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Appellate Division–Third Department Case No. 527256

Court of Appeals

of the

State of New York

PROTECT THE ADIRONDACKS! INC.,

Respondent-Appellant,

– against –

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

Appellant-Respondent.

BRIEF FOR *AMICUS CURIAE* SIERRA CLUB ATLANTIC CHAPTER IN SUPPORT OF RESPONDENT-APPELLANT

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INTEREST OF AMICUS CURIAE

The Sierra Club is a nonprofit public benefit corporation, originally founded in San Francisco, California on May 28, 1892, with 182 charter members.[1] The motto of the Club is, "Explore, enjoy, and protect the planet." From its origins, the club has been focused on protecting the wilderness, originally focused on the Sierra Nevada, but now has spread throughout the country.[2]

The Sierra Club has several purposes, including exploring, enjoying, and protecting the wild places of earth, educating and enlisting humanity to restore and protect the quality of the natural environment, and practicing and promoting the responsible use of the earth's resources and ecosystems.[3] The Atlantic Chapter of the Sierra Club is responsible for membership and activities in New York State, and deals with a variety of environmental issues, including land use and development, recycling, pollution, energy, endangered species, and habitat protection.[4]

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[1] *History: Sierra Club Timeline*, SIERRA CLUB, http://vault.sierraclub.org/history/timeline.aspx (last accessed Mar. 11, 2020); *History: Origins and Early Outings*, SIERRA CLUB, https://vault.sierraclub.org/history/origins/ (last accessed Mar. 11, 2020).
[2] *History: Origins and Early Outings*, SIERRA CLUB, https://vault.sierraclub.org/history/origins/ (last accessed Mar. 11, 2020).
[3] *Policies*, SIERRA CLUB, https://www.sierraclub.org/policy (last accessed Mar. 11, 2020).
[4] *Sierra Club, Atlantic Chapter: History Compiled by Red Hoppenstedt May 2005, updated 2010, and revised in 2012 by Don Young*, https://atlantic2.sierraclub.org/sites/newyork.sierraclub.org/files/documents/2013/01/SCAC%20History%20updated%202012.pdf.

The Atlantic Chapter has been headquartered in Albany since 1978 and has devoted significant resources to cleaning up pollution and opposing environmentally unsound development projects.[5] The Chapter has conducted outings in the Adirondack Park portion of the Forest Preserve since the 1980s. Members hike, canoe and kayak regularly in the Forest Preserve. For more than three decades, members of the Atlantic Chapter have participated on various New York State Department of Environmental Conversation citizen advisory committees which oversee various Forest Preserve related issues.

The Sierra Club has a long legacy of protecting wild lands and wilderness areas, from Yosemite National Park in 1892, the year of the Club's founding, to Glacier National Park in 1910, to its campaign for the passage of the National Wilderness Act in 1964. The author of the National Wilderness Act, Howard Zahniser, had many experiences camping and hiking in the Adirondack Park portion of the Forest Preserve.[6] Mr. Zahniser based the language of that legislation on his knowledge and understanding of the protections afforded to the Forest Preserve under the Forever Wild Clause of Article XIV of the New York State Constitution.[7]

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[5] *Id.*
[6] Ed Zahniser, Where Wilderness Preservation Began: Adirondack Writings of Howard Zahniser 15–34 (1992).
[7] *See id.* at 2.

The Forever Wild Clause is a unique, inspired piece of environmental legislation, which was unanimously adopted by the delegates to the 1894 New York State Constitutional Convention.[8] The clause affords the Forest Preserve the highest degree of protection of wild lands in any state in the United States. The Sierra Club was founded at a similar time to the 1894 constitutional amendment and shares the same goal – protection of the wilderness in its natural state. The founders of the Sierra Club and drafters of Article 14 had the common purpose of defending and protecting their respective Forest Preserves. The Sierra Club has relied upon Article XIV constitutional protections afforded to the Forest Preserve in its work through the decades, from opposing an 18,000 acre speculative Ton-Da-Lay development in 1972, to campaigning for protection of the 15,000 acre Whitney Park in the late 1990s. The preservation of the Forest Preserve protected by the clause is central to Sierra Club's mission, and, consequently, this case holds great significance for the Club.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 500.1(f) of the Rules of Practice of the Court of Appeals of the State of New York, Sierra Club is a not-for-profit public benefit corporation with no parents, subsidiaries, or affiliates.

[8] Rev Rec, 1894 NY Constitutional Convention at 124.

ARGUMENT

I. THIS COURT SHOULD AFFIRM THE APPELLATE DIVISION'S RULING THAT CONSTRUCTION OF THE CLASS II COMMUNITY CONNECTOR SNOWMOBILE TRAILS IS AN UNCONSTITUTIONAL DESTRUCTION OF TIMBER IN THE FOREST PRESERVE

The Appellate Division correctly held that construction of the Class II Community Connector Snowmobile Trails ("Class II Trails") violated the New York State Constitutional provision prohibiting the destruction of "timber" within the forest preserve (R.5015).[9] The plain meaning of Article XIV protects all timber, regardless of age, value or size:

> The 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.

(N.Y. Const. art. XIV, § 1) (emphasis added). The breadth of the word "timber" is central to this case and the only reasonable interpretation of that word is that it refers to *all* trees.

At the time of the constitutional amendment, the definition of "timber" encompassed trees in all phases of life, and not trees that were sizeable and/or mature enough to be worth monetary value in the logging industry. The 1894

[9] References to R_____ are to pages within the administrative record.

Constitutional Convention record specifically mentions the word "timber" over twenty times. In each of these instances, the general and non-exclusionary language surrounding the word indicates that a broad definition was intended by the drafters (*see generally* Rev Rec, 1894 NY Constitutional Convention).

There is one instance in which the mention of timber is particularly revealing of the breadth of the term. The record of the Constitutional Convention states, "[I]t is within only a few years past that a certain large lumbering corporation of this State built a railroad into the heart of the Adirondacks, and cut down all the *valuable* timber . . . " (*id.* at 155). This reference to *valuable* timber suggests the drafters were contemplating the existence of other timber that was not merchantable. Cognizant of this distinction, the drafters surely would have differentiated which types of trees were protected by the amendment had they intended that only certain trees be afforded protection. In other words, the drafters, having explicitly identified valuable timber, would have included such language in the constitutional amendment had they intended that the constitutional amendment exclude smaller trees or nonvaluable timber.

As the Supreme Court found in this case, the reference to "timber" in Article XIV "refers to all 'trees,' the definition of which includes any independent growth of a species that is biologically identified as a tree, no matter the size (*see* testimony of defendant's expert Dr. Howard)" (R.xiii)..

The seminal case, *Assn. for the Protection of the Adirondacks v. MacDonald*, further supports this broad interpretation of the word "timber" *(see Assn. for the Protection of the Adirondacks v. MacDonald*, 253 NY 234, 238 [1930]). In his opinion, Justice Crane states, "[t]aking the words of section 7 in their ordinary meaning, we have the command that the timber, that is, the trees, shall not be sold, removed, or destroyed" (*id.*) It is significant that this Court acknowledged the command from the legislature to protect *all* trees, colloquially referred to as "timber" at the time of drafting. Soon to be Chief Justice Crane specifically defined timber as "the trees" (*id.*)

The *MacDonald* decision was not only groundbreaking for its legal and pragmatic implications, but for the ethos it memorializes. "The Forest Preserve is preserved for the public; its benefits are for the people of the State as a whole" (*id.*) In addition, this decision furthers the underlying purpose of the 1894 amendment, which is to protect the Forest Preserve and not be swayed by any tantalizing projects which call for the destruction of trees to a substantial extent.

As the Appellate Division stated, "It would be anomalous to conclude that destroying 925 trees per mile of trails, or approximately 25,000 trees in total, does not constitute the destruction of timber 'to a substantial extent' or 'to any material degree'" (R.5018).

Further, Judge William P. Goodelle of Syracuse, at the 1894 Constitutional Convention, proposed adding the words "or destroyed" to the end of the Forever Wild Clause (Nicholas A. Robinson, "Forever Wild": New York's Constitutional Mandates to Enhance the Forest Preserve at 13 [Arthur M. Crocker Lecture, Feb. 15, 2007], http://ditigalcommons.pace.edu/lawfaculty/284/). The implication of this addition changed the way one views timber and is significant in the interpretation of this clause in light of the circumstances presented in the case at bar. This addition memorialized that timber and land were not viewed as mere commodities in the arena of our legal system - otherwise the clause could have merely referred to trees that were sold (*id.*) These words were not arbitrarily added: they serve to significantly heighten the protections granted by Article XIV and were incorporated to prevent future erosions of the implications of this constitutional amendment.

The Department is doubtless furthering and fostering an interest in nature by seeking to allow people to recreate in the Adirondacks, but the importance of limited interests furthered by removing the timber cannot alter the interpretation of the constitutional provision. "However tempting it may be to yield to the seductive influences of outdoor sports and international contests, we must not overlook the fact that constitutional provisions cannot always adjust themselves to the nice relationships of life" (*Assoc. for Prot. of Adirondacks v. MacDonald*, 253 NY 234,

241-242 (1930). Moreover, the Class II Trails will not serve to enhance the wilderness experience for the people of the state as a whole, but rather will result in little more than providing certain individuals with access to a small portion of the Forest Preserve, for the price of the loss of 25,000 trees, as well as numerous detrimental effects upon the environment and the ecosystem discussed in greater detail below.

In light of the lack of ambiguity in the language of the Forever Wild Clause, the plain meaning of the word "timber" at the time of the drafting, prior precedent, and the legislative intent of the drafters, it is evident that the definition of timber includes any and all types of trees, regardless of maturity or lack thereof. Accordingly, this Court should affirm the Appellate Division's Ruling that construction of the Class II Trails constitutes an unconstitutional destruction of timber in the Forest Preserve.

II. THE CLASS II TRAILS ARE INCONSISTENT WITH THE "FOREVER WILD" CLAUSE OF ARTICLE XIV.

Even though the Appellate Division correctly held that DEC's actions were unconstitutional, the Appellate Division erroneously held that the construction of the Class II Trails did not violate the first, "forever wild" clause of Article XIV – that, "The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forests" (R.5014). Once the court below had determined that the Class II Trails violated

Article XIV, there was no need to further analyze whether they violated another sentence in the clause; indeed, the entire first section of the opinion was rendered dicta by the ultimate holding. A more natural reading of the Article is that the two sentences should be read together – the forbidding of destruction of timber in the second sentence is one specific way in which the Forest Preserve must be kept forever wild. Read as such, once construction of the Class II trails is found to be violative of the second clause, that construction by definition violates the Forever Wild clause as well.

However, if this Court elects to follow the interpretation of the Appellate Division and analyze two separate parts of the Article as though they were entirely distinct, this Court should hold that the "forever wild" clause of the Article was also violated by the Class II trails because nothing about the Class II Trails at issue is consistent with wilderness or natural forests.

A. The Construction and Use of the Class II Trails Are More Consistent with Roadways than Hiking Trails.

The Appellate Division's reasoning in finding no violation of the "forever wild" clause was based largely on the erroneous conclusion that the record supported that the Class II Trails were more akin to foot trails than roadways (R.5014.). This conclusion ignored many significant factors in the record. When the case is viewed fully and fairly, it becomes clear that the Class II Trails have the character of a roadway, not a hiking trail.

The fact that the Class II Trails are not graveled or crowned (R.5014) does not in and of itself render such trails more akin to a foot trail than a roadway. Importantly, the equipment used to construct Class II snowmobile trails is, for the most part, vastly different than the equipment used to create hiking trails. To construct Class II snowmobile trails, heavy equipment, such as six-ton graders with backhoes, is used to grade and clear rocks, stumps, and anything else in the pathway of the trail.

Further, the lower court erred in its oversimplified size comparison. Hiking trails are 3 to 8 feet wide. The Class II Trails are 9 to 12 feet wide. The fact that the widest hiking trail is allegedly within a foot of the smallest snowmobile trail is inconsequential. This size comparison in theory is not what always occurs in practice. When bench cuts are made, the sides of the trails may be "tapered," resulting in a width that is much greater than 12 feet (R.4365). This process requires that more land be cleared, and more trees be cut (R.4365). The space cleared for Class II trails in practice is much wider than is recommended under the guidelines. Department of Environmental Conservation and Adirondack Park Agency's own witness, Tate M. Connor, conceded that Class II trails could potentially disturb up to 17 feet of the natural surface of the forest floor (R.4365). This estimation falls within Dr. Ronald W. Sutherland's established range of widths, namely, that certain areas of the Class II trails are constructed to a width of

16 to 20 feet (R.3618), R.3525-3526. Dr. Sutherland further testified that the degree of grading that occurs on foot trails differs from that of Class II snowmobile trails (R.3544). Specifically, the degree of bench cutting on Class II snowmobile trails "was much greater in part because if you intersect a wider flat surface, wider horizontal surface with a hill slope, then you end up with a deeper degree of cut" (R.3544). Robert Ripp, a witness called by Department of Environmental Conservation and Adirondack Park Agency, estimated that the widest point of the Class II trails was approximately 15 feet (R.4765). Again, this estimation is extremely close to the estimation of another of Appellants-Respondents' witnesses, Tate M. Connor, as referenced above. This is important because, the estimation of 9 to 12 feet for a Class II trail, as compared to 3 to 8 feet wide for a hiking trail, is simply not an accurate or complete assessment of this issue.

Precedent and the circumstances of "forever wild" cases elucidate the manner in which this Court should approach this issue. In *MacDonald*, for example, the State of New York intended to construct a bobsled run for the 1932 Olympic games (*MacDonald*, 253 NY at 236). The bobsled run was supposed to be 6.5 feet wide, 1.25 miles in length and require the destruction of 2,500 trees (*id.*) Surely, if construction of a bobsleigh run for the Olympics was unconstitutional, then the construction of the Class II Trails must be unconstitutional, given that those trails would be from 9 to 12 feet wide (and often wider than that), span 27

miles in length, and require the destruction of 25,000 trees (R.5012, 5014). The comparison to foot trails relied upon below was simply contradicted by the record and precedent. That portion of the court's reasoning should be corrected in this Court's opinion.

B. Construction of the Class II Trails Will Result in a Significant Loss of Climate Benefits and Other Environmental Benefits.

The addition of the Class II Trails has larger detrimental environmental impacts beyond those discussed above, making them further inconsistent with the Forever Wild Clause. Consistent with the purpose of the Forever Wild clause – the preservation of our wild forest for all of its cultural and environmental benefits – other environmental detriments resulting from the construction of the Class II trails must be considered in determining if they violate the clause.

"Climate change is occurring, is very likely caused primarily . . . by human activities, and poses significant risks for a range of humans and natural systems. These risks indicate a pressing need for substantial action to limit the magnitude of climate change and to prepare for adapting to its impacts" (*America's Climate Choices*, THE NATIONAL ACADEMY OF SCIENCES, https://www.nap.edu/resource/12781/ACC-final-brief.pdf [2011]). Current efforts to combat the effects of climate change are important, but unlikely to yield progress comparable to what could be achieved with strong governmental policies that establish coherent incentives (*id.*) New York State is special in that it is one of

the only states that already has a coherent policy addressing its vast wild lands. We cannot let this slip away or water it down. Although the drafters of Article XIV were certainly not aware of or thinking about climate change, the preservation of the Forest Preserve and the adoption of Article XIV was intended to preserve the environmental benefits of a natural, old growth forest. We now know that one of the most important environmental benefits is in the fight against climate change.

A typical hardwood tree can absorb as much as 48 pounds of carbon dioxide per year: this means it will sequester about 1 ton of carbon dioxide by the time it reaches 40 years old (*Could Global CO2 Levels be Reduced by Planting Trees?*, CO2 MEASUREMENT SPECIALISTS [Sept. 21, 2020], https://www.co2meter.com/blogs/news/could-global-co2-levels-be-reduced-by-planting-trees). Carbon sequestration occurs when carbon dioxide is secured and prevented from entering the Earth's atmosphere (*Carbon Sequestration*, UC Davis, available at https://climatechange.ucdavis.edu/science/carbon-sequestration/ [last accessed Aug. 20, 2020]). Carbon is stabilized in solid and dissolved forms so that it does not result in warming of the atmosphere (*id.*) One fourth of the world's carbon emissions have been captured by Earth's forests, grasslands and farms (*id.*) This fact alone should serve to show us how important our forests truly are.

Beyond climate change, wild forests provide a multitude of environmental benefits. Scholars have lectured about the "One Water, One Health" approach in an effort to ameliorate the underlying issues that created an environment wherein the novel coronavirus infiltrated the human population (*see Seminar "Lessons from COVID-19 for One Water One Health" now available online*, http://www.fao .org/land-water/news-archive/news-detail/en/c/1272240/). It is of utmost importance to preserve the undisturbed connectivity and undisturbed forest biomes. The Forest Preserve is a source for creating a stable area in which nature and species can adapt to climate change and the fluctuation of hydrologic cycles. It is New York's bulwark against the damages of climate change, including but not limited to, major weathering events. It is imperative that we keep the trees and water system within the Forest Preserve healthy, not only for wildlife, but for our own health and benefit. In addition, in an effort to combat the loss of biodiversity, we must provide large areas where biodiversity can flourish, which cannot be accomplished by allocating small parks sporadically. The Forest Preserve is a massive area where biodiversity can flourish.

> The health of all life on the planet is connected. The COVID-19 outbreak starkly reminds us of a basic fact that cannot be ignored: Human, animal, plant and environmental health and well-being are all intrinsically connected and profoundly influenced by human activities. Health entails more than the absence of infectious disease; it must incorporate socioeconomic, political, evolutionary

> and environmental factors while considering individual attributes and behaviors.

(Nicholas A. Robinson & Christian Walzer, *How Do We Prevent the Next Outbreak?*, Scientific American [Mar. 25, 2020]). As stated in the Berlin Principles, adopted in October 2019, all communities must "take action to ensure the conservation and protection of biodiversity, which, interwoven with intact and functional ecosystems, provides the critical foundational infrastructure of life on our planet."

In 1894, the drafters of Article XIV were certainly unaware of how climate change would affect us in the future or other environmental benefits of biodiversity. That said, it is undisputed that the purpose of the "Forever Wild" clause was intended to protect the forest preserve for all its environmental benefits. We are in desperate need of large areas of wilderness and erosion of that wilderness for snowmobile trails is entirely inconsistent with the spirit and intent of Article XIV.

C. The Historical Context of Article XIV Creates an Imperative for the Preservation of the Forest Preserve.

The history of Forever Wild Clause holds much significance, and further elucidates the intent of the drafters. The early destruction of the forest was largely due to criminal – or at least unethical – activity. "[H]uge chunks of the region had been locked up in private preserves owned by Gilded Age robber barons; other

large parcels had been devastated by irresponsible lumbermen and by the fires that often succeeded their operations; and, finally, important steps had been taken toward conserving what was left of the forest" (Philip G. Terrie, *Forever Wild: Environmental Aesthetics and the Adirondack Forest Preserve* 68 [1985]). Robber barons used intimidation, fraud, union busting, violence, as well as their political connections, to gain advantage over competitors (*Gilded Age*, HISTORY, https://www.history.com/topics/19th-century/gilded-age [last updated Apr. 3, 2020]).. They ignored the law, exploited their workers and were relentless in their efforts to amass capital (*id.*) Robber barons became extremely wealthy and dominated every major industry including the railroad, liquor, banking, steel, mining, and most importantly in this instance, timber (*id.*) "The forests and waters of the Adirondacks emerged in the public mind as a landscape in which the people of New York had common concerns, and the adoption of Article VII, Section 7 represented the reluctance of the people to turn that landscape over to the lumber barons, the state bureaucracy, or the scientific foresters" (Philip G. Terrie, *Forever Wild: A Cultural History of Wilderness in the Adirondacks* 108 [1994]). When the 1894 Constitutional Convention met, it is evident that the people of New York were resentful towards the corruption and flagrant abuses taking place within the Forest Preserve in the name of monetary gain.

The language of the Forever Wild Clause is quite indicative of the state of mind of the drafters in light of these circumstances. The drafters and the people of the State of New York fought back to put an end to the corruption within the logging industry and continued butchery taking place within the Forest Preserve. David McClure, the chairman of the New York State Constitutional Convention's five-man special committee on forest preservation said, "It has surprised me with an ever-increasing surprise that this matter of all the questions affecting the people of the State should have been left to so late a day . . . " (David Gibson, *A Founding Moment of the Adirondack Park: The 1894 Constitutional Convention*, ADIRONDACK ALMANACK [Sept. 10, 2013], https://www.adirondackalmanack .com/2013/09/founding-moment-adirondack-park-1894-constitutional-convention.html). It is interesting to consider the series of events that lead to the strongest state conservation law out of any state across the country. The people were furious, and the Forever Wild Clause reflects that; they did not want to leave any room for the destruction or ravaging of wild lands. The people did not want discretion of a state commission, the Executive, or the Legislature, they wanted protection, and the 1894 amendment was part of a civic movement towards conservationism.

"New York is fortunate in its unique commitment to the preservation of forests and the watersheds they protect" (*Friends of the Forest Preserve v. New*

York State Adirondack Park Agency, 34 NY3d 184, 197, 2019 Slip Op 07520 (Ct App 2019, Fahey, J., dissenting). This was the outcome of over a hundred years of sustained leadership by all branches of state government (*id.*) "Whether it was the proposal of 'scientific forestry' at the 1915 Constitutional Convention, which was rejected, or the use of motorized vehicles proposed here, every plan that undermines the integrity of the natural environment of the Adirondacks inevitably weakens the long-term viability of that forest as a 'forever wild' preserve (*see* NY Const, art XIV, § 1)" (*id.* at 180).

Here, the construction and use of the Class II Trails to the extent proposed by DEC undermines the integrity of wild lands. In his dissent in *Friends of the Forest Preserve*, Justice Wilson specifically recognized that Section 1 of Article XIV inaugurated the concept of wilderness into the world of law for the first time ever (*id.* at 207, citing Nicholas A. Robinson, *"Forever Wild": New York's Constitutional Mandates to Enhance the Forest Preserve* at 7 [Arthur M. Crocker Lecture, Feb. 15, 2007], http://ditigalcommons.pace.edu/lawfaculty/284/).

Judges are not the only individuals who have expressed support for the integrity of the natural environment. Article XIV "inaugurated the concept of 'wilderness' into the world of law for the first time ever, anywhere" (Nicholas A. Robinson, *"Forever Wild": New York's Constitutional Mandates to Enhance the Forest Preserve* at 7 [Arthur M. Crocker Lecture, Feb. 15, 2007],

http://ditigalcommons.pace.edu/lawfaculty/284/). Maintaining a healthy environment that is pleasing to the intellect and senses was to become a legislative duty of the New York State government and be a fundamental norm of Environmental Law (*id.*) New York Voters enacted Article XIV first in 1894 and again in 1938, which would not have occurred if the people had not embraced the conservation ethic as a rule of law (*id.*)

> Yet despite the repeated adoption of this constitutional norm, defiance of its provisions characterized the first ten decades of its life. It has been an uphill struggle to secure its observance, and efforts to evade its mandate abound. Just as the Civil Rights movement had to emerge in order to make real the amendments to the Constitution of the United States adopted following the Civil War, so there will need to be an Ecological Rights movement if we are to fully realize the mandate of Article XIV. There is a growing urgency in our present state of affairs; the effects of climate change magnify the importance of the Forest Preserve (id.)

In his publication, Professor Nicholas Robinson memorializes a "land ethic" that resides within the "forever wild" conception of the Forest Preserve. Accomplished scholars have recognized that state and local authorities have observed the mandates of Article XIV most shallowly (*id.* at 8). Authorities have continued to ignore their stewardship duties to promote "forever wild forest lands" (*id.*)

There is no discretion to whittle away at the protections granted to the Forest Preserve by the Forever Wild Clause. "The Article XIV 'forever wild' provisions

are not merely dry legal restrictions, to be forgotten unless tripped over as a technicality, as when an agency of government wants to act to directly harm the Forest Preserve [such as in this case]" (*id.*at 9). There is a history of public investment in Forever Wild; millions of taxpayer dollars have been allocated to the Forest Preserve. Whittling away at these protections should be done only with extreme caution and where entirely necessary. The Class II Trails do not rise to this level.

There have been so many battles concerning New York's "Forever Wild" mandate that have resulted in a pattern of public discourse and political action that focused on what the mandate *prohibited* (*id.* at 15). This was a natural response, as many organizations and entities attempted to complete projects that were prohibited by Article XIV. However, it is imperative that we enter into an era wherein we begin to cultivate an understanding of what the mandate *promotes* (*id.*) We must turn our attention to affirmative authority within the "forever wild" mandate to enhance the Forest Preserve and the natural values that it had embodied for centuries (*id.*)

> Humans exist within and are part of nature. If from time to time we forget this reality, today the effects of climate change will again remind us of our human dependence on the natural environment. This being so, let us turn to the deep potential to forge the harmony between humans and nature that is contained within the legal provisions of our Constitution's 'forever wild' clause (id. at 11).

CONCLUSION

In light of history, legal precedent, and the impacts of the construction and use of the Class II Trails, Amici Curiae respectfully request that this Court affirm the Appellate Division's ruling that construction of the Class II Trails violated the constitutional provision barring the destruction of timber in the preserve, and further hold that Class II Trails violated the "Forever Wild" clause as well.

November 16, 2020
White Plains, New York

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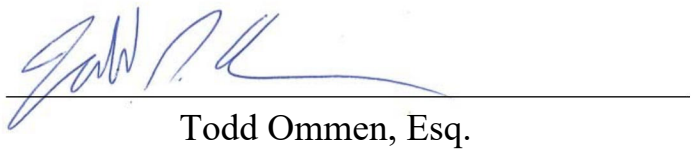
AFFIRMATION OF COMPLIANCE

I hereby certify that, as required by the Rules of Practice of the New York Court of Appeals [22 N.Y.C.R.R. § 500.13(c)(1)], the total word count for all printed text in the body of this brief is 4,766 words, which complies with the 7,000-word limit for amicus briefs provided in that rule.



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