

# The Detroit News

## Can you walk the beach? Supreme Court may decide

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*Long Beach, Ind.* – Two Michigan groups are urging the U.S. Supreme Court to take up an Indiana case that would determine if lakefront property rights extend all the way to the water.

If the court considers the issue, it has the potential to redefine where people can -- and can't -- walk on all Great Lakes beaches that aren't publicly owned.

Save our Shoreline, a Michigan non-profit comprised of Great Lakes property owners, and the Whalesback Preservation Fund LLC, which owns Lake Michigan land near Leland, have filed a brief led by the Cato Institute in support of two Indiana land owners.

Don and Bobbie Grunderson of Long Beach, Indiana, contend their lakefront property extends to the water's edge and landowners have the right to limit who uses the beaches on their properties.

The Gundersons argue that a ruling by Indiana's high court, and a similar 2005 decision by the Michigan Supreme Court, upset a longstanding consensus in the Great Lakes states which held that private ownership extended to the water's edge, wherever that edge was at any given moment. The Indiana court ruled that a different and more nebulous standard, the ordinary high water mark, is the limit of the landowners' property.

The issue may gain additional attention because Long Beach is the hometown of Chief Justice John Roberts, who lived in the town about 30 miles southeast of Chicago from the 1960s until leaving for Harvard University in 1973.

The Indiana ruling being appealed not only unsettles property interests in Indiana, but "implicates the property boundary for tens of thousands of other families who own property on the shores of the Great Lakes," according to the brief filed by the Michigan groups.

The Supreme Court won't decide until next year whether to consider arguments. The court is giving the Indiana attorney general's office an extra two months for a response to the request the Gundersons for the Supreme Court review. That response is now due Jan. 11, The (Northwest Indiana) Times reported.

The Gundersons want to appeal a February decision by the Indiana Supreme Court that set the ordinary high water mark as the boundary between state-owned land under Lake Michigan and private property.

They want the U.S. Supreme Court to definitively set the water's edge as the boundary of lake-adjacent properties for all five Great Lakes — with no requirement to provide public access to the beach.

Property rights groups elsewhere also have begun filing amicus, or “friend of the court,” briefs, urging the high court to rule in the Gundersons’ favor.

The Minnesota Association of Realtors argues in its filing that the varying definitions of lake-adjacent property boundaries in the Great Lakes states calls out for the U.S. Supreme Court to conclusively determine where “the line between private and public property rights on lakefront property must be drawn.”

The brief led by the libertarian Cato Institute and joined by Save Our Shoreline and the Whalesback fund contends that the Indiana Supreme Court ruling amounts to an unconstitutional taking of private property.

“If Indiana wanted to make the shoreline of Lake Michigan a public beach, it could have done so by explicitly exercising its power of eminent domain and justly compensating the landowners,” that brief states.

“What Indiana cannot do, however, is to convert private property to public property by judicial or administrative fiat.”

In the defining Supreme Court case in Michigan, the majority of justices held that the ordinary high water mark — the portion on the shore to which the water frequently reaches — is boundary of the public trust, or the area within which the public can walk.

“This land, although not immediately and presently submerged, falls within the ambit of the public trust because the lake has not permanently receded from that point and may yet again exert its influence up to that point,” the majority opinion held in 2005.

The Michigan groups, with the Cato Institute, held in their brief that the publicly accessible land boundary should be the “wet sand” mark, the demarcation line between wet and dry sand near the water’s edge.