STATE OF MICHIGAN
IN THE SUPREME COURT

KERRI HUNTER OTTO,
As next friend for
Bailey Anne Marie Noble,
Plaintiff-Appellee,

v

THE INN AT WATERVALE, INC.,
A domestic corporation,
Defendant-Appellant.

Supreme Court Docket No. 155380
Court of Appeals No. 330214
Lower Court No. 14-009969-NO

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Statement Of Jurisdiction

This Court has discretion to review the Court of Appeals' decision. MCR 7.303(B) and 7.305(C)(5). Amicus Curiae, the Surfrider Foundation, was granted leave to file this brief on December 27, 2017. This brief is timely filed by the January 19, 2017 deadline provided in the December 27 order.

Question Presented

With regard to the statutory phrase "for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use or trail use", did the Court of Appeals commit an error when it interpreted that phrase – in particular, "any other outdoor recreational use" – and held that the protections of the Recreational Land Use Act apply only to inherently risky, high-intensity activities?

Defendant-Appellant has answered YES.

Plaintiff-Appellee has answered NO.

Amicus Curiae, Heart of the Lakes, will answer YES.

Amicus Curiae, Surfrider Foundation, answers YES.

Statement Of Interest Of Amicus Curiae, The Surfrider Foundation

The Surfrider Foundation ("Surfrider") is a grassroots non-profit 501(c)(3) tax exempt organization established in 1984 and headquartered in Orange County,

California. Pursuant to its mission, Surfrider is dedicated to the protection and enjoyment of our ocean, lakes, waves, and beaches throughout the United States, including here in Michigan. Surfrider has a primary focus of protecting and enjoying our ocean, lakes, beaches, and waves, including the lakeshores in the Great Lakes region. Protecting public beach access is one of Surfrider's five primary initiatives, and includes protection of beach access, including lakeshore access, to promote enjoyment of the beaches, lakes, and waters.

Surfrider works with local, state, and national decision-making bodies to evaluate related beach and waterfront issues as they arise. Surfrider pursues litigation to ensure fair and full access to public waters. Surfrider has more than 250,000 supporters, activists, and members who live in the United States. To fulfil its mission across the United States, Surfrider has 79 local chapters and 60 school clubs.

There are four chapters in the Great Lakes region: the Chicago Chapter, the Milwaukee Chapter, the Minnesota-Superior Chapter, and the Lake Michigan Chapter. These chapters dedicate their time to educating residents and visitors how to be safe in the water by hosting free surf clinics, and teaching beachgoers how to deal with heavy rip currents. They educate the public on relevant legislation, they host beach clean-ups along Lake Michigan, and they perform local water quality testing. These chapters have a significant interest in preserving access to lakes and lakeshores.

Surfrider's Lake Michigan Chapter has an address of 541 Woodlawn Avenue,

Grand Haven, MI 49417. The Lake Michigan Chapter is dedicated to protecting the Michigan portion of the Lake Michigan coast. The Chapter currently has 139 members and a Facebook page with 279 followers.

Surfrider members and supporters regularly use and enjoy Lake Michigan and its beaches. They surf, swim, picnic, stand-up paddle, and relax on the lake and along the lakeshore. The Lake Michigan Chapter has performed beach cleanups in and around Grand Haven, assisted those facing criminal charges related to surfing, educated beachgoers about the risks of rip currents, conducted water quality testing where the Grand River discharges to Lake Michigan, and provided testimony in Lansing about proposed bills that might affect surfing near piers.

Surfrider, on behalf of its Lake Michigan Chapter, has a significant interest in ensuring that statutes like the Recreational Land Use Act do not apply in a way that would unduly limit beach access or reduce enjoyment of Lake Michigan and its lakeshore. A ruling that would cause landowners to close their properties to recreational use by Surfrider's members and supporters would harm them and directly impact Surfrider's interests as well as that of the public.

Argument

Surfrider believes that the Recreational Land Use Act ("RLUA") is unambiguous: on its face, it clearly applies to any and all outdoor recreational uses. MCL 324.73301(1).

However, to the extent this Court decides to use other interpretive tools to reach a conclusion, we are providing analyses of the legislative history and economic impacts, which further support the conclusion that the RLUA applies broadly to any and all outdoor recreational uses.

The legislative history of the RLUA demonstrates that anytime the legislature has revised it, it has done so by making it more inclusive and broader in scope. Specifically, the legislature added an inclusive catch-all phrase and then later revised it to make the phrase more inclusive and applicable to even more outdoor recreational uses.

Limiting the RLUA will foreseeably cause more private landowners to offer less access to their lands. Given Michigan's lakeshore and its relevance to the recreational and tourist economy, adding unwarranted restrictions to the scope of application of the RLUA will also foreseeably have significant impacts to the Michigan economy.

Legislative History

1. The relevance of legislative history to statutory interpretation

When a legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is simply to apply the terms of the statute to the circumstances in a particular case. *In re Certified Question from U.S. Court of Appeals for Sixth Circuit*, 468 Mich 109, 113; 659 NW2d 597 (2003), citing *Turner v Auto Club Ins. Ass'n,* 448 Mich 22, 27; 528 NW2d 681 (1995). However, if the statutory language is ambiguous, then a court may turn to

the legislative history to determine the underlying intent of the legislature. *Great Lakes Steel,* 191 Mich App 323, 327; 477 NW2d 124 (1991), citing *Tope v Howe,* 179 Mich App 91, 102; 445 NW2d 452 (1989). Courts may look to the legislative history of an act, as well as to the history of the time during which the act was passed, to ascertain the reason for the act and the meaning of its provisions. *People v Hall,* 391 Mich 175, 191; 215 NW2d 166 (1974).

Not all legislative history is of equal value. *Id*. Those types of legislative history that "do not necessarily reflect the intent of the legislature as a body" are "significantly less useful" than those that do. *Baumgartner v Perry Pub. Sch.*, 309 Mich App 507, 520; 872 NW2d 837 (2015). Legislative history allows courts to draw reasonable references about the legislature's intent by shedding light on the legislature's affirmative acts. *People v Gardner*, 482 Mich 41, 58; 753 NW2d 78 (2008). The court may find it helpful to compare multiple drafts debated by the legislature before it settled on the language actually enacted. *Id*. A court may consider journals chronicling legislative history, and the changes in the bill during its passage. *In re Brzezinski*, 214 Mich App 652, 665; 542 NW2d 871 (1995), reversed by 454 Mich 890; 562 NW2d 785 (1997), citing *Dep't of Transportation v Thrasher,* 196 Mich App 320, 323; 493 NW2d 457 (1992); *Kizer v Livingston County Bd of Comrs*, 38 Mich App 239, 247; 195 NW2d 884 (1972). Amendments, modifications, and changes in the frame of a bill during its passage may also be considered as evidence of intent. *Kizer v Livingston Cty. Bd. of Comm'rs*, 38 Mich

App 239, 246–47; 195 NW2d 884 (1972) (citation omitted).

The highest quality legislative history consists of sources that relate to an action of the legislature, from which a court may draw reasonable inferences about the legislature's intent with respect to an ambiguous statutory provision. *In re Certified Question*, 468 Mich at 115. Examples of high value legislative history include actions of the legislature intended to repudiate the judicial construction of a statute, which allow a court to draw a reasonable inference about the legislature's intent even when the legislature has failed to unambiguously express that intent. *Id*. In addition, actions of the legislature in considering various alternatives in language in statutory provisions before settling on the language actually enacted are helpful to a court to discern the intended meaning for the language actually enacted. *Id*. High value legislative history sources in Michigan include official House and Senate Journals, bills, committee records, and public acts. Susan Adamczak, *Researching Online Sources of Legislative History*, Libraries and Legal Research, MICHIGAN BAR JOURNAL, (Jan 2006). Unofficial sources include House and Senate bill analyses, legislative studies, and nongovernment information sources such and newspapers and journal articles, amongst others. *Id.*

However, legislative staff analyses and committee reports have limited value. *Frank W Lynch & Co. v Flex Technologies, Inc.*, 463 Mich 578, 587, 624 NW2d 180 (2001). In Michigan, a legislative analysis is a feeble indicator of legislative intent and is therefore a generally unpersuasive tool of statutory construction. *Id*. These lesser quality

sources are entitled to less judicial consideration because they do not involve an act of the legislature, and do not necessarily reflect the intent of the legislature and a body. *People v Gardner*, 482 Mich at 58.

In summary, a Michigan court may turn to legislative history to better understand the intent of the legislature when the statute in question is ambiguous, having more than one interpretation. The type of legislative history that holds the most weight in court includes House and Senate Journals, along with bills and public acts themselves. Legislative analyses and other unofficial sources, which do not represent a direct action of the legislature, will seldom be found to have influence in determining the legislature's intent.

2. The legislative history of the RLUA demonstrates that the legislature intended for the law to apply to as many outdoor recreational uses as possible and for the law to resist any unnecessary restrictions on its scope.

Surfrider believes that the RLUA is unambiguous: on its face, it clearly applies to any and all outdoor recreational uses. However, to the extent this Court decides to use other interpretive tools, legislative history demonstrates that it has been and is the legislature's intent that the phrase "or any other outdoor recreational use" be interpreted as broadly as possible.[1]

[1] For assisting with the legislative history research, gratitude is owed to the amazing library professionals at the Arthur Neef Law Library of Wayne State University School of Law, the Archives of Michigan in the Michigan History Center, and the State of Michigan Law Library.

Among other things, the RLUA under certain circumstances provides a defense against certain tort liability that relates to people being injured while engaging in outdoor recreational activity on private land. MCL 334.73301(1). As described by this Court in another opinion about the RLUA, the legislature has amended the statute many times. *Wymer v Holmes*, 429 Mich 66, 74-78; 412 NW2d 213 (1987), overruled on other grounds in *Neal v Wilkes*, 470 Mich 661; 685 NW2d 648 (2004).[2] What follows is a description of those revisions:

Year	Text	Notes
1953	No cause of action shall arise for injuries to any person who is on the lands of another without paying to such other a valuable consideration for the purpose of fishing, hunting or trapping, with or without permission, against the owner, tenant or lessee of said premises unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant or lessee.	This version originated as House Bill 241 and was enacted into law at 1953 PA 201. It contained only three enumerated uses.
1964	No cause of action shall arise for injuries to any person who is on the lands of anofther without paying to such other a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing or other similar outdoor recreational use, with or without permission, against the owner, tenant or lessee of said premises unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant or lessee.	This version originated as House Bill 401 and was enacted into law at 1964 PA 199. It added three enumerated uses to the three from 1953. It also added the inclusive catch-all phrase. The as enrolled version added "similar" and "outdoor" to the as introduced version.

[2] For the bill versions referenced in the table and with regard to the various related committee and cameral activities, the *Wymer* opinion provides the relevant citations to the House Journals and the Senate Journals. 74-76. For ease of reference, as Exhibit 1, we have included the as introduced version of all four bills, and the as enrolled version of all the bills except the 1964 bill. We searched for the as enrolled version of the 1964 bill but could not locate it.

1974	(as introduced) No cause of action shall arise for injuries to any person who is on the lands of another without paying to such other a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or other recreational activity on the land, with or without permission, against the owner, tenant or lessee of said premises unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant or lessee. (as enrolled) No cause of action shall arise for injuries to any person who is on the lands of another without paying to such other a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use, with or without permission, against the owner, tenant or lessee of said premises unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant or lessee.	This version originated as Senate Bill 1196 and was enacted into law at 1974 PA 177. As introduced, it added two enumerated uses to the six from 1964, and changed the inclusive catch-all phrase from "or other similar outdoor recreational use" to "or other recreational activity on the land", the latter being less restrictive insofar as it removed the qualifier "similar". The inclusive catch-all phrase was further amended by committee. As enrolled, the qualifier "other" became the more inclusive "any other", and "recreational activity on the land" became the less restrictive "recreational use".
1993	No cause of action shall arise for injuries to any person who is on the lands of another without paying to such other a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use or trail use, with or without permission, against the owner, tenant or lessee of said premises unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant or lessee	This version originated as Senate Bill 203 and was enacted into law at 1993 PA 26. It added trail uses to recreational uses as the kinds of uses to which the law could apply.

In order to determine which uses qualify as outdoor recreational uses, the history of revisions demonstrates that the legislature intended to broaden the scope of application of the RLUA[3], not to narrow it. *See Kizer*, 38 Mich App at 247 (explaining that the revisions to a bill as it moves through each chamber and through committees is

[3] Throughout this brief, when reference is made to application of the RLUA, that is shorthand for application of Section 301's defense to tort liability. MCL 324.73301(1).

relevant to statutory interpretation). As to the following relevant language from the current version of the RLUA, "for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use or trail use", when this Court decides whether "any other outdoor recreational use" applies to playing on the beach, it should account for the fact that the legislative history demonstrates that the legislature's intent over time has been not only to include more enumerated uses but also to remove restrictions from the inclusive catch-all phrase.

2.1 The legislature has never narrowed the scope of application by reducing the number of enumerated uses; it has only ever increased the number.

The legislature has added various recreational uses over time. In 1953, the three enumerated recreational uses were fishing, hunting, and trapping. Today, they include those uses and five more: camping, hiking, sightseeing, motorcycling, and snowmobiling. The revisions over time demonstrate an intention to expand the scope of RLUA application, not to restrict it.

2.2 Over time, the legislature has steadily expanded the scope of application both to more enumerated uses and to more generic kinds of outdoor uses.

The legislature not only added an inclusive catch-all phrase but over time expanded the scope of application of that inclusive catch-all phrase. In 1953, the RLUA contained only enumerated uses. Starting in 1964, the legislature affirmatively decided to broaden the scope of coverage to "fishing, hunting, trapping, camping, hiking, sightseeing or other similar outdoor recreational use." The scope of coverage was

opened up to all recreational uses that took place outdoors and that were similar to the enumerated uses. Then in 1974, the legislature revised "other similar outdoor recreational use" and enacted the broader and more inclusive "any other outdoor recreational use." Finally, in 1993, the legislature enacted the even broader and more inclusive "any other outdoor recreational use or trail use". In 1953, the RLUA applied to three enumerated uses. Today, the RLUA applies to eight enumerated uses *and* any other outdoor recreational use *and* any other outdoor trail use. There is no question that the legislature intends that any and all outdoor recreational uses come within the RLUA's applicable scope.

2.3 The prior revisions to the inclusive catch-all phrase demonstrate that the legislature intended to remove as many restrictions as possible on what would constitute an outdoor recreational use to which the RLUA would apply.

The revisions made in 1974 establish that the legislature intended an especially broad scope of application. In 1974, through Senate Bill 1196, the bill as introduced proposed to change "fishing, hunting, trapping, camping, hiking, sightseeing or other similar outdoor recreational use" to "fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or other outdoor recreational activity on that land". This change in and of itself was in the direction of more inclusion and less restriction because the restrictive qualifier "similar" was removed. Based on changes made by committee, the bill as enrolled retained the enumerated uses and changed "or other outdoor recreational activity on that land" to "or any other outdoor recreational

use". The as enrolled phrasing is broader and more expansive than the as introduced phrasing because it removes entirely the restrictive phrase "on the land".

Also, the as enrolled version adds the inclusive adverb "any" to qualify the already inclusive adjective "other". *See People v Rea*, 315 Mich App 151, 158; 889 NW2d 536 (2017), reversed on other grounds, *People v Rea*, 500 Mich 422; 902 NW2d 362 (2017) (explaining how the use of the adverb "any" functions to expand the scope of the language it modifies); *Dep't of Environmental Quality v Worth Tp*, 491 Mich 227, 238; 814 NW2d 646 (2012) (language in a statute must be understood in its grammatical context) (citation omitted). The word "any" when used as an adverb means "to any extent or degree". Merriam Webster's Collegiate Dictionary (11th ed. 2011), p. 56. The word "any" is used as a determiner to refer to indefinite or unlimited entities. Cambridge Dictionary, *English Grammar Today*, entry for "any".[4] While performing statutory interpretation, this Court has acknowledged that the modifier "any" significantly expands the scope of the term it modifies. *In re Forfeiture of $5,264*, 432 Mich 242, 249-251; 439 NW2d 246 (1989) (finding "any" to mean "every", and interpreting the phrase "anything of value" to be "all-inclusive" as a result of the use of "any"); *Gibson v Agricultural Life Ins Co*, 282 Mich 282, 289; 276 NW 450 (1937) (in interpreting the word "any" in an insurance context, held that the ordinary understanding of "any" is to imply "of every kind" and that the use of the word "negatives the idea of exclusion".)

[4] https://dictionary.cambridge.org/grammar/british-grammar/quantifiers/any

2.4 When the legislature deleted "similar" and added "any" to modify and further expand "other recreational outdoor uses", it created a general term that, in the context of ejusdem generis, is more resistant to any restriction that may be placed on it by the preceding specific terms.

In reference to the 1974 bill, the deletion of "similar" and the insertion of "any" to modify "other" should also inform any use of the ejusdem generis interpretive tool. Ejusdem generis is an interpretive tool employed in a context where a general term is preceded by a series of specific terms. It is:

> a rule whereby in a statute in which general words follow a designation of particular subjects, the meaning of the general words will ordinarily be presumed to be construed as restricted by the particular designation and as including only things of the same kind, class, character or nature as those specifically enumerated.

People v Brown, 406 Mich 215, 221; 277 NW2d 155 (1979). In this sense, while the general term is intending to expand the scope of application, the preceding specific terms may be presumed to restrict expansion of the general term.

The Court of Appeals applied the tool and concluded that the additional restrictive qualifiers *high-intensity* and *inherently risky*, which do not appear in the statute, should apply to the scope of "any other outdoor recreational use" since, in the court's opinion, the enumerated uses shared those characteristics. We respectfully disagree that the enumerated uses share those characteristics. For example, depending

on the many different sets of circumstances, the intensity level and inherent riskiness of hiking on a trail may be comparable or equal to that of walking along a beach.

Additionally, the legislative history should inform the application of ejusdem generis and further demonstrates why the Court of Appeals came to the wrong conclusion. The phrase "other similar outdoor recreational use" from 1964 became "any other outdoor recreational use" in 1974. Interpretation of "any other outdoor recreational use" cannot ignore the removal of "similar" and the addition of "any". *People v Miller*, 498 Mich 13, 25; 869 NW2d 204 (2015) (courts must give effect to "every word, phrase, and clause and avoid an interpretation that would render any part of the statute surplusage or nugatory." (citation omitted)).

Because removing "similar" and adding "any" make the general term even more inclusive than it would have been otherwise, any interpreter employing ejusdem generis must account for that. Where the general term became less restricted by the removal of "similar" and by changing "other" to the more expansive "any other", the outcome of the search for common characteristics among the preceding specific terms must reflect that. In other words, whatever restricting effect the preceding specific terms would have had on a general term modified by "similar" and "other", those specific terms have less restricting effect on a general term from which "similar" has been removed and that is modified by "any other". Though it is wrong to read into the statute the restrictive qualifiers high-intensity and inherently risky had the general term

been "other similar outdoor recreational uses", it is even more wrong to do so when the general term is the less restricted and more expansive "any other outdoor recreational use". The loosening of the scope of the general term must, by definition, loosen the search for common characteristics in the series of specific terms. If in a normal situation the specific terms restrict the otherwise unbridled expansion of the general term, in this case the general term is much more resistant to such a restriction.

Impacts to Coastal Recreation and Tourism

3. Spending from coastal lakeshore tourism and recreation is important to Michigan's economy.

Tourism in Michigan, while long an important contributor to the state's economy, has grown significantly over the past 10 years. With the advertising investments of the "Pure Michigan" campaign and the continuing economic recovery from the Great Recession, visitors from across the country have been attracted to the Great Lakes state.[5] In 2016, the Pure Michigan advertising campaign generated five million trips to Michigan, many of which were devoted to coastal tourism, resulting in $1.5 billion in additional visitor spending, which in turn generated about $107 million in state tax revenue.[6] The additional spending directly supported 21,932 jobs, earning $678

[5] Pure Michigan, https://www.michigan.org/ (accessed January 18, 2018)

[6] The Economic Impact of the 2016 Tourism Ad Campaign in Michigan, p 2 https://medc.app.box.com/s/ga69s3my4zhje454vvoxpxuxp0bh1sj9 (accessed January 18, 2018)

million in wages.[7] While data is somewhat limited on the specific factors that lure individuals to visit Michigan, surveys have shown that Great Lakes recreation is responsible for a large proportion of tourism dollars.[8] In the first half of 2017, over 2.2 million people crossed the Mackinac Bridge, and visits to the Pictured Rocks National Lakeshore increased by over 6% from 2016.[9] According to a report developed by Tourism Economics for the Michigan Economic Development Corporation, about 337,490 jobs, with a combined income of $11.6 billion, are sustained in total by the state's tourism and vacation industries.[10] About 14.1% of the money visitors spend in Michigan is devoted to recreation, which comes in second only to spending on lodging and food and beverages, which are directly correlated to recreation spending.[11] Put another way, other than the basic travel necessities, the majority of tourism spending in Michigan is for recreational activities. Tourism spending on recreation and

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[7] *Id.*

[8] Michigan Statewide Tourism Economic Impact – 2016, https://medc.app.box.com/s/0y4ihokfc9mwit5wlfv84lfckhqysdz1 (accessed January 18, 2018)

[9] Lindsay Vanhulle, "As economy improves, so does Michigan Tourism", *Crain's Detroit Business,* http://www.crainsdetroit.com/article/20171015/news/642136/as-economy-improves-so-does-michigan-tourism (accessed January 17, 2018)

[10] Michigan Statewide Tourism Economic Impact – 2016, https://medc.app.box.com/s/0y4ihokfc9mwit5wlfv84lfckhqysdz1 (accessed January 18, 2018)

[11] *Id* at 9.

entertainment contributed $1.6 billion to Michigan's GDP in 2016.[12] Recreational tourism is vitally important to Michigan's growing economy.[13]

About 232,000 Michigan jobs are derived solely from outdoor recreational activities.[14] These are jobs that cannot be outsourced, and thousands of Michigan families depend on careers related to outdoor recreation for their livelihood. Any decrease in public access to land and water recreation opportunities, and an associated drop in dollars spent on recreation, would negatively impact Michigan workers and their families. A broad interpretation of the RLUA, as the legislature intended, is critical to ensuring that this public access, which plays a vital part in the state's tourism and recreation economy, is maintained.

4. Beach access is important to Michigan's tourism and recreation economy.

Visitors travel from across the country and from around the world to see the state's beautiful shoreline, for beach recreation, and to spend money at Michigan's many tourist towns. The Michigan Great Lakes shoreline is a vast 3,288 miles.[15] A 1999

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[12] 2016 The Economic Impact of Travel of in Michigan Statewide, p 21 https://medc.app.box.com/s/0y4ihokfc9mwit5wlfv84lfckhqysdz1 (accessed Jan 18, 2018)

[13] *Id.*

[14] Andy Northrop, "Outdoor Recreation is Important to Michigan's Communities, Economy and Future", *Michigan State University*, http://msue.anr.msu.edu/news/outdoor_recreation_is_important_to_michigans_communities_economy_and_future (accessed Jan 18, 2018)

[15] Economic Impact, *supra*.

Coastal Management study listed 1,494 public access sites for Michigan beachgoers.[16] Michigan's state parks and recreation areas welcome about 22 million annual visitors, many of whom visit the parks and recreation areas specifically for beach access.

Beaches in Michigan are incredibly popular. For example, in 2016, four million people visited Detroit's Belle Isle to engage in recreational activities and for beach access.[17] When visitors are surveyed about the main activities they engage in when visiting Michigan, beach/waterfront and swimming are in the top five.[18] Among the most important reasons why tourists visit the state are activities that require access to Michigan's Great Lakes beaches.[19]

The increase in visitors to Michigan's beaches is a positive for the state's economy, but it is important to acknowledge that, according to a 2001 assessment, only 30% of Michigan's shoreline is publicly owned.[20] Of that 30% of publicly owned shoreline, 20% of the land is in state or federal ownership, meaning that public access to

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[16] Pogue P. and Lee V., *Providing Public Access to the Shore: The Role of Coastal Zone Management Programs*, (Coastal Management Volume 27, 1999) pp. 219-237.

[17] Perry A. Farrell, "Belle Isle is Michigan's Most Popular State Park", *Detroit Free Press*, https://www.freep.com/story/news/local/michigan/detroit/2017/04/21/belle-isle-state-park-attendance/100739198/ (accessed Jan 18, 2018)

[18] Michigan Economic Development Corporation, Michigan Visitors Study – 2016, https://medc.app.box.com/s/gr02ei0mj39r243k2ni6gy9btyrau28z (accessed Jan 18, 2018)

[19] *Id* at 88.

[20] 2001 State of the Beach Assessment, http://www.beachapedia.org/State_of_the_Beach/State_Reports/MI/Beach_Access (accessed January 18, 2018)

beaches is not necessarily provided.[21] There are significant gaps in public access to Michigan's Great Lakes beaches. In fact, the Michigan Department of Natural Resources maintains a map of public access deficiencies, and the map lists 96 areas along Michigan's Great Lakes shoreline where public access is lacking.[22]

Being that a majority of the beaches in Michigan are privately owned, a finding by this Court that private landowners are not protected by the Recreational Land Use Act could cause a significant decline in public access to the Great Lakes, and a corresponding hit to Michigan's economy. If private landowners inhibit use of their property for access to and enjoyment of the state's beaches, spending on recreation will decrease, tourism revenue will decline along with tax revenue to state and local government, and jobs may be lost.

The state's economy depends in large part on recreational tourism tied to Great Lakes beach access. If private property owners deem providing public access to beaches for recreation too risky, then recreational tourism in Michigan could decrease. Recreational tourism in Michigan has been increasing steadily over the past 10 years, driven in large part by beach-going visitors. If private landowners deny public access to the Great Lakes, millions of dollars in tourist spending and the thousands of jobs

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[21] *Id.*

[22] Michigan Department of Natural Resources, Great Lakes Public Access Gap Map, http://www.michigan.gov/dnr/0,4570,7-153-10371_14793-373280--,00.html (accessed Jan 18, 2018)

supported by recreational spending are at risk, and being that many of Michigan's beach access points are privately owned, the state cannot afford to further limit public access.

5. Conclusion

The legislative history of the RLUA reflects the legislature's intention that the defense to certain tort liability apply in as unrestricted a manner as possible to outdoor recreational uses. Adding unwarranted restrictions would not only violate the rules for statutory interpretation but also negatively impact Michigan's opportunities for recreation, and associated lakeshore recreation and tourism economy.

Surfrider respectfully requests that this Court grant Defendant-Appellant's appeal; reverse the Court of Appeals decision; and hold that recreating on the beach is one of the many uses to which the RLUA applies.

Respectfully submitted by,

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Certificate Of Service

I hereby certify that on January 19, 2017, I electronically filed the foregoing Brief By Amicus Curiae, The Surfrider Foundation and this Certificate Of Service with the Clerk of the Court using the TrueFiling System, which will send notification to and serve all counsel registered electronically.

By,

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