A SPLASH TOO FAR: TENNESSEE'S RECREATIONAL USE STATUTE AFTER *BECKHAM V. CITY OF WAYNESBORO*

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INTRODUCTION

The year is 1955, and you and your spouse find the perfect spot to settle down, build a home, and start a family. A quaint parcel tucked up along the edge of a rocky embankment with an immaculate view out over the Tennessee River. You put in a bid with crossed fingers, and lo and behold, you win! However, as construction begins, you notice that people frequent the embankment to fish. You confront them about their choice to fish on your property, and you learn that the previous owner had long-standing agreements with the community providing that they could fish on the property whenever they pleased. In an act of goodwill, given the circumstances, you allow the public to continue to fish on the property at certain fixed times. During one of these designated times, a visitor named Douglas steps on rusty

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nails inadvertently overturned by your contractor and later dies from tetanus. His heirs sue for wrongful death, and the court holds you liable, awarding damages exceeding your home's value.[1] In an instant, your dream life shatters, forcing you to start all over again.

Stories like this were all too common before the passage of recreational use statutes following the United States' post-World War II economic expansion.[2] As families began earning enough money to leave large cities for the newly developing suburbs, they often acquired land previously accessible to the public.[3] This mass privatization of land reduced the space available for public use.[4] At the same time, the prosperity fueling suburban expansion also enabled a new demographic of individuals with disposable income to actively pursue recreational hobbies.[5] These two factors placed immense pressure on landowners to allow recreational access to their property.[6] Landowners then faced a difficult choice: give in to public demands and risk losing everything they had worked for, or deny access and face

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1. At common law, under the trespasser, licensee, and invitee framework, landowners owed a duty to others coming on their property to keep such property in a safe condition. John C. Becker, *Landowner or Occupier Liability for Personal Injuries and Recreational Use Statutes: How Effective Is the Protection?*, 24 IND. L. REV. 1587, 1587 (1991).

2. *See* Le Roux v. State, 121 N.E.2d 386, 388 (N.Y. 1954) (holding the state liable when plaintiff falls into an abandoned well while hunting on public grounds); *see also* Imre v. Riegel Paper Corp.,132 A.2d 505, 506–07 (N.J. 1957) (finding that the plaintiff has a cause of action, even when trespassing on defendant's property, when they suffered injuries from a cave while fishing); Banker v. McLaughlin, 208 S.W.2d 843, 844 (Tex. 1948) (holding that a land owner is liable for the death of plaintiffs son when the son trespassed on defendants property and drowned while swimming in a large watering hole); Loomis v. State, 285 A.D. 988, 988 (N.Y. App. Div. 1955) (holding that a plaintiff who fell into a hidden well while picking berries on the ground made available to the public can proceed with their claim); *Landowner Liability: An Overview*, THE NAT'L AGRIC. L. CTR., https://nationalaglawcenter.org/overview/landowner-liability (last visited Jan. 20, 2025).

3. Michael J. Lunn, *Class Dismissed: Forty-Nine Years Later, Recreational Use Statutes Finally align With Legislation's Original Intent*, 20 DRAKE J. AGRIC. L. 137, 142 (2015).

4. *See* Becker, *supra* note 1, at 1591–92 (explaining that landowner liability and trespass laws discouraged landowners from making their land available for public access).

5. *Leisure: Where No Recession Is in Sight*, U.S. NEWS & WORLD REP., Jan. 15, 1979, at 41.

6. Becker, *supra* note 1, at 1587.

community backlash. These tensions laid the groundwork for the first recreational use statutes in the late 1950s and early 1960s.[7] These statutes sought to balance the interests of landowners and recreationists by limiting landowners' liability[8] for injuries sustained by those using their land for recreational purposes.[9] What began as statutes aimed at protecting private landowners who allowed hunting and fishing on their property has expanded to include protections for all types of landowners[10] and a wide range of recreational activities in a continuing effort to balance public access with landowner protections.[11]

I. ISSUES

The fundamental issues presented in *Beckham v. City of Waynesboro* are whether the court's current interpretation of the Tennessee Recreational Use Statute ("TRUS") (1) strays from the statute's purpose and whether it (2) effectively balances the interests of landowners and recreationists.

A. *Tennessee Recreational Use Statue*

Tennessee passed its first version of its recreational use statute in 1963.[12] The law only applied to private landowners and excluded immunity for injuries resulting from "willful or malicious failure[s] to guard or warn against a dangerous condition, use, structure or activity."[13] In 1987, the legislature significantly revised the TRUS.[14] First, the new version of the statute expanded protections to real property

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7. *See id.* at 1587–88.

8. However, this limited liability is not absolute and can be reduced in certain circumstances, for example, if a defendant is willful or wanton in causing the plaintiff's injuries or acts in a grossly negligent manner. *See* TENN. CODE ANN. § 70-7-104(a)(1).

9. *See* Becker, *supra* note 1, at 1587–88.

10. This includes land owned by any government entity. *See* TENN. CODE ANN. § 70-7-101(1)(B).

11. *See* Becker, *supra* note 1, at 1587–88.

12. Morgan v. State, No. M2002-02496-COA-R3CV, 2004 WL 170352, *4 (Tenn. Ct. App. Jan. 27, 2004).

13. *Id.*

14. *Id.*

owned by governmental entities, and second, it broadened the exemption from liability to cover "gross negligence, willful or wanton conduct."[15]

In 2004, the legislature again made changes to the TRUS by removing the provision prohibiting immunity when "injuries suffered in any case where permission to [engage in recreational activities] was granted for a consideration."[16] As a result, TRUS currently provides that:

> The landowner, lessee, occupant, or any person in control of land or premises owes no duty of care to keep such land or premises[17] safe for entry or use by others for such recreational activities as hunting, fishing, trapping, camping, water sports, white water rafting, canoeing, hiking, sightseeing, animal riding, bird watching, dog training, boating, caving, fruit and vegetable picking for the participant's own use, nature and historical studies and research, rock climbing, skeet and trap shooting, sporting clays, shooting sports, and target shooting, including archery and shooting range activities, skiing, off-road vehicle riding, and cutting or removing wood for the participant's own use, nor shall such landowner be required to give any warning of hazardous conditions, uses of, structures, or activities on such land or premises to any person entering on such land or premises for such purposes.[18]

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15. *Id.*

16. Mathews v. State, No. W2005-01042-COA-R3CV, 2005 WL 3479318, *5 (Tenn. Ct. App. Dec. 19, 2005).

17. *See* TENN. CODE ANN. § 70-7-101(1)(A)–(B) ("'Land' or 'premises' means and includes all real property, waters, private ways, trees and any building or structure that might be located on real property, waters and private ways, [including those owned by any governmental entity].").

18. *Id.* § 70-7-102(a).

This list of activities is not "exclusive nor exhaustive," as activities not explicitly enumerated in Tenn. Code Ann. § 70-7-102 ("Section 102") may also fall within the scope of the recreational use statute if the activity is by its very nature recreational.[19] However, a defendant is still liable if a plaintiff engages in a recreational activity defined in Section 102 while on another's land that is open to the public if either of the exemptions in Tenn. Code Ann. § 70-7-104 ("Section 104") is present.[20] Under Section 104, a landowner is not shielded from liability when either: (1) the landowner acts in a grossly negligent manner, or (2) the injuries were caused by individuals permitted to use the land for recreational activities, and the landowner owed a duty to ensure the land's safety or warn of hazards.[21] Therefore, to successfully raise the TRUS as an affirmative defense, a defendant must prove three things: (1) that they are a landowner; (2) that the plaintiff was injured while engaged in a recreational activity on their land; and (3) that none of the exceptions in Section 104 are present.[22]

II. ANALYSIS OF BECKHAM V. CITY OF WAYNESBORO

On July 28, 2020, Robert Beckham ("Mr. Beckham") and his family purchased admission to the Waynesboro City Park and Pool to swim for a day.[23] While there, Mr. Beckham went to use the diving board and as he began to jump, he slipped, fell, and hit his knee on the board.[24] Two days later, Mr. Beckham underwent surgery on his leg to repair a ruptured quadriceps tendon and torn lateral meniscus.[25] Following his surgery, Mr. Beckham filed a complaint against the City of Waynesboro, claiming negligence under the Governmental

19. Parent v. State, 991 S.W.2d 240, 243 (Tenn. 1999).

20. TENN. CODE ANN. §§ 70-7-104(a)(1), (2).

21. *Id.*

22. Morgan v. State, No. M2002-02496-COA-R3CV, 2004 WL 170352, *5 (Tenn. Ct. App. Jan. 27, 2004).

23. Beckham v. City of Waynesboro, No. M2023-00654-COA-R3-CV, 2024 WL 2153536, at *1 (Tenn. Ct. App. May 14, 2024).

24. *Id.*

25. *Id.*

Tort Liability Act.[26] The complaint alleged that the city breached its duty to maintain the diving board, had notice that the board was in a dangerous condition, and failed to remediate the board's dangerous condition.[27]

The City of Waynesboro moved for summary judgment, arguing that the city was immune from liability as a matter of law under the TRUS because the city owned the pool, Mr. Beckham engaged in the recreational activity of "water sports" through his participation in swimming and diving, and none of the exemptions in Section 104 applied.[28] Mr. Beckham filed a response arguing that the TRUS was ambiguous and should not apply to a city pool because the recreational activities enumerated in the TRUS involve significant amounts of land or water to engage in, such as hunting, fishing, or whitewater rafting.[29]

In its order granting summary judgment, the trial court concluded that the TRUS was not ambiguous and that the plain meaning of the term water sports includes swimming and diving.[30] The trial court then focused on whether there is a difference between improved and unimproved areas when a plaintiff is injured.[31] Ultimately, the court concluded that there is "no need to differentiate between an improved swimming area[32] . . . and a natural lake."[33]

On appeal, Mr. Beckham again argued that he did not engage in a recreational activity as defined in Section 102 because although one could say swimming broadly falls under the definition of "water sports," it was not the type of

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26. *Id.*

27. *Id*. Specifically, the appellants argued that the city purchased and applied eight feet of diving board anti-slip sealant. Brief of Appellants at 10, Beckham v. City of Waynesboro, No. M2023-00654-COA-R3-CV, 2024 WL 2153536 (Tenn. Ct. App. May 14, 2024). However, the diving board in question was sixteen feet in length. *Id.* Plaintiff contends that the city had notice that the diving board was in a dangerous condition as another had slipped and fallen due to wet conditions on the diving board in the proceeding weeks before plaintiffs' injury. *Id.*

28. *Beckham*, WL 2153536, at *1.

29. *Id*.

30. *Id.* at *2.

31. *Id.*

32. Outdoor swimming pool with a diving board.

33. *Beckham*, WL 2153536, at *2.

activity that Section 102 intended to regulate, which instead appears to apply to swimming in a lake, pond, river, or stream.[34] Meanwhile, the city argued that Mr. Beckham engaged in a "recreational activity" because "the plain and ordinary meaning of 'water sports' includes swimming."[35]

The appellate court affirmed the trial court's decision, reasoning that Mr. Beckham engaged in recreational activities because the recreational activities listed in Section 102 are "neither exclusive nor exhaustive."[36] Swimming and diving are recreational in nature and comparable to the other activities listed in Section 102, which fall under the category of watersports.[37] Based on these factors, swimming and diving qualify as recreational activities under Section 102.[38]

III. IMPLICATIONS OF *BECKHAM*

As demonstrated in *Beckham*, Tennessee courts interpreting the TRUS typically grant defendants significant latitude to raise an affirmative defense and negate liability. However, this Note argues that the scope of the TRUS should not include swimming at public pools and other similar activities for three key reasons: (1) the TRUS was not intended to absolve public pools from liability; (2) swimming at a public pool is fundamentally different from the other recreational activities covered by the TRUS; and (3) Tennessee's recreational use statute is ineffective in its current form. Therefore, narrowing the TRUS is essential to achieve a fair balance between the interests of landowners and plaintiffs.

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34. *Id.* at *6.

35. Brief of Appellee at 16, Beckham v. City of Waynesboro, No. M2023-00654-COA-R3-CV, 2024 WL 2153536 (Tenn. Ct. App. May 14, 2024).

36. *Beckham*, WL 2153536, at *6 (quoting Parent v. State, 991 S.W.2d 240, 243 (Tenn. 1999)).

37. *Id.*

38. *Id.*

A. *The TRUS was not Intended to Absolve Public Pools from Liability*

Recreational use statutes were not designed to absolve liability for every type of recreational use.[39] Tennessee's original 1963 TRUS law only protected "hunting, fishing, trapping, camping, water sports, hiking, and sightseeing," all of which are inherently outdoorsy rural activities.[40] Moreover, the statute's original and modified versions are in the "Wildlife Resources" section of the Code, and the TRUS itself "is intended to apply to sportsmen who commonly use the land of another for recreation."[41]

The court's decision to extend liability protections to more developed and commercialized areas, like the pool in *Beckham*, merely because swimming can be considered a water sport, or because swimming "is recreational in nature," contradicts the statute's purpose of protecting landowners who open their land to traditional outdoor pursuits.[42] Under this logic, landowner immunity under Section 102 could apply to other urban activities that occur in sport-specific facilities, such as basketball, football, baseball, and hockey, as they are all recreational in nature.

If the legislature sought to extend liability protections to include urban recreational activities, it could have done so by enumerating such activities within the TRUS. However, since its passage in 1963, the legislature has amended the TRUS four times, and each time, they have chosen not to expressly expand its scope to include such activities, indicating a deliberate choice to maintain its original focus on rural settings.[43] The TRUS is not intended to protect

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39. Becker, *supra* note 1, at 1588.

40. TENN. CODE ANN. § 51-803 (1966) (current version at TENN. CODE ANN. § 70-7-102).

41. Wilkerson v. Altizer, 845 S.W.2d 744, 750 (Tenn. Ct. App. 1992).

42. Becker, *supra* note 1, at 1588; *Beckham*, WL 2153536, at *6 ("Here, swimming and diving are activities that are recreational in nature and comparable to several of the activities listed in § 102, and which both fall under the general category of 'water sports'.").

43. *See* 1987 Tenn. Pub. Acts 897; 2004 Tenn. Pub. Acts 2198; 2010 Tenn. Pub. Acts 1; 2015 Tenn. Pub. Acts c. 53; *see also* 62 AM. JUR. 2D *Premises Liability* § 135

landowners who fail to properly maintain their facility,[44] and the court's broad interpretation extends liability protections to nearly all landowners operating premises where recreation occurs. This shift in interpretation undermines the statute's original intent and now provides immunity to fully developed, zoned, and regulated swimming pools operated by city governments.

B. *Swimming at a Public Pool is Fundamentally Different Than the Other Recreational Activities Covered by the TRUS*

Swimming at a public pool is a fundamentally different type of recreational activity than the other recreational activities covered by the TRUS due to the level of supervision. Take, for instance, a hunting trip, where one can sit in their tree stand for hours a day over the course of a week and may never interact with a game warden. Consider sightseeing in a park; perhaps one will see a staff member, but perhaps one will not. In any case, staff are not following patrons to ensure they adhere to the park's rules.

Compare these examples to a swimming pool, where lifeguards and staff are stationed everywhere and can monitor and correct a swimmer's behavior at any moment. The presence of staff who can actively intervene and correct behavior suggests that the land operator assumes a responsibility to oversee the safety of their patrons,[45] in stark contrast to the loose approach taken with respect to the supervision of the other activities enumerated in Section 102.

Moreover, a pool must comply with the Tennessee Department of Health's rules for public pools before it can open to the public.[46] These rules cover everything from pool operations to design and inspection.[47] In the context of

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(2025) ("[C]ourts have stated that [recreational use] statute[s] [are] intended to apply to nonresidential, rural, or semirural land.").

44. *See* 1987 Tenn. Pub. Acts 897; 2004 Tenn. Pub. Acts 2198; 2010 Tenn. Pub. Acts 1; 2015 Tenn. Pub. Acts c. 53.

45. RESTATEMENT (SECOND) OF TORTS § 314A (1965).

46. *See* TENN. COMP. R. & REGS. 1200-23-5 (2024).

47. *Id.*

Beckham, the Department of Health's rules mandate that a lifeguard be present at all times at any pool operating a diving board greater than one meter tall.[48] Thus, the State required active supervision at public pools, yet it also granted liability protections to the entity even if the employee overseeing the pool acts negligently while performing their job, contradicting the fundamental principles of tort law.[49]

This is particularly evident when contrasting *Beckham* with other areas of tort law. For instance, our tort laws do not absolve defendants from liability in food safety cases simply because the plaintiff assumed the risk of catching a foodborne illness by eating at a restaurant. Nor does a physician's duty of care decrease because a procedure was elective rather than mandatory. The classification of a plaintiff's activity should not supersede clear breaches of regulations deemed necessary for an activity's safe performance.[50] Especially when doing so would simultaneously limit the available remedies for those harmed.

C. *Tennessee's Recreational Use Statute is Ineffective in its Current Form*

Tennessee's recreational use statute is ineffective and fails to balance the interests of landowners and recreationists because it provides too much protection to landowners in its current form. Every state in the United States has its own recreational use statute.[51] As applied to the facts in *Beckham*, Tennessee is only one of several states where the City of

48. *Id.* at 1200-23-5-.02(3)(a)(2).

49. *See* RESTATEMENT (SECOND) OF TORTS § 901 (1979).

50. One caveat to this includes individuals upon the property of another for an unlawful purpose. *See* TENN. CODE ANN. § 29-34-201 ("Any person who is injured while committing a felony or attempting to commit a felony on the real property of another is barred from recovery of actual or punitive damages resulting from injuries, either accidentally or intentionally inflicted by the owner.").

51. *States' Recreational Use Statutes*, THE NAT'L AGRIC. L. CTR., https://nationalaglawcenter.org/state-compilations/recreational-use/ (last visited Jan. 8, 2025).

Waynesboro qualifies for explicit immunity.[52] In every other state, the City of Waynesboro would be unlikely to succeed by raising the TRUS as an affirmative defense for one of two primary reasons.[53]

First, in the common law, other state courts have excluded swimming at a public pool from the broad definition of "water sports."[54] These courts have articulated that the most natural reading of the applicable recreational use statute suggests that the language applies to larger areas and bodies of water.[55] Any other interpretation would stray from the objectives of the recreational use statute and grant blanket immunity to landowners without considering the property's characteristics.[56] Similarly, although an activity like "swimming" may be expressly enumerated in the recreational use statute, it must still be read in the

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52. *Id.* Louisiana's recreational use statute provides "[A]n owner of land . . . who permits with or without charge any person to use his land for recreational purposes . . . does not . . . [i]ncur liability for any injury to [a] person . . caused by any defect in the land . . . ." LA. STAT. ANN. § 2795 (2024). Indicating a public pool may still retain liability, however, the common law contradicts this under a prior version of the Louisiana recreational use statute.

Alabama's recreational use statute provides immunity to persons who charge an admission fee so long as they do not operate a commercial enterprise. ALA. CODE § 35-15-26 (2024). A public pool is unlikely to qualify as a commercial enterprise. Ex parte Pub. Parks & Recreation Bd. of City of Scottsboro, No. SC-2023-0720, 2024 WL 5179878, *16 (Ala. Dec. 20, 2024). In answering whether an entity operates as a commercial enterprise, the court will have to determine if the entity is "profit motivated." *Id.* (citing ALA. CODE 35-15-21(5) (2024). Even those entities that collect a fee do not morph into a commercial enterprise if they exist for the benefit of the public.

Texas' recreational use statute provides an invited recreational guest the same protections as a trespasser while on government property TEX. CIV. PRAC. & REM. CODE ANN. § 75.002 (2024). Wisconsin's recreational use statute states "no owner and no officer, employee or agent of an owner owes to any person who enters the owner's property to engage in recreational activity a duty to keep the property safe for recreational activities." WIS. STAT. ANN. § 895.52 (2024). Minnesota's recreational use statue only restricts liability for commercial for-profit enterprise who charge an admission fee. MINN. STAT. ANN. § 604A.21 (2024).

53. *See States' Recreational Use Statutes*, *supra* note 52 (displaying an interactive map of each states recreational use laws allowing for the comparison of the variation of recreational use laws among the states).

54. Keelen v. State Dep't of Culture, Recreation, and Tourism, 463 So. 2d 1287, 1290–91 (La. 1995); Erickson v. Century Mgmt. Co., 268 S.E.2d 779, 780 (Ga. Ct. App. 1980).

55. *Keelen*, 463 So. 2d at 1291; *Erickson*, 268 S.E.2d at 780.

56. *Keelen*, 463 So. 2d at 1290.

overarching context in which its used.[57] Ultimately, extending a liberal interpretation of water sports from activities occurring in large bodies of water to swimming in public or motel pools would lead to absurd results.[58]

Second, forty-four states include a carve-out in their recreational use statute that eliminates immunity for property owners who charge an admission fee for recreational activities.[59] The thought process is that the choice to require payment creates a business on the premises, and with it comes the responsibility to monitor the property and exercise reasonable care for the patrons on one's property.[60]

Tennessee had a similar carve-out provision in the TRUS prior to 2004, but it was removed when the Tennessee legislature passed the Off-Highway Motor Vehicle Act of 2004 (the "Bill").[61] The Bill recognized the growing popularity of the off-road vehicle industry in the state and sought to protect landowners from potential liabilities.[62] Initially, the proposed language of the Bill deleted Tenn. Code Ann. § 70-

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57. *Id*. at 1291.

58. *Id*.; *Erickson*, 268 S.E.2d at 780.

59. *See* ALASKA STAT. ANN. § 09.65.202(c)(1) (2024); ARIZ. REV. STAT. ANN. § 33-1551 (2024); ARK. CODE ANN. § 18-11-305 (2024); CAL. CIV. CODE § 846 (2024); COLO. REV. STAT. ANN. § 33-41-103 (2024); CONN. GEN. STAT. ANN. § 52-557 (2024); DEL. CODE ANN. tit. 7, § 5906 (2024); FLA. STAT. ANN. § 375.251 (2024); GA. CODE ANN. § 51-3-25 (2024); HAW. REV. STAT. ANN. § 520-5 (2024); IDAHO CODE ANN. § 36-1604 (2024); 745 ILL. COMP. STAT. ANN. 65/4 (2024); IND. CODE ANN. § 14-22-10-2 (2024); IOWA CODE ANN. § 461C.6 (2024); KAN. STAT. ANN. §§ 58-3204 (2024); KY. REV. STAT. ANN. § 411.190 (2024); ME. REV. STAT. ANN. tit. 14, § 159-A (2024); MD. CODE ANN., Nat. Res. § 5-1104 (2024); MASS. GEN. LAWS ANN. ch. 21, § 17C (2024); Mich. COMP. LAWS ANN. § 324.73301 (2024); MISS. CODE ANN. § 89-2-7 (2024); MO. ANN. STAT. § 537.348; MONT. CODE ANN. § 70-16-302 (2024); NEB. REV. STAT. ANN. § 37-732 (2024); NEV. REV. STAT. ANN. § 41.510 (2024); N.H. REV. STAT. ANN. § 212:34 (2024); N.J. STAT. ANN. § 2A:42A-4 (2024); N.M. STAT. ANN. § 17-4-7 (2024); N.Y. GEN. OBLIG. LAW § 9-103 (McKinney) (2024); N.C. GEN. STAT. ANN. § 38A-4 (2024); N.D. CENT. CODE ANN. § 53-08-05 (2024); OHIO REV. CODE ANN. § 1533.18 (2024); OKLA. STAT. ANN. tit. 76, § 10.1 (2024); OR. REV. STAT. ANN. § 105.688 (2024); 68 PA. STAT. ANN. § 477-6 (2024); 32 R.I. GEN. LAWS ANN. § 32-6-5 (2024); S.C. CODE ANN. § 27-3-60 (2024); S.D. CODIFIED LAWS § 20-9-16 (2024); UTAH CODE ANN. § 57-14-204 (2024); VT. STAT. ANN. tit. 12, § 5793 (2024); VA. CODE ANN. § 29.1-509 (2024); WASH. REV. CODE ANN. § 4.24.210 (2024); W. VA. CODE ANN. § 19-25-2 (2024); WYO. STAT. ANN. § 34-19-105 (2024).

60. *See* Becker, *supra* note 1, at 1587–1605.

61. H.B. 1568, 103d Gen. Assemb., 2004 Reg. Sess. (Tenn. 2004); S.B. 875, 103d Gen. Assemb., 2004 Reg. Sess. (Tenn. 2004).

62. S.B. 875, 103d Gen. Assemb., 2004 Reg. Sess. § 3 (Tenn. 2004).

7-104(2) ("Section 104(2)") and replaced it with a nearly identical provision, finding liability when "[i]njuries suffered in any case where permission to hunt, fish, trap, camp, hike, sightsee, cave, or any other legal purpose was granted for a consideration."[63] Under this section, off-road vehicle riders would not receive the same protections as other recreational land users, even if they paid compensation to ride their off-road vehicle on the land.[64] However, the Bill ultimately enacted into law removed the whole provision, eliminating the compensation carveout for all recreational activities.[65]

The removal of this provision and the breadth of the court's definition of "recreational activities" has significantly altered the balance of rights and responsibilities under Tennessee's recreational use statute. Tennessee landowners can now prioritize profit without the same level of concern for the safety of patrons. The scope of immunity under the TRUS remains unclear without review of either the court's interpretation in *Beckham*, or the statute itself. For example, could a child using a public park's batting cage recover under TRUS? They are on city property, participating in the recreational activity of baseball. A more extreme case may involve a roller coaster collapse where riders fall to the ground. Although this scenario may not initially appear to fall under premises liability, a close reading of the TRUS suggests otherwise.

Section 102 does not preclude liability relating to all recreational activity; it only applies to liability resulting from "duties to maintain safe land or warn against hazardous conditions."[66] However, as defined in the TRUS, land includes "any building or structure that might be located on

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63. H.B. 1568, 103d Gen. Assemb., 2004 Reg. Sess. § 15 (Tenn. 2004).

64. *Id.* This provision was likely inapplicable to off-road vehicle riders due to the inherent danger of riding an off-road vehicle regardless of whether the landowner properly maintained their premises. When comparing fault and balancing liability, the legislature reasonably believed off-road vehicles were dangerous enough to justify near-absolute protections for landowners.

65. *Compare* S.B. 875, 103d Gen. Assemb., 2004 Reg. Sess. § 9 (Tenn. 2004), *with* H.B. 1568, 103d Gen. Assemb., 2004 Reg. Sess. § 15 (Tenn. 2004).

66. *See* Huls v. Davis, 835 F. App'x 845, 851 (6th Cir. 2020).

real property."[67] In essence, the TRUS can transform a roller coaster into "land" where a landowner can be shielded from liability if all the other requirements of Section 102 are present.[68] In this example, under the current scope of the TRUS, a landowner possessing a roller coaster may have immunity under Section 102 because they meet all the factors. Ultimately, the inability to definitively and confidently answer whether or not Section 102 immunity applies in these scenarios highlights the growing ambiguity created by the deletion of Section 104(2) and the liberal interpretation of Section 102.

CONCLUSION

Beckham highlights the critical flaw of the current interpretation of the TRUS. Applying the TRUS to activities and facilities not considered when the legislature originally drafted the law upends the balance the TRUS sought to create between landowner protection and public safety. To address this issue, Tennessee should pursue one of two reforms.

First, the Tennessee legislature should reinstate the compensation provision previously included in Section 104(2). This provision would prevent landowners and operators from claiming immunity under the TRUS when charging a fee for recreational activity access. Reinstating the provision would align the state with its counterparts, solidify that business owners owe their customers a duty of care, and align the statute with its original purpose of protecting landowners who give others access to the great outdoors.

Second, in the absence of legislative action, Tennessee courts should narrow their interpretation of the TRUS. Immunity under the statute should not extend to highly

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67. TENN. CODE ANN. § 70-7-101(1)(A).

68. *See Huls*, 835 F. App'x at 851; *see also Structure*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("Any construction, production, or piece of work artificially built up or composed of parts purposefully joined together.").

regulated or urban recreational facilities. By limiting the scope of "recreational activities" to those closely resembling outdoor pursuits, courts can better balance the public's right to safety with landowner immunity.

Implementing either solution would ensure that landowners are protected when they open their land to recreationists without unjustly denying remedies to those injured in commercial or urban recreational settings. These reforms are essential to maintaining public trust and accountability while preserving access to recreational opportunities in Tennessee.