No. 14-792

In the Supreme Court of the United States

WISCONSIN, *et al.*,
Petitioners,
v.
LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS OF WISCONSIN, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE ASSOCIATION OF FISH AND WILDLIFE AGENCIES AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICUS CURIAE*

For over a century, North America's state, provincial, and territorial fish and wildlife agencies have upheld the primary responsibility for conserving and preventing the exploitation of North America's wildlife resources on public and private lands within their borders. The Association of Fish and Wildlife Agencies ("AFWA")[1] serves as these agency members' collective voice in Washington, DC, and on their behalf advances sound, science-based management and conservation policy for fish and wildlife and their habitats. AFWA also works to strengthen state, federal, and private cooperation in conserving America's fish and wildlife resources in the public interest; to provide its members and members' staff with coordination services on issues that range from migratory birds, fish habitat, and invasive species, to conservation education, leadership development, and international relations; and to provide management and technical assistance to conservation leaders.

Founded in 1902 under a different name, AFWA originally formed to establish a system of mutually beneficial interstate cooperation in game and fish management. Its work over the past century has spanned from creating a model of state fish and wildlife agencies in 1934 to advocacy in 2010 for dedicated funding for natural resource adaptation to climate

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[1] Counsel of record for all parties received notice at least 10 days before the due date of the amicus curiae's intention to file this brief. All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

change. AFWA has also participated as amicus curiae in the nation's courts, including before this Court, to safeguard the rights and interests of its members. Given the Association's mission and expertise, it is uniquely positioned to represent the state wildlife agencies' perspective as to the implications of this Court's decision on this petition for certiorari.

Each of AFWA's agency members bears primary legal responsibility to manage fish and wildlife resources within its borders and must ensure that healthy fish and wildlife populations exist now and in the future. AFWA's member agencies rely on science to inform their management decisions and regulations. Appropriate regulation and appropriate enforcement help ensure healthy fish and wildlife populations for the public, which in turn may hunt and fish any harvestable surplus. Yet allowing hunting and fishing necessarily means the agencies must be expert in related public safety issues. AFWA asks the Court to grant certiorari to clarify the state fish and wildlife agencies' expert role in setting hunting regulations so as to protect the public safety and conserve state-managed fish and wildlife populations.

SUMMARY OF THE ARGUMENT

AFWA's state agency members, including Wisconsin, have the legal authority and expertise to manage fish and wildlife, and under that authority and expertise, to set hunting regulations that take into account public safety. They derive this authority from two separate sources: their state police power and their public trust authority over fish and wildlife. Succinctly, if a state fish and wildlife agency determines that a particular hunting practice is unsafe and prohibits it,

the agency's reasonable regulation should stand. The Seventh Circuit's opinion fails to recognize the authority and expertise of Wisconsin Department of Natural Resources ("WDNR") to regulate hunting and public safety. In doing so, it could set a precedent that risks eroding AFWA's other state agency members' authority to conserve fish and wildlife and to protect the public safety. This Court should grant certiorari to clarify state agencies' authority to carry out these important duties.

ARGUMENT

THE SEVENTH CIRCUIT'S DECISION IMPAIRS STATE AUTHORITY TO PROTECT PUBLIC SAFETY AND TO CONSERVE FISH AND WILDLIFE

AFWA will not burden this Court by repeating facts and arguments raised below and in party briefs. What AFWA can and will respectfully provide to this Court is an overview of its agency members' legal authority to manage fish and wildlife resources, how that authority factors into the case, and how that authority is harmed by the Seventh Circuit's decision.

A. The Seventh Circuit's decision harms states' ability to use their police power to ensure public safety.

State fish and wildlife agencies carry out the work of conservation in many ways, some of which include managing and acquiring habitat, educating the public about conservation and hunter safety, carrying out cutting-edge fish and wildlife biological work, selling hunting and fishing licenses and tags, and writing and enforcing conservation regulations. Most relevant to

this case, though, is that state fish and wildlife agencies manage game species and regulate game harvest. In accordance with the North American Model of Wildlife Conservation, state agencies' scientific research undergirds their regulatory and management decisions. Valerius Geist, Sean P. Mahoney, and John F. Organ, *Why Hunting has Defined the North American Model of Wildlife Conservation,* Transactions of the 66th North American Wildlife and Natural Resources Conference, 175, 178 (2001). With regard to game harvest, state agencies regulate both to ensure conservation of the game resource and public safety. They write regulations to address such questions as whether and when to have an open season on various species, what means can be used to harvest game, what the bag limits should be, how many tags to sell, and how to make hunting safe for hunters and the public. State fish and wildlife agencies must be expert in their areas of regulatory authority, and courts should defer to state agencies' reasonable conservation regulations and decisions.

State agencies' public safety role is especially worth underscoring. This Court opined in *Geer v. Connecticut,* a seminal case recognizing state conservation authority, that one basis for the theory of state public trust ownership of fish and wildlife is the state of Connecticut's police power. 161 U.S. 519 (1896). This Court has continued to recognize the states' general police power, which it has called "broad authority to enact legislation for the public good." *Bond v. United States*, 134 S.Ct. 2077, 2086 (2014). States' use of the police power to write regulations in furtherance of the public interest enjoys the "presumption of legislative validity." *Kelley v. Johnson*, 425 U.S. 238, 247 (1976).

This Court specifically recognized in *Kelley* that states have a police-power-based interest in protecting the public safety: "the promotion of safety . . . is unquestionably at the core of the State's police power." *Id*. State fish and wildlife agencies have law enforcement divisions that carry out this core police power function, and their officers enforce the agency's regulations and other state laws, including those covering hunting safety. State fish and wildlife agencies are in part public safety agencies and provide that essential service to their citizens. As state fish and wildlife agencies take on a public safety role, exercising the police power, their actions deserve a presumption of validity.

WDNR derives its authority from several sources of state law, and sources of federal law also recognize state authority to manage fish and wildlife, as discussed *infra*. The Wisconsin Constitution enshrines Wisconsin citizens' "right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law." Wis. Const. art. I, § 26. The Wisconsin Supreme Court has construed this provision and held that it does not limit DNR's regulation of hunting, except that DNR must regulate reasonably. *Wis. Citizens Concerned for Cranes and Doves v. Wis. Dep't of Nat. Resources*, 677 N.W.2d 612, 629 (Wis. 2004). Wisconsin has codified the state public ownership of fish and wildlife, and the Wisconsin Supreme Court has separately recognized the state's public trust ownership. Wis. Stat. § 29.011; *State v. Herwig*, 117 N.W.2d 335, 337 (Wis. 1962). WDNR has a statutory duty to manage fish and game for public use while another statute endows its conservation

wardens with law enforcement powers.[2] Wis. Stat. §§ 23.10, 29.014. WDNR, like its sister state fish and wildlife agencies, promulgates and enforces regulations for hunting, and some of those regulations protect the public safety. For example, state law generally requires hunters to wear blaze orange during deer season, a WDNR regulation restricts the hours for hunting certain species, and hunting from a road is generally prohibited. Wis. Stat. § 29.301(2); Wis. Admin. Code §§ NR 10.05, 10.06.

As WDNR is a statutorily-created state agency that must regulate hunting of wildlife and, as part of that duty, it promulgates and enforces regulations to protect the public safety, it possesses an expertise growing out of that duty. WDNR possesses expertise and power to write and enforce hunting regulations that protect the public safety, which is in furtherance of the state's interest in using its police power to protect the public safety, a key function of the police power that this Court has expressly recognized.

The very test courts apply to state hunting and fishing regulations when determining whether the state can regulate tribal treaty-reserved hunting and fishing rights recognizes the state's strong interest in conserving wildlife and in public safety. The formulation of the test articulated by the District Court in *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin*, 740 F. Supp. 1400, 1422 (W.D.

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[2] WDNR does not regulate fish and wildlife on Respondents' reservations. However, this case pertains to off-reservation hunting, which WDNR may regulate, assuming their regulations meet the test discussed *infra*.

Wis. 1990), allows Wisconsin to regulate tribal hunting, fishing, and gathering if the regulation is necessary for resource conservation or for preserving the public safety; if applying it to the tribes is necessary to address a conservation or public safety interest; if it is the least restrictive alternative; and if it does not discriminate against the tribes. This Court, in *Puyallup Tribe v. Dep't of Game*, 391 U.S. 392, 398 (1968), upon which the District Court relied in articulating the test it applied, similarly recognized that the state may use its police power to regulate tribal fishing in the interest of conservation, "provided the regulation meets appropriate standards and does not discriminate against the Indians." By setting this test, this Court and the District Court explicitly recognize the state agencies' interest in protecting public safety and their need and authority to promulgate regulations serving those interests.

WDNR prohibits the public from hunting deer at night. Pet. at 4. Its own professionally-trained staff members have only taken deer at night under the extremely limited circumstances described in its Petition: for control of chronic wasting disease, and of nuisance deer. Pet. at 6. WDNR does not permit night hunting because it has not found night hunting to be safe, and it introduced evidence, both at the 1989 trial and during the trial court hearing on respondents' Fed. R. Civ. P. 60(b)(5) motion, to show the safety risks night hunting poses. Pet. at 21, 740 F. Supp. at 1423. The District Court, having viewed the evidence in 1989 and having found no basis to revisit the safety question in this case, agreed. It correctly ruled that the respondent tribes had not met their burden to show that night hunting is safe and refused to reopen the

judgment under the 60(b)(5) standard. 740 F. Supp. at 1423; Order at 24, *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin*, No. 3:74-cv-00313-bbc (W.D. Wis. Dec. 13, 2013).

The Seventh Circuit's opinion is replete with unfounded assumptions about deer hunting. It opines, for instance, that a deer illuminated at night by a night hunter's light is "a perfect target," and that hunting deer during the day is more likely to be dangerous because a deer is more likely to be running when a hunter shoots at it. *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin*, 769 F.3d 543, 547 (7th Cir. 2014). Omitting, for example, the common-sense fact that a bullet easily passes through a deer, and assuming, for example, that hunters fire at moving deer, the Seventh Circuit does its own inexpert analysis, dismissing the District Court's findings, which rightly credited the state's concerns about the safety of night hunting. As Wisconsin's Petition notes, the Seventh Circuit also erroneously stated that Michigan and three other states "allow Indians to hunt deer at night." *Id.* at 548, Pet. at 22. To the contrary, Michigan law generally prohibits any hunting for the period from 30 minutes after sunset to 30 minutes before sunrise. Wildlife Conservation Order 2.5(1) (http://www.michigan.gov/documents/dnr/WCO_458867_7.pdf). And there is no exception in the Wildlife Conservation Order for tribal members, much less approval of tribal night hunting. Another state the Seventh Circuit erroneously identifies, Washington, also does not allow anyone to spotlight deer at night. 769 F.3d at 548; Wash. Rev. Code § 77.15.450.

The Seventh Circuit also downplays the potential public safety threat posed by allowing Indians to hunt deer at night, remarking that the Indian population is "very small." *Id*. at 548. But if the Seventh Circuit is correct that Wisconsin's Indian population is 1% of the state's total population, and 2010 Census figures show that Wisconsin had about 5.7 million people, there are about 57,000 Indians in Wisconsin, which does not seem to be a small figure. *Id*.; U.S. Census Bureau, Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2014, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk. Further, the amount of land on which night hunting would be permitted under the Seventh Circuit's decision is staggering. The ceded territory at issue encompasses much of Wisconsin's northern third – approximately 22,400 square miles. Wis. Dep't Nat. Resources, Ceded Territory in Wis., http://dnr.wi.gov/topic/Fishing/ceded/index.html. While the Seventh Circuit pointed out that much of this enormous swath of land is sparsely populated, it also acknowledged that a high caliber rifle bullet of the sort used for deer hunting can travel far, and a night hunter cannot see behind his target. 769 F.3d at 547-48. The Seventh Circuit took improper initiative to do its own factual research, and its chosen facts add up, at best, inconclusively.

The Seventh Circuit's substitution of its judgment for that of WDNR's as to the safety of night hunting is most apparent where that court remarks, "[g]reater experience with deer hunting suggests that a total ban is no longer (if it ever was) necessary to ensure public safety." *Id*. at 548. WDNR has the experience, authority, and expertise to determine the safety of

hunting. In fact, WDNR has accumulated more experience with taking deer at night, given the culling work its employees have conducted, and still deems it unsafe for the general public to hunt deer at night. The Seventh Circuit should have afforded greater credit to the District Court's findings that the judgment should not be reopened, and to the vital public safety role that WDNR plays as it exercises the police power to protect the public.

The Seventh Circuit's decision operates to foreclose Wisconsin's use of its police power to protect the public safety. This decision may resonate well beyond Wisconsin and the states in the Seventh Circuit, and in part for this reason, AFWA requests that this Court grant certiorari.

B. The Seventh Circuit's opinion harms states' legal authority to conserve fish and wildlife.

States have legal authority to manage fish and wildlife within their borders, except for federally protected species. States, as public trustees, hold wildlife in trust for their citizens. The state public trust relationship over wildlife is one of the keystones of the North American Model of Wildlife Management, which is a set of principles that guides fish and wildlife management in the United States and Canada. Geist, *supra*, at 175.

The story of state authority over fish and wildlife resources in the United States, grounded in the public trust, begins 200 years ago. In *Arnold v. Mundy*, 6 N.J.L. 1 (N.J. Sup. Ct. 1821), the New Jersey Supreme Court had before it a dispute as to who had the right to harvest oysters from a riverbed. The court found that

the English Crown held navigable waters and the submerged lands below them in trust for the public use, and the state became trustee following the American Revolution. *Id*. at 43. As a result, the court ruled against private property rights in fisheries and in favor of a public trust theory of ownership. *Id*. at 65. This Court adopted *Arnold's* public trust theory of fisheries ownership in *Martin v. Waddell*, 41 U.S. 367 (1842). *Martin* is thus the point from which this Court's jurisprudence on the public trust theory of state ownership of fish and wildlife in the United States begins.[3]

This Court's opinion in *Geer v. Connecticut* provides the single strongest statement of state public trust ownership of fish and wildlife in the Court's jurisprudence. 161 U.S. 519. The petitioner in *Geer* challenged his conviction under Connecticut law for transporting across state lines game birds killed in Connecticut, claiming in part that the law was unconstitutional under the Commerce Clause. *Id*. at 521-22. Justice White, writing for the majority, noted,

> The ownership being in the people of the state, the repository of the sovereign authority . . . it necessarily results that the legislature, as the

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[3] Following *Martin*, this Court reaffirmed state trust ownership of fisheries in *Smith v. Maryland,* 59 U.S. 71, 74-75 (1855) (upholding a state law prohibiting oyster harvest with a scoop or drag); in *McCready v. Virginia,* 94 U.S. 391, 397 (1876) (upholding a state law prohibiting nonresidents from planting oyster beds in tidal waters); and in *Manchester v. Massachusetts,* 139 U.S. 240, 266 (1891) (affirming the state's right to regulate menhaden fishing). In all three cases, the court based its decision on the state's public trustee ownership of fisheries.

> representative of the people of the state, may withhold or grant to individuals the right to hunt and kill game or qualify or restrict [the right], as . . . will best subserve the public welfare.

Id. at 533. Thus, this Court upheld the petitioner's conviction, holding that state ownership of wildlife in the public trust gave the state the authority to regulate use of wildlife, to include restricting its movement in interstate commerce. *Id*. at 533-35. It also underscored that state regulation of game serves the public welfare. *Id*. at 533.

Geer's bold declaration of state authority over endemic fish and wildlife represents the high water mark of this Court's recognition of that authority. A handful of subsequent cases[4] chipped away at the edges of state authority over fish and wildlife resources, yet the bulk of state authority over states' endemic fish and wildlife resources remains intact. This Court expressly recognized in *Baldwin v. Fish and Game Comm'n of Mont.* that states retain much authority over fish and wildlife resources. 436 U.S. 371, 386, 392 (1978) (upholding a challenge to Montana's elk hunting regulations). Today, only in a few instances does

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[4] *Missouri v. Holland*, 252 U.S. 416, 435 (1920) (holding that the Migratory Bird Treaty and implementing legislation superseded state regulation of migratory birds); *Hunt v. United States*, 278 U.S. 96, 101 (1928) (holding that the Property Clause allows the federal government to control deer that are overgrazing federal land); and *Kleppe v. New Mexico*, 426 U.S. 529, 547 (1976) (holding that the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1331 *et seq*., and the Property Clause grant the federal government authority over wild horses and burros).

federal law limit state authority over fish and wildlife held in the public trust. *Hughes v. Oklahoma*, 441 U.S. 322, 342 (1979) (Rehnquist, J., dissenting). These include direct conflict between state and federal law, state regulations that improperly discriminate against interstate commerce, and state regulations that violate the Equal Protection Clause of the 14th Amendment. *Id*. In addition, many states have since passed constitutional amendments and enacted statutes that declare and solidify their authority over fish and wildlife, as discussed *infra*.

This Court revisited *Geer* in *Hughes v. Oklahoma*, overturning *Geer* only to the extent that *Geer* permitted state regulation of fish and wildlife to discriminate against interstate commerce. 441 U.S. at 339. In *Hughes*, the petitioner appealed his conviction under an Oklahoma law that prohibited transporting native minnows out of the state. *Id*. at 324. Applying its Commerce Clause test articulated in *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970), this Court found that the Oklahoma law was the most discriminatory regulatory alternative and reversed petitioner's conviction. 441 U.S. at 336-39. But the opinion makes several points indicating the importance of and the survival of state authority to manage fish and wildlife.

First, the Court "makes ample allowance for preserving, in ways not inconsistent with the Commerce Clause, the legitimate state concerns for conservation and protection of wild animals," which it notes are "legitimate local purposes similar to the States' interests in protecting the health and safety of their citizens." *Id.* at 335-37. Justice Rehnquist's dissent goes further, calling conservation a "[s]tate's

substantial interest," "important state interest," and a "special interest." *Id*. at 342. He endorses the state public trust ownership of wildlife, calling it a "shorthand way" of describing the strong state interest in conservation of its fish and wildlife. *Id*. Like the majority, Justice Rehnquist recognizes that, "a state's power to preserve and regulate wildlife within its borders is not absolute," but goes on to explain that only in a few instances does federal law limit in part a state's authority over its wildlife. *Id*. These include a direct conflict with federal law, an example of which is the Migratory Bird Treaty Act as in *Missouri v. Holland*; improper discrimination against interstate commerce, as in *Hughes;* and to the extent that the regulation violates the Equal Protection Clause of the 14th Amendment, as in *Takahashi v. Cal. Fish and Game Comm'n*, 334 U.S. 410 (1948). Otherwise, "[s]tate[s are] accorded wide latitude in fashioning regulations appropriate for protection of [their] wildlife," and their "special interest in preserving [their] wildlife should prevail." 441 U.S. at 342-43.

Other sources support the notion that states have authority to manage fish and wildlife resources through a public trust theory. Preeminent public trust scholarship notes the survival – and indeed the vitality – of state public trust ownership of wildlife. *See, e.g*., Michael C. Blumm & Lucus Ritchie, *The Pioneer Spirit and the Public Trust: The American Rule of Capture and State Ownership of Wildlife*, 35 Envtl. L. 673, 706 (2005). Many federal statutes contain provisions reserving state authority over fish and wildlife resources. For example, the Federal Lands and Policy Management Act, which sets the framework for the Bureau of Land Management's administration of

federal lands, contains strong language favoring state authority: "nothing in this Act shall be construed . . . as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife." 43 U.S.C. § 1732(b). Congress wrote similar language into the National Wildlife Refuge Administration Act of 1966, 16 U.S.C. § 668dd(m), "[n]othing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the [Refuge] System." Many other federal acts, ranging from the Sikes Act, 16 U.S.C. § 670a, *et seq*., to the Wild and Free-Roaming Horses and Burros Act, to the Endangered Species Act, 42 U.S.C. § 1531, *et seq*., have provisions recognizing and reserving the role of the states in species conservation, and involve states through reservations of authority, consultation requirements, or cooperative agreements, among other instruments.

Many states have heeded the majority's point in *Hughes* that there is "ample room" for them to regulate regarding and to conserve their fish and wildlife, which is a "legitimate state interest." 441 U.S. 335-36. 7 states, including Arkansas, California, Florida, Missouri, Louisiana, Oklahoma, and Tennessee, have state constitutional amendments explicitly codifying their state common-law public trust ownership of fish and wildlife and vesting management authority in the state. California's amendment declares, "[t]he Legislature may delegate to the [Fish and Game] commission such power relating to the protection and propagation of fish and game as the Legislature sees fit." Cal. Const. art. IV, § 20(b). Alabama, Arkansas,

Georgia, Idaho, Kentucky, Louisiana, Mississippi, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, Tennessee, Vermont, Virginia, Wisconsin and Wyoming have state constitutional amendments guaranteeing citizens the right to hunt and fish, many of which expressly or impliedly codify their state common-law public trust ownership of fish and wildlife. For example, North Dakota's amendment states, "[h]unting, trapping, and fishing and the taking of game and fish are a valued part of our heritage and will be forever preserved for the people and managed by law and regulation for the public good." N.D. Const. art. XI, § 27. California and Rhode Island have constitutional amendments guaranteeing the right to fish and with similar language alluding to state authority. *See, e.g.,* R.I. Const. art. I, § 17. Many states instead or also have statutory provisions that codify their state fish and wildlife agency's role in managing and conserving state fish and wildlife. *See, e.g*., Ala. Code § 9-2-2. Thus, as Professor Blumm recognizes, "the state ownership doctrine lives on in the twenty-first century in virtually all states, affording states ample authority to regulate the taking of wildlife and to protect their habitat." Blumm, *supra*, at 706.

While states codify their public trust authority over fish and wildlife in various ways, all assign the work of conservation to a state fish and wildlife conservation agency. In some states, that agency is the department of fish and wildlife; other states assign fish and wildlife conservation to a department of natural resources, an environmental agency, or a fish and game commission. Some states even split fish from wildlife, assigning authority and responsibility to two different agencies,

or split freshwater fish and wildlife from marine resources. Each state fish and wildlife agency, though, has the authority and duty to manage fish and wildlife, which it derives through the state public trust ownership that this Court and state law recognize. WDNR is no exception.

The Seventh Circuit's opinion creates a result that improperly curtails WDNR's authority to make decisions about hunting safety, and on a larger level, about conservation. WDNR, as explained *supra*, has ample police-power-derived authority to set standards for hunting safety. It also has ample legal authority to conserve fish and wildlife under the public trust. The test that the District Court articulated also recognizes this authority, as under the test, both conservation and safety are legitimate reasons to apply hunting regulations to the respondent tribes. Growing from WDNR's public-trust-based legal authority is its authority to regulate in favor of fish and wildlife conservation. This includes the authority to regulate hunting, and hunting safety.

The question before the District Court was whether or not the respondent tribes could show that circumstances had changed regarding the safety of hunting deer at night, and thus, whether the old judgment should be reopened. But the Seventh Circuit's improper reversal of the District Court's decision affirming that WDNR properly disallows night hunting has implications beyond the narrow question the District Court answered. It usurps and curtails WDNR's public trust authority to manage fish and wildlife, since the Seventh Circuit effectively took on the agency's role and decided what was safe. As a

result, this erroneous decision could also impact other states' public trust authority to manage fish and wildlife, authority that this Court has recognized, that other sources of federal law have recognized, that state law recognizes, and that secondary sources also recognize.

Since the Seventh Circuit's decision could have far-reaching impacts on AFWA's other state agency members as they work to protect the public safety and to conserve fish and wildlife, AFWA requests that this Court grant certiorari.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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