STATE OF MAINE

MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW Court Docket No. Cum-24-82

PETER MASCUCCI, et. Al.,

Plaintiffs – Appellants

v.

JUDY'S MOODY, LLC et. al.,

Defendants – Appellees

APPEAL

FROM THE CUMBERLAND COUNTY SUPERIOR COURT

BRIEF OF AMICUS CURIAE

THE SURFRIDER FOUNDATION

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STATEMENT OF FACTS AND SUMMARY OF PRIOR RULINGS

The Facts of this case are sufficiently laid out in the Brief of Appellants, Peter Mascucci et al. Statement of Facts and Procedural History (pgs.1-7); Brief of Appellant Orlando Delogu (pgs. 1-3); Brief of Party of Interest In Cross Appellant in his Capacity As Attorney General of the State of Maine pages 2-11. pages 2-11.

Note that the court record and briefs of Appellants, Appellees, and State of Maine's Attorney General confirm that the shore front owners have acknowledged, and members of the public have confirmed that the public has engaged in numerous low impact recreational activities including walking on Moody beach between the mean low and high water marks for many decades. Additionally, Moody's beach has been surfed for over 35 years; Surfrider Foundation (Surfrider) members have enjoyed Moody beach over the years engaging in a variety of low impact recreational activities, Surfrider's Counsel on this Brief has personally surfed Moody's beach for over 20 years and Moody's beach has been used by the public for numerous low impact recreational purposes including, but not limited to: surfing, stand-up paddle boarding, swimming, sunbathing, events, ceremonies, land games, walking, and a wide variety of recreational purposes for many centuries.

STANDARD OF REVIEW

The facts relevant to this appeal are undisputed and the central issues involve questions of law, which this Court examines *de* novo. See, Toomey v. Town of Frye

Island, 943 A.2d 563 (2008). The Standard of Review discussion laid out in the Brief of Appellant Orlando Delogu (pgs. 4-10) sufficiently describes why this Court is not bound to continue the injustices suffered by the State of Maine and Moody beachgoers for the last four and a half decades as a result of incorrect prior Law Court decisions in *Bell v. Town of Wells (Bell 1),* 510 A2d 509 (Me. 1986), *Bell v. Town of Wells (Bell II),* 557 A2d 168 (Me. 1989), and *Ross v. Acadian Seaplants, Ltd.,* 2019 ME 45, 206 A3d 283 and the discussion is adopted by reference.

It must also be noted that this Court has considered overturning Bell I and II several times in the relatively recent past and, arguably, the Court would have done so in 2011 had there not been a recusal by one Justice in *McGarvey v. Whittredge*, 2011 ME 97, 28 A3d 620[1]. See also, *Almeder v. Town of Kennebunkport,* 2019 ME 151, 217 A3d 1111; and *Eaton v. Town of Wells,* 760 A2d 232, 248 (Me. 2000). Until this Court is bold enough to review intertidal ownership and Public Trust use rights with fresh, unbiased eyes, these issues will continue to be litigated beach-by-beach, Town-by-Town, recreational-use by recreational-use at significant cost to the State of Maine, Maine taxpayers, litigants, Maine beachgoers, property and business owners, the Maine economy (which depends heavily on ocean driven tourism), the judicial system, and all others who rely on and have vested interests in enjoying and

[1] The McGarvey Court voted 6-0 to expand the interpretation of Navigation under the Colonial Ordinance to include SCUBA diving and suggested it would have expanded the definition further had other activities (surfing specifically) been litigated at trial and split 3-3 on whether to overturn Bell I and II, with one Justice recusing himself because he had practiced with Defendant's attorney in the past. Id.

having access to Maine's intertidal lands starting at the mean high water line, along the 3400+ miles of coastline.

SUMMARY OF ARGUMENT

The stakes could not be any higher. Crucially important resources continue to be held hostage by this Court which in the late 1980s overstepped its authority and stripped title to intertidal lands owned by the State of Maine in trust for the public and gave it away to a few oceanfront owners. See, Bell I and Bell II. The initial ruling found an Ordinance passed by Massachusetts in 1647[2] was based on stronger legal precedent (even though it had been rendered null and void in 1820) than the Public Trust Doctrine, the Equal Footing Doctrine, the U.S. Constitution, several Supreme Court Cases, and the overwhelming majority of state Supreme court cases. all of which hold that States title to intertidal lands held in trust for the public are superior to any private or municipal title claims based on pre-statehood deeds, easements, or laws passed by the parent state prior to statehood, etc.

Public trust use issues are ripe and this Court can definitively end the ownership controversy by: overturning incorrect, closely divided Law Court decisions issued in 1986, 1989, 2000[3]; determining the Ordinance was rendered

[2] Massachusetts Body of Liberties § 16 (December 10, 1641), *reprinted in* R. Perry at 148, 150; and Liberties Common § 2, *The Book of the General Lawes and Libertyes Concerning the Inhabitants of Massachusetts* (Boston, Mass. 1647).

[3] *Bell v. Town of Wells (Bell 1),* 510 A2d 509 (Me. 1986), *Bell v. Town of Wells (Bell II),* 557 A2d 168 (Me. 1989), and *Ross v. Acadian Seaplants, Ltd.,* 2019 ME 45, 206 A3d 283

meaningless under the U.S. Constitution's Equal Footings Doctrine when Maine joined the Union in 1820[4]; following precedent set by the U.S. Supreme Court[5] and most State Supreme Courts which have consistently ruled that the States' ownership rights in the intertidal zone are superior to claimed rights of individuals and municipalities arising from pre-statehood easements, grants or conveyances; or concluding the so called original conveyances of land to the low water mark subject to the Public Trust Doctrine was contingent on the upland owner actually wharfing out, and that those that did not wharf out or maintain wharfs lost ant title claims (the 1647 Ordinance incented Massachusetts shoreland owners to wharf out-- those that did not or did and did not maintain it received nothing -- there was no quid without the pro quo).

Regardless of the rationale that most compels this Court, the issues of determining ownership of Maine intertidal lands and the scope of protected Pubic Trust uses are ripe and need to be decided definitively, or else Maine will continue the costly insanity associated with litigating beach-by-beach in a state that boasts almost 3,500 miles of coastline. This Court has the power to reverse the grave injustice that has plagued so many for so long and the sooner it does, the better off

[4] See U.S. Const. art. IV, §§ 1-3.
[5] See, M*artin v. Waddell, 41 U.S. 367 (1842); Phillips Petroleum Co. v. Mississippi,* 484 U.S. 469, 472 (1988); *Shively v. Bowlby*, 152 U.S. 1, 58 (1894); PPL Montana, LLC v. Montana 565 U.S. 576, 59; Illinois Central R.R. Co. v Illinois 146 U.S. 387 (1892); Knight v. U.S. Land Association, 142 U.S. 161, 183 (1891) (California); Pollard v. Hagan, 44 U.S. 212 (1845 (Alabama).

the State of Maine and the greater public will be. How fitting it would be if this Court finally corrects 38 years of injustice in a case that involves Moody Beach, the exact beach that threw Maine into this mess.

If this Court is unwilling to overturn Bell II, it must at a minimum recognize that walking and low-impact recreational uses are protected uses under the Public Trust Doctrine. This conclusion is dictated by the rationale described by then Chief Justice Saufley in McGarvey v. Whittredge. The compelling arguments mandating this conclusion are described thoroughly in the Brief of Party of Interest In Cross Appellant in his Capacity As Attorney General of the State of Maine; and Brief of Amicus Curiae Town of Wells both of which are adopted by Surfrider.

SURFRIDER FOUNDATION'S INTERESTS

The Surfrider Foundation is a national nonprofit organization, whose mission is to protect and enjoy – including preserving public access to - our world's oceans, waves, and beaches for those wanting to engage in low-impact intertidal dependent recreation. Surfrider also devotes significant resources to monitoring and protecting water quality. Surfrider is headquartered in California, and has approximately 350,000 members, with 80 volunteer-driven Chapters and 130 school clubs located throughout the U.S. Surfrider has been active in Maine, via its Maine Chapter, since its charter in 2002 and has been a party in prior Maine Law Court public trust cases including *McGarvey v. Whittredge* (Surfrider submitted an amicus brief and argued

the public trust use issues before the Law Court) and *Almeder v. Town of Kennebunkport*, in which Surfrider filed an Appellee Intervenor brief. Nationally, Surfrider has been a party or amicus curiae in numerous public trust and other beach access cases.[6]

Surfrider's Maine Chapter members include or have included students, professionals, surfers, engineers, parents and families, environmentalists, scientists, state and private environmental professionals, IT professionals, filmmakers, engineers, doctors, teachers, retirees, trades and service industry workers, and real estate owners all of whom support public access to Maine beaches in order to surf, paddle board, kite-board, boogie-board, snorkel, practice yoga, and engage in any and all types of low impact beach recreation. The Maine Chapter spearheads several stewardship and educational programs[7] and campaigns in furtherance of Surfrider's mission[8] including, but not limited to its: (1) beach cleanup programs, (2) Beach

[6] Surfrider has participated as a litigant to protect public beach access in multiple cases including, but not limited to: Martins Beach 1, LLC v. Surfrider Foundation, No. 117-1198, Cert. Den. (U.S. Oct. 1, 2018); Rose Nulman Park Foundation v. Four Twenty Corp. 93 A.3d 25 (2014); and as Amicus in Stop the Beach Renourishment, Inc. v Florida State Dept. of Transportation, 793 S.E. 2d. 702 (2010); Gregory and Diane Nies v. Town of Emerald Isle. 793 S.E. 2d 699 (N.C. 2016; Brannon v. State of Texas , N.O. 01-08-00179-CV (2014.

[7] The Maine Chapter recently collaborated with a local family volunteer group called the "Chickadeeds" for a beach cleanup at Willard Beach where more than 75 children participated. The Chapter has also engaged with China Primary School, teaching students how to collect beach habitat data and document storm erosion. See, https://www.instagram.com/surfridermaine/

[8] See, https://www.surfrider.org/pages/policy-on-beach-access

Guardians Program[9]; (3) Blue Water Task Force water quality testing program[10] and (4) water protection campaigns which have involved banning single use plastic bags, providing free reusable bags to those in need, and partnering with local restaurants to reduce their environmental impacts.[11] Through collaboration with Maine schools and other volunteer organizations, the Chapter has developed education programs, cleaned dozens of Maine beaches, and advocated for public access.

Surfrider will conduct at least 38 Chapter or Beach Guardians Program sponsored cleanups in 2024 from Kittery to Downeast Maine. At least one cleanup attempt by the Chapter was compromised several years ago when volunteers tried to clean some sections of Moody's beach only to be confronted by oceanfront owners, and multiple "Private Beach - No Access" and" No Trespassing" signs. The aggressive confrontations by owners against volunteers trying to clean "their" beach for free, coupled with numerous threatening signs deterred some volunteers from completing the cleanup in certain areas and had a chilling effect on future cleanups

[9] In February 2024, the Maine Chapter launched the Beach Guardians Program, where Surfrider volunteers conduct monthly or quarterly beach cleanups, habitat monitoring and data collection, and extreme weather documentation. The Beach Guardians Program allows volunteers to claim protective "ownership" over the Maine beach of their choice. Since launching in February 2024, program participants have conducted 18 beach cleanups.

[10] The Blue Water Task Force ("BWTF") is Surfrider's volunteer water quality monitoring program that provides critical water quality information designed to help protect public human and environmental health at the beach. The BWTF labs measure fecal indicator bacteria levels all year long at five beach sites and compares them to State water quality standards. The monitoring program supplements state testing which only occurs during the summer months. Testing results are posted on the Chapter's website.

[11] See https://maine.surfrider.org/programs/reusable-bag-accessibility-program and https://maine.surfrider.org/programs/reusable-bag-accessibility-program

at Moody's. Many surfers over the years, Counsel included, have been confronted by hostile Moody Beach oceanfront owners while walking over intertidal lands carrying their surfboards to enter or exit the ocean (though some owners have also been welcoming) over the intertidal zone. While this behavior has had a chilling effect on many beachgoers, surfers tend to be very driven by their passion to surf and therefore have paid less attention to these ongoing confrontations, especially when surf's up at Moody's beach. Nevertheless, the law requires and it is in the public's best interest that these confrontations be avoided all together.

Surfrider submits this amicus curiae brief in support of public access to Maine's beaches and the intertidal zone to engage in low impact, recreational uses. Such access to and along the beach and intertidal zone is critical to Surfrider's stewardship activities and furthering its mission. We urge this Court to recognize the State's ownership of the intertidal zone and the public's right to engage in reasonable recreational uses in the intertidal zone.

While Surfrider strongly urges the Court to overturn Bell 1 and 2, at a minimum, this Court should recognize that surfing, swimming, and all of the other recreational public uses brought up at the trial court are protected uses. Note that some of the upland owners recognize specific public uses to be permissible in front of their property (or at least not prohibited loitering). For example, Ocean 503 does not consider swimming, surfing, sitting, building sandcastles, or "recreating" on the

beach "loitering" by the Ocean 503 property signage (A. 831-32.) and therefore those activities are unrestricted. Similarly, OA 2012 does not consider walking, running, stopping and stretching, meandering, surfing, playing frisbee, building a sandcastle, sitting and fishing, or sitting in the sand for 30 minutes or less to be prohibited loitering.

ISSUES PRESENTED

1. Did the trial Court err in granting Defendants' motions for summary judgment related to Public Trust uses in the intertidal zone to which Defendants claim ownership based on the so-called "Colonial Ordinance of 1647"?

2. Should past Law Court decisions holding oceanfront owner's own land to the low-water mark subject to the public's right to fish, fowl, and navigate be overturned based on the Public Trust Doctrine, U.S. Constitution's Equal Footing Doctrine, Maine Statehood Act, decisions by the U.S. Supreme Court and / or decisions by several other State Supreme Courts?

3. Should Maine follow the lead of the vast majority of other coastal states in recognizing that the Public Trust Doctrine protects the public's right to walk and participate In low impact recreation activities starting at the mean high water line?

4. Does the Court's duty to ensure public access to Maine's beaches pursuant to the Public Trust Doctrine, Equal Footing Doctrine, U.S. Supreme Court Precedent, Maine Legislative Acts and the findings by most state Supreme Courts outweigh the court blindly adhering to Stare Decisis and the continued affirmation of the wrongly decided and overly restrictive Bell cases?

5. Is equitable recreational beach access for all Mainers' health and well-being an important Environmental Justice issue that needs to be considered by the Court?

Surfrider Argues Yes to all!

ARGUMENT

If this Court finds the Colonial Ordinance invalid, null, or void for any reason, then ownership in the intertidal lands resides with the State (except for parcels that the Maine legislature has validly alienated for marine commerce purposes--which are not relevant in this case) and not the Defendants, and the State must protect valid public uses—including recreation.

If this Court is unwilling to overturn prior rulings regarding ownership between the mean high and low water lines and adheres to restricting public use protections to fishing, fowling and navigation on the basis of Stare Decisis, then it must continue the trend of espousing specific public uses that fit under "navigation" such as surfing and swimming, and should also protect all low-impact recreational uses.

I. The Colonial Ordinance was Rendered Invalid by:

a. The Public Trust Doctrine

Surfrider supports the Plaintiffs' assertion of public trust rights over the intertidal zone up to the mean high-water mark. The Public Trust Doctrine is an ancient legal doctrine rooted in Roman law that dates back over 1,500 years[12] and

[12] The public trust doctrine was codified in Roman law by the Byzantine emperor Justinian who based his civil law code on work of Gaius, a previous Roman jurist, who himself codified existing Greek natural law. David Slade et. al., Putting The Public Trust Doctrine to Work, 209-27 (2d. 1997); Buckland, A Text

stands for the proposition that certain natural resources including intertidal lands are held by states in trust for public use and can only be alienated by a state's legislative branch and only under certain circumstances. The U.S. Supreme Court first addressed the Public Trust Doctrine in 1842 and held the public maintained a common right to fish in navigable water because those waters and the underlying lands were kept in trust by the state for the common use of the people. See, M*artin v. Waddell, 41 U.S. 367 (1842).* In Waddell, the U.S. Supreme Court found "English common law held that the King and Parliament held title to intertidal land in trust for the public. Upon the founding of the Union the title to intertidal land (again, in trust for the public) passed to the states. More recently, the Supreme Court and many state courts have recognized that the concept of public trust uses has been evolving and expanding over time as public uses of intertidal zones change.[13]

In 1647 the Massachusetts Legislature passed a legislative Act that was intended to bolster the economy. The 1647 Ordinance incented private landowners

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Book of Roman Law from Augustut to Justinian 182–83 (Peter Stein rev., 3rd ed. 1963) (explaining that the res communes are things "[o]pen to everyone: the air, running water, the sea, and in later law, the seashore to the highest winter floods.").

[13] In Marks v. Whitney, 491 P.2d 374, 381 (Cal. 1971) the California Supreme Court ruled that the doctrine is meant to protect the most important values society places on tidelands, and these societal values have evolved to recognize more spiritual and recreational uses of the shore and also found preservation to be a protected use; In n re Water Use Permit Applications, 9 P.3d 409, 446–47 (Haw. 2000) Hawaii's Supreme Court found Hawaii's Public Trust Doctrine protects traditional Hawaiian rights including customary water rights; and in Borough of Neptune City v. Borough of Avon-by-the-Sea, 294 A.2d 47, 54 (N.J. 1972) the court explained that "the public rights in tidal lands are not limited to the ancient prerogatives of navigation and fishing, but extend as well to recreational uses, including bathing, swimming and other shore activities.".

to "wharf-out" in intertidal lands by extending beachfront owners (non-exclusive) property rights in the intertidal land to the low water mark[14] –IF AND ONLY IF — the landowner wharfed out. Even if landowners wharfed out, their property rights in the intertidal lands were subject to the *public's absolute rights* to use these lands to fish, fowl, and navigate.

b. Maine Statehood Act of 1820

In 1820 the U.S. Congress passed the Maine Statehood Act which reads, in part: "…the state of Maine is hereby declared to be one of the United States of America and admitted into the Union on an equal footing with the original states in all respects whatever." See 16th U.S. Congress, Session 1, Chapter 19, *An Act for the Admission of the State of Maine into the Union* [statutes at pg. 544) effective March 15, 1820.

c. The Equal Footing Doctrine

Pursuant to Art. IV, §§ 1-3 of the U.S. Constitution, when Maine separated from Massachusetts and entered the Union as an independent state, the 1647 Ordinance was rendered null and void. Maine's ownership to intertidal zone lands

[14] Surfrider agrees with and adopts Professor Delogu's arguments that the 1647 Ordinance granted a license to upland owners to wharf out in and over intertidal lands from the high to the low water mark rather than convey title in fee to such lands and that the Storer Court and every Maine Law Court decision holding to the contrary were wrongly decided). See, Brief of Appellant, Orlando Delogu Count 1 Summary of Argument and Detailed Argument Count 1 (pgs. 11-14 and 21-30).

is held by Maine in trust for public trust uses including recreation. Public trust recreational uses are protected from the sea absent a valid alienation by the Maine Legislature for specific parcels of land deemed necessary to facilitate marine commerce (e.g., "wharfing out" which is not applicable in this case). Even the State cannot legislate the transfer of ownership of intertidal lands unless the transfer is limited in the way it adversely impacts public uses and fundamental public trust uses are retained. See, Illinois Central Railroad v. Illinois 146 U.S.414, Phillips Petroleum

The District of Maine did not become part of the Massachusetts Bay Colony until 1692. By its terms, the Ordinance did not apply to the territory that is now Maine, nor did Massachusetts, the legislative body responsible for its enactment, have governing authority over that territory. Moreover, prior to the separation of Maine from Massachusetts the Ordinance "was annulled with the charter by the authority of which it was made." *Storer v. Freeman*, 6 Mass. 435, 438 (1810). While Storer ruled that the private ownership to the low water mark created by the ordinance was declared part of the common law of Massachusetts (id.), Maine's addition to the Union (1820) ten years later should have settled any and all questions that any grant under the 1647 Colonial Ordinance to upland owners was superseded, and that title to intertidal lands was held by the State in trust for the public to engage

in trust uses.[15] The continuing applicability of the 1647 Ordinance in Massachusetts is based on the fact that the Massachusetts Legislature ceded title to upland owners after Massachusetts was already a State, Maine never did—a crucial fact that this Court has never adequately addressed in a compelling manner.

The United States Supreme Court has confirmed that state ownership of intertidal lands for public trust uses are superior to and extinguish pre-statehood land grants, deeds, and treaties that, but for Equal Footing doctrine, would vest title in parties that hold facially valid instruments with a perfect chain of title. *See Phillips Petroleum Co. v. Mississippi,* 484 U.S. 469, 472 (1988) (affirming decision that title to intertidal lands vested in the State of Mississippi upon statehood despite petitioners' record title from pre-statehood Spanish land grants); *Shively v. Bowlby*, 152 U.S. 1, 58 (1894) (finding at common law intertidal lands were held by the king for the benefit of the nation and these rights passed first to the colonies, then to the original states, and then to new states admitted to the Union); *Pollard*, 44 U.S. at 220-21 (Alabama was a territory created out of a part of Georgia and the Court held that neither Georgia law nor early Spanish grants took precedence over Alabama's title to its intertidal lands and its rights).

[15] See footnote 15 above and the Delogu brief (pages 11-14 and 21-30). regarding the flaws of the Storer decision and the Maine cases that have exacerbated those original flaws.

Deciding that pre-existing deeds, grants, and treaties that transferred title to intertidal lands to private landowners became null and void was necessary to ensuring states joining the Union after the original 12 states, did so on *equal* terms (the "Equal Footings Doctrine"). Deciding to the contrary violates the U.S. Constitutional principle of state sovereignty. Consequently, states that had been territories and integrated the common law of their parent state upon achieving statehood regained title to intertidal lands for public trust uses. *See, e.g.*, *Pollard*, 44 U.S. at 228-29.

In contravention of this body of law, every Maine Law Court decision that has ruled that the Colonial Ordinance divested the State of title to lands the State holds in trust for public uses has been based on blind adherence to the ones before it and each has ignored the fact that only the Maine Legislature has the authority to alienate intertidal lands.[16] Prior Maine cases[17] have also ignored the U.S. Constitution, a line of U.S. Supreme Court Cases – every one of which has held that upon the assumption of sovereignty, states hold fee title to the public trust lands[18] -- and the

[16] See, *Myrick v. James*, 444 A2d 987 (Me. 1982).
[17] See, Bell v. Town of Wells, 510 A.2d 168 (1986), Bell v. Town of Wells 557 A.2d. 168 (1989), Ross v. Acadian Seaplants, ltd. 206 A.3d. 283 (2019).
[18] See, e.g., PPL Montana, LLC v. Montana 565 U.S. 576, 59; Phillip Petroleum Co v. Mississippi, 484 U.S. 469 (1988); Shively v. Bowlby, 152 U.S. 1, 47 (Oregon); Illinois Central R.R. Co. v Illinois 146 U.S. 387 (1892); Knight v. U.S. Land Association, 142 U.S. 161, 183 (1891) (California); Pollard v. Hagan, 44 U.S. 212 (1845 (Alabama).

fact that the adoption of the 1647 Ordinance with respect to intertidal lands was rendered null and void once Maine joined the Union.

Maine received title to the intertidal lands to hold for public trust uses when it became a state in 1820 and this Court lacks the authority to give it away to private landowners.[19] Specifically, to transfer title of the intertidal zone would require an act by the Maine Legislature after it had entered the Union. See, 1 M.R.S. § 5. Not only has the Maine Legislature not alienated intertidal lands in favor of private upland owners; Maine has passed legislation that specifically recognizes the State's ownership of intertidal lands to the highwater mark for the purpose of protecting public trust uses—including recreation. 12 M.R.S. §§ 571-573 The Public Trust in Intertidal Land Act; 12 M.R.S. §§ 1862-1865 Submerged and Intertidal Lands; 14 M.R.S. § 556 Special Motion to Dismiss.

II. The vast majority of State Supreme Courts have recognized that State ownership of intertidal lands is superior to private claims of ownership, and state courts and legislatures have specifically found that public trust uses include recreation, walking and other historic public uses as well as new protected public uses that have and will evolve and change on these lands over time.

The law in the majority of coastal states is that the State has title to the intertidal lands from the high-water mark to the low water mark, and the state holds

[19] See, *Myrick v. James*, 444 A2d 987 (Me. 1982) which held "That which we [the court] may not do is change … a rule or policy once the Legislature has specifically taken the rule or policy out of the arena of the judicial prerogative…by a positive and definitive statutory pronouncement…." Id. at 992.

these lands for the purpose of protecting public trust uses including the right to recreate and walk. Moreover, some states, as described below recognize a public right to use the sandy beach up to the line of vegetation in order to access the beach. The legal bases supporting these States' Public Trust positions come from ancient common law, state common law, the U.S. Constitution, and state laws. The clear trend in Public Trust cases has seen state Supreme Courts and State Legislatures recognizing that public trust uses include the public's right to recreate and walk and that protected uses will continue to evolve over time.

Examples of the strongest State Public Trust approaches taken by many coastal states are provided below, along with other states. This Court should review the Public Trust decisions in other coastal states that protect recreation and walking and follow suit.

a. Oregon

The Oregon Supreme Court has ruled that the vital public interest in the use of the entire seashore (up to vegetative land) for recreational purposes in the intertidal land is superior to private or municipal interests. The court invoked the doctrine of custom in declaring that the public has a right to recreate and enjoy the state's dry sand beaches See, State ex rel. Thornton v. Hay, 462 P.2d 671 (1969).

This case followed Oregon's passage of the 1967 Beach Bill which recognized a state easement on all beaches between the low water mark and the vegetation line.

See, Oregon Beach Bill (House Bill 1601 (1967) and Oregon's Statewide Planning Goals and Guidelines Goal 17 Coastal Shorelands, OAR 660-015-0010(2) (O8/20/1999). The Oregon Supreme Court's decision and the legislative action guarantee public access to all of Oregon's beaches for recreational purposes.

b. Hawaii

Hawaii fiercely protects public trust uses up to the line of vegetation which guarantees beach access to all. The Hawaii Supreme Court has ruled on several public trust cases dating back to 1899 finding that the Public Trust Doctrine is a dual concept of sovereign right and responsibility—imposing responsibilities on the government to protect public trust uses and conferring rights to the public at large; an that it protects uses on the beaches up to the upper reaches of the wash of waves, often represented by the vegetation line. Such protections are a constitutional mandate, and uses include recreation, resource protection, traditional and customary rights.[20] Hawaii's Supreme Court (along with Oregon and several other states) ruled that the public's right to beach access also stems from the legal theory of custom. See, City of Hawaii v. Sotomura, 517 P.2d 57, 61 (1973) (explaining that the "long-

[20]See, In re Water Use Permit Applications, 9 P.3d 409, 446–47 (Haw. 2000) citing HAW. CONST. art. XI, § 1; In re Application of Sanborn, 562 P.2d 771, 779 (1977); King v. Oahu Railway & Land Co., 11 Haw. 717, 725 (1899) (citing Illinois Central Railroad v. State of Illinois, 146 U.S. 387 (1892); Kuramoto v. Hamada, 30 Haw. 841, 845 (1929) (including recreation as a trust purpose); Public Access Shoreline Hawaii v. Hawaii County Planning Comm'n, 900 P.2d 1313 (Haw. Ct. App. 1993) (recognizing special rights of access and of native rights in Hawaii).

standing public use of Hawaii's beaches . . . has ripened into a customary right." In re Application of Ashford, 440 P.2d 771, (1968).

In addition to Hawaii Supreme Court rulings recognizing the State's ownership of its beaches up to the vegetative land, and the State's obligations to protect the land for public uses- which the courts have expanded as those uses have evolved, the State Constitution specifically protects public access to the state's beaches for the purpose of recreation. Hawaii's Constitution states:

> For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.
>
> All public natural resources are held in trust by the State for the benefit of the people.

Haw. Const, art. XI, § 1.

Hawaii passed the Public Access to Coastal and Inland Recreational Areas Act in 2010 which provides the public's right of access to the sea, shorelines, and inland recreational areas in Hawaii. This statute ensures that the public has the right to transit along the shorelines and access the sea for recreational purposes. It also mandates that any development or construction projects must not obstruct these access rights and fixes private property ownership up until the upper annual reaches of the washes of the waves. Prior to the passage of this law private property

boundaries had been fixed at the "vegetative line" and many upland owners extended the vegetative line on the ocean side of their properties. The Hawaii legislature explained:

> The purpose of this Act is to reaffirm a longstanding public policy of extending to public use and ownership as much of Hawaii's shoreline as is reasonably possible by ensuring the public's lateral access along the shoreline, by requiring the removal of the landowners' induced or cultivated vegetation that interferes or encroaches seaward of the shoreline.

See, 9 Haw. Rev. Stat. § 115-10 (2010).

c. California

Early California Supreme Court cases recognized that the Public Trust Doctrine provides title to the state for the purpose of protecting traditional public uses of navigation and fishing,[21] from the mean high tide to the mean low tide[22] regardless of whether the waters above the tidelands are navigable. As uses of California beaches have evolved over time, the Court's decisions on what constitutes protected public uses have as well[23]. For example, the California Supreme Court explained:

> The [Public Trust] doctrine protects at least "the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters

[21] People ex rel. Webb v. Cal. Fish Co., 138 P. 79, 82 (Cal. 1913).
[22] California v. Superior Ct., 625 P.2d 239, 241 (Cal. 1981); People ex rel. Webb v. Cal. Fish Co., 138 P. 79, 82 (Cal. 1913) ("It is a well established proposition that the lands lying between the lines of ordinary high and low tide, as well as that within a bay or harbor and permanently covered by its waters, belong to the state in its sovereign character and are held in trust for the public purposes of navigation and fishery.")
[23] National Audubon Society v. Superior Ct., 658 P.2d 709, 719 (Cal. 1983) stating that "The objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways."

> of the state, and to use the bottom of the navigable waters for anchoring, standing, or other purposes.

See, Marks v. Whitney, 491 P.2d 374, 380 (Cal. 1971). The California Supreme Court has also found that protected public uses to the mean high tide are sufficiently flexible to encompass changing public needs and include -- at least: navigation, commerce, fishing, hunting, bathing, swimming, boating, general recreation, conservation, scientific study, and preservation.[24]

The California Constitution prohibits anyone who possesses or has claims to the frontage of tidal lands from excluding public access to navigable waters and directs the California legislature to pass laws ensuring public access will always be attainable. See, Cal. Const. art. X, § 4. In furtherance of this Constitutional mandate, the California legislature passed the California Coastal Act which states, in part:

> The legislature further finds and declares that the basic goals of the state for the coastal zone are to: . . .(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.
>
> ....
>
> Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of

[24] Marks v. Whitney, 380; National Audubon Soc' v. Superior Ct., 658 P.2d 709, 719 (Cal. 1983) ("The objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways."); and Margaret E. Peloso & Margaret R. Caldwell, Dynamic Property Rights: The Public Trust Doctrine and Takings in a Changing Climate, 30 STAN. ENVTL. L.J. 51, 109 (2011).

> terrestrial vegetation. The state owns the tidelands and submerged lands seaward of the "mean high tide line." The public/private boundary is also sometimes referred to as the "ambulatory high tide line." Although it can be difficult to ascertain the boundary between public and private lands, the general rule is that visitors have the right to walk on the wet beach.

See, California Coastal Act §§ 30001.5 and 30211.

d. North Carolina

North Carolina's Supreme Court has recognized that the Public Trust Doctrine vests title ownership in the state up to the high water mark[25] for the purpose of protecting the public's rights to: navigate, swim, hunt, fish, and enjoy all recreational in the watercourses of the and the all recreational uses.[26] North Carolina Courts have similarly recognized that the public enjoys the right to freely use and enjoy the State's ocean and estuarine beaches and public access to the beaches by passing over and along the strip of land lying between the high-water mark and the low-water mark adjacent to upland owners' properties.[27] The North Carolina Supreme Court further recognizes the public right to recreate even further upland along the State's dry sand beaches based on the public trust doctrine and the public's historic customary use. North Carolina has also recognized the public has rights aove

[25] West v. Slick, 326 S.E.2d 601, 617 (N.C. 1985).
[26] State ex rel. Rohrer v. Credle, 322 N.C. 522 (N.C. 1988); Parker v. New Hanover County, 619 S.E.2d 868, 875 (N.C. Ct. App. 2005) (quoting State ex rel. Rohrer v. Credle, 369 S.E.2d 825, 828 (N.C. 1988);
[27] Fabrikant v. Currituck County, 621 S.E.2d 19, 27–28 (N.C. Ct. App. 2005) (quoting friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation v. Coastal Res. Comm'n, 452 S.E.2d 337, 348 (N.C. Ct. App. 1995) (quoting N.C. GEN. STAT. § 1-45.1 (1994))).

the high water mark to access the ocean based on public customary rights, Nies v. Town of Emerald Isle., 793 S.E> 2d. 699 (N.C. 2016).

Public Trust use rights are specifically protected by the North Carolina Constitution[28] and statutory Law. North Carolina statutory law specifically sets out certain protected public trust rights, including navigation, swimming, hunting, fishing, and all recreational uses.[29]

e. Florida

Florida Supreme Court Public Trust cases followed English common law in recognizing that while the king owns the intertidal lands, the king cannot restrict the public's right to fish or navigate.[30] Over time, Florida Supreme Court cases have ruled that protected public trust uses extend from high water line to the low water mark include: navigation, commerce, fishing, other useful purposes in common to and for the people,[31] and bathing.[32] Moreover, the Florida Supreme Court has protected access to its beaches via dry sand private property based on the legal theory of custom.[33]

[28] N.C. CONST. art 14, § 5.
[29] N.C. GEN. STAT. § 1-45.1 (1994).
[30] Brickell v. Trammell, 82 So. 221 (Fla. 1919); Broward v. Mabry, 50 So. 826, 829 30 (Fla. 1909).
[31] State ex rel. Ellis v. Gerbing, 56 Fla. 603, 608–09 (1908).
[32] City of Daytona Beach v. Tona-Rama, Inc., 294 So. 2d 73, 75 (Fla. 1974); see also White v. Hughes, 190 So. 446, 448 (Fla. 1939).
[33] City of Daytona Beach v. Tona-Rama, Inc., 294 So. 2d 73, 78 (Fla. 1974).

f. New Jersey

New Jersey Supreme Court Public Trust decisions have been amongst the most influential over the last two hundred years including rulings that: the Public Trust Doctrine protects "passing and repassing, navigation, fishing, fowling, sustenance, and all the other uses of the water and its products[34];" the State holds title to intertidal lands up to the high water line"[35] but the public has access rights across the dry sand to the vegetative line to access the beaches -- without which the public's right to access the ocean would be meaningless[36]; and has recognized that protected uses will evolve over time to meet the public's needs[37], including surfing.[38]

g. Texas

The Supreme Court of Texas has ruled that title to Texas' shore belongs to the state and is defined as the stretch of land between the high and low watermarks.[39]

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[34] See, Arnold v. Mundy, 6 N.J.L. 1, 12 (1821).
[35] Panetta v. Equity One, Inc., 920 A.2d 638, 644–45 (N.J. 2007).
[36] Peloso & Caldwell; and Matthews v. Bay Head Improvement Ass'n, 471 A.2d 321, 323, and 326 (N.J. 1984).
[37] *Bor. of Neptune City v. Bor. of Avon-By-The-Sea* (61 N.J. 296 (1972) (we have no difficulty in finding that, in this latter half of the twentieth century, the public rights in tidal lands are not limited to the ancient prerogatives of navigation and fishing, but extend as well to recreational uses, including bathing, swimming and other shore activities. The public trust doctrine, like all common law principles, should not be considered fixed or static, but should be molded and extended to meet changing conditions and needs of the public it was created to benefit").
[38] See Van Ness v. Borough of Deal, 139 N.J. Super. Ct. Ch. Div. 83, 93–97, 352 A.2d 599 (1975) (Surfing and other recreational uses held protected under the public trust doctrine);
[39] City of Galveston, 23 Tex. at 358 ("The shore, is that ground that is between the ordinary high-water and low-water mark, whether on the coast, or in the arms of the sea, such as bays, navigable rivers, etc., in which the tide flows and reflows.").

h. Rhode Island

The Rhode Island Supreme Court has ruled that the state owns title to the seashore to the high tide line.[40] In addition, the Rhode Island Legislature has recognized the evolving and expanding nature of the Public Trust doctrine.[41]

i. Seventeen out of twenty Coastal States recognize that under the Public Trust Doctrine, State Ownership in the Intertidal begins no lower than the high-tide mark and protected public trust uses include recreation and walking.

Of the 20 States that border the ocean, seventeen recognize that under the Public Trust Doctrine, States own title to the intertidal zone starting at the high water mark (public use rights in seven of these states start at the vegetative line above the high water mark). Such ownership is superior to all private or municipal title claims and these lands are held in trust by the state for public trust uses (unless specifically given away by a valid legislative Act) that include at least recreation and swimming in addition to the initially recognized uses (navigation, fishing, marine commerce, etc.).

Only Delaware, Massachusetts and Maine recognize oceanfront owners' title claims to the low water mark, subject to protected public right uses in the intertidal zone. These are also the only three states that do not recognize the Public Trust

[40] State v. Ibbison, 448 A.2d 728, 731 (R.I. 1982).
[41] R.I. GEN. LAWS § 46-23-1.

Doctrine to protect the public's right to use the intertidal zone for general recreation, swimming or walking.

As explained earlier, Maine differs from Massachusetts, in that Massachusetts' alienation of public trust lands to the low water mark was through an official act of the Massachusetts legislature after Massachusetts was already part of the union. See, 1647 Colonial Ordinance.

Under The Maine Statehood Act and the Equal Footing Doctrine, the 1647 Massachusetts Ordinance became null and void in Maine in 1820, at the latest, and Maine never adopted laws after 1820 that ceded its title rights between the low and high tide mark to oceanfront owners that wharfed out. Rather, the Maine Law Court has given title to these lands away based on the Court's improper ruling that the 1647 Ordinance applied in Maine, wrongly applying the common law theory of usage, and overstepping its authority by acting in areas reserved to the Legislature. With respect to Maine and Delaware, Maine includes approximately 3,400 miles of coastline and Delaware has approximately 25 miles. They are not comparable.

As all coastal states have recognized, the public trust duty to preserve the public's rights and privileges of the shore is a progressive and evolving doctrine that is expected to adjust to changing circumstances – and rightfully includes and protects low impact, recreational public uses. The Law Court should follow suit and

recognize State ownership of the Intertidal Zone to at least the high-water mark and recognize that public trust uses include all low-impact recreation.

j. Maine

Maine continues to be an outlier with respect to finding upland owners' title rights extend to the low water mark, and protected public rights uses are limited to narrowly interpreted fishing, fowling, and navigation which do not encompass the right to recreate, swim, walk, surf, or sunbathe. While this Court's majority rulings since Bell I have been overly restrictive, even this Court in concurring, evenly split, and dissenting opinions has expressed interest in overturning the Bell cases completely, or incrementally lessoning the draconian impact the Bell II case has had.

In Eaton, the concurring decision identified the flaws of the Court's Bell II decision and the reasons it should be overturned:

> "By our unduly narrow judicial construction of the time-honored public trust doctrine, our holding in *Bell* restricted the public's right to peaceful enjoyment of one of this state's major resources, the intertidal zone. Pursuant to our holding in *Bell,* a citizen of the state may walk along a beach carrying a fishing rod or a gun but may not walk along that same beach empty-handed or carrying a surfboard. This interpretation of the public trust doctrine is clearly flawed. … I would overturn Bell v. Town of Wells. (Me.1989).

Eaton v. Town of Wells, 760 A2d 232 (ME 2000). What this opinion foreshadowed in 1980 has come to pass. In Eaton, the concurring opinion outlined a five-factor test to determine when overturning precedent is appropriate. Id. This opinion

concluded that all five factors for overturning Bell were satisfied.[42] Surfrider agrees and urges this Court to overturn Bell on these grounds. Professor Delogu analyzes these factors in his 2017 book "Maine's Beaches are Public Property," arguing they support overturning the *Bell* cases and Surfrider adopts these arguments. See, Brief of Appellant Orlando Delogu.

In Ross v. Acadian (2019) then Chief Justice Saufley, whom Justices Mead and Gorman joined, wrote separately, indicating the desire to explicitly overrule *Bell II's* restrictive rule on allowable public trust uses:

> "The constrictive trilogy of that holding [allowing only fishing, fowling, and navigation] has bedeviled the State of Maine since that opinion was issued, and we fear that the Court's holding will become enshrined in increasingly uncorrectable law […] Although judicial efforts to loosen the strings of Bell II have been undertaken—for example, in the strained interpretation of "navigation" in McGarvey v. Whittredge, …--these anemic efforts have failed to do what must be done. […] As time marches on, concepts of stare decisis may begin to take root in this critical aspect of Maine law, and Maine landowners, understandably, may begin to rely on the restrictions placed on the public's access to the intertidal zone. […] because of the passage of time, which will eventually diminish the ability of the Court to correct the wrong created by the Bell II decision, we would take this opportunity to correct the judicial error that restricted the rights of the public to engage in reasonable

[42] Former Chief Justice Leigh Saufley concurring opinion (i.e. not binding precedent) explained she would have taken the opportunity to revisit and overrule the *Bell* cases' restrictive public trust ruling because the following five factors of the Court's test for ignoring stare decisis were met, including: (1) does the prior decision operate harshly, unjustly, and erratically to produce results that are not consonant with *prevailing and well-established conceptions of fundamental fairness and rationally based justice*; (2) is the prior decision based on concepts, authorities, and conditions that have *eroded or no longer exist, as exemplified by disapproval of those concepts and authorities in better reasoned cases and scholarly writings*; (3) is the decision (in *Bell*, the interpretation of ambiguous language in the Colonial Ordinance), the creation of the court itself; (4) has the Legislature accepted or rejected the rule of law fashioned by the prior decision; and (5) can the court in reexamining or overruling the prior decision *avoid harsh impacts on those who may have relied on the prior decision*?

> ocean-related activities that do not interfere with the upland owners' peaceful enjoyment of their own property or their right to wharf out… The 1989 decision in Bell II erroneously limited the public's reasonable and non-abusive use of the intertidal zone. That use should include the right to walk unfettered upon the wet sand of Maine beaches to peacefully enjoy one of the greatest gifts the State of Maine offers the world… Simply put, we would overrule Bell II once and for all. We would adopt the original Wathen analysis, Bell II, 557 A.2d at 180-92 (Wathen, J., dissenting), and allow the common law of public access and use of the intertidal zone to continue to develop as it has over the centuries. The public deserves our correction."

Ross v. Acadian Seaplants, Ltd., 2019 ME 45, 206 A3d 283 (citations omitted).

IT IS NOT TOO LATE!

III. The Law Court Should Overturn Bell and Find That the State Owns the Intertidal Zone to the Low Water Mark in trust for the public and is Obligated to protect public uses including Low Impact Recreation and Walking and these obligations outweigh the Court's need to Blindly Affirm wrong prior decisions based on the Doctrine of Stare Decisis

The Doctrine of stare decisis is a court-made policy[43]. Its purposes are to create "stability" in the law and to "enable the public to place reasonable reliance on judicial decisions affecting important matters." McGarvey v. Whittredge, 28 A.3d 620. However, stare decisis does not carry the same force and weight in every context, and there are well-established factors that help guide the ultimate determination of whether to revise precedent. See, Myrick, at 1000.

[43] See, Payne v. Tennessee, 501 U.S. 808, 828 (1991); Myrick v. James, 444 A.2d 987, 997-98(Me.1982).

The public purposes of stare decisis are not advanced by upholding the restrictive Bell cases – *which have only created instability*. Specifically, on one side, the Bell cases have emboldened shoreline owners to file lawsuits and place threatening signs on Moody and other beaches announcing and staking their claims of exclusive ownership from their home to the low water mark. Conversely, because of Bell, the State and numerous parties have had to file lawsuits disputing the upland owners' title claims and in case after case have demonstrated that for centuries the land between the high and low tide marks have been used by the public for numerous forms of recreation activities that have evolved over time and the public's expectations are that they and the generations to follow will also engage in these activities. As far as upsetting stability, the overwhelming majority of Maine beachgoers have never heard of the 1647 Ordinance or that their rights are limited to fishing, fowling and navigation.

Moreover, the State and beachgoers claims to continue use in the intertidal zone for recreational purposes have been significantly disrupted on Moody beach in recent by the few oceanfront owners that have placed signs and engaged in confrontations when someone lays a blanket or crosses the intertidal zone in front of their properties. The publics' expectations of use have gone on longer and are based on far stronger legal grounds than the owners' clams which rely solely on Bell and this court's continued adherence to affirm bad precedent as a result of stare decisis.

As noted recently by this Court an important factor in determining whether to apply the stare decisis doctrine is whether revising the precedent will upset settled expectations[44]. In McGarvey v. Whittredge, the Court split 3-3 on whether to overturn Bell (the tie resulted in affirmation) and the concurring opinion aptly noted that upholding Bell merely serves private property owners, but does nothing with respect to ensuring beneficial stability in the law for the public.

Because of Bell, this court has had to determine beach-by-beach, use-by-use what activities are allowed in the intertidal zone. If Bell is not overturned, expectations of allowable uses will continue to be litigated on a case-by-case basis with the evolution of public uses. In addition, overturning Bell will only impact a tiny minority of shoreland owners, most of whom purchased their properties well aware that the public used the beaches in front of them, and prior owners had never wharfed out. Accordingly, any expectation Moody Beach ocean front owners (or any Maine beachfront owners) have regarding their exclusive rights to use the land in front of their homes -- knowing full well that before they purchased their homes or during their estates' entire ownership the public used those lands until they erected signs – are unreasonable. Overturning Bell would *provide* stability—not disrupt it.

[44] See *Finch v. U.S. Bank, N.A* https://www.courts.maine.gov/courts/sjc/lawcourt/2024/24me002.pdf; Adams v. Buffalo Forge Co., 443A.2d 932, 935 (Me.1982); Jordan v. McKenzie, 113 Me. 57, 59, 92 A. 995, 996 (1915).

In U.S. jurisprudence it is well understood that Stare Decisis is an important general rule and deserves deference in many circumstances but is not concrete and is regularly ignored when deemed appropriate by the Courts[45]. Recently, this Court discussed the doctrine of stare decisis in *Finch v. U.S. Bank, N.A.*, where the court overturned unanimous precedent. In its discussion of stare decisis, the Court explained:

> "Its [Stare Decisis] purposes are to create "stability" in the law and to "enable *the public* to place reasonable reliance on judicial decisions affecting important matters."

https://www.courts.maine.gov/courts/sjc/lawcourt/2024/24me002.pdf. As noted above, Bell has not created stability in the law and the vast majority of the public are unaware of the Bell decisions. It is time to restore justice and stability for Maine beach access, and overturn Bell.

E. Equitable Recreational Beach Access is Important for all Mainers' Wellbeing and is an Important Environmental Justice Issue

Finally, Surfrider encourages this Court to consider the critical fact that equitable and inclusive beach access is an important environmental justice issue. As

[45] As the Supreme Court has noted, stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable. When such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience. Remaining true to an intrinsically sounder doctrine established in prior cases better serves the values of stare decisis than would following a more recently decided case inconsistent with the decisions that came before it; the latter course would simply compound the recent error and would likely make the unjustified break from previously established doctrine complete. In such a situation, special justification exists to depart from the recently decided case. Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 231 (1995)

Surfrider's Beach Access Policy recognizes, access to healthy and clean coasts and a vibrant ocean should be for the benefit of all people.[46] Not everyone can afford to live on the ocean, and beach access – meaning the ability to access the beach for reasonable, recreational purposes – should not be reserved for those privileged few who can.

Furthermore, there is a history of systemic discrimination that has prevented Black, Indigenous, and other People of Color from accessing the beach.[47] Privatizing beaches, rather than recognizing and protecting their public trust nature, can perpetuate this discrimination. The beach is a public resource and must be accessible for all to enjoy. Surfrider seeks equitable and inclusive opportunities for all people, regardless of race, sex, gender, sexual orientation, religion, and other personal characteristics, to reach and enjoy safe, clean beaches. Surfrider implores this Court to restore equitable beach access for all in Maine, and overturn Bell.

Studies have shown that public beach access and ocean recreation are important contributors to good health and mental wellness.[48] Evidence suggests that time spent in or near blue spaces, including the ocean and lakes, may enhance mental health and well-being in the general population, by providing meaningful opportunities for physical activity, cognitive and emotional restoration, social

[46] See https://www.surfrider.org/pages/policy-on-beach-access
[47] See, e.g., https://www.npr.org/2022/09/26/1125054621/historic-racism-creates-barriers-to-beach-access, https://www.surfrider.org/news/understanding-historical-discrimination-in-u.s-beach-access
[48] See, e.g., https://www.webmd.com/mental-health/mental-health-benefits-of-the-beach

interactions, and even the relaxing sounds of lapping water at the shore. These benefits of the shore, a place offering respite from the stressors of modern life, should be free and available to all people on an equitable basis.

Overturning *Bell* and recognizing the rightful scope of public trust uses of the intertidal zone as including recreational use would restore justice in this regard. Surfrider implores this Court to do so.

CONCLUSION

Based on the U.S. Constitution, Equal Footings Doctrine, Public Trust Doctrine, U.S. Supreme Court Precedent, Supreme Court decisions in the Majority of other Coastal States, Maine Law which this court improperly found unconstitutional this Court should overturn Bell II and subsequent cases that affirmed it and rule that the State of Maine owns the interdial zone to the high water mark and the public's protected uses in these lands include low-impact recreation and walking.

If this Court is unwilling to overturn Bell II regarding ownership between the mean high and low water lines on the basis of Stare Decisis, then it should apply former Chief Justice Saufley's reasonableness test laid out McGarvey and rule that the Public Trust Doctrine obligates the state to protect low-impact recreational activities and walking to the high-water mark.

CERTIFICATE OF SERVICE

I, Adam Steinman, hereby certify that on August 2, 2024, I caused two copies of the Brief for Appellants to be served upon the following counsel of record via regular U.S. Mail and one electronic copy by email:

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