No. 121536

IN THE SUPREME COURT OF ILLINOIS

KATHY CORBETT,

Plaintiff-Appellee,

V.

THE COUNTY OF LAKE,

Defendant, and

THE CITY OF HIGHLAND PARK, an Illinois Municipal Corporation,

Defendant-Appellant.

Appeal from the Second District, Appellate Court, Elgin Illinois,
Appellate Court No. 2-16-0035
There heard on appeal from the Circuit Court of Lake County, Illinois
Circuit Court No. 14 L 000493
The Honorable Christopher C. Starck, Presiding

AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT/APPELLANT, THE CITY OF HIGHLAND PARK

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POINTS AND AUTHORITIES

STATUTES INVOLVED

1-101.1. Purpose: immunities and defenses
§ 1-101.1. (a) The purpose of this Act is to protect local public entities and public employees from liability arising from the operation of government. It grants only immunities and defenses.
(b) Any defense or immunity, common law or statutory, available to any private person shall likewise be available to local public entities and public employees.
(745 ILCS 10/1-101.1) (West 2012)

3-107. Access roads or trails
§ 3-107. Neither a local public entity nor a public employee is liable for an injury caused by a condition of: (a) Any road which provides access to fishing, hunting, or primitive camping, recreational, or scenic areas and which is not a (1) city, town or village street (2) county, state or federal highway or (3) a township or other road district highway.
(b) Any hiking, riding, fishing or hunting trail. (745 ILCS 10/3-107) (West 2012)

INTEREST OF THE *AMICUS CURIAE*

This *amicus curiae* brief is filed on behalf of the Park District Risk Management Agency ("PDRMA"), and its members, all of whom are local public entities as defined in §1-206 of the Tort Immunity Act (745 ILCS 10/1-206 (West 2008). PDRMA is a self-insured intergovernmental risk pool whose members include more than 150 park districts, forest preserve districts and special recreation associations located in Illinois. Together these local public entities own and maintain many thousands of acres of public recreational property, as well as numerous public recreational facilities (including playgrounds, swimming facilities and community centers), and provide countless recreational programs and activities to citizens of every age. In addition, many of PDRMA's members—especially park districts and forest preserve districts—own and/or maintain numerous multi-use recreational trails and paths, which provide access to (and/or provide connections between) recreational, scenic, natural, fishing and other public recreational areas. Therefore, both individually and collectively, PDRMA and its

members have an undeniable interest in the consistent, fair and uniform interpretation and application of the Tort Immunity Act and especially §3-107(b) of that Act.

In addition to the collective interest of PDRMA and its members in the scope of the immunity for any "condition of...(b) Any hiking, riding, fishing or hunting trail" (745 ILCS 10/3-107), PDRMA has a specific interest in addressing the issues on appeal in this case because the appellate court below distinguished and limited the application its own prior decision in *McElroy v Forest Preserve District of Lake County*, 384 Ill. App. 3d 662 (2nd Dist. 2008). (*Corbett*, ¶¶ 28, 30)

PDRMA's Director of Claims and Legal Services briefed the *McElroy* case on behalf PDRMA's member, the Forest Preserve District of Lake County. PDRMA and its members therefore have a keen interest in this Court's review of the *Corbett* case and what PDRMA believes was the appellate court's incorrect and overly restrictive interpretation of the scope and application of §3-107(b) in the decision below. For the reasons set forth in this *amicus curiae* brief, PDRMA firmly believes that this Court should reverse and vacate the decision below. Doing so will not only provide much-needed guidance to the courts and potential litigants regarding the proper scope, interpretation and application of §3-107(b), but will allow and encourage all local public entities (including PDRMA's members) to continue to provide, maintain and expand the miles upon miles of hiking, riding, fishing and hunting trails for the use and enjoyment of all within Illinois.

ARGUMENT

Introduction to the Issues on Appeal

The plaintiff in this case seeks recovery for injuries she allegedly sustained while riding her bicycle with a group of other riders on the Old Skokie Bike Path. According to the appellate court's summary of the deposition testimony, as the group of riders was approaching an intersection, one of the riders ahead of plaintiff "hit a bump and lost control of his bicycle", plaintiff was unable to avoid colliding with the downed rider and his bicycle, and as a result she was thrown off her bike and fell onto the paved path surface (¶ 7). The trial court granted the defendant City's motion for summary judgment on the basis of §3-107(b) (absolute immunity for any condition of a "riding trail") (¶ 18). The appellate court reversed, finding that, in order for a path to qualify as a "trail" and thus fall within the ambit of §3-107(b), the path must "be located within a 'forest or mountainous region'" (¶ 29). The court below then observed in relevant part as follows:

> ...As a matter of law, this restriction defeats the City's assertion that the path is a riding or hiking trail. No contention has been made that the path is located in a mountainous region (mountains being scarce in Lake County). No serious contention can be made that the path is located in a forest; no reasonable person who views the photographs of the path and its surroundings, or even reads the descriptions by those who have seen them, would describe those surroundings as a forest. The path is bordered by narrow bands of greenway that sport some shrubs and a few trees; these narrow bands are surrounded by industrial development, residential neighborhoods, parking lots, railroad tracks, and major vehicular thoroughfares (to the east *and* south of the area of the accident). The case for considering the path a riding trail would not succeed even if utility poles could be considered trees with power lines for branches. (¶ 29)

In addition to what the court described as these "definitional obstacles to calling the path a riding trail" (¶ 32), the court also determined that the trial court's conclusion that this path constituted a "riding trail" for purposes of §3-107(b) was in conflict with

what the appellate court determined was the presumed "underlying purpose of §3-107(b)'s grant of absolute immunity":

> ...That behind the categorical grant of immunity is the recognition of "the burden in both time and money if the local governmental entity were required to maintain these types of property in a safe condition" and that "requiring such maintenance would defeat the very purpose of these types of recreational areas, that is, the enjoyment of activities in a truly natural setting" [citing *Goodwin v. Carbondale Park District*, 260 Ill. App. 3d 489, 493 (5th Dist. 1994)]. These considerations do not apply to a bicycle or hiking path in the midst of an easily accessible developed area. Indeed, the City would not even be a party to this appeal had it not found it manageable to take on the burden of maintaining the path in a safe condition. (¶ 32)

The appellate court's analysis of §3-107(b) is troubling for a number of reasons, not the least of which is that the court (a) imposes substantial conditions and limitations on the application of §3-107(b) which are nowhere found within or supported by the clear statutory language, and (b) improperly speculates about the "underlying purpose of §3-107(b)'s grant of absolute immunity" (*i.e.*, the legislature's presumed intention in adopting §3-107(b)), and concludes that the immunity was intended to apply *only* to paths which traverse undeveloped areas that remain in their natural condition. The appellate court's conclusion not only finds no support whatsoever in the statute itself—after all, the plain wording of the statute states that it applies to "***[A]ny*** hiking, riding, fishing or hunting trail"—but worse, creates a perverse disincentive for local public entities to improve and maintain the thousands of existing multi-use paths and trails, much less to develop additional paths and trails, especially "in the midst of an easily accessible developed area" (¶ 32) (which presumably would include any city and the great majority of suburbs, towns, and villages anywhere in the State).

The *amicus curiae* respectfully suggests that a much more logical assumption for the legislative intent in passing §3-107(b), was to encourage the development (and, better yet, the maintenance and improvement) of hiking and riding paths and trails, by providing local public entities with absolute immunity from liability for any "injury caused by a condition of ...(b) [a]ny hiking, riding, fishing, or hunting trail" (745 ILCS 10/3-107).

This Court has not previously addressed or construed the scope and application of §3-107(b) of the Tort Immunity Act. Although the appellate court has addressed §3-107(b) on a handful of occasions, those decisions are not easily reconciled and share a common flaw: the repeated reliance upon an overly restrictive and clearly inapplicable (at least within the glaciated State of Illinois) definition of the term "trail". As a result, the appellate court has repeatedly strayed from the "cardinal rule" of statutory construction: to ascertain and give effect to the legislature's intent, without reading into or engrafting onto a statute additional limitations or conditions which the legislature itself did not include in the wording of the statute. The appellate court below not only repeated this analytical error, but in doing so effectively gutted the immunity provided by §3-107(b), and thereby directly frustrated the legislature's stated intention in adopting the Tort Immunity Act in the first place: "The purpose of this Act is to protect local public entities and public employees from liability arising from the operation of government. It grants only immunities and defenses." (745 ILCS 10/1-101.1)(a) (West 2012).)

I. THE APPELLATE COURT HAS ADOPTED A DEFINITION OF "TRAIL" WHICH (A) MAKES NO LOGICAL SENSE IN THIS STATE, (B) IS UNDULY RESTRICTIVE, AND (C) COULD NOT HAVE BEEN WHAT THE LEGISLATURE INTENDED IN PASSING §3-107(b)

The appellate court below correctly noted that the word "trail" is nowhere defined in §3-107, nor anywhere else within the Tort Immunity Act: "Because the Act does not define the term ['trail'], our appellate courts have taken up the task. We now turn to what they have said" (¶ 19). The court then summarized four of the prior appellate court cases which have construed §3-107(b), and noted that three of those cases relied upon the same, single, overly-restrictive dictionary definition of the word "trail": "a 'marked path through a forest or mountainous region'." (Quoting Webster's Third New International Dictionary, p. 233 (1981)) (¶21-27).

As the court below also correctly noted, that single dictionary definition was first cited and adopted by the appellate court in the *Brown v. Cook County Forest Preserve District*, 284 Ill. App. 3d 1098, 1101 (1st Dist. 1996). In *Brown*, the court concluded that the trail at issue in that case met that single, restrictive dictionary definition, because the plaintiff in *Brown* "concedes that the path on which he fell is commonly used by bicyclists for riding and that the path is designed to provide access for bicyclists to the natural and scenic wooded areas around Saulk Lake. In light of this, we can see no reasonable dispute regarding whether the place where Brown fell was a 'riding trail'" (284 Ill. App. 3d at 1101).

Thereafter, and as the court below also correctly noted, that same restrictive definition was then applied by the appellate court (Second District) in both the *Mull v. Kane County Forest Preserve District,* 337 Ill. App. 3d 589, 591-2 (2nd Dist. 2003) and the *McElroy v. Forest Preserve District of Lake County,* 384 Ill. App. 3d 662, 667 (2nd Dist. 2008) cases. Similar to the appellate court's conclusion in *Brown*, in both *Mull* and *McElroy* the appellate court determined that the paths at issue fell within the ambit of

§3-107(b), even under the single, restrictive dictionary definition of a "trail" as being "a 'marked path through a forest or mountainous region'."

In this matter the court below likewise applied that same, restrictive, single dictionary definition of the word "trail", and concluded that, "[n]onetheless, *the case law that we follow does require that, to be within §3-107(b), a path not only be used by bicyclists (or hikers or both)* ***but be located within*** *a "'forest or mountainous region'"* [citing *Brown* and the Webster's Third New International Dictionary definition, which the court in *Brown* had adopted] (emphasis added) (¶ 29). Therein lies the problem.

The primary rule of statutory construction, when construing an immunity provision, is to ascertain and give effect to the intent of the legislature. *Nelson v. Kendall County*, 2014 IL 116303, ¶ 23; *DeSmet v. County of Rock Island*, 219 Ill.2d 497, 510 (2006). The courts are not free to read exceptions, limitations, or conditions into an immunity provision that the legislature did not express. *DeSmet*, 219 Ill.2d at 510. "The best evidence of legislative intent is the language used in the statute itself, which must be given its plain, ordinary and popularly understood meaning." *Nelson*, ¶ 23.

Under the guise of "statutory construction", the appellate court—beginning in *Brown*, repeated in *Mull* and *McElroy*, and then repeated and expanded in *Corbett*—violated the most basic rule of statutory construction, by reading exceptions, limitations and/or conditions into §3-107(b), so that (according to the appellate court) the statute now requires *as a necessary precondition to its application*, that the path or trial must "not only be used by bicyclists (or hikers or both) but be located within a "'forest or mountainous region'" (¶ 29).

Those additional conditions and limitations nowhere appear in the plain language of §3-107(b). To the contrary, the statute is completely silent as to where a "trail" must be "located" in order to fall within the ambit of that immunity provision. According to the statute's plain language, the immunity provision applies to "an injury caused by *a condition of*: (b) ***Any*** hiking, riding, fishing or hunting trail" (Emphasis added. 745 ILCS 10/3-107). Yet the appellate court has now effectively re-written and amended the statute, to require that a path or trail must not only be used by bicyclists and hikers (and presumably fisherman or hunters—see §3-107(b)), but must also be *located within* (a) a forest, or (b) a mountainous region. Rather than using that single, restrictive dictionary definition *as a guide* for examples of types of trails, the appellate court has now imposed that definition as the universal, immutable and necessary *precondition* for a path or trail to qualify as a "trail" for purposes of §3-107(b).

The appellate court's improper revision of the statute through "interpretation" has, for all practical purposes, effectively gutted the statute, by unfairly (and unreasonably) imposing additional conditions upon its application which (a) are not contained within the statute and (b), at least with regard to the "mountainous region" qualifier, would be impossible to satisfy in Illinois. There are of course no mountains in the State of Illinois. This truism was recognized by the court below when it observed (presumably wryly): "No contention has been made that the path is located in a mountainous region (mountains being scarce in Lake County)" (¶ 30). That, of course, only highlights the problem with relying on a single, overly-restrictive dictionary definition of the word "trail" where that definition on its face clearly could not apply to *any* paths or trails in Illinois. As this Court well knows (and could justifiably take judicial notice of—see

Illinois Rule of Evidence 201(b)), in addition to there being no mountains in Lake County (as the court below aptly observed), there are no mountains (nor any "mountainous region") anywhere else within the State of Illinois.

The *amicus curiae* respectfully submits that it was simply not reasonable for the appellate court to have adopted a definition of the word "trail" which, on its face, makes no logical sense and could not have been what the legislature had in mind when using the word "trail" in the context of a statutory immunity provision applicable solely to local public entities and their property *in Illinois*. This point alone should have prompted the appellate court to question the use of that particular definition, especially where there are numerous other established definitions of the term "trail" which make much more logical sense in this glaciated State.

By using a definition that requires the path or trail to be in a "forest or mountainous region", the appellate court has added words to the statute which make the immunity provision largely meaningless and nonsensical—especially if the prerequisite of a path or trail having to wind through a "mountainous region" is read into the statute. "'The cardinal rule of statutory construction, to which all other canons and rules are subordinate, is to ascertain and give effect to the true intent and meaning of the legislature.' ... 'In determining the legislative intent, courts should consider first the statutory language'. ... Unambiguous terms, when not specifically defined, must be given their plain and ordinary meaning. ... Moreover, '[t]he courts also will avoid a construction of a statute which would render any portion of it meaningless or void.' ... The courts presume that the General Assembly, in passing legislation, did not intend

absurdity, inconvenience, or injustice." *Hernon v. E.W. Corrigan Construction Co.*, 149 Ill.2d 190, 194-5 (1992).

To add words to the statute under the guise of "construction"—especially where those words do not make logical sense in that context—is contrary to the basic and settled rules of statutory construction. The legislature did not require as a precondition for immunity under §3-107(b) that the path or trail had to be in a "forest" or in a "mountainous region"—or in any specified location or terrain whatsoever. Those words and limitations appear nowhere in the statute, and it would be improper for the courts to add those restrictions and conditions to the statute, under the guise of "statutory interpretation" or otherwise.

Instead of invoking an overly-restrictive, single dictionary definition of the word "trail" which, on its face, could not have been what the legislature had in mind when adopting a statute in the very non-mountainous state of Illinois, the *amicus curiae* respectfully suggests that other, more logical definitions of the term "trail" should be considered. For example, the noun "trail" is defined in Webster's New World College Dictionary (Fourth Edition, 2002[1], p. 1518 as being: "3a) a path or track made by repeated passage or deliberately blazed; ***b) a paved or maintained path or track, as for bicycling or hiking.***" (Emphasis added.) Another commonly-accepted definition of the noun "trail" is "a path through the countryside, especially when designed for walking for pleasure." http://www.macmillamdictionary.cocm/us/dictionary/american/trail_1. Notably, neither of these definitions includes any reference to or requirement that a

[1] The Webster's New World College Dictionary, Fourth Ed., is "[t]he Official Dictionary of the Associated Press", as well as of United Press International (UPI). See cover and forward to dictionary.

"trail" must pass through a forest or a mountainous region in order to be considered a "trail". The *amicus curiae* submits that either of these two definitions makes infinitely more sense for ascertaining the meaning of the word "trail" as used in an Illinois statute, than the definition the reviewing courts (including the court below) have used in applying §3-107(b).

In addition to considering more appropriate dictionary definitions of the word "trail", it is useful to note that the phrase "recreational trail" is defined in the Recreational Trails of Illinois Act, 20 ILCS 862/10 (West 2012), as "a thoroughfare or track across land or snow, used for recreational purposes such as bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, aquatic or water activity, and vehicular travel by motorcycle or off-highway vehicles." Notably, the legislature did not include in that definition any limitation on the location of a trail in order to fall within the definition of "recreational trail", and certainly no requirement that any such trail be located "within a forest or mountainous region". The *amicus curiae* respectfully submits that this definition of a similar term and in a statute which also addresses recreational trails in Illinois, is both informative and lends support to use of a broader definition of the word "trail" than the definition the appellate court has applied in construing §3-107(b).

It is of course not unusual for courts to consider various (and sometimes conflicting) dictionary definitions for a term or phrase, in an effort to ascertain and give effect to the intent of the legislature in using a particular word or phrase in a statute. In this regard (and not surprisingly), this Court has provided useful guidance for that task. For example, in *Landis v. Marc Realty*, 235 Ill. 2d 1 (2009), this Court was called upon to

determine the legislature's intent in using the term "statutory" (which the legislature had not defined in §13-202 of the Code of Civil Procedure), in order to determine which statute of limitations applied to the plaintiffs' cause of action. This Court began its analysis by noting that, because the legislature had not defined the term within the statute itself, "[i]t is appropriate to employ a dictionary to ascertain the meaning of an otherwise undefined word or phrase." (235 Ill. 2d at 8). This Court then examined *multiple dictionary definitions* of the word "statutory", and found (based upon those varying definitions) "that the word 'statutory', may be understood in more than one sense", both narrowly and more broadly (235 Ill. 2d at 8-9). This Court went on to find that, given the varying available definitions, those "dictionary definitions do not definitively resolve the question as to which meaning the legislature intended"; that the existence of alternative definitions (each of which makes "some sense under the statute") itself indicates that the statute is open to interpretation; *and that it is "a general principle of statutory interpretation that we give statutes the fullest, rather than the narrowest, possible meaning to which they are susceptible"* (emphasis added, 235 Ill. 2d at p. 11). Based upon that analysis, this Court concluded that legislature must have intended that the word "statutory" (within the phrase "statutory penalty") be given a broader (rather than a narrower) scope, such that "the word 'statutory' encompasses municipal ordinances as well as state statutes." (235 Ill. 2d at 11-12).

Employing the analysis in the *Landis* case, and keeping in mind the oft-stated cautions of this Court that the courts (a) should not "read into" the Tort Immunity Act words and phrases which do not appear in the statute, and (b) should not adopt a construction of a statute which would render any portion of it meaningless or void, any

interpretation of the word "trail" to require the presence of either a forest or mountainous region as a necessary prerequisite to the application of §3-10-7(b), should be rejected as being contrary to the intention of the legislature. The legislature did not require (or even hint) that a path must pass through a "forest" when adopting §3-107(b); and it is simply nonsensical to require that a path anywhere within the State of Illinois must pass over or through a mountainous region, in order to be considered a "trail" for purposes of §3-107(b). That would be a practical impossibility, as the court below itself all but acknowledged, in commenting about "mountains being scarce in Lake County" (¶30). For this reason alone, the decision below should be reversed.

II. THE APPELLATE COURT IMPROPERLY "READ INTO" AND/OR ENGRAFTED ONTO §3-107(b) ADDITIONAL CONDITIONS AND LIMITATIONS WHICH NOWHERE APPEAR IN THE STATUTE, THUS NARROWING THE SCOPE OF THE STATUTE AND FRUSTRATING THE LEGISLATIVE PURPOSE

In addition to adopting an overly restrictive and clearly inapplicable dictionary definition of the term "trail" as used in §3-107(b), the court below further erred in reading into the statute additional conditions and limitations which nowhere appear in the language of the statute and have the effect of drastically limiting the scope and application of §3-107(b). For example, the court below concluded that the legislature could not have intended that §3-107(b) "apply to a bicycle or hiking path in the midst of an easily accessible developed area" (¶ 32). According to the court below, the legislature instead must have intended to limit the scope and application of §3-107(b) to paths located within a "natural and scenic area" (citing *Brown*); or that are "'surrounded by wooded or undeveloped land'" (citing *Mull*); or otherwise are located in a "forest", but not in an "industrial/commercial/ residential area" as that would not constitute "'the

enjoyment of activities in a truly natural setting'" (citing *Goodwin v. Carbondale Park District*, 268 Ill. App. 3d 489, 493 (5th Dist. 1994)) (¶¶ 30-32).

Based upon these assumptions as to the legislature's intentions in adopting §3-107(b), the court below cited approvingly to the appellate court's speculation in *Goodwin* that the legislature must have intended §3-107(b) to apply only to public property "which is in its natural condition with obvious hazards as a result of that natural condition" (*Goodwin*, 268 Ill. App. 3d at 493, cited in *Corbett* at ¶ 32). Although the court below noted that it was not adopting the overly narrow definition that "some have urged" (presumably referring to the *Goodwin* court), such that any consideration "of a path as a 'trail' is not automatically defeated by the existence of any development in the surrounding area" (¶ 28), the court concluded (as had the court in *Goodwin*), that §3-107(b) is somehow limited to paths and trials that are "in a truly natural setting" (¶ 32). In this regard, the court below reasoned as follows:

> ¶ 32 We note further that, aside from the definitional obstacles to calling the path a riding trail, the underlying purpose of section 3–107(b)'s grant of absolute immunity, even for willful and wanton conduct, is not consistent with the trial court's result here. We agree with the *Goodwin* court that behind the categorical grant of immunity is the recognition of "the burden in both time and money if the local governmental entity were required to maintain these types of property in a safe condition" and that "requiring such maintenance would defeat the very purpose of these types of recreational areas, that is, the enjoyment of activities in a truly natural setting." *Goodwin,* 268 Ill.App.3d at 493, 205 Ill.Dec. 956, 644 N.E.2d 512. These considerations do not apply to a bicycle or hiking path in the midst of an easily accessible developed area. Indeed, the City would not even be a party to this appeal had it not found it manageable to take on the burden of maintaining the path in a safe condition.
>
> ¶ 33 For the foregoing reasons, we hold that the trial court erred in holding that the path is a riding trail, thus triggering the absolute immunity provided by section 3–107(b) of the Act....

In other words, the court below (as had the appellate court in *Goodwin*) (a) read into §3-107(b) the additional conditions that any path or trail, to constitute a "trail" for purposes of the immunity, must be "in a truly natural setting" and not "in the midst of an easily accessible developed area" (¶ 32), and (b) justified these additional conditions by presuming that they are consistent with what the legislature must have intended—*i.e.*, that "the underlying purpose of §3-107(b)'s grant of absolute immunity, even for willful and wanton conduct" (¶ 32), is that the immunity would only apply to recreational paths and trails in (*mostly*, according to the *Corbett* court, or *completely*, according to the *Goodwin* court) undeveloped natural areas. These limitations (regarding the location of the path and the "natural state" of the surrounding area where the path or trail traverses) of course appear nowhere in the text of §3-107(b).

This type of judicial amendment of the Tort Immunity Act has been repeatedly criticized by this Court, and for obvious reasons. As this Court has cautioned, in interpreting the Tort Immunity Act the courts "must not depart from the plain language of the Act by reading into exceptions, limitations, or conditions that conflict with the express legislative intent." *Barnett v. Zion Park District*, 171 Ill.2d 378, 389 (1996). *See also, Epstein v. Chicago Board of Education*, 178 Ill.2d 370, 376-7 (1997), in which this Court rejected similar attempts to restrict the scope of an immunity provision (there, §3-108 of the Act (supervisory immunity)), by "reading into" the statute words and phrases which were not part of the statutory language:

> The Board maintains that, under the plain meaning of this provision, local governmental units are immune from liability for any injury caused by a failure to supervise an activity on public property, which includes immunity for the failure to supervise construction activities that form the basis of a Structural Work Act claim. The plaintiff, on the other hand, asserts that the legislature did not intend section

3-108(a) to include within its scope immunity from Structural Work Act claims. The plaintiff further insists that the legislature did not intend section 3-108(a) immunity to apply to construction-type activities, but rather intended to limit its application to only recreational and scholastic activities. We reject the plaintiff's arguments.

Section 3-108(a) by its plain terms immunizes a local governmental unit's failure to supervise 'an activity' on public property. *This language clearly applies to failure to supervise any 'activity' on public property, as it does not limit, in any manner, the types of activities which are included. The plaintiff asks us to read exceptions into this provision for both Structural Work Act claims and construction activities. The plaintiff also asks us to limit section 3-108(a)'s provisions to only recreational and scholastic activities. This court has in the past, however, specifically admonished against reading exceptions into or engrafting tacit limitations onto the Tort Immunity Act's language that conflict with the express legislative intent. Barnett, 171 Ill.2d at 388-89, 216 Ill.Dec. 550, 665 N.E.2d 808. To accept the plaintiff's argument would require us to do just that. We therefore conclude that section 3-108(a) allows for no such exceptions or limitations.* (Emphasis added).

This Court provided similar cautions with regard to the appellate court's attempts to limit the scope and application of §3-106 (immunity from negligence liability for any condition of recreational property), in *Moore v. Chicago Park District*, 2012 IL 112788. There the appellate court majority had relied on a prior (and similarly incorrect) appellate court decision to the effect that the immunity of §3-106 did not apply to items or elements that were not "affixed to the property" (*e.g.*, were temporary or "moveable" rather than permanent). This Court rejected the appellate court's attempts to limit the scope of §3-106 by reading into it various words and phrases that were not contained within the statute, as part of the appellate court's efforts to define the term "condition" (which, like the term "trail", is not defined in the Act). This Court's observations merit quotation at length, as they are directly applicable in this case as well:

¶ 19 However, we find that, contrary to the holding in *Stein*, section 3–106 of the Tort Immunity Act does not limit "a 'condition of any

public property,' " as the statute states, to only those elements that are "affixed to the property in such a way as to become a part of the property itself" (*Stein,* 323 Ill.App.3d at 577, 256 Ill.Dec. 751, 752 N.E.2d 631). *Rather, we agree* with *Callaghan v. Village of Clarendon Hills,* 401 Ill.App.3d 287, 299, 340 Ill.Dec. 757, 929 N.E.2d 61 (2010), *that Stein's holding is unsupported by the language of section 3–106 and is in contravention of other case law.* [FN deleted] *First, it is clear that the language of section 3–106 does not contain a requirement that a condition of public property must be "affixed" before immunity applies. Indeed, the plain language of that section does not limit itself to any particular type of condition.* See *Callaghan,* 401 Ill.App.3d at 299, 340 Ill.Dec. 757, 929 N.E.2d 61.

¶ 20 Second, although the Act does not define "condition," we observe that Illinois courts have, on numerous occasions, applied section 3–106 immunity to movable conditions of public property. See, *e.g., Sylvester v. Chicago Park District,* 179 Ill.2d 500, 228 Ill.Dec. 698, 689 N.E.2d 1119 (1997) (plaintiff barred from recovery when injured by falling over movable concrete car stop); *Kayser v. Village of Warren,* 303 Ill.App.3d 198, 236 Ill.Dec. 440, 707 N.E.2d 285 (1999) (plaintiff barred from recovery when injured in fall as she attempted to maneuver around movable chair propping open exit door); *Kirnbauer v. Cook County Forest Preserve District,* 215 Ill.App.3d 1013, 159 Ill.Dec. 499, 576 N.E.2d 168 (1991) (plaintiff barred from recovery when injured by movable cable barricade restricting entry to forest preserve access road); *Majewski v. Chicago Park District,* 177 Ill.App.3d 337, 126 Ill.Dec. 724, 532 N.E.2d 409 (1988) (plaintiff barred from recovery when injured by falling on movable broken glass on football field). Even more elucidating is *Grundy v. Lincoln Park Zoo,* 2011 IL App (1st) 102686, 354 Ill.Dec. 125, 957 N.E.2d 441, a recent decision by a different division of the First District than that involved herein, which considered a similar certified question as to the meaning of the phrase "a condition of any public property" under section 3–106.

* * *

¶ 21 ...We agree with this assessment of our prior opinions, and accordingly find, to the extent that *Stein* contradicts this conclusion, it is overruled.

¶ 22 *Finally, our holding that snow and ice are a condition of public property such that defendant is immune from liability under section 3–106 is in harmony with that statute's purpose, which, as we have stated, is to encourage the development and maintenance of, inter alia, public parks, playgrounds, "open areas, buildings or other enclosed recreational facilities."* 745 ILCS 10/3–106 (West 2008); see *Kayser,* 303 Ill.App.3d at 200, 236 Ill.Dec. 440, 707 N.E.2d 285; *Lewis v. Jasper County Community Unit School District No. 1,* 258 Ill.App.3d 419, 422, 196 Ill.Dec. 383, 629 N.E.2d 1227 (1994). As this court

> stated in *Sylvester*, " section 3–106 may apply to facilities or structures *that increase the usefulness* of public property intended or permitted to be used for recreational purposes." (Emphasis added.) *Sylvester*, 179 Ill.2d at 508, 228 Ill.Dec. 698, 689 N.E.2d 1119. While we have found the nature of the accumulation of snow and ice to be irrelevant to our determination of the certified question, *a reading of section 3–106 which encourages the maintenance of a parking area adjacent to a recreational facility through the removal of snow and ice clearly "increase[s] the usefulness" of that recreational facility. As previously noted, "[b]y providing immunity, the legislature sought to prevent the diversion of public funds from their intended purpose to the payment of damage claims."* *Bubb*, 167 Ill.2d at 378, 212 Ill.Dec. 542, 657 N.E.2d 887. *Thus, we find it to be in line with the public policy of this state to promote the expenditure of public funds for the purpose of creating greater access to recreational areas, rather than to divert those funds to pay damage claims stemming from the resulting condition of that property.* (Emphasis added.)

This Court's reasoning and holding in *Moore* apply with equal force here. The appellate court below (and in *Goodwin*) has, under the guise of interpreting and defining the word "trail", improperly restricted the scope and application of the immunity of §3-107(b), by reading into that provision additional terms and conditions that are not part of the statute: in *Goodwin*, by limiting §3-107(b) to "unimproved hiking, riding, fishing or hunting trails in undeveloped recreational areas that remain in their natural condition" (268 Ill. App. 3d at 493); and in *Corbett*, by limiting §3-107(b)'s application to areas surrounded with "wild nature" (¶ 30), and *not* "in the midst of an easily accessible developed area" (¶ 32). Respectfully, and as this Court cautioned in *Barnett*, *Epstein*, *Moore*, and numerous other cases in which various provisions of the Tort Immunity Act have been construed, the appellate court should not read exceptions into or engraft limitations onto clear provisions of the Act, under the guise of "statutory interpretation". Such efforts are not only improper, but frustrate the clear legislative purpose of

encouraging the expenditure of public funds to expand access to recreational and scenic areas, rather than paying damage awards stemming from the public's use of such trails.

As this Court succinctly stated in *Henrich v. Libertyville High School*, 186 Ill. 2d 381, 391 (1999), "[w]here the language of a statute is unambiguous, the only legitimate function of the courts is to enforce the law as enacted by the legislature. [Cite omitted.] There is no rule of construction which authorizes a court to declare that the legislature did not mean what the plain language of the statute says. [Cite omitted.]" Unfortunately, the appellate court below (and previously in *Goodwin*, which the court below cited with approval and relied upon for guidance) did precisely that. The result is that, if those rulings are left undisturbed, §3-107(b) will have in effect been judicially amended and restricted, to the frustration of the legislature (which adopted §3-107(b) without any such restrictions or limitations) and of the local public entities who have planned, developed and maintained numerous hiking, riding, fishing and/or hunting paths and trails throughout the State, under the assumption that their tort liability exposure would be fairly limited, based upon the clear language of the immunity supplied in §3-107(b).

III. THE APPELLATE COURT HAS CREATED CONFUSION AND UNCERTAINTY WITH REGARD TO THE APPLICATION OF §3-107(b), IN PLACE OF THE CLARITY AND CERTAINTY WHICH THE LEGISLATURE HAD PROVIDED IN ADOPTING THAT PROVISION

There are numerous problems which flow from the appellate court's importation of additional conditions and restrictions into the plain text of §3-107(b). If the decision below is not reversed, some of the practical effects will be: (a) miles and miles of existing paths and trails across the State may no longer be subject to the protective immunity of §3-107(b); and worse, (b) it is quite probable that various portions of existing paths and trails may or may not qualify as a "trail" under §3-107(b), depending on the nature of the

surrounding property (including the development of adjacent or nearby property which is privately owned or is owned by other public entities, including the State, counties, cities and villages, townships, school districts, etc.).

As just one example, the Des Plaines River Regional Trail is owned and maintained by the Lake County Forest Preserve District, is approximately 31.4 miles in total length, is intended for hiking, biking and horseback riding, and extends south through numerous communities, and across (as well as over and/or under) various roadways, as it generally follows the Des Plaines River from near the Wisconsin state line on the north end to Lake-Cook Road on the south end of Lake County. (See the trail map and description at www.lcfpd.org/maps, as well as the "countywide map and guide brochure" link on that site. For the Court's convenience, photocopies of those documents are included as Exhibits A1-A4 in the Appendix to this brief.) Although portions of that trail certainly wind through forest areas, other portions of the trial (which, after all, extends the length of Lake County) "are surrounded by industrial development, residential neighborhoods, parking lots, railroad tracks, and major vehicular thoroughfares" (to use the appellate court's description of the trail in this case (at ¶ 29)).

Using just the Des Plaines River Regional Trail as an example, and applying the new "test" announced by the court below, the *amicus curiae* is at a loss to understand whether some, all or none of that trail now falls within the ambit of §3-107(b). Does it matter where precisely the plaintiff in a personal injury lawsuit claims to have been injured? Will the application (or not) of §3-107(b) hinge on a fact-intensive inquiry into whether there were "sufficient" amounts of surrounding "wild nature" (to again use the appellate court's own phrasing, at ¶ 30) at or near that location, and possibly using

opinion witness testimony as part of that inquiry? Or would the fact that some portion(s) of the trail is surrounded by more developed areas, negate outright the application of §3-107(b) to *any* portion of the trail (as the court below appears to suggest with regard to the Old Skokie Bike Path in Lake County, because it is neither surrounded by a forest and nor located in a mountainous region (¶ 29))?

In addition to these concerning problems in the application of §3-107(b) as interpreted and construed by the court below, there is the additional problem which the appellate court (Second District) itself previously highlighted, while criticizing the reasoning and analysis of the appellate court (Fifth District) in the *Goodwin* case. In *Mull v. Kane County Forest Preserve District*, the appellate court (Second District) rejected the plaintiff's argument (based on the *Goodwin* holding) that the development of surrounding land could negate the application of §3-107(b) immunity:

> In addition, we reject plaintiff's contention that the trail at issue cannot be considered a "trail" because the entrance to a subdivision is located near the path. *If we accepted plaintiff's interpretation, immunity could be lost if a neighboring landowner decided to develop his property. We do not believe the legislature intended immunity to be based on the actions of a property owner different from the public entity in question.*
>
> Accordingly, the record establishes that the trail at issue is a trail within the meaning of the Act and, thus, defendant is immune from this cause of action. (Emphasis added. 337 Ill. App. 3d at 592-3.)

As the Second District's own prior decision in *Mull* confirms, it would make little sense to interpret §3-107(b) in such a way that the statutory immunity would apply or not in a given case, based upon whether *surrounding landowners* had or had not developed their property, as that would be completely outside of a local public entity's control. Yet that unfortunately is the unavoidable result of the ruling of the court below, if it is not overturned by this Court. Not only would local public entities lose the protections of

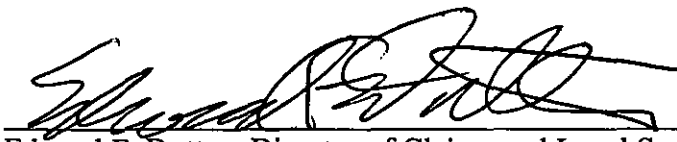
§3-107(b) if they developed and/or improved their own surrounding property (*e.g.*, by installing a parking lot or a building), but (according to the analysis by the court below) those local public entities could also lose the protections of the immunity provision if surrounding landowners developed their property adjacent to or in the vicinity of the trail. Based upon the analysis of the trail in this case, the court below concluded that the path could not qualify as a "trail" for §3-107(b) purposes in part because of the development of the surrounding properties: "The path is bordered by narrow bands of greenway that sport some shrubs and a few trees; these narrow bands are surrounded by industrial development, residential neighborhoods, parking lots, railroad tracks, and major vehicular thoroughfares (to the east *and* south of the area of the accident). The case for considering the path a riding trail would not succeed even if utility poles could be considered trees with power lines for branches." (¶ 29)

Clearly, the legislature could not have intended that a local public entity would lose the immunity provided by §3-107(b) based upon the lawful actions of neighboring landowners in developing their own properties adjacent to a public trail that provides hiking and riding or access to fishing and/or hunting areas.

CONCLUSION

At base, the appellate court has created an unworkable test which is fraught with uncertainty, raises more questions than it answers, and, even more problematic, is based upon an overly restrictive judicial re-writing of §3-107(b). For all of the reasons set forth herein and in the defendant/appellant's brief on appeal, this Court should reverse the court's ruling below, reverse the appellate court's holding in *Goodwin v. Carbondale Park District,* and find as a matter of law that §3-107(b) applies in this case and provides absolute immunity to the defendant/appellant, the City of Highland Park.

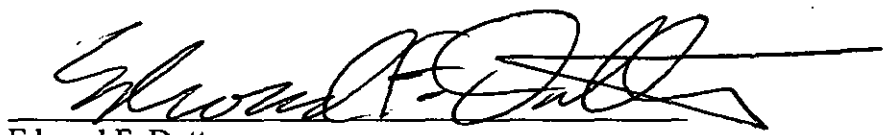
Respectfully submitted,



Edward F. Dutton, Director of Claims and Legal Services
Park District Risk Management Agency
On behalf of the *Amicus Curiae*, Park District Risk Management Agency (PDRMA)

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 23 pages.



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APPENDIX

Lake County Forest Preserves
847-367-6640 www.LCFPD.org

Emergency: call 911
Nonemergency public safety issue: 847-549-5200

GENERAL FACILITIES	ACRES	BOAT/BICYCLE RENTAL	CANOE LAUNCH	DOG EXERCISE AREA	EXHIBITS	GIFT/PRO SHOP/SNACKS	HORSE TRAILER PARKING	MARINA/BOAT LAUNCH	MODEL AIRPLANE FIELD	PARKING	PICNIC TABLES	TOILETS	OPEN PLAYFIELD	TRAILS: BIKING	TRAILS: HIKING	TRAILS: IN-LINE SKATING
Buffalo Creek	408									•	•	•		3.7	3.7	
Captain Daniel Wright Woods	750		•							•	•	•		4.75	4.75	
Cuba Marsh	781									•	•	•		3.15	3.15	
Duck Farm	354			•												
Fort Sheridan	250				•					•				1.6	4.2	1.0
Fourth Lake	622									•				0.2	0.5	
Grant Woods	1,226		•							•	•	•	•	7.15	9.25*	
Grassy Lake	689									•		•			5.8	
Greenbelt	596									•	•	•	•	4.7	5.3	
Half Day	236						•			•	•	•	•	1.2	1.75	
Hastings Lake	270		•							•	•	•		4.05	4.05	2.75
Heron Creek	242									•	•	•	•	2.5	2.5	
Lake Carina	481									•	•	•		0.4	1.5	
Lakewood	2,806			•			•			•	•	•	•	4.4	20.4	
Lyons Woods	345									•	•	•		2.6	2.6	
Marl Flat	208									•		•		•	•	
McDonald Woods	308									•	•	•		2.75	4.3	
Middlefork Savanna	687									•				4.1	5.3	
Nippersink	329									•	•	•	•	2.6	2.75	
Oak Spring Rd. Canoe Launch			•							•	•			•	•	
Old School	543						•			•	•	•	•	5.3	7.0	1.5
Pine Dunes	867					Fis	at	ent	ce o	•	•	•		1.65	2.0	
Prairie Wolf	435			•						•	•	•		1.7	1.7	
Raven Glen	575						•			•	•	•		4.35	6.2	
Ray Lake	1,039									•	•	•		1.4	1.9	
Rollins Savanna & Native Seed Nursery	1,250									•	•	•		4.5	4.75	
Sedge Meadow	808		•			Fis	on	er o		•	•	•		2.1	2.1	
Singing Hills	718						•			•	•	•		•	•	
Sun Lake	629									•	•	•		3.25	3.25	
Van Patten Woods	975		•				•	•	•	•	•	•	•	5.0	6.8*	
REGIONAL TRAILS																
Des Plaines River Trail (DPRT)[2]			•				•			•		•		31.4	31.4*	
Fort Hill Trail										•		•		6.0	6.0	
Millennium Trail[3]							•			•		•		29.7	29.7	
SPECIAL FACILITIES																
Adlai E. Stevenson Historic Home					•					•	•	•			•	
Bonner Heritage Farm					•					•	•			•	•	
Brae Loch Golf Club	161					•				•		•				
Countryside Golf Club	482					•				•		•				
Fox River	598							•		•	•	•	•	3.15	3.15	
Greenbelt Cultural Center	596				•					•	•	•				
Independence Grove & Visitors Center[1]	1,151	•	•	•	•			•		•	•	•	•	7.25	7.9	3.25
Lake County Discovery Museum				C	ng S	em	201	eop	ng I	201	ne	ber	le lo	ion.		
Ryerson Woods & Welcome Center[1]	565				•					•		•			6.8	
ThunderHawk Golf Club	241					•				•		•				

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CONSERVATION, RESTORATION, EDUCATION AND RECREATION

EDUCATION | MUSEUM | RECREATION

TRAIL MAPS

Welcome to the Lake County Forest Preserves! We've been preserving open space and natural areas since 1958. We manage nearly 31,000 acres of land for conservation and recreation. Our preserves are the largest natural area land in Lake County, and it's packed with opportunities for you to explore.

Navigate Your Next Adventure

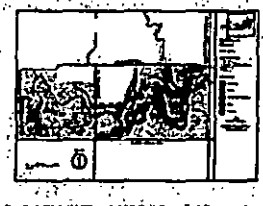
Use our trail maps to help navigate your next adventure in a forest preserve near you. Exercise, relax and spend quality time outdoors on hiking trails that wind through scenic natural settings. Find regional trail connections on the Lake County Division of Transportation's bicycle map. View a map of water trails in Northeastern Illinois.

For a map and chart of amenities for all preserves, download our Countywide Map and Guide brochure.

Before heading out, click the button below to check the current status (open/closed) of trails, underpasses and preserves.

CHECK STATUS OF TRAILS AND PRESERVES

Buffalo Creek



Download Trail Map

Captain Daniel Wright Woods & Half Day

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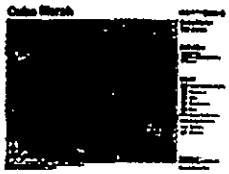
Cuba Marsh



Download Trail Map

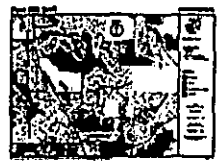
Des Plaines River Trail

Download Trail Map

Dog Sled Area

Download Trail Map

Fort Hill Trail



Download Trail Map

Fort Sheridan

Download Trail Map

Fourth Lake

Download Trail Map

Des Plaines River Trail - North

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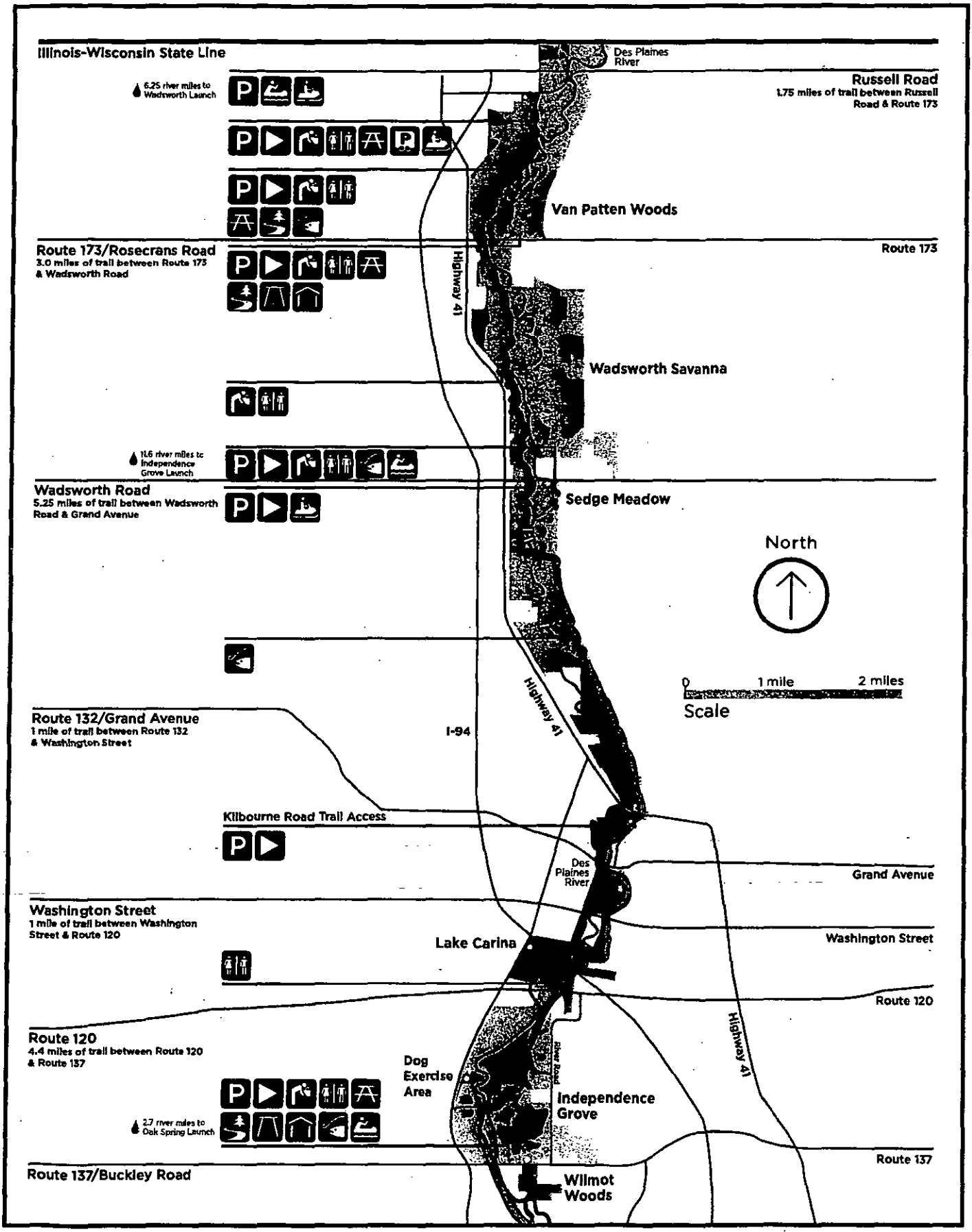

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Des Plaines River Trail - South

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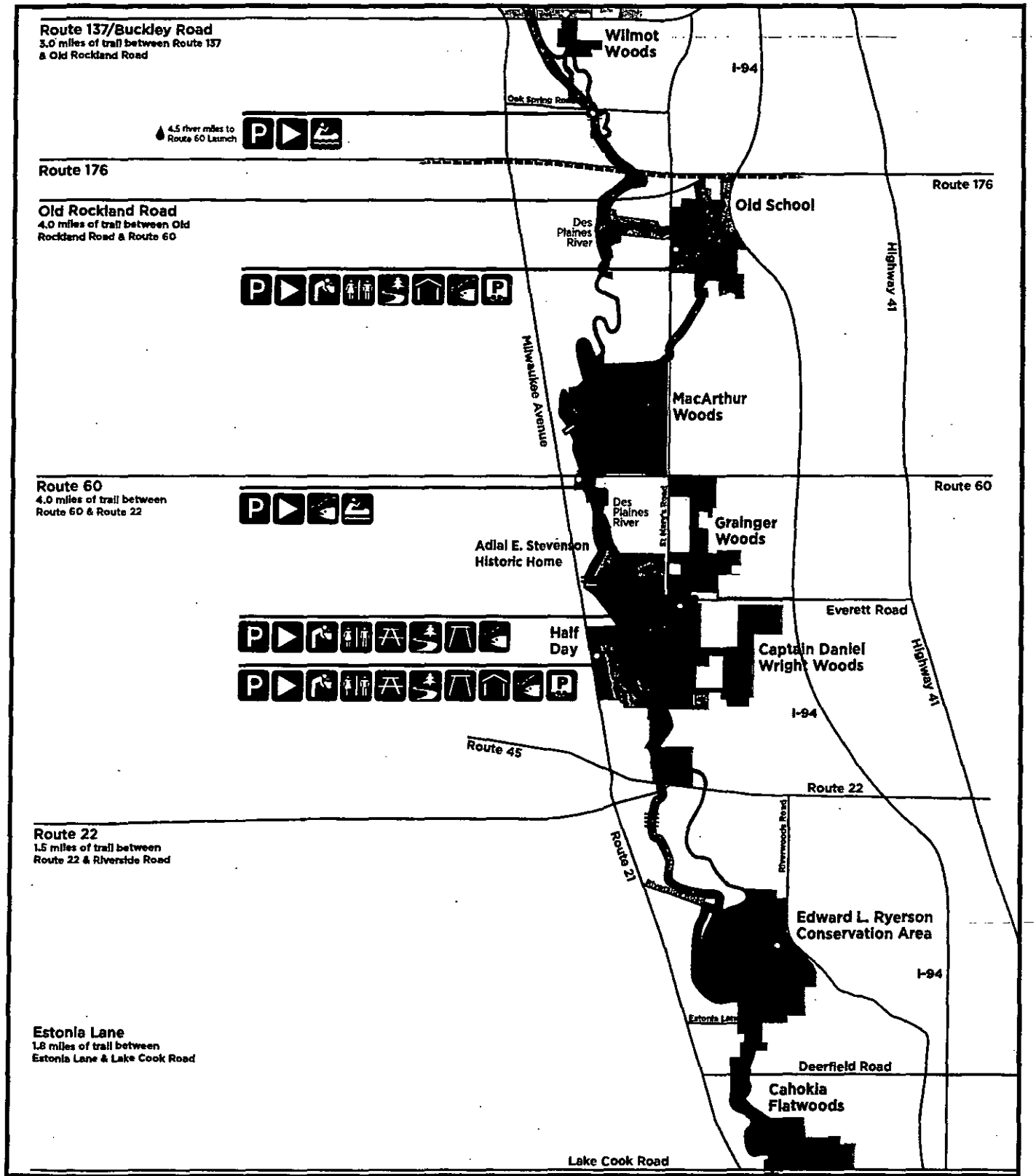

LEGEND

- Parking
- Toilet
- Drinking Water
- Trail Access
- Canoe Launch
- Additional Trails
- Fishing
- Horse Trailer Parking
- Shelter
- Picnic Tables
- Snowmobile Trailer Parking
- Dam
- Des Plaines River Trail
- North Shore Bike Path
- Bridges & Boardwalks
- Other Trails
- Snowmobile Trail

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