



## US Supreme Court pushes deadline on Lake Michigan beach case

November 26, 2018

The U.S. Supreme Court won't decide until next year whether to consider arguments from residents of Chief Justice John Roberts' Indiana hometown of Long Beach over ownership of the Lake Michigan community's shoreline. The case could have a ripple effect for public and private property rights across the Great Lakes states.

The court is giving the Indiana attorney general's office an extra two months for a response to the request from Don and Bobbie Gunderson of Long Beach, Indiana, for the Supreme Court review. That response is now due Jan. 11, The Times of Northwest Indiana 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 contend their lakefront property extends to the water's edge and that landowners have the right to limit who uses the beaches abutting their properties.

Roberts lived as a child in Long Beach, about 30 miles southeast of Chicago, from the 1960s until leaving for Harvard University in 1973.

The Gundersons argue that the 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.

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. Landowners in October asked the nation's highest court to hear the case. The case on the U.S. Supreme Court docket is *Gunderson v. Indiana*, 18-462.

Property rights groups elsewhere have begun filing amicus 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.”

Another amicus brief, led by the libertarian Cato Institute and joined by Save Our Shoreline and the Whalesback Preservation Fund, both of Michigan, 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.”

Public interest groups likewise are expected to file briefs urging the court to uphold the Indiana Supreme Court’s ruling.

While the Gundersons remain the named plaintiffs in this case, they have not owned the property that gave rise to this case for years, an IL review of property and court records found. It remains unclear who the actual plaintiffs are in this case.