

In the
Supreme Court of Ohio

RICHARD COMBS,	:	Case No. 2014-1891
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Franklin County
v.	:	Court of Appeals,
	:	Tenth Appellate District
OHIO DEPARTMENT OF NATURAL	:	
RESOURCES, DIVISION OF PARKS &	:	Court of Appeals
RECREATION,	:	Case No. 14AP-193
	:	
Defendant-Appellant.	:	

**REPLY BRIEF OF DEFENDANT-APPELLANT
OHIO DEPARTMENT OF NATURAL RESOURCES,
DIVISION OF PARKS & RECREATION**

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INTRODUCTION

As the Ohio Department of Natural Resources showed in its opening brief (at 4-16), the text, purpose, and history of Ohio's recreational-user statute, combined with the many cases that have interpreted it, all prove that the statute bars negligence claims against a landowner for injuries arising from the recreational use of the landowner's "premises"—whether those injuries arise from a *condition* on the premises or from *maintenance* of the premises. R.C. 1533.181(A). By immunizing landowners not just from "condition" claims but also from "maintenance" claims as well, the recreational-user statute encourages landowners *both* to open their properties for public use, *and* to maintain and repair their properties to keep them safe and useable for the recreational activities. Here, Richard Combs was injured when a Department employee maintained the land for its intended recreational use (fishing), and his suit thus falls squarely within the recreational-user statute.

The various responses of Combs and his amicus lack merit. For his part, Combs spends all of two pages citing three cases that allegedly hold that the statute's "immunity does not extend to active negligence of a landowner causing injury to a recreational user of the land." Combs Br. at 7. That is wrong. As this and other courts have expressly recognized, the "statute does not contemplate a distinction between . . . passive and active negligence." *Milliff v. Cleveland Metroparks Sys.*, No. 52315, 1987 WL 11969, at *3 (8th Dist. June 4, 1987).

Combs's amicus is mistaken for many additional reasons, most notably in its claim that "[t]he ironic omission from the State's public-policy argument is any mention of the State's supreme interest: public safety." Amicus Br. at 34. To the contrary, safety compels the Department's interpretation. The amicus's interpretation, by contrast, would provide landowners with exactly the *wrong* safety incentives by encouraging landowners *not* to make their lands safer. Under the amicus's approach, those landowners would risk *negligence claims* for any of

their maintenance activities, but would risk *nothing* for simply “letting their lands go.” So, for example, a city that placed in a public park a dangerous mound of debris (with immovable railroad ties protruding out of it) would face no potential negligence litigation if it merely left that debris where it was. *See Pauley v. Circleville*, 137 Ohio St. 3d 212, 2013-Ohio-4541 ¶¶ 4-7, 22. But under the amicus’s interpretation, the city could risk negligence litigation if it opted to clean up that dangerous mound. Such an upside-down scheme of incentives would make little sense. In short, the amicus’s own arguments go a long way toward showing why the Department must be right.

ARGUMENT

Appellant Ohio Department of Natural Resource’s Proposition of Law:

R.C. 1533.181(A) immunizes landowners from liability for injuries to recreational users arising from the condition and maintenance of the land.

A. R.C. 1533.181’s text and history support the Department’s reading that the statute covers *both* conditions of the premises *and* maintenance of the premises.

The amicus argues (at 7-11, 17-18, 24-25) that the Department’s view cannot be squared with the statutory text, which states that no landowner “[o]wes any duty to a recreational user to keep the premises safe for entry or use,” R.C. 1533.181(A)(1), and defines “premises” as the “lands, ways, and waters, and any buildings and structures thereon,” R.C. 1533.18(A). According to the amicus, this text limits statutory immunity *only* to those cases where “it [is] the condition of the premises”—by itself—“that injure[s]” a recreational user. Amicus Br. at 8. The amicus even suggests that this injurious condition must exist at the time “*the recreational user finds the premises upon entry or use.*” *Id.* at 25. This view is mistaken.

First, the amicus has failed to explain how the text supports its limitation on immunity to injuries caused solely by conditions of the land with no human involvement. It does not. Nowhere does the relevant language (that a landowner has no duty “to keep the premises safe”)

restrict immunity only to injuries caused *solely* by conditions on the land without any human involvement—as opposed to injuries caused by a *combination* of human efforts and land conditions. Instead, this text asks whether “[t]he cause of the injury ha[s] [any]thing to do with ‘premises’ as defined in R.C. 1533.18(A).” *Ryll v. Columbus Fireworks Display Co., Inc.*, 95 Ohio St. 3d 467, 2002-Ohio-2584 ¶ 15 (Pfeifer, J., op.). Under this test, for example, when a dangerous condition on the land causes the injury, immunity applies even if a human actor had “‘*affirmatively created* [the] dangerous condition.’” *Pauley v. Circleville*, 137 Ohio St. 3d 212, 2013-Ohio-4541 ¶ 21 (emphasis added; citation omitted)). Likewise, when a lifeguard’s negligent failure to supervise a lake caused the injury (a drowning), that human negligence fell within the statute. *See McCord v. Ohio Div. of Parks & Recreation*, 54 Ohio St. 2d 72, 72-74 (1978) (per curiam). In this case, too, the injury was caused by a combination of human efforts to maintain or repair *conditions* on the premises. *See, e.g., Meiser v. Ohio Dep’t of Natural Res.*, 2004-Ohio-2097, ¶¶ 1, 12 (Ct. Cl.) (suit for property damage caused by rock flung by weed-whacker barred by recreational-user statute). Where, by contrast, the injury is caused *solely* by human activity that has no connection to the land whatsoever (other than the fact that it occurred on the land), that human negligence falls outside the statute. *See, e.g., Ryll*, 2002-Ohio-2584 ¶ 15 (Pfeifer, J., op.).

Second, the amicus’s interpretation that the relevant condition must exist at the time of entry does not account for *changes* in the premises that may occur after a recreational user has entered and begun to use the property, but before the user is injured. Imagine, for example, that a recreational user enters a park in the morning to fish, with plans to meet a friend, arriving some hours later, for a late picnic. While he is out fishing, but before the friend arrives, a sink hole opens on the property. If upon returning to shore, the fisherman and his friend both are injured

by the sink hole, the amicus's interpretation would bar recovery for the friend's injuries because the sink hole was present at the time he entered the park property. But it would not bar the fisher's claim, because he entered the park before the sink hole formed. Such anomalous applications of the statute are not faithful to its text.

Third, the amicus's position is divorced from the statute's history, which shows that the General Assembly intended it to encompass the Department's proposition of law. As the Department noted in its opening brief (at 8-9), the recreational-user statute's history shows a legislative intent to change the common law of premises liability to encourage landowners to open their properties to public use. At common law, recreational users such as Combs would have been considered invitees or licensees, and owed specific duties. But as the Legislative Service Commission report reveals, the General Assembly intended for the statute to treat recreational users like traditional common-law trespassers. *See* Legislative Service Commission Commentary, H.B. 179 (1963). Under the common law, a landowner was not liable to trespassers for failure to exercise due care either to put his land in a reasonably safe condition, or "*to carry on his activities so as not to endanger them.*" Restatement (Second) of Torts § 333 (emphasis added). Maintaining one's property is certainly an "activity" falling outside of the duties owed to trespassers. Thus, by effectively shifting the status of recreational users under the statute from common-law invitees or licensees to trespassers, the General Assembly intended to immunize landowners not just from claims rooted in allegedly dangerous conditions on the premises, but also from claims rooted in the landowner's maintenance of those premises. *See id.* Both types of claims have a causal connection to the premises themselves in a way that ordinary negligence claims having nothing to do with the land do not.

Fourth, and finally, even if some ambiguity exists based on the plain text alone, this textual debate is somewhat beside the point. The Court has repeatedly noted that the recreational-user statute’s text is “inartfully drafted.” *Moss v. Dep’t of Natural Res.*, 62 Ohio St. 2d 138, 141 (1980); see *Marrek v. Cleveland Metroparks Bd. of Comm’rs*, 9 Ohio St. 3d 194, 197 (1984). Indeed, read literally, the relevant text (that no landowner “[o]wes any duty to a recreational user to keep the premises safe for entry or use”) could encompass any injury occurring on the property. See *Pauley*, 2013-Ohio-4541 ¶ 21 (“Generally speaking, ‘[i]f there is no duty, no liability can follow.’” (citation omitted)). But the Court “has refused in the past to engage in a literal reading of R.C. 1533.181, on the basis that a literal interpretation of this ‘inartfully drafted’ legislation would not comport with the intention of the General Assembly.” *Loyer v. Buchholz*, 38 Ohio St. 3d 65, 67-68 (1988). As described immediately below, that intent is dispositive in this case.

B. The recreational-user statute’s purpose supports the Department, not Combs.

This Court has long held that in interpreting statutes—and this statute in particular—a paramount consideration is the General Assembly’s intent. Interpretations of ambiguous text that subvert the purposes of the law should be rejected. See, e.g., *Walden v. State*, 47 Ohio St. 3d 47, 52 (1989) (rejecting a position because “no purpose of the statute [] would be served by” the party’s proposed rule); *Featzka v. Millcraft Paper Co.*, 62 Ohio St. 2d 245, 247-49 (1980); *Hicks v. Garrett*, 2012-Ohio-3560 ¶ 113 (5th Dist.) (rejecting proposal because it would “undermine the purpose and focus of the malpractice statute”); *Pritchard v. Adm’r*, No. 97APD080053, 1998 WL 400793, at *4 (5th Dist. Apr. 29, 1998) (adopting statutory interpretation because the alternative “would undermine the purpose and intent of the Workers’ Compensation Laws”). Here, neither Combs nor his amicus dispute that the General Assembly’s purpose in passing the recreational-user statute was to encourage landowners to open their properties for recreational

use without fear of liability. See Dep't Br. at 1-2, 11-14; see, e.g., *Zivich v. Mentor Soccer Club, Inc.*, 82 Ohio St. 3d 367, 371 (1998). But the amicus suggests that the Department's view undermines this purpose because it would allegedly both (1) hinder public safety, and (2) discourage the public from using the lands for recreation. See Amicus Br. at 34-36. It is mistaken on both fronts.

Start with public safety. Both Combs and his amicus ignore the Department's argument (at 11-14) that the lower court's decision provides a disincentive for landowners to undertake safety-enhancing maintenance or repairs. In the aggregate, public safety would likely be harmed more by deterring maintenance activities than it would be by immunizing landowners from negligence liability for tragic yet quite *Palsgrafian* accidents like the one that happened in this case. *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99, 99 (N.Y. 1928). Take, for example, snowblowing a park's paved jogging paths. If, as the lower court held, private landowners can be sued for unexpected injuries arising from maintenance of premises, some might not clear snow, choosing to leave snow and ice on the paths across their properties instead of taking the risk that the owner might injure someone with a stray rock flung by the snowblower. After all, there is no dispute that the statute immunizes those landowners from suits for injuries arising from unmaintained conditions, such as snow and ice. See, e.g., *Mason v. Bristol Local Sch. Dist. Bd. of Educ.*, 2006-Ohio-5174 ¶ 63 (11th Dist.); *Phillips v. Ohio Dep't of Natural Res.*, 26 Ohio App. 3d 77, 78 (10th Dist. 1985); *Milliff v. Cleveland Metroparks Sys.*, No. 52315, 1987 WL 11969, at *3 (8th Dist. June 4, 1987); *Fetherolf v. State, Dep't of Natural Res.*, 7 Ohio App. 3d 110, 112 (10th Dist. 1982). The General Assembly simply could not have intended to incentivize landowners to leave their properties icy, dangerous, or otherwise poorly maintained—rather than to maintain their properties so that they can be safely used for

recreation. *Cf. Hill v. Superior Property Mgmt. Servs., Inc.*, 321 P.3d 1054, 1058 (Utah 2013) (noting that “a disincentive for gratuitous service benefiting another is not the sort of conduct that our tort law ought to countenance”); *McFarland v. Bruno Mach. Corp.*, 68 Ohio St. 3d 305, 308 (1994) (noting that the rule excluding evidence of subsequent remedial measures “is based on the social policy of encouraging repairs or corrections”).

Turning to recreation, the amicus is equally wrong in suggesting that a grant of immunity in this case would discourage recreation. By not providing a disincentive to owners to maintain their property, the Department’s view encourages landowners to make their properties *suitable* for recreation. The lower court’s decision, instead, discourages landowners from maintaining their properties, thus potentially making recreational lands unusable by the public. This case proves the point. The uncontroverted testimony shows that the Department was mowing the grass along the edge of the lake to allow fishermen to access the water—that is, to allow them to use the park *for recreation*. Transcript of Deposition of Jerry Leeth 16 (Nov. 18, 2013) (“Leeth Dep. Tr.”) (“Q: Okay. And [sic] what purpose were you mowing the edge of the lake? A: Because it grows up and then the fishermen can’t access the water.”). Without maintenance, lands opened to the public for recreation might not be really open. They can become unusable, thus defeating the General Assembly’s recreation-promoting purpose behind the statute.

One final purpose-based point. Because the legislative intent goes the Department’s way, the amicus is wrong to invoke the canon that courts should strictly construe statutes in derogation of the common law. Amicus Br. at 5, 7, 34. That canon—analogue to the rule of lenity for criminal statutes—gets triggered only if a statute remains ambiguous *after* considering all available tools of statutory construction, including the text, structure, history, and purpose. *See State v. Sway*, 15 Ohio St. 3d 112, 116 (1984) (“The canon in favor of strict construction of

criminal statutes is not an obstinate rule which overrides common sense and evident statutory purpose.”); *cf. Barber v. Thomas*, 560 U.S. 474, 488 (2010) (“[T]he rule of lenity only applies if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute, such that the Court must simply guess as to what Congress intended.” (internal quotation marks and citation omitted)). This Court, for example, has already “broadly construed” the recreational-user statute’s definition of “recreational user” because that broad reading furthered the purpose of encouraging landowners to open their lands (even if it ran contrary to this narrow-construction canon). *See Miller v. City of Dayton*, 42 Ohio St. 3d 113, 115 (1989). So, too, here the statute should be broadly construed. Whether or not the text alone is ambiguous, it becomes unambiguous when interpreted in light of the statutory purpose.

C. The amicus brief’s “sky is falling” arguments repeatedly misconstrue the scope of the Department’s position.

Throughout its brief, the amicus misconstrues the Department’s position to make it sound extreme. With rhetorical gusto, the amicus repeatedly suggests that the Department has asserted that the recreational-user statute “categorically absolves” landowners of any and all tort liability and “immunizes all [of their] behavior” so “long as the recreational user is injured on the premises.” Amicus Br. at 5, 18-19. That is not a fair reading of the Department’s position.

As the Department’s proposition of law makes clear, the recreational-user statute prohibits recreational users from bringing negligence claims for injuries causally connected to the *premises*—either because the injuries arose from a *condition* on the premises or because they arose from *maintenance* of the premises. *See* Apt. Br. at Proposition of Law. Both parties and the amicus agree that the statute covers an owner who fails to conduct maintenance, such as by leaving a hole on the property, *see, e.g., Phillips*, 26 Ohio App. 3d at 78 (path collapse), or an owner who performs that maintenance negligently, such as by filling a hole with dangerous

objects, *see, e.g., Pauley*, 2013-Ohio-4541 ¶ 22 (railroad tie sticking out of refuse pile). The Department’s proposition seeks only a ruling that the statute also covers an intermediate step—the act of maintaining the premises themselves. *See, e.g., Meiser*, 2004-Ohio-2097, ¶¶ 1, 12.

The amicus is thus wrong when it asserts (at 4, 18-23) that the Department’s proposition of law immunizes *all* activities by landowners on their premises. Intentional torts obviously fall outside the scope of a statute that uses the term “duty”—a negligence term of art. *Cf. Marchetti v. Kalish*, 53 Ohio St. 3d 95, syl. (1990) (holding that intentional torts are not covered by the assumption of risk doctrine in tort). Additionally, negligent activities with no connection to the premises fall outside the statute’s reach. To put it mildly, a landowner might have a hard time proving that an employee who simply “hurl[ed] a rock in the direction of recreational users” was throwing the rock to repair the property. Amicus Br. at 25. Likewise, driving generally does not have a connection to the land. And a fireworks show has nothing to do with the land either. *Ryll*, 2002-Ohio-2584 ¶ 15 (Pfeifer, J., op.). But here, it is undisputed that the Department employee was mowing to maintain the park shoreline and cut down brush that would prevent fishers from accessing the water. *See* Leeth Dep. Tr. at 16. Nor is it disputed that Combs’s injury occurred as a result of the employee’s maintenance.

Finally, contrary to the amicus’s claims, the Department does not seek a ruling “[g]iving special consideration to the State” or, even more extravagantly, make a “threat” to “close parks if this Court does not rule in its favor.” Amicus Br. at 37-38. As the Department noted in its opening brief, Ohio’s recreational-user statute applies to public and private landowners alike, and a ruling in this case will affect *all* landowners—not just the Department—who open up their lands to the public for recreational use. *See, e.g., Stiner v. Dechant*, 114 Ohio App. 3d 209, 211 (9th Dist. 1996) (applying recreational-user statute to bar suit against private landowner); *Parker*

v. Patrick, 2012-Ohio-3312 ¶¶ 2, 13 (12th Dist.) (same); *Getsy v. Eastham*, 2008-Ohio-6767 ¶¶ 2, 23-24(11th Dist.) (same). As for the amicus’s claim that the recreational-user statute need not incentivize the State to open its lands because R.C. Chapter 1541 already directs the State to maintain a system of parks, the Court has seen (and rejected) this argument before. It has instead read these two statutory schemes harmoniously, noting that “the common goal of both R.C. Chapter 1541 and the recreational user statutes” is “to encourage the state to open its land to public recreational use without fear of liability.” *Sorrell v. Ohio Dep’t of Natural Res.*, 40 Ohio St. 3d 141, 145 (1988).

D. Ohio cases support the Department, not Combs.

Combs (at 6-8) and his amicus (at 8-11, 27-34) argue that Ohio cases have rejected the Department’s proposition of law. But Ohio cases have long supported the rule that maintaining one’s premises, even when negligently performed, is protected by the recreational-user statute. Only the Department’s interpretation of the recreational-user statute harmonizes *all* of Ohio’s case law in this area. Indeed, the amicus forthrightly acknowledges that this Court would need to overrule at least two—and really, three—lower-court decisions if it adopted the amicus’s interpretation of the statute. *See* Amicus Br. at 33 (citing *Mitchell v. Blue Ash*, 181 Ohio App. 3d 804, 2009-Ohio-1887 (1st Dist.), and *Meiser*, 2004-Ohio-2097, as cases that “are materially indistinguishable” from this case); *see also* *Gudliauskas v. Lakefront State Park*, 2005-Ohio-5598 at ¶¶ 4, 12 (Ct. Cl.).

For his part, Combs interprets Ohio cases as standing for the proposition that the recreational-user statute “does not extend to active negligence of a landowner.” Combs Br. at 7. But Ohio courts have long held that the recreational-user statute immunizes landowners from suits alleging *active* negligence by the landowner or the landowner’s employees. *See, e.g.,* *Mitchell*, 2009-Ohio-1887 ¶ 12 (applying statute to bar suit for injury caused by employee

negligence); *McCord*, 54 Ohio St. 2d at 74 (same); *Gudliauskas*, 2005-Ohio-5598 ¶¶ 4, 12 (same); *Meiser*, 2004-Ohio-2097 ¶¶ 1, 12 (same). Indeed, lower courts have recognized that the “statute does not contemplate a distinction between . . . passive and active negligence.” *Milliff*, 1987 WL 11969, at *3. Rather, it “protects all owners of land who fall within it from [liability for] *all acts of negligence*.” *Id.* (emphasis added).

Combs’s position would also require the Court to overrule its recently minted decision in *Pauley* in addition to all of the active negligence cases cited above. *See* 2013-Ohio-4541 ¶ 21 (no liability “even if the property owner affirmatively created a dangerous condition” (citation omitted)). The amicus likewise all but agrees that its position makes little sense in light of *Pauley*. It claims that “Ohioans are not well served by R.C. 1533.181 after *Pauley*” because that decision allows landowners to affirmatively create hidden dangers with impunity. Amicus Br. at 39. If that were true, why would the Court want to add an additional disincentive for landowners to repair such dangerous conditions through an artificial exception to that immunity for maintenance activities? In other words, what the Court said in *Pauley* rings even more true in this case: “Creating an exception to this immunity is a policy decision that comes within the purview of the General Assembly, not the courts.” 2013-Ohio-4541 ¶ 38.

E. None of the amicus’s out-of-state decisions even involved the question whether a recreational-user statute reaches maintenance activities like those at issue here.

Finally, Combs and his amicus cite many out-of-state decisions to support their argument that Ohio’s recreational-user statute applies “only when the recreational user is injured by the condition of the premises.” Amicus Br. at 11; *see id.* at 11-16 (citing California, Iowa, Maine, Utah, New York, and Arizona); Combs Br. at 8 (citing California, Utah, and Iowa). But not one of these cases is on point, because they do not involve injuries caused by landowners who were *maintaining* their premises at the time of the relevant injury, and thus do not bear on the

Department's proposition of law. Instead, all of these cases are analogous to the Court's decision in *Ryll* in that they involved activities unrelated to the premises. *Ryll*, 2002-Ohio-2584 ¶ 15 (Pfeifer, J., op.); see *Klein v. United States*, 235 P.3d 42, 44 (Cal. 2010) (bicyclist struck by vehicle driven by park volunteer); *Scott v. Wright*, 486 N.W.2d 40, 41 (Iowa 1992) (out-of-control tractor giving hay rides); *Dickinson v. Clark*, 767 A.2d 303, 304-05 (Me. 2001) (minor injured using wood-splitter on family property); *Young v. Salt Lake City Corp.*, 876 P.2d 376, 377-79 (Utah 1994) (bicyclist struck by city-owned vehicle); *Del Costello v. Delaware & Hudson Ry. Co.*, 274 A.D.2d 19, 20, 25 (N.Y. App. Div. 2000) (snowmobiler struck by train); *Smith v. Arizona Bd. of Regents*, 986 P.2d 247, 248, 250 (Ariz. Ct. App. 1999) (student injured while using trampoline). Just as *Ryll* does not support Combs's position, these cases do not either.

As far as the Department is aware, only Wisconsin has expressly considered whether a recreational-user statute covers maintenance activities (in contrast to general activities having nothing to do with the premises). And while Wisconsin's statute grants immunity for any injury to a recreational user, see Wis. Stat. § 895.52(2)(b), the Wisconsin Supreme Court has interpreted that provision to immunize landowners only from those injuries tied to the recreational-use of the land or its maintenance, thus bringing Wisconsin's statute in line with Ohio's. See *Linville v. City of Janesville*, 516 N.W.2d 427, 432 (Wis. 1994) ("Extending immunity to landowners for negligently performing in a capacity unrelated to the land or to their employees whose employment activities have nothing to do with the land will not contribute to a landowner's decision to open the land for public use"). So both Wisconsin and Ohio have held that their respective statutes do not apply to injuries sustained during a fireworks show. See *Kosky v. Int'l Ass'n of Lions Clubs*, 565 N.W.2d 260, 262-66 (Wis. Ct. App. 1997); *Ryll*, 2002-

Ohio-2584 ¶ 15 (Pfeifer, J., op.). And both have held that their statutes do “not distinguish between active and passive negligence.” *Held v. Ackerville Snowmobile Club, Inc.*, 730 N.W.2d 428, 432 (Wis. Ct. App. 2007); *Milliff*, 1987 WL 11969, at *3.

Finally, Wisconsin courts have adopted the Department’s position here in interpreting Wisconsin’s statute to cover injuries caused by either the condition or maintenance of the land. *See, e.g., Linville*, 516 N.W.2d at 432; *Kosky*, 565 N.W.2d at 265-66 (interpreting *Linville* to find immunity inappropriate where the actions resulting in plaintiff’s injury were “unrelated to the condition or maintenance of the land”). Courts have given Wisconsin’s statute this scope because it best effectuates the legislature’s intent to reduce landowner liability and thus induce property owners to open their lands to the public for recreational use. *See, e.g., Linville*, 516 N.W.2d at 432; *Held*, 730 N.W.2d at 432 (“The legislature did not enact the recreational use statute to stop landowners from engaging in negligent behavior, but to induce property owners to open their land for recreational use.”).

* * *

As the Department established in its opening brief, its proposition of law is supported by the text, history, and purpose of the recreational-user statute, and comports with all of the decisions of this Court and lower courts across Ohio. The Court should thus hold that maintenance activities to preserve the safety and recreational-character of land open to the public are protected by the recreational-user statute.

CONCLUSION

For the foregoing reasons, the Department urges the Court to reverse the Tenth District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Brief of Defendant-Appellant Ohio Department of Natural Resources, Division of Parks & Recreation was served by U.S. mail this 20th day of July, 2015 upon the following counsel:

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