is limited; it applies only to “the improved portion of the highway designed for vehicular travel” and excludes “sidewalks,

trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel.” *Id.*

Consistent with its traditional approach to matters of immunity, this Court has described the GTLA’s retention of immunity as “expressed in the broadest possible language” and limited only by the “narrowly drawn” statutory exceptions. *Ross v Consumers Power Co*, 420 Mich 527, 618; 363 NW2d 641 (1984). See also *Nawrocki*, 463 Mich at 158 (“[T]he immunity conferred upon governmental agencies is *broad*, and the statutory exceptions thereto are to be *narrowly* construed.”).

In 2000, this Court applied this “basic principle” of interpretation to the highway exception in *Nawrocki*, construing the exception as available only for defects in “the actual roadbed, paved or unpaved, designed for vehicular travel.” *Nawrocki*, 463 Mich at 152, 158. In doing so, the Court overruled prior case law denigrating governmental immunity for inadequate signage or similar installations that are not part of the actual roadbed. *Id.* at 180. In short, *Nawrocki* confirmed that a “narrow construction and application of the highway exception and the plain language of the statutory clause” was the appropriate standard under which to review highway-defect claims. *Id.* at 151.

Then in 2006, this Court applied these precedents in *Grimes* in examining whether a highway shoulder is designed for vehicular travel. Again affirming that the scope of the highway exception is “narrowly drawn” and reasoning that “such narrowing of the duty supplies important textual clues regarding the Legislature’s

intent,” the Court concluded that the Legislature did not intend to abrogate immunity for defects in a highway shoulder. *Grimes*, 475 Mich at 78, 91.

To reach this conclusion, the Court considered competing arguments, all of which it found inconsistent with the legislative intent. First, the Court rejected a broad definition of “travel” as “the shortest incremental movement by a vehicle on an improved surface.” *Id.* at 89. It also distinguished the “disparate concepts” of design and contemplated use, reasoning that because “vehicular traffic might *use* an improved portion of the highway does not mean that that portion was ‘designed for vehicular travel.’” *Id.* at 90. Rather, it held that “taken as a whole,” the highway exception requires that “only the *travel lanes* of a highway are subject to the duty of repair and maintenance specified in MCL 691.1402(1).” *Id.* at 91 (emphasis added).

In short, *Grimes* analyzed the highway exception in accordance with this Court’s 150-year-old rule of statutory interpretation that “every word and clause of a statute shall be presumed to have been intended to have some force and effect.” *Morrill v Seymour*, 3 Mich 64, 1853 WL 1965, at \*2 (1853). No later decision of this Court has limited *Grimes* or abrogated the reasoning employed therein. *Grimes*’s limitation of liability to “travel lanes” remains controlling law.

**B. The Court of Appeals erred in broadly construing the highway exception.**

Despite this Court’s clear guidance in *Nawrocki* and *Grimes*, the Court of Appeals inverted the analysis, broadly construing the highway exception and

narrowing the scope of governmental immunity. In doing so, the Court of Appeals eschewed traditional modes of statutory interpretation and departed from *Grimes*.

The Court of Appeals devised the following rule: MDOT must keep in reasonable repair “any part of the highway that was specifically designed—that is, planned, purposed, or intended—to support travel by vehicles (manpowered, animal powered, or motorized, . . .).” (Slip op, p 11.) If the highway exception applies to any portion of the highway capable of “supporting” this wide swath of vehicles, rather than the “travel lanes” as defined in *Grimes*, governmental agencies could be responsible for defects in the following:

- A highway shoulder, in direct conflict with *Grimes*.
- An improved grassy median in the right-of-way, capable of supporting travel by lawn tractors or other maintenance and construction vehicles. See *Grimes*, 475 Mich at 90, n 53.
- Parallel-parking lanes.
- A concrete median barrier on the highway, capable of supporting a well-trained bicyclist or unicyclist.
- Basically, any part of a highway right of way where it is possible to ride or drive a “means of conveyance.” (Slip op, p 8.)

Had the panel stayed faithful to *Grimes* and the statutory text, these results would have been avoided. *Grimes* simply inquired whether the area at issue was a “travel lane” based on the definition of “travel.” Because “travel” does not include “the shortest incremental movement by a vehicle on an improved surface,” a motorist’s momentary swerve onto a shoulder did not render the shoulder a travel lane. *Grimes*, 475 Mich at 90. Similarly, a motorist making an “incremental

movement” to enter or exit a parking spot is not “traveling” within this definition. Nor is a motorist who makes fleeting use of an unoccupied parking lane to pass a vehicle. See MCL 257.637(1)(b).<sup>2</sup>

The panel’s concerns about particular portions of the highway right of way, including right-turn lanes, ramps, and “Michigan left” turnaround lanes, can be allayed by realizing that these installations are similarly distinguishable from parallel-parking lanes by reference to *Grimes*’ definition of travel. These exemplars all permit motorists to continue their journeys uninterrupted, whereas motorists enter parking lanes to pause or end their travel rather than to further their journey. And unlike parallel-parking lanes, these installations are all found *within* the pavement markings designating the travel lanes. Finally, the Court of Appeals’ anecdotal evidence that vehicles sometimes stray outside the marked lanes when traveling is the type of “common experience” that *Grimes* rejected as a method of judicial interpretation. *Grimes*, 475 Mich at 85.

Although plaintiffs like Yono may arouse sympathy, that sympathy must be tempered by the fact that “[o]nly public entities are required to build and maintain thousands of miles of streets, sidewalks and highways.” *Nawrocki*, 463 Mich at 156. MDOT is required by law to construct and maintain state trunk-line highways, see 1951 PA 51, MCL 247.661 *et seq.*, and it cannot “reduce its risk of potential liability by refusing” to perform those tasks. *Nawrocki*, 463 Mich at 156. To account for this

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<sup>2</sup> MDOT cites MCL 257.637(1)(b) only to respond to *Yono*’s suggestion that this statute is demonstrative of a parking lane’s intended design. Reliance on the Motor Vehicle Code to interpret the GTLA is “a perilous endeavor to be avoided by our courts.” *Grimes*, 475 Mich at 85.

truism, waivers of governmental immunity must be strictly construed, with the unavoidable result that some injuries “will inevitably go unremedied.” *Id.* at 157.

The Court of Appeals’ decision is incompatible with *Grimes* and this Court’s historical approach to interpreting statutory waivers of governmental immunity. This broadening of tort liability is inconsistent with the legislative intent, and its impacts will be felt far outside this case.

**II. Geometric design, which includes paint markings, is an integral part of highway design.**

On remand, the Court of Appeals was to identify the legal standard used to decide if a portion of highway is designed for vehicular travel and then apply that standard to Yono’s complaint. Although the panel recited the legal standard regarding motions brought under MCR 2.116(C)(7), see generally *Patterson v Kleiman*, 447 Mich 429; 526 NW2d 879 (1994), it misapplied those standards, rejecting MDOT’s affidavit as irrelevant without considering Yono’s submitted evidence.

Gary Niemi, an MDOT engineer who performs design work, relied on federal and state design standards to opine that the parallel-parking lanes were not designed as travel lanes. (Niemi Aff, ¶¶ 3, 8-9.) The Court of Appeals found Niemi’s affidavit inadmissible, largely because Niemi did not personally take part in

the initial design or otherwise have actual knowledge of the original design process.<sup>3</sup> (Slip op, p 11.)

Had the Court of Appeals required Yono to rebut Niemi's affidavit, rather than doing so for her, it would have found her expert's affidavit lacking. Yono's expert did not demonstrate any design experience. He did not review any plan sheets or cite to any design standards or other guidelines. Rather, his opinion was based solely on his visual inspection of the highway and pictures thereof. (Yono Br in Response to MDOT's Mot for Summary Disposition, Exhibit 10, Edwin Novak Aff, ¶¶ 4-8.) The Court of Appeals should have found that Yono's conclusory affidavit failed to raise a genuine issue of material fact as to the design of the parallel-parking spaces.

More importantly, highway design encompasses more than the engineering or construction of the physical surface. In rejecting Niemi's affidavit, however, the Court of Appeals credited only this limited definition of the term "design" and so equated "designed" with "engineered," despite its own recognition that the word "designed" simply means "intended" for a particular purpose (slip op, p 8). This myopic view of highway design—i.e., of how MDOT plans and intends to use specific portions of highways—fails to account for all of the following:

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<sup>3</sup> Not to be macabre, but the chances of *anyone* having personal knowledge of the *actual* original design of a roadway last reconstructed in 1956 are rapidly dwindling. Moreover, Niemi can undoubtedly be qualified to give his opinion without having participated in the actual design. For example, medical experts routinely opine on procedures that they did not personally perform. Under the Court of Appeals' view, only the doctor who actually performed an operation would be qualified to give expert testimony.

- Highway design consists of, among other things, the material design of the roadway and associated infrastructure (i.e., the pavement, drainage systems, guardrail, signing, etc.) and geometric design (i.e., the layout of curves, hills, lane widths, etc.).
- Geometric design consists, among other things, of the horizontal and vertical alignment of the road, super-elevation, lane widths, and the number of lanes.
- The geometrics of a highway are designed to accommodate the intended use of a highway.
- Pavement markings are an integral aspect of a highway's geometric design, as they convey the intended operation (i.e., the function and use of a roadway portion) to the motorist. Among their uses, pavement markings delineate travel lanes from non-travel areas.
- MDOT can alter portions of a highway's geometric design without re-designing the material aspects.
- Recent examples include the conversions of a four-travel-lane highway (two lanes each direction) to a three-travel-lane highway (one lane in each direction and a center turning lane). This has been accomplished through changes to the geometric design of the highway, without widening or narrowing the material roadbed.
- MDOT's plan sheets include both material and geometric design components. MDOT uses standard-pavement-marking plans and, as needed, specific plans to address the paint markings to be used to incorporate the geometric design of the highway.
- Parallel-parking lanes are not designed as travel lanes and are not considered travel lanes for the purpose of operations.

In short, an inquiry into whether a portion of the highway is an area "designed for vehicular travel" depends not on whether it was originally engineered to hold the weight of a vehicle, but on whether the design *as a whole* (including markings) shows that the portion is intended for vehicular travel. MDOT is prepared to

present the above evidence by affidavit should this case be remanded, under MDOT's alternative request for relief, to the Court of Claims.

This Court generally affords statutory terms their ordinary meaning, consistent with their context and setting. See, e.g., *Tyler v Livonia Pub Schools*, 459 Mich 382, 391; 590 NW2d 560 (1999). But when a potentially ambiguous term like "design" is left undefined, "we must turn to the intent and purposes of the Legislature in establishing th[e] statute to facilitate its interpretation and application." *Gross v Gen Motors Corp*, 448 Mich 147, 157; 528 NW2d 707 (1995) (finding meanings of "design" and "manufacture" ambiguous in products-liability venue provision). See also MCL 8.3a ("[T]echnical words and phrases" that have "acquired a peculiar and appropriate meaning in the law" shall be construed "according to such peculiar and appropriate meaning").

"The stated purpose of the GTLA was to 'define and limit' liability of governmental units." *Pavlov v Community Emergency Medical Service, Inc*, 195 Mich App 711, 722; 491 NW2d 874 (1992); see also Preamble to 1964 PA 170. In limiting "design" to physical construction, and then applying the term to any constructed surface, the Court of Appeals did not clarify the liability of government units, and it certainly did not limit their liability. A holistic interpretation of "design" that recognizes all aspects of highway design, including geometric design,

better comports with the plain language and better serves the GTLA's stated purpose.<sup>4</sup>

In addition to using a stilted definition of "design," the Court of Appeals appeared to read the term as a one-time phenomenon. That is, it construed the design of a highway as static following the original construction of that highway, regardless of what future changes MDOT makes to that highway. For the statute to operate in that manner, the phrase would need to read as "the improved portion of the highway *originally* designed for vehicular travel" or employ an equivalent modifier. The Legislature could have written "the improved portion of the highway that was designed for vehicular travel." By not doing so, the Legislature left the phrase open to mean "the improved portion of the highway that is designed for vehicular travel," recognizing that intent concerning where vehicles may travel can change over the lifetime of a highway.

The Legislature did not draft the exception to say "originally designed," and "[i]t is a well-established rule of statutory construction that this Court will not read words into a statute." *Byker v Mannes*, 465 Mich 637, 646; 641 NW2d (2002). That being said, the way this phrase is currently written allows a court to recognize that the existing physical structure of a highway can be re-purposed to accommodate

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<sup>4</sup> This interpretation would also be consistent with the Legislature's references, in statutes directly applicable to MDOT, to "parking spaces" or "parking areas" as installations distinct from the highway or traveled way. See Acquiring Property for Highway Purposes Act, 1925 PA 352, MCL 213.171(h) (allowing for condemnation of property "adjacent to such highways" including "parking spaces"); Highway Advertising Act, 1972 PA 106, MCL 252.302(t) ("Main-traveled way does not include . . . parking areas.").

different needs or operations, as the above example of the reconstituted four-lane road demonstrates. Such activity could alter the location or dimensions of the shoulders, which, consistent with *Grimes*, are not considered travel lanes.

Because the Legislature did not restrict the term “design” to original, physical construction, the Court of Appeals erred doing so. This Court should interpret the term “design” to comply with the GTLA’s stated purpose of limiting the liability of governmental entities and to be consistent with the Court’s historical practice of narrowly construing waivers of immunity.

#### **CONCLUSION AND RELIEF REQUESTED**

The Court of Appeals’ decision on remand cannot be reconciled with *Grimes*, *Nawrocki*, or this Court’s general immunity jurisprudence. If unaltered, this decision will impose tort liability on MDOT and other governmental agencies charged with maintaining highways in excess of the narrow legislative waiver.

MDOT requests that this Court grant leave to decide whether the marked parallel-parking lane falls outside the “improved portion of the highway designed for vehicular travel.” Alternatively, MDOT requests that this Court vacate the

Court of Appeals' decision and remand the case to the Court of Claims for further proceedings consistent with this Court's precedents.

Respectfully submitted,

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