No. APL-2019-00166

State of New York
Court of Appeals

PROTECT THE ADIRONDACKS! INC.,

Respondent-Appellant,

-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND
ADIRONDACK PARK AGENCY

Appellants-Respondents.

BRIEF FOR *AMICI CURIAE* ADIRONDACK ASSOCIATION OF TOWNS AND VILLAGES and NEW YORK STATE ASSOCIATION OF COUNTIES IN SUPPORT OF APPELLANTS-RESPONDENTS

Dated: January 26, 2021

MILLER, MANNIX, SCHACHNER &
HAFNER, LLC
Mark Schachner, Esq., Of Counsel
Jacquelyn P. White, Esq., Of Counsel
Attorneys for Amici Curiae *Adirondack Association of Towns and Villages and New York State Association of Counties*
15 West Notre Dame Street
Glens Falls, New York 12801
(518) 793-6611
mschachner@mmshlaw.com

Supreme Court, Albany County, Index No.: 2137-13
Third Department No.: 527256

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CORPORATE STATEMENT

In accordance with Rule 500.1(f) of the Rules of Practice of the Court of Appeals, the Adirondack Association of Towns and Villages and New York State Association of Counties are not-for-profit corporations with no parents, subsidiaries or affiliates.

PRELIMINARY STATEMENT

The Adirondack Association of Towns and Villages ("AATV") and New York State Association of Counties ("NYSAC") respectfully submit this Brief in support of Appellants-Respondents New York State Department of Environmental Conservation ("DEC") and Adirondack Park Agency ("APA"). This matter involves the State's construction of 27 miles of Class II Community Connector Trails in the State's Forest Preserve located in the Adirondack Park to be utilized for snowmobiling and other outdoor recreational activities and which run through and connect several Adirondack communities ("Project"). At issue is whether the Project is prohibited by article XIV, § 1 of the State Constitution, which states in part that "[t]he lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed."

After a thirteen-day bench trial at which several experts testified, Albany County Supreme Court determined that the Project did not violate article XIV, § 1. However, after appeal to the Appellate Division, Supreme Court's determination was overturned. The Appellate Division correctly held that the Project does not violate the first clause of article XIV, § 1, as it does not change the "forever wild" nature of the Forest Preserve. *Protect the Adirondacks! Inc. v. New York State Dept. of Envtl. Conservation*, 175 AD3d 24, 28 (3d Dept 2019). However, it erred in its inconsistent determination to overturn Supreme Court's Decision by holding that, despite not impacting the "forever wild" nature of the Forest Preserve, the Project would violate the provision of article XIV, § 1 prohibiting the removal of timber within the Forest Preserve. *Protect*, 175 AD3d at 29.

In analyzing the constitutional prohibition against removal of timber in the forest preserve, the Appellate Division characterized (or more accurately mischaracterized) "timber" as including "all trees, regardless of size." *Protect*, 175 AD3d at 31. "All trees, regardless of size" could in turn be interpreted as meaning seedlings, saplings and very small trees that, prior to this Decision, would never have been classified as "timber" by anyone. If the constitutional provision really means that seedlings, saplings and small trees must be included in assessment of timber removal, then this threatens not only construction of new trails of any kind, but seriously calls into question the ability to maintain even existing trails, as trail

maintenance obviously includes removal of small brush (including seedlings, saplings and small trees) in order to maintain safe and clear pathways.

This Court must recognize that outdoor recreational opportunities and activities are the "lifeblood" of our Adirondack communities. The overwhelming majority of Adirondack residents themselves enjoy these activities, the overwhelming majority of visitors come in pursuit of these activities and recreational tourism based on these activities is the foundation of our local economies. In short, it is no overstatement that any significant reduction or elimination of outdoor recreational opportunities would have devastating and disastrous impacts on our communities.

AATV and NYSAC acknowledge that Courts (especially appellate Courts) must rule on the issues as presented to them in written documents and that, in cases like this, their rulings may be based on esoteric legal principles on which the Court may place substantial importance. However, AATV and NYSAC also believe that Courts must evaluate complex legal principles not just in an abstract vacuum, but also in the context of practical reality and the real-life implications of their decisions – to borrow a phrase from the military, with "boots on the ground". The interpretation of "timber" thrust upon us by the Appellate Division could lead to cessation of all Adirondack trail maintenance activities. If our trails are not maintained, natural succession will lead to them becoming overgrown, impassable

and eventually obliterated – they could cease to exist altogether. Hiking is the most popular recreational activity in the Adirondacks and, should trail maintenance be prohibited and our hiking trails cease to exist, there will in fact be no "boots on the ground" at all.

INTERESTS OF THE *AMICI*

Adirondack Association of Towns and Villages is the not-for-profit corporation formed to assist and advocate the interests of the 102 municipalities in the Adirondack Park and essentially functions as the "voice" of these Towns and Villages. AATV was formed for the purpose of increasing efficacy and economy of its Member Towns and Villages by specifically providing support and guidance to its Members, addressing issues common to communities within the Adirondack Park and bringing these issues to the attention of State lawmakers and regulatory agencies when necessary. No private interests are directly served by its activities.

In representing the collective interests of Towns and Villages within the Adirondack Park, AATV is fully familiar with the facts in this matter and the importance of the outcome of this Court's determination. It is deeply concerned about the ramifications of the Appellate Division Decision finding construction of the Connector Trails unconstitutional. This concern is substantially magnified by the potentially devastating result of the Court's rationale in doing so. Recreation within the State's Forest Preserve, including but not limited to snowmobiling, is of

critical importance to the economies of the communities within the Adirondack Park. The consequences of upholding the Appellate Division's Decision would be detrimental to these communities and these consequences may be overlooked without the benefit of AATV's informed perspective.

NYSAC, is a not for-profit corporation incorporated pursuant to the laws of the State of New York whose sole Members consist of the 62 New York Counties. It is the only statewide municipal association representing the interests of county government, including elected county executives, county supervisors, legislators, representatives, commissioners, administrators and other county officials from the 62 counties including the City of New York. NYSAC's activities involve providing support and guidance to county officials in furtherance of their essential governmental functions, and all its activities, including the filing of this Brief, accrue to the benefit of all county governments in New York. NYSAC joins in the submission of this Brief because resolution of this appeal will have a substantial impact on its membership.

No one better recognizes the balance that must be struck in protecting the resources of New York's great Forest Preserve while also allowing responsible use of the Preserve than the residents of the Adirondack Park. The people of these communities appreciate that their communities would not exist without the preservation of their unique and beautiful natural surroundings. However, without

the public's ability to responsibly use these resources, these communities cannot survive.

The Appellate Division has altered the interpretation of the State Constitution in a manner that could forever prohibit and impede responsible recreation, maintenance and use of the Forest Preserve – recreation, maintenance and use upon which survival of Adirondack Towns and Villages depends. The Constitutional provision at issue and the case law interpreting it recognize the balance that must be struck between preservation of the Forest Preserve and its use for recreation and commerce. The Appellate Division's Decision has upended this balance. The Towns, Villages and people of the Adirondack Park do not want to see their beloved Forest Preserve damaged, altered or compromised. They simply want to ensure that responsible use of the Forest Preserve lands remains viable to appropriately promote recreational enjoyment and commerce for the region and the State as a whole. For these reasons, AATV and NYSAC are compelled to submit this Brief in support of DEC and APA.

ARGUMENT

THE PROJECT DOES NOT VIOLATE ARTICLE XIV, § 1 OF THE STATE CONSTITUTION

In 1930, in the seminal relevant case, this Court stated that this provision, which was then set forth at article 7, § 7 of the State Constitution, "like those of any

law, must receive a reasonable interpretation, considering the purpose and the object in view." *Association for the Protection of the Adirondacks v. MacDonald,* 253 NY 234, 238 (1930). The Court held that the intent of the provision at issue as evidenced by the debates of the 1894 Constitutional Convention was to prohibit any removal of timber to a "substantial extent". *MacDonald,* 253 NY at 238. The Court went on to clarify that "all things necessary were permitted, such as measures to prevent forest fires, the repairs to roads and proper inspection, *or the erection and maintenance of proper facilities for the use by the public* which did not call for the removal of the timber to any material degree." *Id.* (emphasis added).

As evidenced in the Record and discussed in detail in Appellants-Respondents' Briefs, the construction at issue will not result in large swaths of Forest Preserve being disturbed, but instead includes 11 narrow corridors in various locations throughout the Forest Preserve located within the Adirondack Park, ranging in length from 40 to 50 feet to 11.9 miles and generally not exceeding 9 feet in width. R. at xi-xii, 543-44, 3119.[1] These trails are intended for recreational activities including snowmobiling, hiking and mountain biking. R. at 1255. The construction of these trails will provide greater protection of the Forest Preserve by relocating existing snowmobile trails from the interior of the Preserve and other

[1] "R." refers to the certified Record on Appeal in this matter.

sensitive areas to the periphery where motorized travel corridors already exist. R. at 1255-56, 1259-60. These pre-existing interior trails will be re-designated for non-motorized use or abandoned altogether. R. at 1255, 1258-59, 1480-1481. Part of the goal of this Project is to protect the Forest Preserve by minimizing existing environmental concerns and overuse on unofficial trails._The State's standards and guidance for the Project require that tree cutting be minimal, that the closed canopy of the Forest Preserve be maintained and that careful accounting be made for all trees to be cut which are at least three inches in diameter at breast height ("dbh"). R. at 1263, 4090. Ultimately, the Project will promote and maintain the integrity of the Adirondack Forest Preserve by providing access along carefully constructed, sustainable trails, planned through environmental forestry management principles by expert DEC Staff. These professional forestry principles will minimize environmental impact while also preserving public lands for the public to enjoy.

The Appellate Division correctly determined that the Project will not alter the "forever wild" nature of the Forest Preserve and therefore did not violate the first clause of article XIV, § 1. In making its determination, the Appellate Division agreed with Supreme Court's findings noting, among other things, that evidence in the Record supported that "the trails are more similar to hiking trails than to roads," that the trails "generally retained a closed canopy" and that "construction did not disturb old-growth forest to any meaningful degree." *Protect* at 28-29.

However, after upholding the lower Court's determination that the first sentence of article XIV, § 1 would not be violated, the Appellate Division then chose to adopt a novel and broader interpretation of the word "timber" as used in the next sentence to override the intent of the provision and deem the Project unconstitutional. The Appellate Division clearly erred by, first, broadening the definition of "timber" beyond the intention of Constitutional drafters and common practice over more than a century and, second, failing to consider the totality of article XIV, § 1, which requires a reasonable balance between protection and the public's use of the Preserve.

I. THE APPELLATE DIVISION IMPROPERLY EXPANDED THE ACCEPTED DEFINITION OF "TIMBER" UNDER ARTICLE XIV, § 1

As addressed in detail in the Briefs submitted by DEC and APA, the interpretation of the word "timber" in this constitutional provision is a proper issue before this Court and the Appellate Division's interpretation of the second sentence of article XIV, § 1 is inconsistent with the drafters' intention, accepted practice and this Court's interpretation of this provision as a whole. As with all questions of constitutional interpretation, the Court must consider "practical effect, having in mind the purpose of the body which framed it and the people who adopted it." *In Re Fay*, 291 NY 198, 207 (1943). This Court has said that the State Constitution "is to be construed liberally and with regard to its fundamental aim and object, and not

with the acute verbal criticism to which a penal ordinance is properly subjected." *People v. Tremaine*, 252 NY 27, 40 (1929). In reviewing this very provision, this Court stated that it must be a "reasonable interpretation, considering the purpose and the object in view." *MacDonald,* 253 NY at 238.

Looking to the debates of the 1894 Constitutional Convention which resulted in the adoption of this provision, it is clear that the drafters intended to prevent the removal of merchantable timber – not all tree growth within the Preserve. 4. Rev. Rec., 1894 NY Constitutional Convention at 139, 155; *See*, *MacDonald* at 239-40. The delegates were concerned with protecting the timber from "lumbermen" and the lands being taken by "corporations". 4 Rev. Rec., 1894 NY Constitutional Convention at 139. It is also clear that one of the main purposes in protecting this timber was to allow for the public's use and enjoyment, including recreation. 4 Rev. Rec., 1894 NY Constitutional Convention at 139, 149,156, 199; *See*, *MacDonald* at 239-41. The Constitution's drafters used the word "timber" – not trees, vegetation, growth or any other terms that would have clearly included all growth within the Forest Preserve. They instead used "timber"; a word that had more limited meaning at the time of the Article's adoption and still has more limited meaning today. This provision was debated again at the 1915 Constitutional Convention, but the use of "timber" remained as it was, after the delegates rejected a proposed amendment that would have prohibited the removal of "trees and timber." 2. Rev. Rec., 1915 NY

Constitutional Convention at 1448. To accept the Appellate Division's unprecedented broadening of this constitutional language to include all tree growth would violate the plain meaning of the provision as well as the clear intent behind it in a way that would have detrimental impacts to the communities of the Adirondack Park.

The Record also contains clear evidence of the State's application of this Provision for over a century. The evidence presented at trial included testimony from DEC Foresters, including one who worked in the private forestry sector for many years before joining the State. The Foresters testified that DEC takes a more conservative approach by accounting for trees of at least three inches dbh, while the private forestry sector considers timber to mean trees of at least eight inches dbh. R. at 4241, 4670-4773, 4676-78.

At the time the *MacDonald* case was before the Appellate Division, that Court noted that the proposed project included the "cutting of 2,600 trees which must unquestionably be regarded as of 'timber' size." *Association for the Protection of the Adirondacks v. MacDonald*, 228 AD 73, 82 (3d Dept 1930). It is therefore evident that in 1930, for purposes of the analysis of this provision, the Appellate Division distinguished all trees from trees of "timber size". However, in the present case, the same Appellate Division erroneously concluded that "use of the word 'timber' in the constitutional provision at issue is not limited to marketable logs or

wood products, but refers to all trees, regardless of size." *Protect* at 28.

The Appellate Division's interpretation of "timber" contradicts its own determination that the Project does not violate the "forever wild" nature of the Preserve and also runs counter to this Court's articulated standards for article XIV, § 1 as set forth in *MacDonald*. The Appellate Division did not subject this provision to "reasonable interpretation," but instead dissected article XIV, § 1 in a manner that resulted in an internally incongruous determination that fails to appreciate the intent behind the provision. The novel interpretation of "timber" and this provision as a whole would inhibit the State and Local communities within the Adirondack Park from doing the "all things necessary" previously endorsed by this Court. *MacDonald*, 253 NY at 238. This Court did not blithely say that necessary measures for fire protection and road maintenance were simply allowed, but allowed only if "they did not call for the removal of timber to any material degree." *Id.* However, the Appellate Division's unreasonable interpretation and application of the word "timber" has necessarily changed the meaning of "material degree" and therefore what may be done to maintain and protect public facilities for both safety and recreation.

Neither this Court's analysis in *MacDonald* nor any other applicable authority mandates such an expansive and patently unreasonable interpretation of the word "timber". To the contrary, the countenance of this Court in interpreting article XIV,

§ 1 is consistent with the principle of requiring "reasonable interpretation". Simply stated, "timber" could not reasonably have been intended to mean "trees of any size" and the Appellate Division has trampled upon more than a century of Adirondack jurisprudence in so finding.

II. THE APPELLATE DIVISION FAILED TO PROPERLY BALANCE PROTECTION OF THE FOREST PRESERVE AND THE PUBLIC'S RIGHT TO USE IT

"The Forest Preserve is preserved for the public; its benefits are for the people of the state as a whole. Whatever the advantages may be of having wild forest lands preserved in their natural state, the advantages are for every one within the state and for the use of the people of the state." *MacDonald*, 253 NY at 238-239. Preservation to ensure the People's use and enjoyment requires that a reasonable balance must be struck. In his dissent to the Appellate Division's Decision, Justice Lynch recognized this balance and diverged from his colleagues by concluding that "[t]hese trails effect a reasoned balance between protecting the Forest Preserve and allowing year-round public access." *Protect*, 175 AD3d at 32.

Preservation and use of the Preserve are not mutually exclusive. In fact, as recognized by this Court, the very intent of this provision is to protect the Preserve so that it remains intact for the use and enjoyment of the people of the State of New York. The discussion and debate of the 1894 Constitutional Convention make clear

that, while the delegates intended to protect the Preserve from commercial exploitation, they did not intend to create a purely isolated forest haven. *See*, 4. Rev Rec., 1894 NY Constitutional Convention at 124-163. The benefits of responsible access to the Preserve as recognized by the delegates were not limited to purely recreational enjoyment, but also economic benefits, including tourism. *See*, 4. Rev Rec., 1894 NY Constitutional Convention at 131-132, 136-137, 146, 151. The delegate who proposed the addition of "or destroyed" to the "timber" removal prohibition, which was ultimately included in the constitutional text, stressed in his remarks that the Adirondacks "furnish a vast sanitarium, not only for the people of this State, but from all over the Country." 4. Rev. Rec., 1894 NY Constitutional Convention at 141-142.

This recognition of the Preserve's role in commerce is critically important when considering how interwoven the Forest Preserve and the local communities are in the Adirondack Park. The Adirondack Park is not a segregated, demarcated tract of public lands. It is a 6-million-acre patchwork of public and private lands that contains 102 towns and villages and includes approximately 2.5 million acres of Forest Preserve spread throughout the Park. R. at 4159. There are also approximately 130,000 people living in the Park; people who survive on the tourism and recreation the Preserve provides, many of whom are responsible for the care and protection of the Preserve. Adirondack Park Agency,

https://apa.ny.gov/gis/_assets/ParkTownPop2010.pdf (accessed Jan. 13, 2021). The communities located within the Park have every right to not only survive, but thrive – just as the Forest Preserve shall thrive. These goals are not mutually exclusive.

The trails at issue will confer a significant benefit not only upon the individuals who make use of them, but upon all of the individuals involved with the local businesses that sustain the numerous recreational opportunities; from restaurants and lodging to gas stations, grocery stores and many others. The economies of these municipalities depend on tourism and the indirect benefits of the recreational opportunities that the Adirondack Park and our great Forest Preserve afford. *See*, R. at 1005, 1340, 1942, 2084. Obviously, in 1894 the delegates of the Constitutional Convention could not have envisioned snowmobiling or the vital part it would play in the economic survival of the communities within the Park, but they did recognize the vital role of the Forest Preserve in the commerce of that time. Snowmobiling has now assumed a similar generalized importance to these communities. R. at 998-1015, 2084**.** One of the goals of the Project and similar trails is to create community connections or a "touring" experience for snowmobiles in the Park, linking communities and encouraging users to seek services that support those communities and increase snowmobile-related spending. R at 1001-1003, 1019, 2213, 2858. It is just this type of vital inter-community connection that is at stake here.

Previous jurisprudence considering this constitutional provision highlights the reasoned balance in protecting the Preserve and providing necessary access as envisioned by the provision's drafters. In *MacDonald*, this Court found that the State's effort to remove 4½ acres of trees in a single location for construction of a bobsled run for the 1932 Winter Olympics did violate article XIV, § 1. *MacDonald* at 236. It was reasonable to find that proposal unconstitutional in a balancing of interests under this provision as the great intrusion would have provided a short-lived, seasonal benefit that would have been enjoyed by a very limited pool of the public. However, in finding that specific project unconstitutional, this Court noted that it was not being called upon to determine what may be done in the forest lands and recognized that "a very considerable use may be made by campers and others without in any way interfering with this purpose of preserving them as wild forest lands." *MacDonald,* 253 NY at 240.

The Project here differs greatly from that proposed in *MacDonald* and is the exact type of public use that does not interfere with the purpose of preserving the lands as forever wild. The Appellate Division failed to appreciate the totality of the Project, the context and its vast differences from the facts in *MacDonald*. Here, there is no clearcutting of large swaths of the Forest Preserve, but instead, tree removal in narrow corridors spread throughout the Preserve that would not disturb the closed canopy and, most importantly as acknowledged by the Appellate Division

itself, will not disturb the "forever wild" nature of the Preserve. *Protect,* 175 AD3d at 28-29. This Project also poses benefits to the Preserve in that is designed to move snowmobile trails from the interior and more environmentally sensitive areas to the periphery along travelled corridors. Critically, the project in *MacDonald* would have had a detrimental impact in cutting a swath of the Forest Preserve with a benefit limited in scope, time and season. In comparison, the construction of the far less environmentally impactful trails at issue here will provide a variety of recreational activities accessible to the general public including hiking and snowmobiling. These minimally intrusive year-round recreational activities will be enjoyed by the public at large and will provide significant long-term economic benefits to the communities of the Adirondack Park as a result.

In *Balsam Lake Anglers Club v. Dept. of Envtl. Conservation*, the Appellate Division considered and struck the appropriate balance finding a proposed project, not unlike the Project at issue, to be constitutional. *See, Balsam Lake Anglers Club v. Dept. of Envtl. Conservation*, 199 AD2d 852 (3d Dept 1993). At issue there was DEC's proposed project in the Catskill Forest Preserve which included construction of five new parking lots, designation of campsites, relocation of trails and construction of a new hiking trail and new cross-country ski trail. *Balsam Lake Anglers Club*, 199 AD2d at 852. The Appellate Division acknowledged that article XIV, § 1 does not prohibit any cutting and applied the "substantial extent" and

"material degree" standards set forth in *MacDonald*. *Id.* at 853. In doing so, it found that, despite the total amount of cutting being unknown, the "proposed uses appear compatible with the use of forest preserve land, and the amount of cutting necessary is not constitutionally prohibited." *Id.* at 854. The facts here are quite similar. There will be minimal impact to the Preserve while at the same time providing access to the public for uses that are clearly compatible with the intent of the constitutional provision and that will promote great economic opportunities for the Adirondack communities. In the instant matter, the Appellate Division turned its back on this precedent, ignored any reasonable balance and applied a myopic mathematical analysis that fails to appreciate the intent of article XIV, § 1.

The potential impacts on the local communities' economies caused by the Appellate Division's Decision are clearly not limited to this Project alone. The novel definition of timber would severely impact use and maintenance of the Forest Preserve as a whole, further limiting accessibility to the detriment of the people living and working within the Adirondack Park. DEC has indicated that, as a result of the Appellate Division's Decision, it has ceased work on many projects including work on foot trails, parking lots, boat launches and potable water lines. *See*, Appellants-Respondents' Brief at footnote 13. All of these facilities are integral and imperative components of maintaining Adirondack residential, commercial and recreational opportunities and these efforts to sustain local economies are undertaken

not with the goal of providing benefits for a few individuals or corporate entities, but for the actual survival of entire communities.

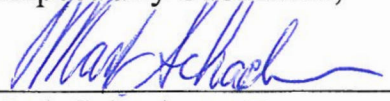
CONCLUSION

Local government members of AATV have been integrally involved and working with DEC and APA for many years in planning, development and maintenance of numerous outdoor recreational trails and trail systems to facilitate community connectivity and various recreational activities including snowmobiling, hiking, mountain biking, cross-country skiing, snowshoeing and the like. Implementation of the Appellate Division Decision would have disastrous impacts on the lives and well-being of our Adirondack communities, the survival of which is uniquely tied to the land and relies upon preservation of the great Adirondack Park, including the Forest Preserve. However, for economies now based largely upon recreational tourism, their survival also depends upon safe and reasonable public access and enjoyment of the Forest Preserve. Adoption of the erroneously restrictive reading of article XIV, § 1 would severely limit future access and enjoyment of the Forest Preserve at substantial detriment and loss to and of these treasured communities. Therefore, AATV and NYSAC urge this Court to uphold the portion of the Appellate Division Decision finding no violation of "Forever Wild" and reverse the determination that "timber" includes "all trees regardless of

size", thereby finding the Project to be consistent with article XIV, § 1 of the State Constitution.

DATED: January 26, 2021

Respectfully Submitted,



Mark Schachner, Esq.
Jacquelyn P. White, Esq.
MILLER, MANNIX, SCHACHNER & HAFNER, LLC
Attorneys for Amici Curiae *Adirondack Association of Towns and Villages and New York State Association of Counties*
15 West Notre Dame Street
Glens Falls, New York 12801
(518) 793-6611
mschachner@mmshlaw.com

CERTIFICATE OF COMPLIANCE

Mark Schachner, Esq., a member of MILLER, MANNIX, SCHACHNER & HAFNER, LLC, attorneys for *Amici Curiae* Adirondack Association of Towns and Villages and New York State Association of Counties, certifies that the foregoing Brief was prepared pursuant to 22 NYCRR § 500.13(c)(1) as follows:

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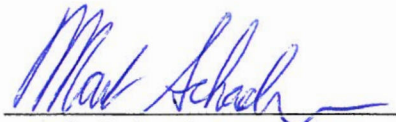

Mark Schachner, Esq.

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No. APL-2019-00166

STATE OF NEW YORK COURT OF APPEALS

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-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION and ADIRONDACK PARK AGENCY,

Appellants-Respondents.

STATEMENT PURSUANT TO COURT OF APPEALS RULES OF PRACTICE § 500.23(a)(4)(iii)

Motion No.: 2021-134

STATE OF NEW YORK)
) ss.:
COUNTY OF WARREN)

MARK SCHACHNER hereby affirms under penalty of perjury:

1. I am the Senior Principal Attorney of MILLER, MANNIX, SCHACHNER & HAFNER, LLC.
2. We are Counsel for the Adirondack Association of Towns and Villages ("AATV") and the New York State Association of Counties ("NYSAC") in their Motion for leave to appear as *amici curiae* relief in the above matter.

3. In accordance with Rule § 500.23(a)(4)(iii) of the Rules of Practice of the Court of Appeals, we hereby state that:

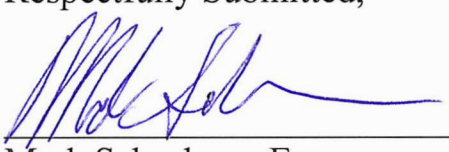
   a. No party's counsel contributed content to the brief or participated in the preparation of the brief in any other manner;

   b. No party or a party's counsel contributed money that was intended to fund preparation or submission of the brief; and

   c. No person or entity, other than movants or movants' counsel, contributed money that was intended to fund preparation or submission of the brief.

DATED: February 3, 2021

Respectfully Submitted,



Mark Schachner, Esq.
MILLER, MANNIX, SCHACHNER &
HAFNER, LLC
Attorneys for Amici Curiae *Adirondack Association of Towns and Villages and New York State Association of Counties*
15 West Notre Dame Street
Glens Falls, New York 12801
(518) 793-6611
mschachner@mmshlaw.com

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AFFIDAVIT OF SERVICE BY MAIL

Motion No.: 2021-134

Supreme Court, Albany County, Index No.: 2137-13

Third Department Docket No.: 527256

STATE OF NEW YORK)
) ss.:
COUNTY OF WARREN)

I, ANNALEE FINDLEY, being duly sworn, deposes and says: That she is over the age of 18 years; that she served two copies each of the Brief for *Amici Curiae* on behalf of the Adirondack Association of Towns and Villages and New York State Association of Counties in Support of Appellants-Respondents at the following place in the following manner:

DATE: February 16, 2021

Jennifer L. Clark, Esq. LETITIA JAMES Attorney General State of New York *Attorney for Appellants-Respondents* The Capitol Division of Appeals Albany, New York 12224	John W. Caffry, Esq., Of Counsel CAFFRY & FLOWER *Co-Counsel for Respondent-Appellant* 100 Bay Street Glens Falls, New York 12801

by depositing a true and correct copy of the same properly enclosed in a postpaid wrapper in the Official Depository maintained and exclusively controlled by the United States at Glens Falls, New York, directed to said parties respectively mentioned above, that being the address within the State designated for that purpose upon the last papers served or the place where the above keep offices or reside according to the best information which can conveniently be obtained.

ANNALEE FINDLEY

Sworn to before me this
16th day of February 2021

Notary Public

BRIAN REICHENBACH
Notary Public, State of New York
Qualified in Warren County
Reg. No. 02RE4962359
My Commission Expires Feb. 15, 2022

\\MRDS\company\Clients\AATV\Protect v. DEC\AMICUS PAPERS\AFFIDAVIT OF SERVICE BY MAIL_Brief.docx