

No. 94643-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

PIERCE COUNTY, a political subdivision of the State of Washington;
and BLAIR SMITH, individually, and as an employee of Pierce County,

Petitioners,

v.

MARGIE M. LOCKNER, a single woman,

Respondent.

BRIEF OF AMICI CURIAE WASHINGTON ASSOCIATION OF
LAND TRUSTS, WASHINGTON TRAILS ASSOCIATION, THE
MOUNTAINEERS, THE WASHINGTON TRUST FOR HISTORIC
PRESERVATION, THE WASHINGTON CATTLEMEN'S
ASSOCIATION, EVERGREEN MOUNTAIN BIKE ALLIANCE, THE
ACCESS FUND, THE WASHINGTON CLIMBERS COALITION, AND
AMERICAN WHITEWATER

PACIFICA LAW GROUP LLP

Paul Lawrence, WSBA No. 13557
Alanna Peterson, WSBA No. 46502
1191 Second Avenue, Suite 2000
Seattle, WA 98101
Telephone: (206) 245-1700

Counsel for Amici

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	IDENTITY AND INTERESTS OF AMICI.....	3
III.	STATEMENT OF THE CASE	3
IV.	ARGUMENT	3
A.	Washington’s outdoor recreation assets unite, sustain, and enrich our communities.....	3
B.	The court of appeals’ interpretation of the recreational immunity statute would significantly limit its reach and frustrate efforts to preserve, expand, and facilitate outdoor recreation.....	7
1.	It is common and beneficial to the public for landowners to enter into legal agreements memorializing their decision to permit public recreational access.....	8
2.	Lands with outdoor recreation assets often also provide other beneficial public uses.....	14
3.	The public benefits from recreational access to lands used primarily for non-public purposes.....	16
C.	A broad and unambiguous interpretation of the recreational immunity statute is essential to promote the diversity and accessibility of outdoor recreation, particularly for activities perceived to be higher risk.....	17
V.	CONCLUSION	20

Table of Authorities

Cases

<i>Camicia v. Howard S. Wright Const. Co.,</i> 179 Wn.2d 684, 317 P.3d 987 (2014).....	9, 14
---	-------

<i>Cregan v. Fourth Mem'l Church,</i> 175 Wn.2d 279, 285 P.3d 860 (2012).....	16
--	----

<i>Lockner v. Pierce Cnty.,</i> 198 Wn. App. 907, 396 P.3d 389 (2017).....	3, 8, 14
---	----------

<i>Widman v. Johnson,</i> 81 Wn. App. 110, 912 P.2d 1095 (1996)	13
--	----

Statutes

Laws of 1967, ch. 216, § 1	5
----------------------------------	---

Laws of 1972, ch. 153, § 7.....	5
---------------------------------	---

Laws of 2003, ch. 16, § 1	19
---------------------------------	----

Laws of 2003, ch. 16, § 2.....	5
--------------------------------	---

RCW 4.24.200	5
--------------------	---

RCW 4.24.210	1, 12, 18, 19
--------------------	---------------

RCW 4.24.410	16, 19
--------------------	--------

RCW 79.155.010	15
----------------------	----

RCW 79A.15.030.....	10
---------------------	----

RCW 84.34.120	10
---------------------	----

Regulations

18 C.F.R. § 2.7	12
-----------------------	----

I. INTRODUCTION

Outdoor recreation connects, sustains, and enriches our communities, and is a defining characteristic of our shared identity as Washingtonians. Washingtonians recreate across a patchwork of public and private lands, access to which is secured through collaboration among state and local government, public and private landowners, conservation organizations, and recreational users. The legislature enacted Washington's recreational immunity statute, RCW 4.24.210, to promote outdoor recreation by enabling landowners to permit public recreational access without fear of liability.

The court of appeals' interpretation of the recreational immunity statute would frustrate that purpose by limiting the statute's reach and creating uncertainty as to its application. First, the weight the court of appeals places on a landowner's authority to open or close their property would inappropriately preclude immunity for landowners who memorialize a decision to permit public access through an easement, deed restriction, or other legal agreement, which is a common and effective mechanism through which public access is secured. Second, the court of appeals restricts the statute's application solely to lands held open **only** for recreational purposes, excluding lands that may also serve other beneficial public purposes, such as education, scientific study, or the practice of

Native American religious and cultural traditions. Amici encourage this Court to reject the court of appeals' narrow and ambiguous interpretation and instead apply recreational immunity to any landowner who demonstrates an intent to allow public access for the purpose of recreation, irrespective of whether the landowner also permits other public uses. This test furthers the legislature's purpose in enacting the statute—the promotion of outdoor recreation—and clarifies its reach by recognizing the varied ways in which landowners and stakeholders collaborate to effectuate that purpose.

As nonprofit organizations which represent or collaborate with landowners to protect and expand outdoor recreation opportunities in Washington, amici understand the negative impact that the court of appeals' limited interpretation, and the uncertainty it engenders, would have upon the diversity and accessibility of outdoor recreation opportunities in this state. Accordingly, amici respectfully request that this Court reverse the court of appeals' decision and effectuate the legislature's intent by broadly and unambiguously interpreting the recreational immunity statute to give its full benefit to landowners who allow public recreational access on their land.

II. IDENTITY AND INTERESTS OF AMICI

The interest of the Washington Association of Land Trusts, Washington Trails Association, the Mountaineers, the Washington Trust for Historic Preservation, the Washington Cattlemen's Association, Evergreen Mountain Bike Alliance, the Access Fund, the Washington Climbers Coalition, and American Whitewater in joining as amici curiae in this matter is described in the Motion for Leave to File to Amici Curiae Brief filed concurrently with this brief.

III. STATEMENT OF THE CASE

Amici adopt the Statement of the Case set forth in the Appellant's Supplemental Brief filed with this Court on October 3, 2017 and the Statement of Facts set forth in the court of appeals' opinion entered on May 9, 2017. *See Lockner v. Pierce Cnty.*, 198 Wn. App. 907, 909-910, 396 P.3d 389 (2017).

IV. ARGUMENT

A. Washington's outdoor recreation assets unite, sustain, and enrich our communities.

Outdoor recreation is "essential" and integral to the quality of life enjoyed by Washingtonians.¹ More than 90 percent of Washingtonians

¹ Wash. Recreation and Conservation Office, *Governor's Blue Ribbon Parks & Outdoor Recreation Task Force, Final Recommendations*, at 1 (Sept. 19, 2014), <https://www.rco.wa.gov/documents/ORTF/ORTF-Recommendations.pdf> [hereinafter "Blue Ribbon Recommendations"].

recreate outside.² On average, Washingtonians spend 56 days per year recreating outside and are more likely to go camping or hiking than the average American.³ Washington’s “interconnected systems of parks, trails, waterways, and natural areas equitably provide for diverse recreation pursuits while conserving critical landscapes for the benefit of people, plants, and animals that live here.”⁴ Washington contains a remarkable diversity of ecosystems, including more than 3,000 miles of coastline, wetland estuaries, dry coniferous forests, subalpine and alpine meadows, sand dunes, glacier-fed rivers and freshwater lakes, the Cascade and Olympic mountain ranges, the San Juan Archipelago—among the most diverse and fragile marine ecosystems in the world, the channeled scablands and coulees of the Columbia Plateau, and the only rainforest in the contiguous United States, all of which offer unparalleled outdoor

² Wash. Recreation and Conservation Office, *Recreation and Conservation Plan for Washington State, 2018-2022, Executive Summary*, at 3 (2017), https://www.rco.wa.gov/documents/strategy/RCO_SCORP_ExecutiveSummary_2018-2022.pdf [hereinafter “RCO Recreation and Conservation Plan”].

³ Outdoor Industry Ass’n, *Outdoor Recreation Economy Report: Washington* (July 2017), https://outdoorindustry.org/wp-content/uploads/2017/07/OIA_RecEcoState_WA.pdf [hereinafter “OIA Economy Report”]; Earth Economics, *Economic Analysis of Outdoor Recreation in Washington State*, at ix (Jan. 2015), available at <https://www.rco.wa.gov/documents/ORTF/EconomicAnalysisOutdoorRec.pdf> [hereinafter “RCO Economic Analysis”].

⁴ RCO Recreation and Conservation Plan, at 3.

recreation opportunities.⁵ Outdoor recreation also has measurable and meaningful impacts on Washington’s economic success and human and ecological health.⁶ In short, “Washington’s outdoors—and our enjoyment of it—represents one of the state’s most significant assets.”⁷

To facilitate and promote outdoor recreation in Washington, the legislature enacted Washington’s recreational immunity statute. *See* Laws of 1967, ch. 216, § 1. The statute promotes outdoor recreation by “encourag[ing] landowners to open their lands to the public for recreational use by limiting their liability toward persons entering thereon.” RCW 4.24.200. Through amendments to that statute, the legislature has reiterated the importance of “promot[ing]” and “developing as fully as possible” the recreation opportunities available to Washingtonians. *See, e.g.*, Laws of 1972, ch. 153, § 7 (amending statute to define recreation to include “the pleasure driving of all-terrain vehicles,” with the “intent” to ensure that “public recreation facilities be developed as fully as possible to provide greater recreation opportunities for the citizens of the state.”); Laws of 2003, ch. 16, § 2 (finding it “important to the promotion of rock climbing opportunities to specifically

⁵ *See* Nat’l Park Serv., *Nature, San Juan Island National Historic Park* (March 30, 2015), <https://www.nps.gov/sajh/learn/nature/index.htm>; Wash. Biodiversity Council, *Washington’s Biodiversity: Status and Threats*, at 12-14 (Jan. 2007), <https://www.rco.wa.gov/documents/biodiversity/WABiodiversityStatusThreats.pdf>.

⁶ RCO Recreation and Conservation Plan, at 3; OIA Economy Report, at 1.

⁷ Blue Ribbon Recommendations, at 3.

include “rock climbing” because “some property owners in Washington are concerned about the possibility of liability arising when individuals are permitted to engage in potentially dangerous outdoor recreational activities”).

Since Washington’s recreational immunity statute was enacted, Washington’s state and local government agencies, public and private landowners, land conservation organizations, and recreational users have continued to collaborate to secure, protect, and expand the diversity and accessibility of Washington’s outdoor recreation opportunities. Whether to secure public access to and enjoyment of a critical trail connection, a world-class climbing route, a historic or culturally significant structure or site, or safe entry to or exit from a whitewater run, land conservation organizations and recreational users routinely negotiate with landowners to protect, secure, and facilitate outdoor recreation.⁸ Landowners will commonly enter into legal agreements, such as easements or deed restrictions, to define the circumstances under which the public may enjoy all or part of their land. In other circumstances, land conservation organizations or recreational user groups may advocate for the outright

⁸ Land trusts play a critical role in these efforts, protecting over 866,467 acres of land in Washington, 72% of which is open to the public. Land Trust Alliance, *2015 National Land Trust Census Report: Washington State* (2015), <https://www.landtrustalliance.org/census-map/#Washington>. Washington land trusts manage 457 properties with public access in Washington and have helped private landowners place conservation easements on 98,265 acres of land. *Id.*

sale or donation of the property, either for their own ownership and management or to be owned and managed by a public entity. In addition, land conservation organizations and recreational user groups often rely on government or grant funding to compensate the landowner, which funding often includes a requirement of public access to or enjoyment of the land.

With unprecedented population growth and decreasing and unstable funding for public parks and open space, it is critical to maintain incentives for landowners to open, sell, or donate their lands for public recreation.⁹ “Washington’s population growth is placing a strain on outdoor spaces already stressed by financial and policy constraints that threaten our recreation infrastructure and outdoor programs.”¹⁰ These problems will only increase, with the state’s population expected to grow by 2 million people by 2040.¹¹ Continued collaboration among public and private stakeholders is essential to ensure the continued accessibility and diversity of outdoor recreation opportunities in this state.

B. The court of appeals’ interpretation of the recreational immunity statute would significantly limit its reach and frustrate efforts to preserve, expand, and facilitate outdoor recreation.

Here, the court of appeals narrowly interpreted the recreational immunity statute to preclude immunity for landowners who (1) lack the

⁹ RCO Recreation and Conservation Plan, at 3; *see* Blue Ribbon Recommendations, at 3.

¹⁰ Blue Ribbon Recommendations, at 3.

¹¹ RCO Recreation and Conservation Plan, at 3.

continuing authority to open or close their land to public recreation, or (2) also elect to permit the public to enjoy the other valuable assets their land offers. This narrow interpretation frustrates the statute's purpose by discouraging landowners from permitting public recreational access and impacting negatively the diversity and accessibility of recreational opportunities in our state. To avoid such negative and far-reaching consequences, amici encourage this Court instead to interpret the statute to apply to any landowner who demonstrates an intent to allow the public to use their land for recreational purposes, irrespective of whether the landowner retains the authority to close the land to public access or allows the public to access their land for other beneficial public purposes. This interpretation can be clearly applied and is consistent with the manner in which landowners and stakeholders secure, protect, and facilitate meaningful recreational access.

1. It is common and beneficial to the public for landowners to enter into legal agreements memorializing their decision to permit public recreational access.

In deciding whether recreational immunity applied here, the court of appeals first weighed whether the county had the authority to close the trail to the public. *See Lockner*, 198 Wn. App. at 914-15 (considering whether the county had the authority to enforce stated trail closures). As other amici argue, the court of appeals' interpretation misconstrues this

Court’s decision in *Camicia v. Howard S. Wright Const. Co.*, 179 Wn.2d 684, 695–96, 317 P.3d 987 (2014), which on that point was limited to its unique factual circumstances. *See Wash. State Ass’n Municipal Attorneys Amicus Curiae Br.* 14–18. Beyond the unique factual circumstances present in *Camicia*, weighing a landowner’s ongoing authority to open or close their property to the public limits significantly the statute’s reach by precluding immunity for landowners who enter into legal agreements memorializing their decision to permit public outdoor recreation, which is a common and effective mechanism through which recreational access is secured. The result would be to dissuade landowners from opening their land to long-term recreational use.

For example, many landowners formalize a decision to permit public access by entering into legal agreements, such as deed restrictions or easements. Landowners often also enter into memoranda of agreement or understanding with recreational users, which may spell out the circumstances under which users may modify or enhance the property to facilitate recreational use.¹² Such legal arrangements protect both the

¹² For example, mountain biking groups rely heavily upon such agreements to specify where and under what circumstances those groups can build trails and manmade features on private or other lands. Without the benefit of recreational immunity, such agreements would be impracticable. Given their organic nature, trails and other manmade features change frequently and substantially, and user groups understand that it is the rider, not the landowner, who should evaluate and ultimately bear the risk of taking a certain trail or feature.

landowner and recreational users by clearly delineating the parties' legal rights and obligations and providing a mechanism for enforcing them. Nullifying immunity in such circumstances would strongly discourage landowners from entering into such agreements, and would discourage land trusts or local governments from accepting ownership or stewardship of such lands for public use.

The court of appeals' interpretation would also threaten the ability to use public and grant funding sources to secure and maintain outdoor recreation assets. Many funding sources require as a condition of approval that land remain open to the public to some extent. For example, any development, recreation, or acquisition projects funded through the state's Recreation and Conservation Office ("RCO") "must be accessible for public recreation and outdoor education unless the board specifically approves limiting public access in order to protect sensitive species, water quality, or public safety." RCW 79A.15.030(5). Most RCO acquisition grants additionally require recording of a deed of right providing for such public access. Local government Conservation Futures programs have similar requirements.¹³ See also RCW 84.34.120 (authorizing local governments and certain other entities to acquire lands through such

¹³ See, e.g., Clark Cnty., *Conservation Futures Legacy Lands, Program Guidance Manual*, at 14, 20, 21 (June 3, 2013), https://www.clark.wa.gov/sites/default/files/legacy_manual.pdf.

programs “for public use or enjoyment”). As another example, the Land and Water Conservation Fund, which is federal funding distributed through RCO, funds only acquisition and development projects that provide “public access” for outdoor recreation purposes.¹⁴ The court of appeals decision could be interpreted to deny immunity for those projects because the funding restriction prohibits the landowner from closing public access once the funds are accepted.

The court of appeals’ interpretation could also have implications for essential programs to address affordable housing and density issues, such as transfer of development right (“TDR”) programs. For example, King County’s TDR program allows landowners of certain rural or resource lands to sell or donate some or all of their rights to develop their land.¹⁵ TDR lands must provide one or more of the enumerated “public benefits,” which includes providing regional trail connections.¹⁶ A conservation easement is then recorded on title to legally limit development of the TDR property.¹⁷ Developers in urban areas can then

¹⁴ Wash. Recreation and Conservation Funding Board, *Land and Water Conservation Fund, Manual 15*, at 13 (March 2016), https://www.rco.wa.gov/documents/manuals&forms/Manual_15-LWCF.pdf.

¹⁵ King Cnty., *Program Overview – Transfer of Development Rights* (Jan. 10, 2017), <https://www.kingcounty.gov/services/environment/stewardship/sustainable-building/transfer-development-rights/overview.aspx> [hereinafter “King Cnty. TDR Overview”].

¹⁶ *Id.*; King Cnty., *Transfer of Development Rights (TDR), Sending Site Qualification Criteria* (Jan. 10, 2017) <https://www.kingcounty.gov/services/environment/stewardship/sustainable-building/transfer-development-rights/sending-criteria.aspx>.

¹⁷ See King Cnty. TDR Overview.

purchase those separated development rights to increase density, usually by building additional dwelling units that exceed the number permitted by existing zoning restrictions.¹⁸ Because the conservation easement would limit the authority of the landowner to close the trail connection to public use, immunity would be precluded under the court of appeals' interpretation of the statute.

Precluding immunity simply because a landowner lacks the authority to exclude public access is also inconsistent with the legislative history of the statute. In 2011, the legislature amended the recreational immunity statute to apply explicitly to "hydroelectric project owners," who are required by federal law to collaborate with stakeholders to plan, provide, operate, and maintain appropriate recreational areas and facilities. RCW 4.24.210; *see also* 18 C.F.R. § 2.7. That amendment addressed and appeased the trepidations of the Chelan Public Utility District, which agreed as a component of its hydroelectric license to release water from a dam for whitewater recreation but expressed concern in its testimony before the legislature that it could be "liable for injuries to those recreating in the whitewater, particularly where the water hides dangerous rocks or drops."¹⁹ Under the court of appeals' rationale, landowners legally required to permit public recreational access—such as the hydroelectric

¹⁸ *Id.*

¹⁹ S. B. Rep. on S.B. 5388, 62nd Leg., Reg. Sess., at 2 (Wash. 2011).

electric project owners whom the legislature amended the statute to explicitly include—would be excluded from the application of the recreational immunity statute. The Court of Appeals determinative focus on whether the landowner retains the right to close public access to the property after a commitment is made to open the property is inconsistent with the immunity statute.

To avoid such far-reaching and negative consequences, this Court in deciding whether immunity applies should focus instead on whether the landowner demonstrates an intent to allow public recreational use of their property. Landowners could (and many already do) demonstrate this intent to allow public recreational access by agreeing to restrictive language in legal agreements, seeking or receiving funding sources that require or prioritize public recreational access, accepting ownership or control of property subject to such legal agreements or funding restrictions, or posting signage or distributing materials permitting recreational use, among other ways. The test amici propose properly focuses on the intent of the landowner, not the recreational user, consistent with the purpose of the recreational immunity statute and other Washington case law interpreting it. *See, e.g., Widman v. Johnson*, 81 Wn. App. 110, 114, 912 P.2d 1095 (1996) (finding that the occasional use of a private forest road as a shortcut “lacks legal significance” because

“[e]very reasonable person would also believe that Hanson had opened the Main Line for recreational use.”). That a landowner elected to formalize their commitment to permit public recreational through a legal agreement which provides permanence, certainty, and (perhaps most importantly) enforceable legal rights to recreational users should weigh in favor of, not against, applying the recreational immunity statute.

2. Lands with outdoor recreation assets often also provide other beneficial public uses.

The court of appeals also held that the recreational immunity statute applies solely to land “open to the public **solely** for the purpose of recreation,” regardless of the other public benefits the land may provide. 198 Wn. App. at 914 (emphasis added). As petitioner and other amici argue, that holding is inconsistent with and an unwarranted limitation of the recreational immunity statute and this Court’s decision in *Camicia*. See Pet. Supp. Br. 6, 13; Wash. State Ass’n Municipal Attorneys Amicus Br. 3-14. This interpretation would preclude immunity for landowners who also wish to provide the public access to the other diverse and valuable assets their land holds. Where a landowner demonstrates an intent to allow public recreational access, it should be irrelevant whether they also permit the public to use their property for other purposes.

Lands with outdoor recreation assets often also provide other public benefits, such as education, scientific study, or the opportunity to practice Native American medicinal and cultural traditions. For example, many properties also serve as outdoor educational classrooms and provide opportunities for hands-on STEM learning. One land trust-owned property, which protects critical spawning and rearing habitat for endangered salmon, partners with local school districts and educational groups to provide opportunities for students to learn about water quality, local ecology, and natural history, in addition to and apart from inviting the public onto the property for quiet reflection, picnicking, and bird and wildlife watching. Community forests, which are supported and funded by the state and in which multiple stakeholders join together to determine and actualize the best use of land to maximize multiple community benefits, often also provide invaluable educational opportunities to local schools and community groups.²⁰ Another land trust recently secured a wide swath of forest in Port Gamble, Washington which will provide the community with miles of hiking, birdwatching, biking, and shoreline access trails, permit limited commercial logging and, importantly, provide

²⁰;See Wash. Dept. of Natural Resources, *Wash. Community Forest Trust Program*, <https://www.dnr.wa.gov/managed-lands/washington-community-forest-trust-program> (last visited Jan. 11, 2018). The legislature enacted the community forest trust program to curb the loss of forestland, which provides essential “multiple benefits to our communities,” including recreation and open space. *See* RCW 79.155.010(1)-(2).

the Port Gamble S’Klallam and Suquamish tribes with the opportunity to harvest natural foods, traditional medicines, and materials for their art and textile traditions on land of great cultural significance to them.²¹

Precluding immunity in these circumstances would frustrate the purpose of the recreational immunity statute by discouraging landowners from providing the public with the full and varied benefits their land may provide. That cannot be the result the legislature intended. To avoid that result, amici encourage this Court to consider only whether a landowner intended to allow the public to use their property for the purpose of recreation, irrespective of whether the landowner has decided also to permit public access for other beneficial purposes.

3. The public benefits from recreational access to lands used primarily for non-public purposes.

Although this Court has previously acknowledged that recreational immunity applies to lands used for non-public purposes (such as private commercial activity) where recreation is permitted during non-business hours, Washington courts have not addressed whether and how RCW 4.24.410 applies if a landowner also permits recreation at other times or does not specify business hours. *See Cregan v. Fourth Mem'l Church*, 175 Wn.2d 279, 285–86, 285 P.3d 860 (2012). With over 50% of land in

²¹ *A Gift to the Region: Over 1,500 More Acres of Port Gamble Forest Secured on Kitsap Peninsula*, Forterra (Dec. 22, 2017), <http://forterra.org/press-releases/gift-region-1500-acres-port-gamble-forest-secured-kitsap-peninsula>.

Washington in private ownership, it is important that private landowners are encouraged to open their lands to recreational access, regardless of whether their land serves a different primary purpose. Many important recreational assets are located on lands that primarily serve other, non-public purposes. For example, it is common for cattle ranchers to permit the public to hunt, fish, or view wildlife in their cattle pastures, which are often thousands of acres in size. Many popular rock climbing areas are on lands owned by timber companies or state or local government agencies, which through negotiations with recreational user groups often permit climbing to continue while those lands are being actively logged or managed. And mountain bike users work collaboratively with timber companies and other landowners to construct trails and features on lands actively used as working forests. In deciding this case, amici urge this Court to take care not to inadvertently preclude or call into question immunity in those circumstances.

C. A broad and unambiguous interpretation of the recreational immunity statute is essential to promote the diversity and accessibility of outdoor recreation, particularly for activities perceived to be higher risk.

Regardless of the specific test that this Court elects to adopt, amici note that a broad and unambiguous application of the statute is vital to ensure that the recreational immunity statute serves the purpose for which

it was intended. It shifts the risks inherent in outdoor recreation squarely where they belong: on the recreational user. Immunity from liability allows landowners to evaluate clearly whether and under what circumstances they wish to permit the public to recreate on their land, without the need to account for potential liability for injuries sustained by recreational users. This is particularly important for activities perceived to be higher risk, such as rock climbing, mountain biking, whitewater boating, and hunting, where in the absence of immunity a landowner could reasonably conclude that the potential liability far outweighs any benefit they or the public may receive from permitting public recreational access. If the application of the immunity statute to a particular property is uncertain, even a landowner inclined to collaborate with recreational users would be understandably wary to assume liability for the inherent or perceived risks that accompany many recreational activities.²² Amici fear that such ambiguity would widely foreclose opportunities for Washingtonians to engage in and enjoy outdoor recreation.

²² For example, Washington State Parks permits climbing on its property based upon its express assumption that it is not liable for any injuries that climbers may incur. *See, e.g.*, Wash. State Parks, *Beacon Rock State Park, Technical Rock Climbing Management Plan*, at 5 (2017), <https://parks.state.wa.us/DocumentCenter/Home/View/9469> (providing that “State Parks assumes no responsibility for monitoring or managing the manner in which climbers practice their sport, or the hazards of climbing . . . Climbers are responsible for their own safety, as provided in RCW 4.24.210”). Without the reassurance that immunity provides, it is unlikely that State Parks will continue to permit climbing.

That the legislature specifically amended RCW 4.24.410 to apply to land open for rock climbing and whitewater boating underscores the importance of the clear application of the statute to incentivize landowners to permit those activities. In amending the statute to apply specifically to “rock climbing,” the legislature found that:

some property owners in Washington are concerned about the possibility of liability arising when individuals are permitted to engage in potentially dangerous outdoor recreational activities, such as rock climbing. Although RCW 4.24.210 provides property owners with immunity from legal claims for any unintentional injuries suffered by certain individuals recreating on their land, the legislature finds that it is important to the promotion of rock climbing opportunities to specifically include rock climbing as one of the recreational activities that are included in RCW 4.24.210.

See Laws of 2003, ch. 16, § 1. The legislature also amended the statute to apply specifically to whitewater recreation and hydroelectric project owners to address similar landowner concerns.²³

The clear application of the statute also encourages landowners not just to permit, but to facilitate meaningful recreational access, including by building or permitting users to build, trailheads, parking areas, signage and

²³ S. B. Rep. on S.B. 5388, 62nd Leg., Reg. Sess. (Wash. 2011); *see also* RCW 4.24.210(1). Diversity and accessibility is particularly important for whitewater boating, where the quantity and diversity of access correlates directly to the safety and accessibility of the sport. Additional points of access to a whitewater run ensure that beginners can enter and exit runs before and after more difficult obstacles. Without such access, those runs are available only to those with the skill to access the most difficult components of a run.

informational materials, and other amenities to improve the recreational experience. Unfortunately, the court of appeals’ interpretation of the statute imbues its application with the ambiguity that the legislature intended to avoid. The test amici propose—whether the landowner demonstrates an intent to allow public recreational access—provides clear direction to landowners seeking the protection the statute provides.

V. CONCLUSION

With dwindling parks and open space budgets, unprecedented population growth, and increasingly overcrowded trailheads and natural areas, the strain on our natural resources, and the state’s ability to maintain them, has never been greater. To further the purpose of the recreational immunity statute—to promote outdoor recreation opportunities—amici respectfully request that this Court reject the court of appeals’ ambiguous and overly narrow interpretation and instead extend immunity to all landowners who demonstrate an intent to allow the public to access their land for the purpose of outdoor recreation. A clear test, such as amici propose, is imperative to protect the continued diversity and accessibility of Washington’s outdoor recreation assets.

RESPECTFULLY SUBMITTED this 12th day of January, 2018.

PACIFICA LAW GROUP LLP

By: *s/ Paul Lawrence*

Paul Lawrence, WSBA # 13557

Alanna Peterson, WSBA # 46502

PACIFICA LAW GROUP LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101-3404
(206) 245-1700