



## WASHINGTON AREA BICYCLIST ASSOCIATION

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### TESTIMONY OF THE WASHINGTON AREA BICYCLIST ASSOCIATION IN SUPPORT OF BILL 20-884, THE BICYCLE AND MOTOR VEHICLE COLLISION RECOVERY AMENDMENT ACT OF 2014

Thank you for the opportunity to testify today on behalf of the Washington Area Bicyclist Association, our thousands of members and supporters, and the many bicyclist crash victims who have been harmed by the continued recognition of contributory negligence in roadway crash cases in the District.

#### **I. Contributory negligence is an inequitable and outdated doctrine.**

This bill addresses the most significant legal injustice confronting bicyclists who have been injured in crashes on the District's roadways.

The doctrine of contributory negligence, as applied to bicyclists and other vulnerable roadway users, operates to leave injured victims of roadway crashes without fair opportunity to pursue justice. It empowers the more protected party—with more ability to injure and less likelihood of being injured—to avoid compensating the more vulnerable party for injuries and damages sustained in a collision that, regardless of fault, cannot help but be unequal in consequence. It also frequently allows insurers—who in a fair system would mitigate roadway risks across the population, regardless of travel mode—to abdicate that critical economic role. Instead it provides incentive for them to reject claims and deny compensation to all involved, keeping in its coffers the funds that should rightly pay for victims' medical treatment.

Contributory negligence has long outlived its usefulness, and it has already been eliminated in all but four states and the District. Thus, we truly appreciate this Committee's willingness to consider correcting this inequity for those who travel the District's roadways.

#### **II. For bicyclists and vulnerable users, contributory negligence adds unjustified legal vulnerability to pre-existing physical and contextual vulnerabilities.**

Inherent physical vulnerability places the burden of injury in roadway crashes disproportionately on bicyclists.

The justification for excepting bicyclists from this doctrine is based, quite simply, on vulnerability. Where the parties in a crash or a case are unequal in vulnerability, justice cannot be blind to the consequences of that inequality. Our public policy and our legal system must provide a level playing field for all parties, and not compound vulnerability upon vulnerability.

That bicyclists are vulnerable roadway users is a simple, physical reality. In a crash between a bicyclist and motorist, we know, in advance, who will be the more-injured victim. We know who will suffer the greater physical pain and endure injuries that can be life-altering. We also know who is more likely to be taken away in the ambulance, while the police interview the motorist and get the story of the crash from the party who generally will have sustained only nominal damages.

A crash between a motorist and a bicyclist is an inherently unequal interaction where the comparative physical vulnerability of the bicyclist means will result in an injured and unrepresented bicyclist facing non-trivial medical and property damages seeking to exact recovery from an uninjured motorist with

nominal damages, if any, and the support of an insurance company seeking to protect the motorist's financial interest.

Uncertainty in and misunderstanding of the urban bicycling environment increases the likelihood of improper negligence findings against bicyclists.

Despite progress in infrastructure, enforcement, and other protections, the DC bicyclist still, on a daily basis, faces the conundrum of the angry motorist shouting at her to get off the street and the angry pedestrian shouting at her to get off the sidewalk.

Where there is dedicated space for bicyclists, it often operates in a confusing legal limbo, filled with "Follow Pedestrian Signals" signs here, "Use Crosswalks" signs there, and "Except Bikes" signs telling cyclists to ride against traffic. These pieces of bike infrastructure come with no user manual. The police are not trained on how to enforce the specific rules for each facility. The infractions listed on their ticket books were not written for these conditions.

Where there is no dedicated space for bicyclists, police still are not sufficiently trained in even the basics of bicycling laws. We have several reports from the Office of Police Complaints documenting bicycling enforcement concerns and detailing how MPD needs to improve its efforts to understand and apply bicycling laws. These reports demonstrate that MPD is not prepared to handle the volume and complexity of bicyclist roadway interactions properly, or to apply the rules of the road correctly for cyclists.

It is here, in this context of missing clarity and consistency, that bicycle crashes occur. And yet, knowing this is the system in which bicyclists operate, we maintain a doctrine that allows an insurer to deny every ounce of recovery to an injured bicyclist who is wrongly ticketed. With contributory negligence, a single misapplication of law or misunderstanding of the bicyclist's duty of care allows insurers to deny all compensation to the crash victim. And so insurance claims adjusters, who live thousands of miles away and have no experience with DC's complex transportation environment, read and interpret the police reports. They apply their own uninformed judgment to cases, and have refused compensation for such reasons as "the bike should have gotten farther out of the driver's way" or "if the biker hadn't been on that busy street he wouldn't have been hit."

To be clear, these common denial rationales are legally just dead wrong. Contributory negligence does not make them wrong. But contributory negligence makes them devastating, because it allows misunderstanding of the duty of the bicyclist-plaintiff to act as a complete shield for the motorist-defendant and, where the fact-finder is an auto insurance company, to take that shield for itself.

Contributory negligence's operation as a full economic bar to recovery limits bicyclist access to representation for subsequent appeal for justice.

Once that initial decision-maker has determined that the injured bicyclist deserves no compensation, the cyclist then faces an uphill battle in seeking how to right the wrong. Many of these cases come to WABA through our bicyclist community engagement and our online crash tracker. I consistently see that cyclists who face an improper denial by an insurer are unable even to secure legal representation to assist them in pursuing their rights through the court system. Plaintiffs' lawyers generally are paid from a portion of the funds recovered on behalf of their injured clients. A predetermination that the bicyclist

was negligent—which with contributory negligence is also a predetermination that the expected economic outcome of the case is zero—makes it infeasible for attorneys to take these cases.

So, the result tends to be that crash victims with injuries—sometimes severe or even debilitating ones—have no access to any venue except small claims court, where they must generally proceed *pro se* and where they can hope to receive no more than \$5000 of their total damages, even if they manage to succeed in overcoming the odds, with the deck stacked against them.

**III. Excepting vulnerable roadway users from contributory negligence leaves a more equitable, functional system of spreading and mitigating the risks of roadway harms.**

This is the situation that we seek to avoid, by eliminating this doctrine that makes even the slightest mistake—whether by a victim, an enforcement officer, or a finder of fact—a complete bar to recovery.

It is important to note, however, that despite the incredible importance of this bill to bicyclists, it is far from a sweeping jurisprudential change.

- This bill does not change the definition of negligence or any of its components.
- It does not shift the burden among the parties. It is still the bicyclist who bears the burden of demonstrating the motorist's duty, the motorist's breach of that duty, and that the motorist caused the harm.
- It does not change what constitutes evidence of negligence in any given situation.

Simply put, forty-six states have designed and operated a better, fairer, more just system by avoiding contributory negligence. Many switched from a contributory negligence standard to a comparative standard via legislation, and the sky did not fall. The legal and insurance industries adapted, and vulnerable roadway users are better protected as a result.

We have the opportunity to take the same step here by passing this bill. This Committee, and the Council, should seize this opportunity to do so.

Thank you.