

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

MARK KRAMER and TODD PRAGER,

Plaintiffs-Appellants,

v.

CITY OF LAKE OSWEGO; and the
STATE OF OREGON, by and through the
State Land Board and the Department of
State Lands,

Defendants-Respondents,

and

LAKE OSWEGO CORPORATION,

Intervenor-Defendant.

Clackamas County Circuit Court
No. CV12100913

CA A156284

MOTION – APPEAR *AMICUS CURIAE*

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Pursuant to ORAP 8.15, Willamette Riverkeeper and thirty-six law professors and scholars from over two dozen law schools across the United States respectfully apply to appear before the Court of Appeals as *amici curiae*. These professors have taught law school for a combined total of over 700 years. If allowed to appear, the applicants would submit a brief aligned with plaintiffs-appellants to assist this Court in considering how the public trust doctrine applies to whether a municipality may prohibit non-residents from entering a public lake.¹ The proposed brief of *amici* will comply with the requirements of the Oregon Court of Appeals Rule 8.15 and will be filed on Tuesday, July 8, 2014.

The following are applicants for *amici curiae* status:

Robert T. Anderson of University of Washington School of Law, Seattle, WA. Professor Anderson is Director of the Native American Law Center. He teaches and writes in the areas of Indian Law, Public Land Law, and Water Law.

Hope Babcock of Georgetown University Law Center, Washington, DC. Professor Babcock is Co-Director of the Institute for Public Representation. Her areas of expertise are environmental law and clinical

¹ *Amici* file this brief solely as individuals and not on behalf of the institutions with which they are affiliated.

education. Her 2008 article “Grotius, Ocean Fish Ranching, and the Public Trust Doctrine: Ride ‘Em Charlie Tuna” was selected as one of the 22 best in 2008 by the Chicago-Kent College of Law review panel.

Michael C. Blumm of Lewis & Clark Law School, Portland, OR. Professor Blumm is the Jeffrey Bain Faculty Scholar, and he teaches a course devoted entirely to “Public Trust Doctrine Law.” He has also written numerous works concerning the public trust doctrine and co-authored the first casebook on the public trust doctrine, *The Public Trust Doctrine in Environmental and Natural Resources Law* (2013).

David N. Cassuto of Pace Law School, White Plains, NY. Professor Cassuto is the Director of the Brazil-American Institute for Law & Environment. He teaches in the areas of property, animal law, water law, and legal and environmental theory, among others. He has published and lectured widely on legal, literary, and environmental issues.

Myanna Dellinger of Western State College of Law, Fullerton, CA. Professor Dellinger is the Director of the Institute for Global Law and Policy. She maintains a lively publishing and blogging dialogue on international and environmental issues.

John C. Dernbach of Widener Law School, Harrisburg, PA. Professor Dernbach is Co-Director of the Environmental Law Center. He teaches

environmental law, property, international environmental law, sustainability and the law, and climate change. His research concentrates on sustainable development, climate change, and environmental law.

Timothy P. Duane of University of California, Santa Cruz, and University of San Diego School of Law. Professor Duane teaches Environmental Studies at University of California, Santa Cruz, and is a Visiting Professor of Law at University of San Diego School of Law. Professor Duane specializes in land-use regulation, renewable energy law and policy, environmental law, and administrative law.

Stephen Dycus of Vermont Law School, South Royalton, VT. Professor Dycus is an internationally recognized authority on national security law and environmental law. His areas of expertise include water rights, property law, and environmental law.

John Echeverria of Vermont Law School, South Royalton, VT. Professor Echeverria teaches courses in the law of property and a wide range of environmental and natural resource law topics. His published articles include “The Public Trust Doctrine as a Background Principles Defense in Takings Litigation” (2012).

Eric Freyfogle of University of Illinois College of Law, Champaign IL. Professor Freyfogle is the author or editor of a dozen books dealing with

issues of humans and nature, including works on conservation and private rights in nature. He has authored and co-authored casebooks on property law, natural resources law, and wildlife law. His many scholarly articles have appeared in all leading environmental law journals and seven of his law review articles have been reprinted as among the best articles of the year.

Lin Harmon of Pace Law School, White Plains, NY. Professor Harmon is the Assistant Dean and Director of Environmental Law Programs. Her research interests are primarily focused on environmental conflict resolution and strategic approaches to the progressive development of environmental law. She has organized numerous academic conferences on a wide variety of environmental law topics.

Sean B. Hecht of UCLA School of Law, Los Angeles, CA. Professor Hecht is the Co-Executive Director of the Emmett Institute on Climate Change and the Environment. He is also the Evan Frankel Professor of Policy and Practice. He teaches Public Natural Resources Law and Policy, Environmental Law, the Environmental Law Clinic, and a Climate Change Seminar.

Oliver Houck of Tulane Law School, New Orleans, LA. Professor of Houck is Director of the Environmental Law Program. He is nationally acclaimed for his outstanding teaching and scholarship in many areas of

environmental and natural resources law. He publishes regularly on issues involving wildlife, biological diversity, coastal, and water pollution control problems.

Blake Hudson of Louisiana State University Law Center, Baton Rouge, LA. Professor Hudson teaches natural resources and environmental law. His research considers how property, land use, and natural resources law and policy intersect with environmental and constitutional law. His publications include “The Public and Wildlife Trust Doctrines and the Untold Story of the Lucas Remand” (2009).

Sam Kalen of University of Wyoming College of Law, Laramie, WY. Professor Kalen is Director of the Center for Law and Energy Resources in the Rockies. Professor Kalen has published numerous law review articles and his research focuses on the fields of energy, environment, public lands and natural resources, administrative law, and constitutional law.

Christine A. Klein of University of Florida Levin College of Law, Gainesville, FL. Professor Klein is Director of the LL.M. Program in Environmental & Land Use Law. She teaches courses in natural resources law, water law, and property. She is co-author of the casebook *Natural Resources Law: A Place-Based Book of Problems and Cases*, currently in its third edition (2013).

Ryke Longest of Duke University School of Law, Durham, NC.
Professor Longest is Director of the Environmental Law and Policy Clinic. His published articles include “Using the Public Trust Doctrine to Achieve Ocean Stewardship” (2013).

Patrick C. McGinley of West Virginia University College of Law, Morgantown, WV. Professor McGinley is an acclaimed professor in environmental and natural resources law, and founder of the Eastern Mineral Law Foundation. He has taught courses on land use planning, administrative law, environmental law, and environmental justice. He has served as co-editor of the multi-volume treatise *Coal Law & Regulation* (1983) and has published numerous other scholarly works, including “Climate Change and the Public Trust Doctrine” (2013).

Errol Meidinger of SUNY Buffalo Law School, Buffalo, NY. Professor Meidinger is Director of the Baldy Center for Law & Social Policy. The courses he teaches include environmental law and property. Much of his current research focuses on efforts to use “supra-governmental” regulatory systems, such as environmental certification and fair labor standards programs, to improve the social and environmental performance of business organizations.

Gary D. Meyers of University of Tasmania Faculty of Law, Hobart,

Tasmania, Australia. Professor Meyers is Associate and Professor of Law. His publications include “Variation on a Theme: Expanding the Public Trust Doctrine to Include Protection of Wildlife” (1989).

Joel A. Mintz of Nova Southeastern University Law Center, Fort Lauderdale, FL. Professor Mintz teaches courses in environmental law, torts, and environmental enforcement. His scholarship focuses primarily on environmental law and policy, environmental enforcement, sustainable development, regulation of hazardous wastes, and state and local taxation and finance.

Zygmunt Jan Broël Plater of Boston College Law School, Newton Center, MA. Professor Plater is a nationally renowned scholar, teaching and researching in the areas of environmental, property, land use, and administrative law. He is Director of the Land & Environmental Law Program. He is the lead author of the casebook *Environmental Law and Policy: Nature, Law, and Society*, currently in its fourth edition (2010). Several of his scholarly articles have been cited in U.S. Supreme Court decisions. His recent presentations include “The Evolving Public Trust Doctrine” (2010).

Ann Powers of Pace Law School, White Plains, NY. Professor Powers is a faculty member of the Center for Environmental Legal Studies. She teaches a range of environmental courses focusing on the law of oceans and

coasts, water quality, and international environmental law. Her scholarship includes emerging ocean issues and water pollution trading programs.

Melissa Powers of Lewis & Clark Law School, Portland, OR. Professor Powers teaches courses on energy law, climate change law, and the Clean Air Act. Her research interests include energy law, domestic policies aimed at mitigating climate change, and U.S. pollution control laws.

Daniel Rohlf of Lewis & Clark Law School, Portland, OR. Professor Rohlf teaches various courses in the environmental and natural resources program. He is a co-founder of and counsel for the Pacific Environmental Advocacy Center, now Earthrise Law Center, the law school's domestic environmental law clinic. His expertise includes endangered species law and policy, wildlife law, and ecosystem management.

Armin Rosencranz of Stanford Law School, Stanford, CA. Professor Rosencranz is the founder of Pacific Environment, an NGO that protects the living environment of the Pacific Rim by promoting grassroots activism, strengthening communities, and reforming international policies. He has taught classes on natural resources policy and law, and environmental policy and law.

Erin Ryan of Lewis & Clark Law School, Portland, OR. Professor Ryan teaches courses including environmental and natural resources law, property

and land use, and water law. Her research expertise includes the public trust doctrine. She has written articles and given lectures around the world on the public trust doctrine.

Melissa Scanlan of Vermont Law School, South Royalton, VT. Professor Scanlan is Associate Dean of the Environmental Law Program and Director of the Environmental Law Center. Her publications include “Implementing the Public Trust Doctrine: A Lakeside View into the Trustees’ World” (2012). She has given several presentations on the public trust doctrine.

Daniel P. Selmi of Loyola Law School, Los Angeles, CA. Professor Selmi is the Fritz B. Burns Chair in Real Property Law. He specializes in land use law, environmental law, and appellate advocacy. His 2011 article, “The Contract Transformation in Land Use Regulation,” was voted by peers in the field as one of the “top 10” land use and environmental law articles of the year.

William J. Snape, III of American University, Washington College of Law, Washington, DC. Professor Snape is a fellow in environmental law and practitioner-in-residence. His areas of specialization include environmental law and international environmental law. He is also senior counsel at Center for Biological Diversity, where he works on endangered species, public lands, and energy issues.

Mark Squillace of University of Colorado Law School, Boulder, CO.

Professor Squillace is the Director of the Natural Resources Law Center. He is an expert and frequent speaker on natural resources law issues. He has also testified before Congress about natural resources issues.

A. Dan Tarlock of IIT Chicago-Kent College of Law, Chicago IL.

Professor Tarlock is Director of the Program in Environmental and Energy Law. He is an internationally recognized expert in environmental law and the law of land and water use. He teaches courses in land use, property, energy and natural resource law, and international environmental law.

Robert R. M. Verchick of Loyola University New Orleans College of Law and Tulane University, New Orleans, LA. Professor Verchick holds the Gauthier-St. Martin Chair in Environmental Law at Loyola University New Orleans. He is also a Senior Fellow at Tulane University's Disaster Resilience Leadership Academy. His writing focuses on environmental regulation, climate change adaptation, and the developing field of disaster law.

Steven Weissman of UC Berkeley School of Law, Berkeley, CA.

Professor Weissman is Director of the Energy Program at UC Berkeley Center for Law, Energy & the Environment. He is an energy and environmental attorney, and an environmental mediator. He teaches energy law and policy classes as a lecturer in residence.

Mary Christina Wood of University of Oregon School of Law, Eugene, OR. Professor Wood is the Director of the Environmental and Natural Resources Law Program and Philip H. Knight Professor of Law. She teaches a course dedicated to “Public Trust Law,” as well as courses on property law, natural resources law, and other subjects. She also serves as the Faculty Leader of the Conservation Trust Law Project, Sustainable Land Use Project, and Native Environmental Sovereignty Project. She has received national and international attention for her “sovereign trust” approach to global climate policy. She co-authored the first casebook on the public trust doctrine, *The Public Trust Doctrine in Environmental and Natural Resources Law* (2013).

Sandra Zellmer of University of Nebraska College of Law, Lincoln, NE. Professor Zellmer teaches and writes about natural resources, water law, public lands, wildlife, environmental law, and related topics. She has presented and written on the public trust doctrine; her work includes “Putting the Public Trust Doctrine to Work” (1999).

Willamette Riverkeeper, Portland, OR. Willamette Riverkeeper works to protect the Willamette River system’s water quality and habitat and to connect Oregonians to their River.

In short, these law professors and scholars have devoted their careers to teaching, researching, and writing about environmental law, natural

resources law, property law, and the public trust doctrine. Indeed, two of these professors—Michael C. Blumm and Mary Christina Wood—teach courses focusing solely or primarily on the public trust doctrine. Thus, these law professors are deeply familiar with the issues presented in this case, and they have a strong interest in informing the Court about the role of the public trust doctrine in relation to a municipality prohibiting non-residents from entering a public lake.

The attached Brief of *Amici Curiae* Law Professors and Willamette Riverkeeper in Support of Plaintiffs-Appellants is intended to be helpful to the Court. This appeal involves novel legal issues raised by applying the public trust doctrine to uplands where necessary to provide public access and prevent monopolization of public waters, and the Court’s decision is likely to set an important legal precedent. The law professors listed above are uniquely qualified to address these legal issues in a way that supplements and goes beyond the arguments presented by the parties to this appeal. This brief will help the court understand the rich legal history and evolution of the public trust doctrine as well as its relevance and applicability to the present matter.

The law professors and Willamette Riverkeeper, therefore, respectfully request that the Court grant their motion to appear before the Court of Appeals as *amici curiae*.

DATED this 8th day of July, 2014.

Respectfully submitted,

/s Kenneth Kaufmann

Kenneth Kaufmann, OSB No. 982672

Counsel for Applicants,
Amici Curiae Law Professors and
Willamette Riverkeeper

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on July 8, 2014, I filed MOTION – APPEAR *AMICUS CURIAE* with the Appellate Court Administrator via the eFiling system, which will serve this motion by eFile on:

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