

**BEACH RIGHTS AND THE INDIANA SUPREME COURT'S DECISION IN *GUNDERSON v. STATE***  
**90 N.E.3d 1171 (Ind. 2018); Cert. Denied Feb.18, 2019**

In 2014, the Gunderson Trust, a lakefront residential property owner, filed a lawsuit in the LaPorte County Superior Court seeking a declaration that it owned the Indiana Lake Michigan shore to the “water’s edge” and had a right to exclude other Indiana citizens from using it. **Four years later, the *Gunderson* dispute was decided in favor of all Indiana citizens by a unanimous Indiana Supreme Court on February 14, 2018.** The U.S. Supreme Court declined to review that decision on February 18, 2019.

**The Gunderson Decision Answers Six Key Questions:**

<p><b>Who owns the Lake Michigan shore?</b></p>	<p>The Court held: The State of Indiana acquired title to the Lake Michigan shore at statehood in 1816 and has not transferred its title to lakeside owners, except for certain municipal and industrial ports. <b>SB 581 incorrectly assumes that private parties own the shore.</b></p>
<p><b>What is the boundary of public and private property on the Lake Michigan shore?</b></p>	<p>The Court held: The boundary separating public and private ownership on the Lake Michigan shore is the <i>ordinary high water mark (OHWM)</i>, a standard in both Indiana and federal law. The OHWM is the high point to which the waters extend on a recurring basis, as shown by changes in soil and vegetation and other factors. The visible vegetation line is a useful indicator of its location. <b>The Court expressly rejected the 581.5 ft elevation as the boundary between public and private property. SB 581 would illegally allow the rejected 581.5 ft elevation to be used as this boundary.</b></p>
<p><b>Can a deed grant a lakeside owner private title below the OHWM?</b></p>	<p>No. The Court reaffirmed settled federal law holding that a private deed is void to the extent it purports to create title below the OHWM. <b>SB 581 incorrectly assumes deeded private title on this shore.</b></p>
<p><b>Who may use the shore of Lake Michigan lakeward of the OHWM?</b></p>	<p>The Court held: The State holds the Lake Michigan shore lakeward of the OHWM <i>in trust for the public’s use</i> under the Public Trust Doctrine, a federal rule of law on navigable waters that goes back 100+ years. <b>SB 581 illegally creates recreational rights only for private property owners on the public shore.</b></p>
<p><b>Can the General Assembly curtail the public’s rights on the Lake Michigan shore?</b></p>	<p>No. Gunderson reaffirmed long-established law that the State cannot change the boundary of the public trust shore or take away the public’s right to use that shore. <b>By changing the OHWM, SB 581 would illegally curtail public rights to all or portions of the public shore.</b></p>
<p><b>What activities are permitted on the shore held in trust for the public?</b></p>	<p>The Court held: <u>Minimally</u>, the Lake Michigan shore can be used for: <i>fishing, navigation, and commerce</i>, and <i>walking</i>. The Court left it to the General Assembly to define permitted <i>recreational activities</i>. No one may permanently occupy or monopolize the shore to the exclusion of others’ exercise of these rights. <b>SB 581 illegally allows construction of private structures that prevent public use of the public shore.</b></p>