
APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

ROBERT A. SCHRIESHEIM,	)	
	)	
<i>Plaintiff-Appellant</i>	)	Appeal from the Circuit Court of
	)	Cook County, Illinois, County
v.	)	Department, Chancery Division
	)	
ILLINOIS DEPARTMENT OF	)	No. 2023-CH-05443
NATURAL RESOURCES, ET AL.,	)	
	)	Hon. Allen P. Walker
	)	
<i>Defendants-Appellees</i>	)	
	)	

**BRIEF OF THE *AMICI CURIAE* OPENLANDS AND SIERRA CLUB
IN SUPPORT OF PLAINTIFF-APPELLANT**

Robert A. Weinstock
ARDC # 6311441
Environmental Advocacy Center
Bluhm Legal Clinic
Northwestern Pritzker School of Law
375 E. Chicago Ave., 8th Floor
Chicago, IL 60611
(312) 503-1457
robert.weinstock@law.northwestern.edu

*Attorney for Amici Curiae
Openlands & Sierra Club*

TABLE OF POINTS AND AUTHORITIES

INTRODUCTION	1
<i>Paepcke v. Public Bldg. Comm’n</i> 46 Ill. 2d 330 (1970)	2
Ill. R. Evid. 201(b)	2
<i>Sierra Club v. Kenny</i> 88 Ill. 2d 110 (1981)	3
ARGUMENT	3
I. The ARL Cannot Be Interpreted to Undo the Century-Old Imperative of Judicial Review of State Decisions Affecting the Public Trust	3
<i>Paepcke v. Public Bldg. Comm’n</i> , 46 Ill. 2d 330 (1970)	4, 5, 8
17 Ill. Adm. Code § 3704.10.....	4, 7
<i>Illinois Central R.R. Co. v. Illinois</i> , 146 U.S. 387 (1892).....	4, 6
<i>Bowes v. Chicago</i> , 3 Ill. 2d 175 (1954)	6, 8
<i>People ex rel. Scott v. Chicago Park District</i> , 66 Ill. 2d 65 (1976)	6, 7
<i>People ex rel. Moloney v. Kirk</i> , 162 Ill. 138 (1896)	6
<i>Lake Michigan Federation v. US Army Corps of Eng’rs</i> , 742 F. Supp. 441 (N.D. Ill., 1990)	6
Joseph L. Sax, <i>The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention</i> , 68 MICH. L. REV. 471 (1970)	7
615 ILCS 5/4.9 <i>et seq.</i>	7
615 ILCS 5/8.....	7

	<i>Rush University Medical Center v. Sessions</i> , 2012 IL 112906 (2012)	8
	<i>Acme Fireworks Corp. v. Bibb</i> , 6 Ill.2d 112 (1955)	8
II.	The Circuit Court’s Reading of ARL § 107 is Inconsistent with the Text of the ARL and Not Compelled by Relevant Caselaw	9
	735 ILCS 5/3-107	9
	<i>Int’l Union of Operating Eng’rs, Loc. 148, AFL-CIO v. Ill. Dept. of Emp. Sec.</i> , 215 Ill. 2d 37 (2005)	10
A.	The text of § 107 does not create a substantive requirement that ARL plaintiffs are limited to “parties of record” who have taken specific steps in the underlying administrative proceeding.....	10
	735 ILCS 5/3-107	11, 12, 13
	<i>People v. Hoffman</i> , 2025 IL 130344.....	11
	2008 Ill. Legis. Serv. P.A. 95-831 (S.B. 2111) (WEST)	12
	Ill. H.R. Trans., 2007 Reg. Sess. No. 60.....	13
B.	Canons of statutory construction confirm that the statute does not impose a limitation on plaintiffs	14
	<i>People v. Foster</i> , 2021 IL App (2d) 190116	14
	<i>People v. Roberts</i> , 214 Ill. 2d 106 (2005)	14
	<i>People v. Wells</i> , 2023 IL 127169.....	14
	<i>People v. Alcozer</i> 241 Ill. 2d 248 (2011)	15
	<i>Stewart v. Rosenblum</i> , 2025 IL 131365.....	15
	<i>Illinois Central R.R. Co. v. Illinois</i> , 146 U.S. 387 (1892).....	15

C.	The Circuit Court misapplied important case law and did not consider a key case on the “party of record” question	16
	<i>Int’l Union of Operating Eng’rs, Loc. 148, AFL-CIO v. Dept. of Emp. Sec.</i> , 345 Ill. App. 3d 382 (Ill. App. Ct. 2003).....	16, 17, 20
	<i>Int’l Union of Operating Eng’rs, Loc. 148, AFL-CIO v. Ill. Dept. of Emp. Sec.</i> , 215 Ill. 2d 37 (2005).....	16
	<i>Collins v. Industrial Comm’n</i> , 12 Ill. 2d 200 (1957)	17
	<i>Williams v. Dept. of Labor</i> 76 Ill. 2d 72 (1979)	17
	<i>Lincoln Central Association v. Zoning Board of Appeals</i> , 30 Ill. App. 3d 258 (Ill. App. Ct. 1975)	17, 18
	<i>Sierra Club v. Office of Mines & Minerals of the Dept. of Nat. Res.</i> , 2015 IL App (4th) 140405	18, 23
	<i>Helping Others Maintain Env’t Standards v. Bos</i> , 406 Ill. App. 3d 669 (Ill. App. Ct. 2010)	19, 23
D.	The Circuit Court’s reading of the ARL would harm the public in other areas of law where it would render unreviewable other types of permits that impact public health and natural resources	21
	Chicago, Ill., Municipal Code § 11-4-2520	22
	Chicago, Ill., Municipal Code § 11-4-620	22
	735 ILCS 5/3-102	22
	735 ILCS 5/3-104	22
	City of Chicago Dept. Of Admin. Hearings, Procedural Rules & Regs. Ch. 8, available at https://www.chicago.gov/content/dam/city/depts/dol/rulesandregs/DOAH_Rules.pdf	22
	<i>Helping Others Maintain Env’t Standards v. Bos</i> , 406 Ill. App. 3d 669 (Ill. App. Ct. 2010)	23
	<i>Sierra Club v. Office of Mines & Minerals of the Dept. of Nat. Res.</i> , 2015 IL App (4th) 140405	23

35 Ill. Adm. Code § 101.106.....	23
415 ILCS 5/41	
35 Ill. Adm. Code § 105.204.....	23
35 Ill. Adm. Code § 252.205.....	23
<i>Alliance for the Great Lakes, Nat. Res. Defense Council, Openlands, and Sierra Club v. Illinois Dept. of Nat. Res., 2020 IL App (1st) 182587.....</i>	24
III. A Decision Like the IDNR Permit Here Would be Subject to Judicial Review in the Courts of Other Lake Michigan States and in Federal Court	25
A. Indiana	26
Ind. Code § 4-21.5-5-1	26
Ind. Admin. Code § 6-8-1	26
Ind. Code § 14-29-1-8.....	26
Ind. Code § 4-21.5-5-2.....	26
Ind. Code § 4-15-10.5-1	26
Ind. Code § 4-21.5-5-3.....	27
Ind. Code § 4-21.5-3-21	27
Ind. Code § 4-21.5-5-3(b)(2)(B)	27
B. Michigan	28
Mich. Comp. Laws § 324.32512(a)	28
Mich. Comp. Laws § 324.1101(1).....	28
Mich. Comp. Laws § 24.301.....	28
<i>Michigan Citizens for Water Conservation v. Nestle Waters North America, Inc., 737 N.W.2d 447 (Mich. 2007).....</i>	28
<i>Lansing Schools Education Ass’n, MEA/NEA v. Lansing Bd. Of Educ., 792 N.W.2d 686 (Mich. 2010).....</i>	28

	<i>Lakeshore Grp. v. Dep’t of Env’t Quality</i> , 968 N.W.2d 251 (Mich. 2021).....	28
C.	Wisconsin	29
	Wis. Stat. § 227.....	29
	Wis. Stat. § 30.12.....	29
	Wis. Stat. §§ 227.52-53.....	29
	<i>Friends of Black River Forest v. Kohler Co.</i> , 977 N.W.2d 342 (Wis. 2022).....	29
	<i>Sierra Club v. Wisconsin Dep’t of Nat. Res.</i> , 24 N.W.3d 157 (Wis. Ct. App. 2025).....	29, 30
	<i>Borsellino v. Wisconsin Dep’t of Nat. Res.</i> , 606 N.W.2d 255 (Wis. Ct. App. 1999).....	30
	<i>State v. Deetz</i> , 224 N.W.2d 407 (Wis. 1974).....	30
	<i>Gillen v. City of Neenah</i> , 580 N.W.2d 628 (Wis. 1998).....	30
D.	Federal agency decisions in federal courts in Illinois	31
	5 U.S.C. §§ 701–706.....	31
	<i>American Bottom Conservancy v. U.S. Army Corps of Eng’rs</i> , 650 F.3d 652 (7th Cir. 2011).....	31
	<i>Lake Michigan Federation v. U.S. Army Corps of Eng’rs</i> , 742 F. Supp. 441 (N.D. Ill., 1990).....	31, 32
	CONCLUSION	32

INTRODUCTION

Title to land submerged below navigable waterways is held by the State, in its sovereign capacity, in trust for the people of the entire State and it is the role of our state courts to review legislative and agency decisions that would cede such land to a private party. On May 2, 2023, Defendant-Appellant Illinois Department of Natural Resources (“IDNR”) issued a permit allowing Defendant-Appellant Orchard 2020 Revocable Trust to construct breakwaters in Lake Michigan, intruding on just such submerged public lands. *Schriesheim v. Illinois Dep’t of Nat. Res.*, No. 2023 CH 05443, Compl. ¶¶ 2, 5 (Ill. Cir. Ct. June 6, 2023). When Plaintiff-Appellant, a taxpaying resident who lives nearby, filed a complaint challenging that permit as a violation of the public trust doctrine, among other claims, *id.* at ¶ 7, the Circuit Court dismissed his complaint, finding that Plaintiff-Appellant lacked standing to bring claims under the Administrative Review Law (“ARL”), *Schriesheim v. Illinois Dep’t of Nat. Res.*, No. 2023 CH 05443, slip op. at 7 (Ill. Cir. Ct. Jan. 10, 2025) (“Circuit Court Opinion”) Under the Circuit Court’s decision no one can challenge the State’s disposition of public trust lands through issuing an IDNR permit because the only entities that would be able to obtain judicial review of the IDNR decision would be IDNR itself and the entity that received IDNR’s largesse at the expense of public rights. The resulting policy dynamic is an affront to state accountability when it acts as trustee of shared resources for the entire public because there judicial review would be impossible once the agency and developer agree to the permit between themselves.

Every one of us in Illinois shares a mere 63 miles of Lake Michigan shoreline.¹ And every one of us in Illinois has a right to participate in—and to challenge in court—every decision by our government that would grant over to a private landowner any piece of that precious, shared inheritance. The Circuit Court did not consider over a century of case law firmly establishing broadly available standing to enforce the public trust doctrine and erred by misconstruing the Administrative Review Law (“ARL”) as imposing an additional “party of record” requirement on third parties who would challenge an IDNR permit. While limiting standing to “part[ies] of record” is incorrect as to ordinary challenges to improper agency actions, it is far worse in case involving government decisions relating to the protection of natural resources held in the public trust. In the words of the Illinois Supreme Court: “[i]f the ‘public trust’ doctrine is to have any meaning or vitality at all, the[n] members of the public . . . must have the right and standing to enforce it.” *Paepcke v. Public Bldg. Comm’n*, 46 Ill. 2d 330, 341 (1970).

Amici curiae Openlands and Sierra Club urge this Court to reverse the Circuit Court’s holding as to standing for the following reasons.² First, this brief explains the magnitude of the Circuit Court’s failure to address the public trust doctrine in its standing

¹ See Illinois Environmental Protection Agency, “Lake Michigan,” <https://epa.illinois.gov/topics/water-quality/monitoring/lake-michigan.html>.

For purposes of providing context, *Amici Curiae* ask the Court to take judicial notice of basic background facts drawn from government agency websites like this one that are referenced throughout this brief. Courts may take judicial notice of any fact not subject to reasonable dispute that is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Ill. R. Evid. 201(b).

² *Amici curiae* Openlands and Sierra Club take no position on any other issue implicated by Plaintiff-Appellant’s underlying complaint in this action.

analysis. Second, Openlands and Sierra Club urge this Court to reject the Circuit Court’s interpretation of the ARL, which imposes an additional “party of record” requirement in evaluating an ARL plaintiff’s standing that is unsupported by the statute’s text and frustrates public accountability in regulatory schemes intended to protect public interests. Finally, *amici curiae* ask this Court to consider that in every other court with authority over Lake Michigan’s shores, a member of the public would be able to challenge a decision like the IDNR permit at issue. Under the Circuit Court’s decision, people in Illinois have lesser rights in Lake Michigan than their neighbors in Indiana, Wisconsin and Michigan.

Amici Curiae Openlands and the Sierra Club are two of the state’s leading public interest organizations that organize around, advocate for, and directly participate in the preservation of our shared natural resources. For decades, each organization has fought—in courts and administrative permit processes—to protect public trust resources from privatization and to protect Illinois’ natural environment and public health from administrative decisions that fail to live up to statutory, constitutional and common law standards. See, e.g., *Sierra Club v. Kenny*, 88 Ill. 2d 110 (1981). Based on that experience and the arguments below drawn from it, *Amici Curiae* urge this Court to reverse the Circuit Court.

ARGUMENT

I. The ARL Cannot Be Interpreted to Undo the Century-Old Imperative of Judicial Review of State Decisions Affecting the Public Trust.

The Circuit Court’s decision must be reversed because it contravenes a squarely settled foundation of Illinois law: a plaintiff who seeks to challenge any state action that would cede to a private entity land held in public trust has a right to judicial review.

Paepcke, 46 Ill. 2d at 341. The Circuit Court decision did not consider the public trust doctrine at all. Nor did it address *Paepcke*, although Plaintiff-Appellant included a public trust claim in his complaint, Complaint, ¶111-115, and the IDNR regulations under which the permit here was issued are explicitly anchored in the State’s public trust obligations, see 17 Ill. Adm. Code § 3704.10 (“[C]onstruction will be regulated to prevent . . . [i]mpairment of the rights, interests or uses of the public in any public body of water[.]”).

As made clear in the ancient decision that recognized the public trust doctrine, the right to enforce the public trust is older and more fundamental than any statute. *Illinois Central R.R. Co. v. Illinois*, 146 U.S. 387, 458 (1892) (“The title to lands under tide waters, within the realm of England, were by the common law deemed to be vested in the king as a public trust [.]”). While the Circuit Court here looked to the procedural provisions of the relevant substantive statute, the Illinois Rivers, Lakes and Streams Act (the “Act”), in considering how to apply the ARL to IDNR’s decision, it did not consider the substance that the Act is intended to protect: “the public’s interests, rights, safety and welfare in the State’s public bodies of water.” 17 Ill. Adm. Code § 3704.10.

Where such public trust interests are at stake, judicial review must be available. In *Paepcke*, a class of plaintiffs sued the Public Building Commission of Chicago (“PBCC”) to stop its decision to construct school and recreational facilities in public parkland that plaintiffs alleged was held in public trust. *Paepcke*, 46 Ill. 2d at 333-35. The PBCC challenged plaintiffs’ standing to sue, because they based their right to judicial review on their status as taxpayers. *Id.* at 341. The Illinois Supreme Court held that plaintiffs had standing to obtain judicial review of this agency action purporting to convey parkland held in the public trust, explicitly overruling all prior precedent that had

held “that a citizen and taxpayer has no right, in the absence of statute, to bring an action to enforce the trust upon which public property is held unless he is able to allege and prove special damage to his property.” *Id.* In rejecting the argument that the public’s right to judicial review of public trust decisions depended on specific statutory authorization, the Court declared that broad access to judicial review is central to the public trust doctrine. The Supreme Court stated plainly:

If the ‘public trust’ doctrine is to have any meaning or vitality at all, the members of the public, at least taxpayers who are the beneficiaries of that trust, *must have the right and standing to enforce it*. To tell them that they must wait upon governmental action is often an effectual denial of the right for all time.

Id. (emphasis added). Indeed, the Circuit Court’s decision here is particularly offensive to the Supreme Court’s holding in *Paepcke* because the Circuit Court holding would strip every member of the public—who is not IDNR or a lakefront developer—of the right to enforce the public trust doctrine “for all time,” even after they “wait upon governmental action” by IDNR. The Circuit Court failed to consider that Plaintiff’s Count III is a public trust claim and ignored *Paepcke*’s clear holding about standing to bring such claims, whether brought alongside ARL claims or not.³

A straightforward application of *Paepcke* resolves this case. Plaintiff-Appellant is a local property owner, a taxpayer, and a beneficiary of the public trust, and, thus, meets traditional standing requirements. Plaintiff-Appellant has “the right and standing to

³ It appears that Plaintiff-Appellant’s briefing below focused on the ARL and did not discuss public trust caselaw holdings as to the issue of standing, even as to Count III. *Amici curiae* participate in this matter specifically to ensure that this Court’s analysis *does* consider this directly relevant, longstanding, settled and crucial body of law. The Circuit Court’s decision must be reversed to avoid inadvertently and fundamentally undoing the public’s fundamental right to judicial review of public trust decisions as a matter of law, which cannot turn on the parties’ tactical briefing choices.

enforce” that trust by asking the court to review IDNR’s issuance of a permit that allowed construction in Lake Michigan. See *Bowes v. Chicago*, 3 Ill. 2d 175, 182, 185 (1954) (finding that both taxpayers and local property owners had standing to bring public trust challenge to construction project in Lake Michigan).

Broad access to judicial review is indispensable when the public trust is implicated because public trust doctrine itself is a bedrock common law restraint on all exercises of state power. Public trust doctrine teaches that certain public resources like the bed of Lake Michigan are held in trust for all—government agencies and even the legislature itself make decisions about such resources not under their own authority, but only as agents of the people, who are the beneficiaries of that trust and underlying owners of the resources. *People ex rel. Scott v. Chicago Park District*, 66 Ill. 2d 65, 75 (1976) (quoting *People ex rel. Moloney v. Kirk*, 162 Ill. 138, 147 (1896)) (“[T]he state holds the title in trust, in its sovereign capacity, for the people of the entire state . . . [t]he governmental powers of the state over these lands cannot be relinquished or given away.”). Searching judicial review of such state actions effectuates that idea. As one court explained, “[t]he very purpose of the public trust doctrine is to police the legislature’s disposition of public lands.” *Lake Michigan Federation v. US Army Corps of Eng’rs*, 742 F. Supp. 441, 446 (N.D. Ill., 1990).

The Illinois judiciary has a venerable, centuries-old tradition of vigilantly policing attempts by the state government to give away parts of Lake Michigan held in public trust. See, e.g., *Illinois Central*, 146 U.S. 387 (invalidating Illinois statute as violation of public trust doctrine because it conveyed part of submerged Lake Michigan bed to railroad for private purposes and stripped public of control and access). In fact, this

tradition of muscular public trust judicial review is nationally renowned: *Illinois Central* is the “[t]he Lodestar in American Public Trust Law.” *People ex rel. Scott*, 66 Ill. 2d at 72 (citing *Illinois Central*, 146 U.S. 387; Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 471, 489 (1970)). In *People ex rel. Scott*, the Illinois Supreme Court explained that Lake Michigan specifically “is a valuable natural resource belonging to the people [of Illinois] in perpetuity, and any attempted ceding of a portion of it in favor of a private interest has to withstand a most critical examination.” *People ex rel. Scott*, 66 Ill. 2d at 79.

But the Circuit Court’s holding would mean there is no judicial examination whatsoever of IDNR’s permit that cedes portions of Lake Michigan to a private entity. As described in the following section, the plain text of the ARL does not support the Circuit Court’s interpretation of “party of record” as a matter of reading that statute in and of itself. In this specific case, however, the Circuit Court’s reading was even more fundamentally erroneous because its effect is to insulate from judicial review an agency’s action under legislatively delegated authority when the legislature itself would be subject to judicial review, under the public trust case law cited above, if it took the same action directly via legislation. IDNR’s only powers are those delegated to it by statute. 17 Ill. Adm. Code § 3704, implementing the Rivers, Lakes and Streams Act (615 ILCS 5/4.9 *et seq.*). Part of that delegation does give IDNR discretion to hold or not to hold public hearings as part of its permit process when deciding whether it can give away public trust land. 615 ILCS 5/8. But it cannot be the case that IDNR discretion as to when to hold a hearing allows IDNR to shield its decisions from substantive public trust judicial review.

And yet that is the effect of the Circuit Court’s interpretation of the ARL by foreclosing judicial review to any entity who was not “an applicant . . . or part of a public hearing” in the permit process. Circuit Court Opinion at 8. While the legislature, through the ARL, may have in some contexts replaced common law causes of action that were the historical means to challenge agency or executive decisions before passage of the ARL, the legislature cannot displace the substantive rights vested in the public under the public trust doctrine.⁴ One of those rights is the right to judicial review of all legislative or executive branch actions that cede public trust resources to private entities—displacing that right would strip the doctrine of all “meaning and vitality.” *Paepcke*, 46 Ill. 2d at 341; *Bowes*, 3 Ill. 2d at 185. This Court should reverse the Circuit Court’s decision because it does just that, which *Paepcke* forbids.

⁴ For this same reason, a legislative act like the ARL could also not possibly be read as displacing or precluding claims brought directly under public trust doctrine, which is, in and of itself, a limit on the legislature’s powers. Indeed, the language cited from *Paepcke* above shows the Illinois Supreme Court presumed the public would also have a right to challenge the decisions after the fact—by referencing the alternative of telling the public it “must wait upon governmental action” before seeking judicial review. *Paepcke*, 46 Ill. 2d at 341. As such, the ARL, which existed at the time of *Paepcke*, cannot be read as somehow including an implicit legislative repeal of the broad and fundamental common law right to challenge government actions that implicate the public trust doctrine. “[A] statute that does not expressly abrogate the common law will be deemed to have done so only if that is what is ‘necessarily implied from what is expressed.’ But in such cases, there must be an ‘irreconcilable repugnancy’ between the statute and the common law right such that both cannot be carried into effect.” *Rush University Medical Center v. Sessions*, 2012 IL 112906, ¶ 17 (2012) (citing *Acme Fireworks Corp. v. Bibb*, 6 Ill.2d 112, 119 (1955)). Here, even if the ARL could or should be read as creating such an explicit and “irreconcilable repugnancy” with the public trust case law—which, as explained below, it should not be—it would be the ARL that would have to yield because the public trust doctrine is, itself, a limit on the legislative power used to create the ARL.

II. The Circuit Court’s Reading of ARL § 107 is Inconsistent with the Text of the ARL and Not Compelled by Relevant Caselaw.

The Circuit Court also erred by construing ARL § 107 as creating a prerequisite that a plaintiff must have been a “party of record” to the underlying agency process and that the text of the ARL means that “submitting a comment during an administrative agency’s permit application process” is not sufficient to attain such “party of record” status. Circuit Court Opinion at 7. The Circuit Court erroneously held only permit applicants or named parties to statutorily-required agency hearings could satisfy that requirement. *Id.* at 8. As detailed in the following subsections, the language of § 107 simply does not create any requirement that a plaintiff must demonstrate they were a “party of record” before the agency and certainly does not create an inflexible rule that submitting a comment is insufficient to attain such status if it were required.

First, § 107 is simply not at all about a plaintiff’s standing to sue. Section 107—entitled “Defendants”—is focused only on ensuring that all relevant entities are joined as *defendants* in any action for judicial review under the ARL. 735 ILCS 5/3-107.

Second, that § 107 is simply not at all about plaintiffs’ standing is confirmed by basic canons of statutory construction that dictate courts should avoid interpreting the statute in a way that puts the ARL in irreconcilable tension with the public trust doctrine as described above.

Third, prior caselaw construing § 107 as imposing some additional threshold requirement on ARL plaintiffs is distinguishable in fundamental ways and should not be followed by this Court. Indeed, the Illinois Supreme Court has affirmed an appellate court’s rejection of the idea that there could be any “inflexible rule” on this “party of record” question and after a close review of the first case—*Williams v. Department of*

Labor—that the Circuit Court cited to summarize the argument it would go on to adopt. See *Int’l Union of Operating Eng’rs, Loc. 148, AFL-CIO v. Illinois Dept. of Emp. Sec.*, 215 Ill. 2d 37 (2005) (affirming appellate court’s rejection of *Williams* as inappropriately creating an “inflexible rule” from the phrase “party of record” and allowing union that did not participate in administrative proceedings to seek judicial review of that proceeding).

Fourth, this Court should consider how the Circuit Court’s interpretation forecloses judicial review to the public in a variety of other contexts where such judicial review is crucial to ensure agencies charged with issuing permits to regulated entities are fulfilling their obligations to protect public health and natural resources.

Finally, the Court should bear in mind that traditional standing and administrative review rules remain regardless of how “party of record” is or is not applied to plaintiffs. These rules ensure that ARL challenges can be brought only by individuals with legally cognizable interests at stake in an agency’s decision and must be based on the administrative record.

A. The text of § 107 does not create a substantive requirement that ARL plaintiffs are limited to “parties of record” who have taken specific steps in the underlying administrative proceeding.

The Circuit Court, echoing a few courts in other parts of the state, took a statutory section about “Defendants” and imposed a brightline rule on plaintiffs that artificially limits judicial review of agency actions regarding vital public issues and resources. In doing so, the Circuit Court misread the words of the statute.

ARL § 107 is unambiguous in what it provides for and what it omits: it omits any brightline rule regarding what steps a plaintiff must take during an agency process prior

to bringing an ARL challenge to the result of that agency process. ARL § 107, titled “Defendants,” requires that “in any action to review any final decision of an administrative agency, the administrative agency and all persons, other than the plaintiff, who were parties of record to the proceedings before the administrative agency shall be made defendants.” 735 ILCS 5/3-107(a). The phrase “parties of record” qualifies the word “defendants,” not “the plaintiff.” This is confirmed by the respective nouns: “parties of record,” “all persons,” and “defendants” are plural where “the plaintiff” is singular. The construction of the sentence itself also indicates that “who were parties of record” refers back to a clause, “the administrative agency and all persons,” which specifically *excludes* the plaintiff. Moreover, the entire pleading requirement established by § 107 is phrased in the passive voice; the statute conspicuously avoids saying *who* must name parties of record as defendants. In other words, the grammar of § 107 is designed to avoid saying anything about who would be a proper plaintiff.

The “primary objective in construing a statute is to ascertain and effectuate the legislature’s intent . . . [w]here a statute’s language is clear and unambiguous, we must effectuate the statute’s meaning without consulting other aids of statutory construction.” *People v. Hoffman*, 2025 IL 130344 ¶ 16 (citations omitted). Here, the statutory section titled “Defendants” is clearly about naming defendants and does not embody a legislative intent to create an additional substantive standing requirement on potential plaintiffs. Other provisions within § 107 confirm this reading.

The rest of subsection (a) provides significant leeway even to this requirement to name all “parties of record” as defendants. The statute bars dismissal for misjoinder and entitles plaintiffs to a 35-day period to join any required parties they may have not joined

initially. 735 ILCS 5/3-107(a). This statutory section is about who must be served and ensures that ministerial errors in naming or serving parties may be corrected without prejudice. These narrow purposes are evident from the legislative history. In 2008, the General Assembly amended § 107(a) to clarify which methods of service are available for ARL complaints. 2008 Ill. Legis. Serv. P.A. 95-831 (S.B. 2111) (WEST). Part of that amendment was to make it easy to cure a wider range of joinder and service defects; to do so, the legislature deleted a phrase that formerly limited the opportunity to cure service defects to only situations where the proper party that did not receive service—though it should have—was a “party [] not named by the administrative agency in its final order as a party of record.” *Id.* In other words, before the 2008 amendment, a plaintiff was only allowed to correct a mistake in naming defendants and re-serve a complaint if the initially omitted party was both a “party of record” *and* “not named by the administrative agency in its final order.” The legislature could not have understood “party of record,” by itself, to refer only to parties “named” by the agency—as the Circuit Court here does—while it used language that specifically referred to parties that would be entitled to receive service of an ARL complaint as “parties of record” but were “not named by the administrative agency.” Even just looking at the facial language of § 107(a) today, though, it is unreasonable to read a ministerial pleading requirement that the legislature has explicitly made curable and non-dispositive as implicitly creating an entirely distinct substantive standing requirement that would be dispositive, as the Circuit Court applied it.

Subsections (b) and (c) of § 107 constitute specific additional legislative direction for particular types of ARL cases that review local zoning decisions or certain historic

preservation and building code decisions. As the Circuit Court noted, for appeals of zoning decisions, the legislature chose to explicitly define “party of record” very narrowly: “only the zoning board of appeals and applicants,” “only the administrative agency and applicants before the administrative agency,” (for historic preservation and building codes) and “only the hearing officer or the zoning board of appeals and applicants.” 735 ILCS 5/3-107(b), (b)(1), (c); Circuit Court Opinion at 8. Indeed, when the General Assembly added subsection (c) in 2007, it made clear it was doing so for the specific purpose of making administrative review more constrained in the specific context of county zoning boards. Ill. H.R. Trans., 2007 Reg. Sess. No. 60 (“[W]hat we’re trying to do here is help a situation that I think simply got out of hand.”). The legislature’s explicit choice to limit review to the applicant and agency in the specific contexts of zoning and building code decisions should be interpreted as indicating that the use of “parties of record” without such a limitation in (a) must mean that the legislature understood the term to be broader there. The Circuit Court was actually correct in observing that the “legislature knows how to define this [party of record] term when it intends to do so.” Circuit Court Opinion at 8. Inexplicably, the Circuit Court disregarded that observation in reading “party of record” in subsection (a) as implicitly importing the same agency-and-applicant limitation that is explicit in subsections (b), (b)(1) and (c), even though the legislature chose *not* to define the term in (a) and did do so in the later subsections.

B. Canons of statutory construction confirm that § 107 does not impose a limitation on plaintiffs.

While the plain language of § 107 belies the Circuit Court’s reading, the need to reverse that misinterpretation is confirmed when that text is read through various canons of interpretation.

“The maxim *expressio unius est exclusio alterius* means ‘the expression of one thing is the exclusion of another.’” *People v. Foster*, 2021 IL App (2d) 190116, ¶11 (quoting *People v. Roberts*, 214 Ill. 2d 106, 117 (2005)). This canon reinforces the point in the preceding subsection: the expression of limiting ARL review to an applicant and the agency in specific contexts of subsections (b), (b)(1), and (c), excludes the implication of that limit in the general provision (a). This canon also undermines the Circuit Court’s interpretation because § 107(a) contains express requirements as to who must be made a defendant, which stands in contrast to its lack of any express requirement as to who can be a plaintiff. To read in an implicit requirement as to plaintiffs in a section explicitly about “Defendants” and in a general subsection that lacks such explicit language that is included in later subsections violates this basic rule of statutory construction.

Moreover, “[i]n construing the statute, we must presume that the legislature did not intend absurdity or injustice.” *People v. Wells*, 2023 IL 127169, ¶35, *reh’g denied* (Mar. 25, 2024), *cert. denied sub nom. Wells v. Illinois*, 145 S. Ct. 291 (2024). Here, limiting judicial review to “named parties” before the agency has the absurd result that the agency can, in effect, use its discretion over procedures to prevent judicial review of its substantive decisions. While IDNR may not have been required to hold a hearing, Circuit Court Opinion at 7, the Circuit Court’s requirement that an ARL plaintiff be a

“named party” by being “part of a public hearing” *id.* at 8, means that the Circuit Court’s holding gives IDNR the power to choose whether judicial review—here even the fundamental common law right of judicial review in public trust cases—will apply to its decisions on a case-by-case basis.

Finally, “[i]t is well settled that courts should avoid constitutional questions when a case may be decided on other grounds.” *People v. Alcozer*, 241 Ill. 2d 248, 253 (2011) (citations omitted); *Stewart v. Rosenblum*, 2025 IL 131365, ¶ 24 (citations omitted) (Illinois courts have “duty to construe statutes in a manner that upholds the statute’s validity and constitutionality when it is reasonably possible to do so.”). As explained above, the nature of this case as a challenge to the State’s conveyance of a public trust resource, and inclusion of a public trust claim in the complaint, means that the public must have recourse to judicial review. But it also means that the Court should avoid adopting a reading of the ARL in a way that would put the statute in conflict with the ancient imperative of allowing broad standing under the public trust doctrine. While the public trust doctrine is not, per se, rooted in the Illinois Constitution, it is a public right far older than that document and, like constitutional rules, constrains all state government authorities. See *Illinois Central*, 146 U.S. at 458 (“The title to lands under tide waters, within the realm of England, were by the common law deemed to be vested in the king as a public trust [].”). Here, the Circuit Court’s interpretation of the ARL would create a direct conflict with the well-settled public right to enforce the public trust doctrine through judicial review. In light of *Paepcke*, even if the Circuit Court’s reading of § 107 were viable as a matter of the statutory text, it nonetheless must be avoided.

C. The Circuit Court misapplied important case law and did not consider a key case on the “party of record” question.

There have been cases over the past several decades that have reviewed § 107 and come to a similar conclusion as the Circuit Court. First and foremost, none of those cases involved public trust claims, so none of those cases can support the Circuit Court’s holding here that ignores the public’s right to judicial review of public trust decisions. Further, some of those cases do not actually stand for the sweeping proposition that § 107 must be read as requiring in all cases that an ARL plaintiff be a “named part[y]” in the underlying administrative proceeding or that submitting a comment is insufficient to trigger a right to judicial review. Circuit Court Opinion at 8. Those cases that did reach that result are not binding on this Court and should be rejected as unpersuasive because those cases contravene both the text of § 107 and the Illinois Supreme Court’s affirmation of an appellate court’s holding that the “party of record” requirement cannot be read as creating such an “inflexible rule.” *Int’l Union of Operating Eng’rs, Loc. 148, AFL-CIO v. Dept. of Emp. Sec.*, 345 Ill. App. 3d 382, 392 (Ill. App. Ct. 2003), *rev’d on other grounds*, *Int’l Union of Operating Eng’rs, Loc. 148, AFL-CIO v. Ill. Dept. of Emp. Sec.*, 215 Ill. 2d 37 (2005).

It is important to begin with *International Union of Operating Engineers*, in which the Illinois Supreme Court permitted a union to appeal an administrative determination despite not being a named party in the underlying administrative proceeding. 215 Ill. 2d at 61. Although it ruled against the union on the merits of the case, the Supreme Court affirmed the appellate court’s determination that the union had standing despite an argument that the “party of record” requirement foreclosed its standing. *Id.* at 43-44. The Supreme Court affirmed the appellate court’s reasoning, upon

review of the caselaw, that while “[g]enerally, only a party who was *both* of record in the administrative proceedings *and* adversely affected by the final administrative decision has standing to seek administrative review . . . [t]his requirement is not, however, an inflexible rule.” *Int’l Union of Operating Eng’rs*, 345 Ill. App. 3d at 392. The appellate court relied on an earlier case, *Collins v. Industrial Commission*, 12 Ill. 2d 200, 203-04 (1957), where the Illinois Supreme Court allowed attorneys to seek judicial review of a determination of the Industrial Commission relating to their fees, despite not being parties of record themselves. *Int’l Union of Operating Eng’rs*, 345 Ill. App. 3d at 392. Because in both cases the attorneys and the union participated in the underlying administrative proceedings to the extent the agency allowed them to, the “party of record” requirement could not be read as a barrier to their obtaining judicial review of the final agency actions. *Id.* at 392–93.

Some of cases central to the Circuit Court decision on “party of record” are simply off point. *Williams v. Dep’t of Labor*, 76 Ill. 2d 72 (1979) is often cited for the categorical rule that only named parties of record to an agency process may be plaintiffs in actions for judicial review. However, as noted by the appellate court in *International Union of Operating Engineers*, the dispositive factor in *Williams* was that “the claimant was not a party aggrieved by the Board's latter decision.” *Williams*, 76 Ill. 2d at 78; *Int’l Union of Operating Eng’rs*, 345 Ill. App. 3d at 393. *Williams* was about applying the traditional standing requirement that any plaintiff must assert an injury to a legally-cognizable interest; it was not about “party of record” at all.

Similarly, the Circuit Court’s reliance on *Lincoln Central Association v. Zoning Board of Appeals*, 30 Ill. App. 3d 258 (Ill. App. Ct. 1975) is misplaced. The holding of

Lincoln Central did not even mention, let alone turn on, the “party of record” phrase, but involved the court applying a traditional standing analysis and finding that the plaintiffs, neighboring property owners, did, indeed allege an injury-in-fact sufficient to challenge a zoning variance decision. *Id.* at 261.

Two cases from other Districts have reviewed the “party of record” question and come to the same conclusion as the Circuit Court. Those cases are not binding on this Court, present no substantive statutory analysis—and certainly no persuasive analysis—and rely on the same misreading of *Williams* rejected in *International Union*.

In *Sierra Club v. Office of Mines & Minerals*, the Fourth District quoted the language of § 107(a), but completely failed to engage with the key phrase “other than the plaintiff,” or to perform any statutory analysis whatsoever. *Sierra Club v. Office of Mines & Minerals of the Dept. of Nat. Res.*, 2015 IL App (4th) 140405, ¶¶ 25–30. The Fourth District reflexively assumed the “party of record” requirement constituted an inflexible rule, citing *Williams* for the notion that a plaintiff must have been a “named party” before the agency. *Id.* The entirety of the court’s statutory analysis was a single sentence: “[r]egardless of labels, the aforementioned rule is clearly a threshold requirement that plaintiffs must satisfy for review under the Administrative Review Law.” *Id.* at ¶¶ 27. Indeed, the Fourth District improperly elevated agency procedural discretion above the substantive rights of the public even more egregiously than the Circuit Court did here: In *Seirra Club*, the court found dispositive not only that IDNR chose not to hold a requested hearing, but also that IDNR unilaterally chose to omit plaintiffs’ duly submitted comment letters to the agency from the administrative record it submitted to the court. *Id.* ¶¶ 32–33.

Helping Others Maintain Environmental Standards v. Bos is even farther afield. First, *Helping Others* did not even involve an ARL claim. *Helping Others Maintain Env't Standards v. Bos*, 406 Ill. App. 3d 669, 682 (Ill. App. Ct. 2010) (“Thus, neither the Livestock Act nor the Department’s regulations provide for review under the Administrative Review Law....”). Instead, the court equated its review under a writ of *certiorari* with ARL review and then, again, mechanically applied *Williams* as creating an inflexible “party of record” rule. *Id.* at 683. Ironically, the *Helping Others* court cited *International Union* for the proposition that standing is an affirmative defense but failed to address the appellate court’s holding in *International Union* as to the “party of record” issue or its rejection of *Williams*. *Id.* at 682-84.

This Court should readily reject following these nonprecedential cases that failed to engage with the statutory text and misapplied *Williams*. The proper reading of the phrase “party of record” in § 107(a) is that it creates no threshold requirements on ARL plaintiffs.

Indeed, even improperly assuming that § 107(a) *does* limit who may be an ARL plaintiff in any way, the reading adopted by the Circuit Court and echoing these cases still cannot be correct because it would mean that same statutory phrase has a different meaning in different cases. The Circuit Court held that “participation in the comment process does not confer party of record status” as a matter of interpreting the undefined phrase in the ARL because “the [Rivers, Lakes, and Streams] Act does not include explicit language indicating that those participating in the public comment process are granted the right to appeal.” Circuit Court Opinion at 8. While an underlying substantive statute can explicitly impose additional procedural rights or limitations on the agency’s

permit process and judicial review thereof, it cannot be that silence in one specific substantive statute compels reading “party of record” in the ARL as imposing an inflexible rule applicable in every context. Here, the Circuit Court held as a matter of “statutory construction” of the ARL that a plaintiff cannot obtain judicial review if they have only “submit[ed] a comment” and, instead, they must have been “[a] named part[y],” i.e. “an applicant [] or part of a public hearing.” *Id.* at 8, 9. The text of § 107(a) cannot have that meaning, though, because, as the Circuit Court itself noted, the same “party of record” language poses no obstacles for plaintiffs who only submit comments in proceedings under other substantive statutes, where public commenters *do* have an explicit right to judicial review. *Id.* at 4. The same ARL phrase cannot mean one thing here as a matter of statutory construction—public comment is insufficient—and have a different textual meaning—public comment is sufficient—in different contexts. Rather, if § 107 is to be applied to impose requirements on plaintiffs at all, “party of record” should be understood as presenting a practical question under given factual circumstances: was this plaintiff actually aggrieved by this agency decision and did this plaintiff participate in this particular agency proceeding to the extent that this agency process allowed it?

The only policy rationale that appears in the caselaw for imposing a “party of record” requirement on plaintiffs is to ensure that ARL review can be limited to the administrative record created during the agency process. *Int’l Union of Operating Eng’rs*, 345 Ill. App. 3d at 392. (“The reason for this additional requirement for standing in petitions for administrative review is that review is limited to the administrative record.”). This is because a party that did not participate in the administrative proceeding might seek to put before the court facts that were not before the agency, which would be in

tension with the ARL's limit of judicial review to the agency's record. *Id.* So long as an ARL plaintiff put their evidence into the record before the agency during the agency process to the extent they were allowed to participate therein and bases their ARL claims on that administrative record, the only articulated purposes of a "party of record" requirement are served.

The cases underlying the Circuit Court's reasoning are either inapposite or were wrongly decided, poorly reasoned, and not binding on this Court. This Court should reject those cases, and either properly construe the procedural language of § 107(a) as imposing no implicit substantive requirements on ARL plaintiffs at all or, in the alternative, apply a more proper, pragmatic understanding of the phrase "party of record." Either way, this Court should proceed to reverse the lower court.

D. The Circuit Court's reading of the ARL would harm the public in other areas of law where it would render unreviewable other types of permits that impact public health and natural resources.

The Circuit Court's reading of the ARL in this case must be corrected because it could also prevent public access to judicial review in a variety of other permit processes that are intended to safeguard public health and the environment. There are many permit processes that do not require the agency to hold a public hearing, which, under the Circuit Court's interpretation of the ARL, would render it impossible for a third-party member of the public to qualify as a "party of record," entitled to judicial review. Limiting judicial review in those contexts to only the agency and the permittee would exclude the public from the permit processes that exist to protect the public and would frustrate agency accountability by putting permits that an agency agrees to with a polluter or developer beyond the reach of judicial review.

While limiting standing to narrowly-construed “parties of record” is certainly improper in a case implicating the public trust, *Amici* urge the Court to further consider how the Circuit Court’s misinterpretation of § 107(a) would, or has already been used to, effectively preclude third parties from seeking administrative review for the following types of agency action, all of which implicate important public values:

- The Chicago Department of Public Health (“CDPH”) issues air pollution and other permits that limit pollution and other nuisances that industrial facilities otherwise would impose on neighboring communities. See, e.g., Chicago, Ill., Municipal Code § 11-4-2520 (permit required for recycling facilities); § 11-4-620 (air pollution control permit required for certain regulated equipment). Judicial review of these permits is available under the ARL. 735 ILCS 5/3-102, 5/3-104. However, the Chicago Municipal Code makes it impossible for third parties to qualify as “parties of record” as the Circuit Court would define that term. City of Chicago Dept. Of Admin. Hearings, Procedural Rules & Regs. Ch. 8, available at https://www.chicago.gov/content/dam/city/depts/dol/rulesandregs/DOAH_Rules.pdf. The rules explicitly prohibit participation by the public in an administrative hearing, other than when serving as a witness called by a party to the hearing. *Id.* Rule 8.1 (“Members of the general public, while welcomed to observe, may not testify in the actual hearing proceedings unless formally called as a witness by the petitioner or respondent.”).
- Factory farms, or Concentrated Animal Feeding Operations (“CAFOs”), are regulated by a permitting structure established and enforced by the Illinois Environmental Protection Agency.⁵ Permits governing CAFOs exist primarily because of the industry’s discharge and runoff of livestock manure, which often contains pathogens, chemicals, and even heavy metal compounds like copper sulfate.⁶ These contaminants can enter nearby groundwater and surface water that local communities rely on. *Id.* Residents living near CAFOs can also experience significant health consequences from CAFO air emissions, including asthma and severe respiratory problems. *Id.* Despite these significant impacts

⁵ *Concentrated Animal Feeding Operations (CAFOs)*, ILL. ENV’T PROT. AGENCY (Oct. 7, 2025), <https://epa.illinois.gov/topics/water-quality/watershed-management/cafos.html>.

⁶ Carrie Hibrar, *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities*, CDC STACKS (2010), <https://stacks.cdc.gov/view/cdc/59792>.

to communities that live near CAFOs, the Circuit Court’s interpretation of “party of record” precludes judicial review of CAFO permits. See *supra* at 19 (addressing *Helping Others Maintain Env’t Standards*, 406 Ill. App. 3d 669).

- IDNR is responsible for issuing a variety of mining permits that authorize massively impactful surface mining operations. 225 ILCS 715/5. Surface mining activities release heavy metals into water sources that communities depend on for drinking water and recreation.⁷ Heavy metal contamination contributes to severe health impacts for surrounding communities, including kidney and liver damage and cancer.⁸ As explained above, *Sierra Club v. Office of Mines and Minerals*, found such decisions beyond review by applying the Circuit Court’s reading of “party of record.” *Sierra Club*, 2015 IL App (4th) 140405, see *supra* at 18.
- For many statewide environmental permits, including those administered by Illinois Environmental Protection Agency (“IEPA”), third parties who believe an issued permit should be denied or modified may challenge the permit decisions at the Illinois Pollution Control Board (“IPCB”). 35 Ill. Adm. Code § 101.106. Once the IPCB makes a decision, then an appeal can be brought through the ARL. 415 ILCS 5/41. IPCB rules lay out whether third-party review is available for a few types of permit where the substantive statute dictates it, however, judicial review for the Board’s catch-all category—“Other Agency Final Decisions”—would be limited under the Circuit Court’s interpretation of “party of record.” See 35 Ill. Adm. Code § 105.204(f) (limiting petitions for Board review to the applicant, a person at whom a final agency decision is “direct[ed]” and “any third person authorized by law to appeal”). In such cases, per the Circuit Court, IEPA’s discretion to deny a hearing could prevent a third party from seeking IPCB or ARL review. See, e.g., 35 Ill. Adm. Code § 252.205 (addressing certain air pollution permits and instructing IEPA to hold a hearing “when the Agency has determined that a hearing would serve the interests of the public or of the Agency.”).

⁷ *Mining and Water Quality*, U.S. GEOLOGICAL SURVEY (Oct. 8, 2025), <https://www.usgs.gov/water-science-school/science/mining-and-water-quality#overview>.

⁸ *Potential Well Water Contaminants and Their Impacts*, U.S. ENV’T PROT. AGENCY (Oct. 10, 2025), <https://www.epa.gov/privatewells/potential-well-water-contaminants-and-their-impacts>.

Until now, the First District has not endorsed the “party of record” interpretation adopted by the Circuit Court, though this Court has reviewed at least one IDNR permit decision under the ARL after applying a straightforward standing analysis. *Alliance for the Great Lakes, Nat. Res. Defense Council, Openlands, and Sierra Club v. Illinois Dept. of Nat. Res.*, 2020 IL App (1st) 182587, ¶ 33 (finding third-party challengers of IDNR permit satisfied traditional standing inquiry). The plaintiffs in *Alliance for the Great Lakes* would have been able to pass the “party of record” test imposed by the Circuit Court here, because the underlying statute there did require IDNR to hold a hearing before issuing a permit and the plaintiffs formally intervened in that hearing. *Id.* at ¶ 10-13, 43. The point, though, is that asking the “party of record” question that the Circuit Court found dispositive here is unnecessary to effectuate proper judicial review of permits. This Court assured itself plaintiffs had standing under the traditional, injury-in-fact test and then proceeded to review the permit decision on the administrative record.

There are sound policy reasons to reject a reading of the ARL that excludes third parties from judicial review in cases where they participate in the administrative process to the extent available but were not “named” parties by the agency itself. The Circuit Court’s interpretation of § 107 contravenes a basic purpose of instituting public permit schemes for harmful activities like CAFOs, mining, and intrusions into the public trust. The legislature creates such permit programs to protect the public and important public values, after all, so the Court should find such permits beyond third-party judicial review only when the legislature commands it explicitly in the relevant substantive statute and, even then, only if the legislature has the power itself to remove the issue from judicial review. As to the public trust, the legislature lacks that power. See *supra* at 4-8. And

moreover, the Circuit Court recognized that the Rivers, Lakes and Streams Act neither specifically prohibits third-party judicial review nor imposes additional agency procedures that an ARL plaintiff should be required to exhaust. Circuit Court Opinion at 8. The Circuit Court's interpretation of legislative silence creates a situation where there is literally no check whatsoever on the agency and permit applicant agreeing to a permit that is facially illegal or that harms the public in the very ways the substantive statute was intended to prevent because no other entity could obtain judicial review of such a permit.

The actual language of the ARL does not compel that agencies be beyond judicial accountability and neither does the relevant caselaw, properly understood.

III. A Decision Like the IDNR Permit Here Would be Subject to Judicial Review in the Courts of Other Lake Michigan States and in Federal Court.

Under the Circuit Court decision, Illinois residents who sought to participate in an agency process and are impacted by a permit decision would not be able to seek judicial review in Illinois state court, although they would be able to obtain judicial review if the same permit decision had been made by a federal agency or in another Lake Michigan state. In each state, though a third-party challenger would be required to exercise opportunities to engage in the administrative process prior to bringing a judicial challenge, the agency could not insulate itself from judicial review by manipulating its process and judicial review would ultimately be available in a situation similar to that before the Court.

In considering how to interpret the ARL as applied to reviewing agency decisions related to the public trust doctrine, this Court should consider that the Circuit Court decision leaves the people of Illinois with fewer rights and less accountable agencies than

the people of Indiana, Wisconsin, and Michigan and in cases where federal agencies permit construction activities in Lake Michigan.

A. Indiana.

Under Indiana law, agency permit decisions are appealable in state court by third parties. The Administrative Orders and Procedures Act (“AOPA”) establishes the exclusive means for judicial review of an agency action, including breakwater and other lakefront construction permits issued by the Indiana DNR. Ind. Code § 4-21.5-5-1 (establishing judicial review of agency actions); Ind. Admin. Code § 6-8-1; Ind. Code § 14-29-1-8 (requiring permit for construction of permanent structure in navigable waters). Under the AOPA, permitting agencies must allow for formal petitions to intervene and grant intervention if the intervenor has standing under the traditional injury-in-fact test; to qualify for judicial review, that person must then have exhausted their administrative remedies available within the agency, file suit within 30 days of notice of agency action, and timely transmit the agency record. Ind. Code § 4-21.5-5-2. Prior to filing a petition for judicial review of a permit issued by the Indiana DNR, for example, exhaustion of administrative remedies includes filing an administrative appeal, now handled through the Office of Administrative Law Proceedings (“OALP”). Ind. Code § 4-15-10.5-1 (amended July 1, 2025, to require OALP to hear petitions for review of DNR decisions, rather than the Indiana Natural Resources Commission (“INRC”), which had such jurisdiction prior to that date). So, Indiana law sets out specific procedures all agencies must follow as to third parties and when a third party participates in an agency process to the extent they are allowed, they may obtain judicial review of the resulting decision.

The AOPA specifically defines a standing requirement for plaintiffs seeking judicial review of agency decisions. Included among eligible judicial review plaintiffs are a named party to the underlying administrative proceedings or a person eligible for standing under the substantive law applicable to the final agency action. Ind. Code § 4-21.5-5-3. The same section goes on, though, and also allows for judicial review by any persons who were “otherwise aggrieved or adversely affected by the final agency action” as long as certain requirements are met. *Id.* A third party may establish standing under that route by intervening in an administrative proceeding as described above. Ind. Code § 4-21.5-3-21. And even if the agency denied such a petition to intervene, a person whose interests are affected by the final order may still seek judicial review.⁹ Ind. Code § 4-21.5-5-3(b)(2)(B). In other words, Indiana’s courts are open to a person who alleges a legally cognizable injury and participates in the administrative process as much as the agency will allow. And an agency’s procedural choice about giving a third-party “named” party status through intervention cannot close the courthouse doors. In contrast, the Circuit Court’s interpretation of “party of record” would allow the agency’s rejection of a third party’s efforts to participate in the agency process to preclude judicial review.

⁹ An ongoing administrative appeal of a lakefront construction permit, by Save the Dunes Conservation Fund challenging the Indiana DNR’s approval of the Town of Ogden Dunes’ proposal for a stone revetment along the Lake Michigan shoreline, is an example of a third party appealing an agency permit, beginning with the required administrative appeal to the INRC. Brief of Petitioner at 3, *Save the Dunes Conservation Fund, Inc. v. Town of Ogden Dunes/Scott Kingan and Department of Natural Resources*, No. 23-036W (Indiana Natural Resources Commission Oct. 7, 2024), <https://conservationlawcenter.org/wp-content/uploads/2024/10/Petitioners-brief-in-support-of-SJ-final.pdf>. Once the INRC issues a final order and the plaintiff has exhausted all available administrative remedies including from the INRC, those third-party plaintiffs would have the right to petition for review in an appropriate state court.

B. Michigan.

Michiganders have recourse to judicial review to make public trust challenges to permits authorizing construction into Lake Michigan issued by the Michigan DNR. Michigan's Natural Resources and Environmental Protection Act, under which the Michigan environmental departments issue permits, outlines general administrative procedures and judicial review rules and specifies that a party with legal standing can request the state's Commission of Natural Resources to review such a permit. Mich. Comp. Laws § 324.32512(a) (permit required for certain construction on Great Lakes submerged lands); Mich. Comp. Laws § 324.1101(1) (Commission review of final permit decisions available "if a person has legal standing."). Once available administrative remedies are exhausted, the Michigan Administrative Procedures Act governs judicial review of that agency decision. Mich. Comp. Laws § 24.301. Agency decisions are subject to review "when a person has exhausted all administrative remedies available within an agency, and is aggrieved by a final decision or order in a contested case." *Id.* Neither this statute nor Michigan case law impose any additional requirements for a plaintiff to seek judicial review of an agency decision so long as they have availed themselves of opportunities to participate in the underlying agency process. Instead, Michigan courts apply the traditional legal standing doctrine, under which alleging a specific injury resulting from an agency's conduct is sufficient. See *Michigan Citizens for Water Conservation v. Nestle Waters North America, Inc.*, 737 N.W.2d 447 (Mich. 2007) (property owner plaintiffs established standing to challenge permit threatening their riparian rights), *overruled on other grounds by Lansing Schools Education Ass'n, MEA/NEA v. Lansing Bd. Of Educ.*, 792 N.W.2d 686 (Mich. 2010); *Lakeshore Grp. v.*

Dep't of Env't Quality, 968 N.W.2d 251 (Mich. 2021) (statute governing dune development permit established standing for landowners with adjacent properties). Again, a Michigan permit like the IDNR permit at issue here would be subject third-party judicial review in Michigan state courts.

C. Wisconsin.

If neighbors of a developer constructing breakwaters into Lake Michigan were to seek judicial review of a similar permit decision by the DNR in Wisconsin, there is no question that Wisconsin state law would enable them to do so. Challenges to agency actions, including the issuance of lakefront construction permits, are governed by the Wisconsin Administrative Procedure Act. Wis. Stat. § 227 (statute governing Administrative Procedures and Review); Wis. Stat. § 30.12 (statute requiring permit for construction of breakwater in Lake Michigan). This Act provides for judicial review of final agency decisions by “any person aggrieved by a decision” of an agency covered by the review law that “adversely affect the[ir] substantial interests.” Wis. Stat. §§ 227.52-53. While the plaintiff must meet that traditional standing requirement related to asserting an injury-in-fact—i.e. must have “substantial interests”—Wisconsin courts have not interpreted the administrative statute as creating additional procedural requirements that a plaintiff must show they met prior to bringing a permit challenges. This is demonstrated in cases adjudicating public trust-related construction permits, including those issued by the state’s DNR. See *Friends of Black River Forest v. Kohler Co.*, 977 N.W.2d 342 (Wis. 2022) (applying traditional standing test and finding plaintiffs lacked an injury to a legally protected interest); *Sierra Club v. Wisconsin Dep’t of Nat. Res.*, 24 N.W.3d 157 (Wis. Ct. App. 2025). In *Sierra Club v. Wisconsin Department of Natural Resources*, a

Wisconsin court of appeals did not insert any additional administrative requirements, and the typical legal standing doctrine was sufficient to show the plaintiffs were aggrieved by the permit decisions and entitled to judicial review. *Id.* at 169 (environmental organization sufficiently established standing to challenge air permit by demonstrating an injury to a legally protected interest).

Wisconsin's public trust doctrine—like that of Illinois described above in Section I—would also preclude the invention of additional standing requirements for third-party plaintiffs seeking to challenge a state agency permit authorizing construction on submerged lands held in the public trust. Wisconsin courts note that the public trust doctrine specifically “establishes standing for the state, or *any person* suing in the name of the state for the purpose of vindicating the public trust, to assert a cause of action recognized by the existing law of Wisconsin.” (emphasis added) *Borsellino v. Wisconsin Dep’t of Nat. Res.*, 606 N.W.2d 255, 261 (Wis. Ct. App. 1999) (citing *State v. Deetz*, 224 N.W.2d 407, 413 (Wis. 1974)). Wisconsin courts acknowledge that when the DNR “fails to live up to its duties as a trustee under the public trust doctrine, a citizen has standing under that doctrine.” *Id.*; *Gillen v. City of Neenah*, 580 N.W.2d 628 (Wis. 1998) (plaintiffs established standing by alleging DNR action was prohibited under public trust doctrine). Again, this Court should be aware that the Circuit Court decision means people in Illinois have fewer rights in their shared resources than people in Wisconsin and denigrates the public trust doctrine in a way specifically rejected by Wisconsin courts.

D. Federal agency decisions in federal courts in Illinois.

Had his case involved a federal agency action related to construction of structures on public trust submerged lands, a member of the public would be permitted to challenge such a federal permit in federal court so long as they meet the traditional injury-in-fact standing requirement. Under the federal Administrative Procedure Act, a person suffering a legal wrong, or who is affected or aggrieved by agency action, is entitled to judicial review of the agency action. 5 U.S.C. §§ 701–706. In other words, third-parties who can demonstrate traditional, injury-in-fact standing as to a permit decision can challenge that permit in federal court. See *American Bottom Conservancy v. U.S. Army Corps of Eng'rs*, 650 F.3d 652 (7th Cir. 2011) (environmental organization challenging permit for construction of waste disposal facility on wetlands alleged sufficient injury to establish standing).

Such federal APA review is available to third parties who allege injuries to their individual interests in relation to Lake Michigan construction permits. In *Lake Michigan Federation v. United States Army Corps of Engineers*, the plaintiffs sought to prevent Loyola University of Chicago from expanding its campus by constructing a lakefill, despite both state legislative and agency approval of the project. 742 F. Supp. 441 (N.D. Ill., 1990). As part of this expansion plan, the Illinois legislature purported to convey acres of lakebed to Loyola, asserting that the suggested public benefit of the campus expansion allowed them to convey the land. *Id.* at 443. With this approval from the state, Loyola sought the applicable permit from the Army Corps of Engineers. *Id.* The federal court allowed the third parties to challenge both the legislative conveyance and the Corps' permit decision and ultimately decided against Loyola and the agency because the legislative conveyance of the lakebed violated the public trust doctrine. *Id.* at 444.

Without addressing third-party standing specifically, the court reviewed a third-party challenge to an agency permit and highlighted the protective nature of the public trust doctrine and its purpose “to police the legislature’s disposition of public lands.” *Id.* at 446. It would be nonsensical for a plaintiff to be able to bring a challenge in federal court asserting a violation of the state’s public trust doctrine through an Illinois legislative conveyance to a developer and a related federal agency permit, but to be unable to challenge a similar permit issued by a state agency.

CONCLUSION

Amici Curiae Openlands and Sierra Club respectfully request that this Court reverse the ruling of the Circuit Court. That decision represents a fundamental denigration of the public trust doctrine and an unwarranted and erroneous interpretation of the ARL text that would result in the people of Illinois having fewer rights and less accountable agencies than our Lake Michigan neighbors. Whatever the ultimate decision on the merits of Plaintiff-Appellant’s claims, our shared inheritance of Lake Michigan deserves its day in court.

Dated: October 14, 2025

Respectfully Submitted,

/s/ Robert A. Weinstock

Robert A. Weinstock
ARDC #6311441
Environmental Advocacy Center
Bluhm Legal Clinic
Northwestern Pritzker School of Law
375 E. Chicago Avenue, 8th Floor
Chicago, IL 60611
(312) 503-1457
robert.weinstock@law.northwestern.edu
*Attorney for Amici Curiae
Openlands & Sierra Club
in Support of Plaintiff-Appellant*

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 32 pages.

Dated: October 14, 2025

/s/ Robert A. Weinstock

NOTICE OF FILING AND CERTIFICATE OF SERVICE

I, Robert A. Weinstock, an attorney, hereby certify that on **October 14, 2025**, I caused a true and complete copy of the foregoing **BRIEF OF THE *AMICI CURIAE* OPENLANDS AND SIERRA CLUB IN SUPPORT OF PLAINTIFF-APPELLANT** to be filed electronically with the Clerk's Office of the Illinois Appellate Court, First Judicial District, using e-filing provider Odyssey eFileIL, which sends notification and a copy of this filing by electronic mail to all counsel of record. I further certify I caused an additional courtesy copy of this filing to be served by electronic mail upon the following:

Christina Hansen
Assistant Attorney General
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
Christina.Hansen@ilag.gov

*Counsel for Defendant-Appellee,
IDNR*

Adam L. Hoefflich
Asha Spencer
Stacy Maione
Bartlit Beck LLP
Courthouse Place
54 West Hubbard Street, Suite 300
Chicago, IL 60654
Adam.Hoefflich@bartlitbeck.com
Asha.Spencer@bartlitbeck.com
Stacy.Maione@bartlitbeck.com

*Counsel for Defendant-Appellee,
Orchard 2020 Revocable Trust*

Eamon P. Kelly
Martin V. Sinclair, Jr.
Sean M. Koller
Sperling Kenny Nachwalter, LLC
321 N. Clark Street
Chicago, Illinois 60654
ekelly@sperlingkenny.com
mvs@sperlingkenny.com
skoller@sperlingkenny.com

*Counsel for Plaintiff-Appellant,
Robert A. Schriesheim*

Under penalties by law pursuant to Section 1-109 of the Code of Civil Procedure,
the undersigned certified that the statements set forth in this notice of filing and
certificate of service are true and correct.

/s/ Robert A. Weinstock