FILED, Clerk of the Supreme Court, 30 Jun 2025, **089642**

SUPREME COURT OF NEW JERSEY
Docket No. 089642

ANDRIS ARIAS, Plaintiff-Petitioner, vs. THE COUNTY OF BERGEN, Defendant-Respondent.	On Certification Granted from a Final Judgment of the Superior Court of New Jersey, Appellate Division Docket No. A-2574-22 Sat Below: Hon. Jessica R. Mayer, J.A.D. Hon. James R. Paganelli, J.A.D. Hon. Lorraine M. Augostini, J.A.D.

BRIEF OF *AMICI CURIAE* NEW JERSEY ASSOCIATION OF COUNTIES AND THE COUNTY OF ESSEX IN SUPPORT OF AFFIRMANCE

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STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Amici Curiae are a densely populated New Jersey county and an association representing county government interests in New Jersey. County governments own and maintain a large amount of open recreational space, much of which is in or near urban and suburban residential neighborhoods. As such, counties have a significant stake in the resolution of the central question pending before this Court: whether the Landowner's Liability Act, N.J.S.A. 2A:42A-2 to -10 ("LLA"), provides immunity from a negligence claim to a county landowner when the injury occurs on open land that is devoted to recreational purposes but is located within or surrounded by a densely populated urban or suburban area.

The **New Jersey Association of Counties ("NJAC")** is a non-partisan organization that provides a unified and proactive voice for county governments in New Jersey. NJAC is committed to advocating for improvements and development in the law to empower county governments to operate efficiently and effectively, and to enhance the level of services provided for New Jersey citizens while saving valuable taxpayer dollars. One important function of

[1] The facts set forth in this Statement of Interest of *Amici Curiae* are derived from the Certification of Daniel K. Salvante dated June 10, 2025, and the Certification of John G. Donnadio dated June 12, 2025, submitted in support of *Amici Curiae*'s motion for leave to appear as *amici curiae*.

NJAC is to represent the interests of county governments in matters before the Legislature, the executive branch, and the courts. To that end, NJAC has appeared as a party or as *amicus curiae* in numerous matters before the courts, at both the trial and appellate levels.

The **County of Essex ("Essex County" or the "County")** is the third most populous county in New Jersey and among the most densely populated in the nation. The County has a large and diverse park system which was established in 1895 as the first county park system in the United States. Covering 6,076 acres of open space, the park system is open to the public free of charge and includes a wide range of lands and facilities, from reservations and wetlands to developed urban parks.

The County's recreational resources include 3 golf courses, 5 reservations, 25 developed parks, 23 playgrounds, 67 tennis courts, 6 senior citizen facilities, 3 community centers, a zoo, an ice-skating arena and a roller-skating complex. These parks accommodate various additional active and passive recreational opportunities such as field sports, picnicking, hiking, jogging, fishing, boating, and outdoor concerts, as well as numerous scenic overlooks, wooded areas, gardens, and wildlife refuges. Many of the parks contain waterways: the largest, Weequahic lake, is nearly 80 acres.

Because of the County's population density, Essex County's park system unavoidably exists within and adjacent to urban areas as well as residential and suburban neighborhoods. Among the County's largest and most notable open spaces are: (1) South Mountain Reservation, a 2110-acre nature reserve located in portions of Maplewood, Millburn and West Orange, and bordering on South Orange; (2) Eagle Rock Reservation, a 408-acre forest reserve and recreational park located in West Orange, Montclair and Verona; (3) Branch Brook Park, the nation's oldest county park, which is approximately 360 acres and is located in Newark (the State's largest city) and Belleville; (4) Weequahic Park, located entirely in Newark, consisting of 311 acres including the 80-acre Weequahic lake; (5) Mills Reservation, a county park comprised of 157 acres located in Cedar Grove and Montclair; and (6) Brookdale Park, consisting of 121 acres, located in Bloomfield and Montclair.

Amici curiae have a special interest in the outcome of this appeal and are well positioned to address the adverse implications that Petitioner's interpretation of the LLA would have on the rights and interests of counties, their resident taxpayers, and members of the public who use the counties' park systems. Given its size, diversity, and mix of active and passive recreational opportunities, Essex County's park system, like that of Bergen and other counties, attracts a large number of visitors from within and outside the County. Branch Brook Park is noted for the largest collection of cherry blossom trees in the United States

and, at its height, the Cherry Blossom Festival attracts over 10,000 people per day. If the Court accepts Petitioner's proposed interpretation of the LLA, which would deny LLA immunity to a county park located in or near urban or suburban residential areas, Essex County and other local governments would face an untold increase in litigation and potential liability arising from the public's use of the counties' vast open recreational spaces. Ultimately, that expansion of liability would be borne by the counties' taxpayers.

Many counties manage their own park systems and provide open space to the public free of charge. Due to their limited financial resources, they rely on funding obtained from State under the Green Acres Program to develop and maintain their parks and recreational facilities. An expansion of tort liability imposes an undue burden on local governments at a time in which resources are limited and officials are struggling to provide even essential services in a cost-effective manner. Because public entities have limited resources, they must have the ability to make discretionary decisions as to how to best apply public resources without being exposed to a floodgate of litigation.

Furthermore, the specter of expansive tort liability is likely to discourage counties and other landowners from acquiring and providing liberal access to open recreational spaces, which is directly contrary to the purposes of the LLA

and the longstanding public policy of this State to promote the acquisition, preservation and use of open recreational spaces for the benefit of the public.

The ability of county and other public landowners to provide and maintain free open recreational spaces to the public without fear of broad tort liability is vital to the public interest. *Amici curiae* support affirmance of the decision below and request the opportunity to be heard on this issue of significant public importance.[2]

PRELIMINARY STATEMENT

The LLA clearly states that, except as otherwise provided therein, owners, lessees, and occupants of premises owe no duty to persons injured while using such premises for sport or recreational activities and are immune from suit. Petitioner asks this Court to read into the LLA an exception to immunity when the property is situated in or near a populated or residential area. However, there is nothing in the language or legislative history of the LLA to suggest that, when conferring immunity, the Legislature was concerned with surrounding land characteristics or intended to make immunity contingent upon anything other than the dominant character of the property on which the plaintiff is injured. The Appellate Division and trial court correctly held that Bergen County is entitled to immunity

[2] In a September 28, 2023 order, the Appellate Division allowed the New Jersey Association for Justice ("NJAJ") to appear as amicus curiae and participate in oral argument in support of plaintiff-petitioner's argument that Bergen County is not entitled to immunity under the LLA. (Pa143, n. 3.)

because Van Saun County Park's dominant character as an open space for sport and recreational activities renders the park the exact type of premises entitled to the protections of the LLA. This Court should reject Petitioner's attempt to reverse that decision.

The Legislature adopted the LLA to encourage landowners to provide the public with access to open spaces for recreation without fear of liability for accidents that inevitably would occur from their use. As this Court recognized over forty-five years ago in Harrison v. Middlesex Water Co., 80 N.J. 391 (1979), it would be very difficult for owners of large sized tracts of rural, semi-rural or similar types of open land to make those lands safe for persons who enter thereon and engage in outdoor recreational activities. That difficulty is not lessened where the open recreational space is in or near an urban or suburban residential area. In fact, the need for immunity is at its apex in more densely populated areas, where the volume of visitors and inevitable wear and tear of open spaces from regular public use make it especially unreasonable to impose a duty of care on landowners to keep those large spaces free of hazardous conditions at all times. Furthermore, continuous monitoring and maintenance of large open recreational spaces is most impractical for public landowners who must operate with limited budgets and resources.

Applying a dominant character of the land test for determining LLA immunity, as the courts did below, is the only approach that meaningfully gives

effect to the Legislature's stated purpose in adopting the LLA. The grant of immunity in this case also aligns with jurisprudence of this Court which holds that, when both tort liability and immunity appear to exist for a public entity, immunity must prevail. To the extent this Court and lower courts have read into the LLA certain limitations on immunity relating to urban or residential areas, *amici curiae* urge this Court to clarify that those limitations have no application to publicly owned open recreational spaces like Van Saun County Park, which are used by the public to enjoy the outdoors free of charge and are thus the very types of open recreational spaces the LLA was designed to encourage and protect.

PROCEDURAL HISTORY

Amici curiae rely upon and incorporate by reference the procedural history set forth in the Respondent County of Bergen's brief filed in the Appellate Division and in this Court in opposition to Petitioner's petition for certification.

STATEMENT OF FACTS

On April 24, 2021, Petitioner fell when she skated over a hole while rollerblading on a paved pedestrian pathway in Van Saun County Park, which is located in suburban Paramus and River Edge. The park, established in 1960, is owned by the County of Bergen and consists of 130 acres of open land that provides recreational amenities free of charge to the public, including athletic fields, catch-and-release fishing, bicycling, tennis courts, walking paths, and

picnic facilities. (Pa140.)[3] Van Saun County Park is one of Bergen County's most utilized parks. (Pa84.)

LEGAL ARGUMENT

I. THE APPELLATE DIVISION AND TRIAL COURT CORRECTLY HELD THAT THE LLA CONFERS IMMUNITY FROM TORT LIABILITY TO LANDOWNERS BASED ON THE PREDOMINANT CHARACTER OF THE LAND ON WHICH AN INJURY OCCURS, REGARDLESS OF ITS LOCATION

The LLA provides that, except as provided in N.J.S.A. 2A:42A-4:

> a. An owner, lessee or occupant of premises, whether or not posted as provided in section 23:7-7 of the Revised Statutes, and whether or not improved or maintained in a natural condition, or used as part of a commercial enterprise, owes no duty to keep the premises safe for entry or use by others for sport or recreational activities, or to give warning of any hazardous condition of the land or in connection with the use of any structure or by reason of any activity on such premises to persons entering for such purposes.
>
> b. An owner . . . who gives permission to another to enter upon such premises for a sport or recreational activity or purpose does not thereby (1) extend any assurance that the premises are safe for such purpose, or (2) constitute the person to whom permission is granted an invitee to whom a duty of care is owed….

[3] Citations to "Pa__" and "Pb__" refer to the Appendix and Brief, respectively, filed by Plaintiff-Petitioner Arias in the Appellate Division on July 10, 2023. Citations to "NJAJb___" refer to the brief filed by amicus curiae NJAJ in the Appellate Division on September 7, 2023. Citations to "Pet__" refer to Petitioner's Petition for Certification filed in this Court on July 15, 2024. "ACa__" refers to the accompanying appendix of *Amici Curiae*.

N.J.S.A. 2A:42A-3. Immunity does not exist, however, under the following circumstances:

> a. For willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity; or
>
> b. For injury suffered in any case where permission to engage in sport or recreational activity on the premises was granted for a consideration other than the consideration, if any, paid to said landowner by the State; or
>
> c. For injury caused, by acts of persons to whom permission to engage in sport or recreational activity was granted, to other persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owes a duty to keep the premises safe or to warn of danger.

N.J.S.A. 2A:42A-4.

The term “premises” is not defined under the LLA. However, the "[s]port and recreational activities" covered by the law are defined to include "hunting; fishing; trapping; horseback riding; training of dogs; hiking; camping; picnicking; swimming; skating; skiing; sledding; tobogganing; operating or riding snowmobiles, all-terrain vehicles or dirt bikes; and any other outdoor sport, game and recreational activity including practice and instruction in any of these activities." N.J.S.A. 2A:42A-2. As this Court has noted, these are outdoor recreational activities that are typically accommodated upon large tracts of rural

or semi-rural lands, "or other lands having similar characteristics." Harrison, supra, 80 N.J. at 400.

Relying principally on this Court's 1979 decision in Harrison, Petitioner argues that the Legislature never intended the term "premises" to encompass land located in an urban area or suburban residential neighborhood and generally accessible to the public. In Harrison, the Court, interpreting the 1968 LLA, declined to extend immunity to a wrongful death claim brought against the defendant water company when plaintiff's decedent tragically drowned trying to rescue two people who had fallen through ice while skating on the company's frozen reservoir. The Court based its decision on a number of factors, including the fact that the drowning occurred on an improved tract of land that was situated in a highly populated suburban community and generally accessible to the public. Harrison, 80 N.J. at 401-402. The Court also held that the LLA should be narrowly construed based on its assumption that the Legislature did not intend to broadly immunize all property owners from liability for the negligent infliction of injury arising out of the use of their properties. Id. at 401.

In 1991, however, the Legislature passed an amendment to the 1968 LLA which made several significant changes to the statute. L. 1991, c. 496. First, the Legislature added language stating that immunity applies to premises made available for sport and recreation "whether or not improved or maintained in a natural

condition, or used as part of a commercial enterprise," thus invalidating any consideration of the improved nature of property, or any commercial activities thereon, as a factor weighing against immunity. (Id. at § 2.) The Legislature also expanded the definition of "sport and recreational activities" to include the operation and use of snowmobiles, all-terrain vehicles, and dirt bikes. (Id. at § 1.)

Additionally, the Legislature added a new provision, codified at N.J.S.A. 2A:42A-5.1, expressly stating the LLA "shall be liberally construed to serve as an inducement to the owners, lessees and occupants of property, that might otherwise be reluctant to do so for fear of liability, to permit persons to come onto their property for sport and recreational activity." (Id. at § 3.) Taken together, these amendments leave no doubt that the Legislature intended that the premises covered by the LLA should be construed broadly, limited only by the requirement that they be open tracts of land made available for "sport and recreational activity." Moreover, by unequivocally asserting that the objective of the LLA is to "induce[]. . . owners. . . of property. . . to permit persons to come onto their property for sport and recreational activity", the Legislature made clear that a property's general accessibility to the public is a factor that should weigh in favor of immunity, not against it.

The 1991 LLA amendments were "clearly designed to focus the inquiry on the dominant character of the land and to account for the evolving types of

activities considered recreational pursuits." Toogood v. St. Andrews at Valley Brook Condominium Association, 313 N.J. Super. 418, 425-426 (App. Div. 1998). Nowhere in the text or legislative history of the LLA does the Legislature indicate any intent to restrict landowner immunity based on the land characteristics or population density of surrounding neighborhoods. Petitioner's narrow interpretation of "premises" attempts to read into the LLA a limitation that simply does not exist in the text of the law. But a court "may neither rewrite a plainly-written enactment of the Legislature nor presume that the Legislature intended something other than that expressed by way of the plain language." O'Connell v. State, 171 N.J. 484, 488 (2002).

Most counties in New Jersey have park systems that provide large open spaces to the public to engage in a variety of active and passive recreational pursuits. "Maintenance of an open tract of land and allowance of access by the general public for passive or active recreational purposes are precisely the types of conduct the Legislature [sought] to encourage" in the LLA. Toogood, 313 N.J. Super. at 425. This Court acknowledged that in Harrison, finding that the Legislature's purpose in adopting the 1968 LLA and granting tort immunity to landowners was to "encourage such owners to keep their lands in a natural, open and environmentally wholesome state", which the Court acknowledged is "an important policy in view of the substantial and seemingly relentless shrinkage and disappearance of such land

areas from the face of our State." 80 N.J. at 400. Tort immunity is granted to such premises in recognition of the fact that "[o]wners of such properties would have difficulty in defending their lands from trespassers or, indeed, even in taking precautions to render them safe for invited persons, engaging in . . . energetic outdoor activities." Id.

The cases that Petitioner and NJAJ rely on for the proposition that the LLA does not immunize the owners and occupiers of suburban residential property are distinguishable because none of them involve property whose dominant purpose is to provide open recreational space to the public. See Boileau v. DeCecco, 125 N.J. Super. 263, 265-266 (App. Div. 1973), aff'd, 65 N.J. 234 (1974) (LLA immunity inapplicable to individual suburban homeowner for accident that occurred in homeowner's swimming pool); Harrison, supra, 80 N.J. at 400-402 (immunity inapplicable to injuries occurring on property of utility company operating a water treatment plant and pumping station);[4] Toogood, supra, 313 N.J. Super. at 425-426 (immunity inapplicable where plaintiff was injured while rollerblading in a private residential condominium complex); Benjamin v. Corcoran, 268 N.J. Super. 517, 531 (App. Div. 1993) (immunity inapplicable where plaintiff was injured while

[4] Notably, the decedent in Harrison was not engaging in a recreational activity when he drowned, a factor that contributed to the Court's finding that the LLA did not apply. Id. at 402.

sledding on the grounds of a nursing home); Mancuso ex rel. Mancuso v. Klose, 322 N.J. Super. 289, 293-94 (App. Div. 1999) (immunity inapplicable where plaintiff suffered an injury running across a neighbor's yard.)

In contrast, public land like Van Saun County Park exists for the sole purpose of providing open recreational space to the public so it can be enjoyed and preserved, which is the express objective of the LLA. When individuals have been injured while using properties devoted to sport or recreational use, our appellate courts have properly found that LLA immunity applies based on the character of the property itself, regardless of the property's proximity to urban or suburban residential areas. See, e.g., Vaxter v. Liberty State Park, 2010 N.J. Super. Unpub. LEXIS 2607, *7-8 (App. Div. 2010), certif. denied, 205 N.J. 273 (2011) (Pa29) **(**Liberty State Park, "[a]lthough located in a heavily populated urban area," is itself "an expansive piece of land open to the public for recreational purposes free of charge and is not in a residential area" and, thus, entitled to LLA immunity); Tompkins v. County of Mercer, 2020 N.J. Super. Unpub. LEXIS 1596, *14 (App. Div. 2020), certif. denied, 246 N.J. 233 (2021) (Pa51) (LLA immunity applied to injury sustained at a dog park within Mercer County Park, even though the park had adjacent residential housing, because the park itself was a vast open space providing a vast array of active and passive recreational opportunities); Lareau v. Somerset County Park Comm'n, 2013 N.J. Super. Unpub. LEXIS 2437, *1-2 (App. Div. 2013) (LLA immunity applied to

injury sustained while walking over a footbridge on a county golf course because "[t]he property is open land, comparable to an open tract of land in a sparsely populated area" and, "although the course abuts a developed residential area, the premises are not situated within a suburban, residential development….") (ACa1-5).[5] Accord Weber v. United States, 991 F. Supp. 694, 695 (D.N.J. 1998) (LLA immunity applied to claim for injury sustained in a thirty-five-acre park in Fort Dix because the park was a large open area on military property which was provided to the general public to use for recreational purposes.)

The Legislature has expressly commanded that the LLA be construed liberally to encourage property owners to make their properties available for public recreational use. Petitioner's proposed interpretation, which would restrict LLA immunity only to large tracts of undeveloped land in thinly populated rural or semi-rural areas, is narrow and would discourage access to open lands for sport and recreational activity, contrary to the Legislature's intent. It also would render the LLA largely inoperative because the density of development in this State makes it hard to find any open recreational space that isn't surrounded by a residential or populated area. (Pa160.)

[5] Pursuant to R. 1:36-3, a copy of this unpublished opinion has been included in the accompanying Appendix of *Amici Curiae*.

Indeed, the argument that immunity should not apply in areas where open recreational properties are generally available to the public turns the LLA on its head. The Legislature granted immunity under the LLA for the stated purpose of *inducing* landowners to make their land available for sport and recreational purposes, without "fear of liability." N.J.S.A. 2A:42A-5.1. That purpose is best served when the greatest amount of people accesses open recreational space, not the least. It makes no sense to construe the LLA as intended to confer recreational immunity upon owners of remote, rarely accessed lands but not upon landowners whose land best achieves the Legislature's goal of promoting the use and preservation of open space.

Petitioner has not identified any cogent reason why large open tracts of land devoted to a sport or recreational purpose should be excluded from the immunity afforded under the LLA simply because they are located in or near urban or suburban residential areas. As the trial court pointed out, "Plaintiff was . . . not injured in a residential area. She was injured in a . . . large 130-acre County park. There's no reason why the [the LLA] would not apply to this County park." (Pa141.) The fact that county parks and nature reserves are often located in or near urban or suburban residential areas does not change their dominant character as large tracts of open recreational space nor does it lessen the burden that would be placed

on county and other public landowners to keep those open lands constantly safe for public use, a key factor supporting the legislative grant of immunity under the LLA.

Van Saun County Park "offers the general public access to picnic areas, playgrounds, pavilions, athletic fields, wooded areas, bicycling and walking paths, and a dog park -- without charging a fee." (Pa165-166.) The Appellate Division correctly held that "the Park's dominant character as an open space for sport and recreational activities renders the Park the type of property entitled to the protections under the LLA." (Pa166.) *Amici curiae* urge this Court to affirm that decision as consistent with the Legislature's stated intent of promoting sport or recreational activities on "lands having similar characteristics" to rural and semi-rural property, regardless of location.

II. PETITIONER'S NARROW INTERPRETATION OF THE LLA CONFLICTS WITH NEW JERSEY LAW WHICH IMMUNIZES PUBLIC ENTITIES FROM TORT LIABILITY UNLESS THERE IS A CLEAR AND SPECIFIC STATEMENT OF LEGISLATIVE INTENT TO IMPOSE LIABILITY

It is a basic tenet of statutory construction that, when interpreting multiple statutes touching upon the same subject, a court "must attempt to harmonize the provisions of all statutes that the Legislature has enacted affecting the subjects involved." Northwest Bergen County Utilities Authority v. Donovan, 226 N.J. 432,

443-444 (2016) (citing Town of Kearny v. Brandt, 214 N.J. 76 (2013) (citing Saint Peter's Univ. Hosp. v. Lacy, 185 N.J. 1, 14-15 (2005)). As this Court has recognized:

> The Legislature is presumed to be familiar with its own enactments, with judicial declarations relating to them, and to have passed or preserved cognate laws with the intention that they be construed to serve a useful and consistent purpose. *And the courts have the duty of reconciling them so as to give effect to both expressions of the lawmakers' will*.

Northwest Bergen County Utilities Authority, 226 N.J. at 444 (emphasis in original) (citing State v. Federanko, 26 N.J. 119, 129-30 (1958) (citations omitted).) Accordingly, "[s]tatutes that deal with the same matter or subject should be read *in pari materia* and construed together as a 'unitary and harmonious whole.'" Id. (quoting Saint Peter's Univ. Hosp., supra, 185 N.J. at 14-15 (quotation marks and citation omitted)). Courts should "presume that the Legislature intended for its [multiple] statutory schemes . . . to generally work harmoniously, not in conflict with one another." Id.

Petitioner and NJAJ argue that the LLA should be interpreted narrowly in favor or landowner liability to afford a remedy to individuals who are injured by negligent conduct when engaging in sport and recreational activities in county parks and other recreational spaces. However, a narrow interpretation of the LLA as applied to a county landowner is completely at odds with the Legislature's approach

to public entity tort immunity generally, and premises liability specifically, as set forth in the New Jesey Tort Claims Act ("TCA").

When the Legislature adopted the TCA, it did so with the recognition that "the area within which government has the power to act for the public good is almost without limit and therefore government should not have the duty to do everything that might be done." N.J.S.A. 59:1-2. Accordingly, under the TCA, public entities are not liable for an injury, except as such liability may be provided for in the Act. Tice v. Cramer, 133 N.J. 347, 355-356 (1993) (citing N.J.S.A. 59:2-1; Chatman v. Hall, 128 N.J. 394, 402 (1992)).

The Legislature specifically "rejected the concept of a statute that imposed liability with specific exceptions…." Rochinsky v. State, Dep't of Transp., 110 N.J. 399, 408 (1988) (quoting Attorney General's Task Force Report on Sovereign Immunity, cmt. to N.J.S.A. 59:2-1 (1972)). It did so out of a "paramount concern" that "a statute imposing general liability, limited only by specified statutory immunities, would provide public entities with little basis on which to budget for the payment of claims and judgments for damages." Id. at 407-408. The Legislature was also concerned "that such a statute would greatly increase the amount of litigation and the attendant expense that public entities would face." Id. at 408.

Accordingly, the TCA establishes a system "in which immunity is the rule, and liability the exception." Bombace v. City of Newark, 125 N.J. 361, 372 (1991);

see also Kolitch v. Lindedahl, 100 N.J. 485, 498 (1985)) ("[I]mmunity is the dominant consideration of the [TCA].") (O'Hern, J., concurring). The TCA "was intended to be construed strictly to effectuate its purpose of limiting the liability of the taxpayer and for this reason, courts should be wary of extending public entity liability." Macaluso v. Knowles, 341 N.J. Super. 112, 117 (App. Div. 2001). Thus, "when both liability and immunity appear to exist, immunity prevails." Blunt v. Klapproth, 309 N.J. Super. 493, 507 (App. Div.) certif. denied, 156 N.J. 387 (1998) (citing Tice v. Cramer, 133 N.J. at 356.)

The Legislature has been particularly circumspect in addressing public entity premises liability. Under the TCA, public entities and public employees are absolutely immune from suit for an injury caused by a condition of any unimproved public property. See N.J.S.A. 59:4-8; N.J.S.A. 59:4-9. That immunity exists for injuries caused by any condition of unimproved public property, even a dangerous one. Freitag v. County of Morris, 177 N.J. Super. 234, 238 (App. Div. 1981).[6]

With respect to improved property, while public entities don't enjoy blanket immunity under the TCA, they can only be held liable if a plaintiff meets the onerous burden of establishing not only a dangerous condition on public property and

[6] Consistent with legislative intent, courts construe the phrase "unimproved public property" liberally in favor of immunity. Freitag, 177 N.J. Super. at 239 (citing Comment to N.J.S.A. 59:4-8 and -9.)

wrongful conduct or actual or constructive notice of the dangerous condition, but also that the public entity's action or failure to act was "palpably unreasonable". N.J.S.A. 59:4-2.[7] This standard represents more than ordinary negligence: it "implies behavior that is patently unacceptable under any given circumstance....[F]or a public entity to have acted or failed to act in a manner that is palpably unreasonable, it must be manifest and obvious that no prudent person would approve of its course of action or inaction." Ogborne v. Mercer Cemetery Corp., 197 N.J. 448, 459 (2009) (quoting Kolitch, supra, 100 N.J. at 493.)

Despite the substantial protections in the TCA, public entities are not limited to the immunities set forth in the Act. The TCA provides that a public entity may avail itself of any defenses that would be available to a private person. N.J.S.A. 59:2-1(b). Accordingly, counties enjoy the same protections under the LLA that are available to private property owners, even though the LLA's immunity may be broader than the protections under the TCA itself. Trimblett v. State, 156 N.J. Super. 291, 294-95 (App. Div), certif. denied, 75 N.J. 589 (1977) (Applying

[7] More specifically, a plaintiff must establish, in addition to palpable unreasonableness, that (1) the public "property was in [a] dangerous condition at the time of the injury"; (2) "the injury was proximately caused by the dangerous condition"; (3) "the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred"; and (4) "a negligent or wrongful act or omission of [a public] employee . . . created the dangerous condition; or . . . a public entity had actual or constructive notice . . . of the dangerous condition . . . ." N.J.S.A. 59:4-2.

LLA immunity in wrongful death claim arising out of boating accident at State-owned Round Valley Reservoir); Rochinsky, supra, 110 N.J. at 409 (Noting that "common-law and statutory immunities *not* contained in the [TCA] can prevail over the Act's liability provisions.") (citing cases) (emphasis in original).

The LLA provides broader immunity than the TCA for open recreational land: it immunizes public (and private) owners, lessees and occupants of premises against liability for any claim for injuries arising out of the use of open land made available for a sport or recreational use (except as explicitly set forth in N.J.S.A. 2A:42A-4) by removing any duty to keep the premises safe or to give warning of any hazardous condition on the land. N.J.S.A. 2A:42A-3. The LLA thus reflects the Legislature's policy determination that property owners and occupants who make their open land available to the public as recreational spaces -- the LLA's core policy objective – should not be deterred from doing so by the threat of broad tort liability.

The Legislature has directed that the LLA be construed liberally, which means that landowners who make their properties available for public recreation should get the benefit of the immunity provided under the statute. To construe the LLA otherwise would render N.J.S.A. 2A:42A-5.1 meaningless, contrary to basic rules of statutory interpretation. See, e.g., Burgos v. State, 222 N.J. 175, 203 (2015) (New Jersey Supreme Court "do[es] not support interpretations that render

statutory language as surplusage or meaningless….") Even if this Court were to find that the language of the LLA is ambiguous as to its intended scope, it should be construed liberally in favor of immunity with respect to public landowners, in harmony with the TCA's rule of immunity over liability, because the policy considerations supporting immunity are the same under both laws.

The Legislature's grant of immunity in the TCA for claims involving the use of unimproved public property "reflect[s] the policy determination that it is desirable to permit the members of the public to use public property in its natural condition and that the burdens and expenses of putting such property in a safe condition as well as the expense of defending claims for injuries would probably cause many public entities to close such areas to public use." Freitag, supra, 177 N.J. Super. at 237 (quoting Report of the Attorney General's Task Force on Sovereign Immunity (1972), cmt. to N.J.S.A. 59:4-8 and -9.) It also reflects a policy judgment that, "[i]n view of the limited funds available for the acquisition and improvement of property for recreational purposes, it is not unreasonable to expect persons who voluntarily use unimproved public property to assume the risk of injuries arising therefrom as part of the price to be paid for benefits received…." Id.

Similarly, the Legislature adopted the "palpably unreasonable" standard for premises liability for improved lands in recognition of "the difficulties inherent in a public entity's responsibility for maintaining its vast amounts of public property"

and "on the thesis that a public entity's discretionary decisions to act or not to act in the face of competing demands should generally be free from the second guessing of a coordinate branch of Government." Polzo v. County of Essex, 209 N.J. 51, 76 (2012) (quoting Harry A. Margolis and Robert Novack, Claims against Public Entities, citing cmt. to N.J.S.A. 59:4-2 (Gann 2011)).

So, too, the LLA reflects the Legislature's policy determination that it is desirable to encourage access to open land for sport and recreation, but the burden of keeping large open tracts of property safe for frequent public use and the "fear of liability" in having to defend and pay claims would discourage access to such land without a grant of immunity. N.J.S.A. 2A:42A-5.1. Those burdens and challenges exist for county and other public landowners regardless of whether their property is located in thinly populated or densely populated areas. In fact, the burdens of property maintenance and the exposure to increased litigation and threat of liability, driving forces for immunity, are arguably higher in more densely populated areas because there is more wear and tear in these parks from frequent use and a far greater number of people who use the parks and could potentially be injured while engaging in recreational pursuits. The Appellate Divion's finding of immunity in this case is faithful both to the LLA's express mandate to construe the LLA broadly in favor of immunity as well as the legislative mandate under the TCA to immunize public entities from liability for negligence and other tort liability unless there is a statutory

declaration to the contrary.

Interpreting the LLA broadly in favor of public landowner immunity, however, does not mean that individuals who are injured on premises covered by the LLA are without any recourse as Petitioner and NJAJ claim. The LLA states that immunity does not apply in three express circumstances, including a "willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure[,] or activity", and where the injured person paid "to engage in sport or recreational activity on the premises." N.J.S.A. 2A:42A-4. If a plaintiff fits within one of these statutory exceptions to immunity, the LLA will not bar recovery. But for members of the public who use the vast amounts of publicly provided open spaces to engage in energetic recreational activities free of charge and are injured due to negligence, "[i]n view of the limited funds available for the acquisition and improvement of property for recreational purposes, it is not unreasonable to expect [such] persons . . . to assume the risk of injuries arising therefrom as part of the price to be paid for benefits received…." Freitag, supra, 177 N.J. Super. at 237.

III. PETITIONER'S NARROW INTERPRETATION OF THE LLA CONFLICTS WITH NEW JERSEY'S LONGSTANDING PUBLIC POLICY TO PROMOTE THE USE AND PRESERVATION OF OPEN SPACE FOR RECREATIONAL AND CONSERVATION PURPOSES

The Legislature's desire to promote access to open recreational space is at the heart of LLA immunity. In this regard, the LLA is fully aligned with New Jersey's

"Green Acres" laws[8], which are specifically designed to promote the public acquisition, development, and conservation of land for outdoor "recreation and conservation purposes."[9] The Green Acres laws are predicated on the core belief that "[t]he provision of lands for public recreation and the conservation of natural resources promotes the public health, prosperity and general welfare and is a proper responsibility of government." N.J.S.A. 13:8A-36(a). Accordingly, under the Green Acres program, the State provides grants and loans to local governments to help them achieve that goal in exchange for their agreement to restrict the use of their land and the grant money for those purposes. See N.J.S.A. 13:8A-2; N.J.S.A. 13:8A-20; N.J.S.A. 13:8A-36; N.J.S.A. 13:8A-47.

Significantly, the State's public policy to incentivize the acquisition and development of open space, under both the LLA and Green Acres laws, is rooted in the recognition that the amount of open land available for recreational activities is

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[8] See L. 1961, c. 45, codified at N.J.S.A. 13:8A-1 to -18 (the New Jersey Green Acres Land Acquisition Act of 1961); L. 1971, c. 419, codified at N.J.S.A.13:8A-19 to -34 (the New Jersey Green Acres Land Acquisition Act of 1971); L. 1975, c. 155, codified at N.J.S.A. 13:8A-35 to -55 (the New Jersey Green Acres Land Acquisition and Recreation Opportunities Act ("1975 Green Acres Act").

[9] "Recreation and conservation purposes" is defined under the 1975 Green Acres Act as the "use of lands for parks, natural areas, historic areas, forests, camping, fishing, water reserves, wildlife, reservoirs, hunting, boating, winter sports and similar uses for either public outdoor recreation or conservation of natural resources, or both." N.J.S.A. 13:8A-37(f).

becoming increasingly scarce, even as the need and cost for such land increases. This Court recognized this as the basis for LLA immunity in Harrison, stating:

> The public policy to afford these property owners a modicum of protection from tort liability [under the LLA] may be thought of as one which would encourage such owners to keep their lands in a natural, open and environmentally wholesome state. *This is an important policy in view of the substantial and seemingly relentless shrinkage and disappearance of such land areas from the face of our State. It is a concern well known to the Legislature and the preservation of such lands is very much an integral part of our governmental and public policy*. See, e.g., N.J.S.A. 13:8A-1 et seq. (Green Acres Land Acquisition Act of 1961); N.J.S.A. 13:8A-19 et seq. (Green Acres Land Acquisition Act of 1971); N.J.S.A. 13:8A-35 et seq. (Green Acres Land Acquisition and Recreation Opportunities Act); N.J.S.A. 4:1B-1 et seq. (Agricultural Preserve Demonstration Program Act); N.J.S.A. 54:4-23.1 et seq. (Farmland Assessment Act). ***This purpose was assuredly intended to be served by the Legislature in structuring the [1968 LLA].***

Harrison, 80 N.J. at 400 (emphasis added). This policy concern also is expressly acknowledged in the legislative findings supporting the 1975 Green Acres Act, which state that "[l]ands now provided for [recreational and conservation] purposes will not be adequate to meet the needs of an expanding population in years to come", and "[t]he expansion of population, while increasing the need for such lands, will continually diminish the supply and tend to increase the cost of public acquisition of lands available and appropriate for such purposes…." N.J.S.A. 13:8A-36(b) and (c).

Thus, contrary to Petitioner's argument (Pet18-19), it was the Legislature's policymaking, not the Appellate Division's, which determined that the increasing scarcity of undeveloped land in New Jersey and the population density in the State pose a threat to the Legislature's goal of promoting the acquisition, preservation and use of open space for recreational activities and conservation. As such, it was entirely appropriate for the Appellate Division to consider the State's population density and the scarcity of remaining lands untouched by housing or other development in determining that Petitioner's narrow interpretation of the LLA, which would result in very few properties being covered by the law, was inconsistent with the LLA's stated purpose and should be rejected. (Pa160.)

The bottom line is that Petitioner supports an interpretation of the LLA that would discourage the provision of access to open recreational space by denying immunity to most of the public properties in the State that provide free open space to the public for sport and recreational purposes. This is plainly contrary to the LLA's goal of providing immunity as an "inducement to the owners...of property, that might otherwise be reluctant to do so for fear of liability, to permit persons to come onto their property for sport and recreational activity." In contrast, the Appellate Division's construction of the LLA to encompass any premises whose predominant character is to serve as an open space for sport and recreational activities, regardless of its location, gives effect to the express purpose of the LLA

and also harmonizes the LLA with the Green Acres laws and similar laws which are designed to promote the use preservation of lands for recreational and conservation purposes as an "integral part of our governmental and public policy". Harrison, 80 N.J. at 400. For this additional reason, the decision below should be affirmed.

CONCLUSION

For these reasons, *Amici Curiae* urge the Court to affirm the Appellate Division's decision.

Dated: June 12, 2025

Respectfully submitted,

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