

Free, but for a Fee: Addressing Racially Discriminatory Burdens on New Jersey Beaches,  
One Beach Tag at a Time

London Jones

Faculty Mentor: Prof. Randall S. Abate

Urban Coast Institute

Monmouth University

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## INTRODUCTION

“As soon as their feet hit the sand, their eyes would grow as wide as the ocean and they would take off running,” John Romanik, former seventh grade science teacher at Upper Deerfield Township Middle School, reminisced on his annual class trip to Cape May Point. “It is hard enough to keep kids interested about ecosystems in a classroom setting, let alone on a beach when many of them have never stood in front of an ocean before!” Romanik chuckled.

Living in New Jersey is often associated with three things: pork roll sandwiches, the feud between the North, South, and Central regions of the state, and enjoying summers along the Jersey shore. For most New Jersey residents, and out-of-state tourists who want in on the action, these three staples are easily attainable. However, Romanik’s story is not uncommon. The reason many of his students had never visited the beach, despite living within 40 minutes of the shore, was not because they had a fear of the ocean but because their families could not afford the high prices associated with a day at the shore. In Upper Deerfield Township, where Romanik taught, 19.8% of its population is Black (Cumberland County Department of Planning, 2019). New Jersey beach towns have reared their ugly heads time and time again in burdening public beach access protected under the Public Trust Doctrine, which has had the effect of excluding Black communities who seek to enjoy a day at the shore.

Oceans, and the shorelines that accompany them, are considered open and free for public use. The Public Trust Doctrine, which originated in 1821, is a common law doctrine protecting New Jersey residents’ and visitors’ access to the beaches (Kennedy, 2017). The doctrine protects against various limitations on this public right such as unjust private property ownership, discriminatory beach fees, and the absence of accompanying public services for beaches such as

restrooms and parking (Mulvaney & Weeks, 2007). Despite the doctrine's protections, local government policies and regulations on beach access can result in unintended discriminatory impacts on the basis of race. In an attempt to affirm the broad scope of the New Jersey Public Trust Doctrine, Gov. Murphy signed Senate Bill 1074 in 2019 (McKillop, 2019). The new legislation, which focuses primarily on infrastructure and agencies associated with the Jersey shore, fails to address a requirement that applies to all beachgoers when stepping on the sand: the beach tag.

New Jersey is one of the few states that requires the purchase of a tag for access to most of its beaches, with 41 towns across the coast charging from \$5 daily to \$100 seasonal per person (Koob & Roland, 2020). Since the introduction of beach tags at Bradley Beach in 1929, several court decisions imposed mandates to ensure equality when requiring these tags for the summer seasons. The reason behind tags lies in the need for coverage of beach-related expenditures, like lifeguard protection and police patrolling. As a way of avoiding increases in property taxes, beach tags serve as a "user fee" (Ambrosio, 2019). Nonetheless, a consistent spike in prices and the misuse of those funds by the towns have imposed a burden on Black beachgoers.

As for the towns that do not charge for beach tags, such as Atlantic City and the Wildwoods, their user fees come in the form of parking payments, casino revenues, and hospitality income. Although they do not physically enforce a small plastic tag at a high price simply to access the sand and surf, these towns utilize other income opportunities to help pay for beach-related expenditures. Ultimately, these forms of revenue can also have the effect of restricting access to particular groups of beachgoers, just like their sibling the beach tag.

Part I of this paper discusses the longstanding history of racial discrimination along the New Jersey coast. It then examines efforts to limit beach access through use of beach tags in

three bustling beach towns: Cape May Point, Belmar, and Asbury Park. Part II explores the legal framework governing the issue, grounded in New Jersey’s Public Trust Doctrine and the principles on which it was built. Additionally, the beach tag revenues from the above-referenced three towns are examined to reveal how the funds are being utilized for the betterment of the beaches and their patrons. Finally, Part III proposes transparency and accountability measures such as expenditure disclosure and beach tag revenue implementation that New Jersey can adopt to promote equitable access to public beaches and beach services for Black visitors to the Jersey shore.

## I. THE PROBLEM

### A. Racial Discrimination at the Jersey Shore: May this History Not Repeat Itself

Before 1900, beach segregation in the shore town of Atlantic City, New Jersey did not exist. Although Jim Crow laws had been enforced for over 20 years at that time, Black and white beachgoers were permitted to occupy the same stretches of sand. Hospitality has always been a booming business in Jersey shore towns, however, and by 1928, Atlantic City hotel owners began a tirade of complaints to city officials that resulted in a swift jump to a segregated shore (Stephens, 2014; Duhart, 2020).

White hotel patrons, many traveling from the Jim Crow South, had begun to vocalize disdain for their Black beach-going counterparts. The city’s response was to designate the beaches on the north side of town, starting at Missouri Avenue, accessible to Black visitors. Soon dubbed “Chicken Bone Beach,” after typical lunch leftovers discarded by the patrons, the

location was no mere coincidence. That side of town had already been occupied by Black residents, many of whom worked in the very same business industry that advocated for this segregation (Duhart, 2020). This dynamic created a sharp divide ensuring that Black individuals rarely crossed over into the white part of Atlantic City, unless it was to work.

Farther up New Jersey's coast and also in the early 1900s, Asbury Park was implementing its own segregative regulations as well. Mirroring Atlantic City's economic frontier, Asbury Park's founder, James A. Bradley, provided an abundance of jobs in the hospitality industry to Black individuals residing in the area. However, to appeal to the white tourists drawn to the sand and sun, Bradley prohibited Black patrons from utilizing public areas like the boardwalk and bathhouses until after 10:30 pm, for he felt that a white man seeing a Black man outside of a working role would diminish the value of the beach resort. This then led to the 1906 inclusion of a Black settlement on the west end of town, which has since laid the foundation for a long history of racial tension between opposite sides of Asbury Park's train tracks (Strunsky, 2019). An example of this racial tension came in the form of the 1970 race riots, in which the Black youth community of the West Side district retaliated when Asbury's tourist industry began giving white youths more jobs in the area. The apparent employment crisis, coupled with a lack of recreational opportunities and poor housing, was the straw that broke the camel's back for the Black population in Asbury. In a protest spanning six days, riots broke out resulting in \$5,600,000 of damage to the West Side, almost resulting in the West Side district being declared as a "major disaster area" (Fernandez, 2018).

The comparable contexts in these two towns aligned with the "separate but equal" doctrine in the United States. The doctrine was established in *Plessy v. Ferguson* (1856), where the U.S. Supreme Court concluded that separation of people based on race was not

discrimination provided that they were given access to the same types of facilities (Urofsky, 2020). Similarly, in these two New Jersey beach towns, Black communities were granted access to beaches, boardwalks, and basic amenities like the white communities, but time and location restrictions kept them separated.

The 1964 Civil Rights Act abolished these injustices, ensuring public access rights for Black individuals in not only the aforementioned two towns, but every Jersey shore town whose main goal had been to appease the white community. Chicken Bone Beach has since become a historic landmark widely populated by famous figures and, in light of the Black Lives Matter movement, there is talk of removing James A. Bradley's statue from where it was erected in Asbury Park 100 years prior (Duhart, 2020; Goldfinger, 2020). However, by the 1970's, many New Jersey beach towns had adopted indirect exclusionary tactics that favored town residents and burdened "outsiders," including people of color, urban populations, and the poor. These exclusionary policies included difficult-to-obtain beach tags, limited parking, and the banning of food or drink on the beaches (Poirier, 1996). While segregation has dissipated and systemic racism is not outwardly present on New Jersey beaches in 2020, those exclusionary tactics are still persistent in shore towns today, resulting in indirect discrimination to the Black community.

The best way to describe the issue as a whole is with a hypothetical scenario: A beach town with a population that is 97% white has raised its daily beach tag fees from \$8 to \$10. Additionally, the town is continuing to charge \$2 per hour for parking along the beach boardwalk, with free parking further inland and no public transportation. The justification for these hefty fees are unbeknownst to the public, but longterm residents are unfazed. They have their own parking on their properties and get first dibs on the seasonal beach tags, which sell out fast and work out to be a better deal than buying daily. In this town, beach tag checkers and

lifeguards both work 10 a.m. to 5 p.m., after which the beaches are free to use and parking meters are shut off.

To some, this scenario might seem like no big deal, but to others, it may resemble a game of cat and mouse. For a large family, just one day at the Jersey shore can cost a lot of cash, causing those who cannot afford such to either go after hours, to designated free beaches with no lifeguards, or not at all. A 2018 population survey by the United States Census Bureau showed that Black households had the lowest median income compared to other races (P.G.P.F., 2019). Furthermore, 52% of New Jersey's Black children live in low-income families (N.C.C.P., 2018). The parallels between beach fee racial burdens today and the separate but equal mindset in Crow America are striking. While it is very difficult to prove that the towns' policies constitute purposeful discrimination, disproportionate impacts on the basis of race are occurring nonetheless. As for the scenario described above, a similar reality will be conveyed in the next section, but with a town's name attached.

## B. The Tale of Three Towns and the Tags that Bind Them

### 1. Cape May Point: Beach Tag Prices

- \$10 daily
- \$25 weekly
- \$40 seasonal (\$33 if purchased before June 19)
- Children 11 and under are free (Koob & Roland, 2020)



“Take Exit 0 off of the New Jersey Parkway, drive straight through West Cape May, then follow Sunset Boulevard until you see the lighthouse”; simple directions that will take any person to the tiny beach town of Cape May Point, right at the tip of the state. Founded originally as Stites Beach in 1875, Cape May Point is home to many historic sites and nature preserves, including the Cape May Bird Observatory, Lake Lily, the Cape May lighthouse, and the World War II Bunker (Cape May County, 2020). With a population of only 204 citizens, the tiny town with only one restaurant to its name may not seem like anything to write home about, but Cape May Point’s tourism belies its tiny size (DataUSA, 2020). With tourist attractions galore on the edge of the island, plus the best beaches at which to witness a sunset, Cape May Point has enough to keep day-trippers and loyal vacationers coming back. However, one must not forget to stop at the state park and pick up those beach tags first.

Cape May Point has a robust stretch of beach containing a variety of access points on almost every street. Two particular beaches bookend either side of the town. These two are known as the Cape May Point State Park, which is home to the lighthouse, and Sunset Beach, or the best place to watch the sunset in New Jersey. The stretch of beaches in between are standard Jersey shore beach vacation spots. Lifeguards patrol these beaches from 10 a.m. to 5 p.m. daily for the summer season and tags are required from the third Saturday in June through Labor Day (Borough of Cape May Point, 2020). As for the other two, these are designated as free beaches open to the public. While the state park and Sunset Beach bring many unique and beneficial resources to the table, they also lack many important features.

Starting with Sunset Beach, on the east end of town, this tourist stop is best known for its breathtaking sunset ceremonies, World War II tower, quaint gift shops, mini golf, and small restaurant called “The Grille.” A small parking lot is located along the sand and restrooms are

available both in the gift shop, when it is open, and in accessible portable toilets. The beach is open all day, year-round, pets are permitted on the sand, and beach tags are not mandated (Sunset Beach Gift Shops, 2020). However, with beach tags not required for access, Cape May Point does not require lifeguards on those beaches. This means swimming is prohibited, but that does not stop visitors from flocking to the sands, setting up their towels, and dipping a toe, or ten, in the water.

On the west end of the beaches, the same situation applies. The beach connected to the state park does not require beach tags for access, but also lacks lifeguards during their working hours. Nevertheless, tourists fill the expansive parking lot daily, utilizing the free museum and connected bathrooms and providing business to the small food truck and gift shop attached to the lighthouse. The state park has hour limitations, unlike Sunset Beach, and has a gate that is unlocked from dawn to dusk daily (State of New Jersey, 2020). It is also the home to the municipal building, the lifeguard office, and the office of the beach tag seller. Even though the lifeguards are located right around the corner, they do not keep an eye on the beachgoers of the state park.

Accidental drownings are a massive challenge that has plagued New Jersey beaches for many years. An article for NJ.com deemed 2017's summer season as deadly as the period from 2011 to 2015 for drownings (Milo, 2019). The common denominator for many of these stories was that the instances occurred on beaches when the lifeguards were off duty at the end of the day, or where there were no lifeguards scheduled to be on duty. To avoid beach tag checkers, whose days end when the lifeguards leave, many people opt to visit the beaches after hours or visit free beaches. Such decisions place those people at a higher risk of swimming-related incidents, because signs that simply say "no swimming allowed" do not always work. Another

instance of accidental drowning, in Cape May specifically, occurred in September 2019 when a man in his late 60's had to be pulled out of a strong rip current and died on the scene. Lifeguards were not stationed in the area where he chose to swim, and though it was only the middle of the afternoon, the lifeguards that were called did not make it fast enough, causing the man to be submerged for six to eight minutes before being pulled to shore (Greenberg & Chang, 2019).

Cape May Point provides three opportunities for visitors to bypass the mandatory fees, which are steadily rising, if they want to enjoy the beach. Those opportunities come in the form of the state park, Sunset Beach, and after hour access, which is very enticing to those who cannot afford the tags. Another disproportionate racially discriminatory impact at the Point involves the fact that tag sales begin at the start of the season, and daily passes can be bought from 9 a.m. to 12 p.m. at the state park office, but nowhere else (Borough of Cape May Point, 2020). This gives a major advantage to the locals, 96% white, who can buy in bulk at the start of the season and who have walking access to the office from their homes.

Collectively, these three realities impose a disproportionate burden on the Black community, whose safety is just as vital to protect even if they have to attend the state park or Sunset Beach to bypass the enforced fees. Federal data show that minorities, particularly the Black community, are at higher risk of drowning, and rip currents along New Jersey beaches are a persistent and dangerous threat (Shelley, 2017). Wildwood, only one Parkway exit above Cape May, is able to fund lifeguards for each of their beaches without charging for beach tags (Koob & Roland, 2020). Why does Cape May Point deem it necessary to require beachgoers to pay for their own safety?

## 2. Belmar: Beach Tag Prices

- \$9 daily
- Free for children 15 and under
- \$70 seasonal
- \$30 seasonal for seniors age 65+ (Koob & Roland, 2020)

Time for a lesson in the Italian language. If “Belmar” means “beautiful sea” in Italian, what is another word that can be used to describe this shore town? If your answer was “costoso,” or expensive, you are correct, for it does not take a foreign language to draw attention to the astronomical beach fees mandated in Belmar, New Jersey.

Classified as a borough by the year 1885, Belmar has grown from an original home to the Native American tribe, The Leni Lenape Nation, to a vacation destination with a population of over 5,500 (DataUSA, 2020). Today, Belmar is ranked as one of the top beach towns in the state, with its main attraction being the 1.3-mile boardwalk that runs along the stretch of its beaches. Belmar prides itself in providing every amenity, like bathrooms, food services, phone charging stations, and handicap access points, on practically every beach entrance to ensure that its visitors are comfortable and satisfied all season long (Belmar Township, 2017). With the hefty beach tag fees, required from Memorial Day Weekend to Labor Day, this all seems to be a great bang for a person’s buck at first glance (The Borough of Belmar New Jersey, 2020). It, unfortunately, is not until a day-tripper gets into town where the real problem occurs.

Imagine a hot Saturday in July. Every member from a family of five is off from their day jobs or school and are piling into their family vehicle to take an impromptu trip to the shore for the day. They get an early morning start to avoid traffic and make the hour commute to Belmar,

locked and loaded with just enough money to purchase daily beach tags. When they finally arrive, they realize that many people had the same idea that day, and all of the metered parking along the boardwalk front is filled. No matter, since there is free parking on every other street in Belmar, the family circles around the blocks for close to an hour hoping a space will open up. No cars move, and what the family does not realize is that the spots are taken up by the property owners and house renters, whose absence of driveways means street parking is a must for the weeks they stay there. Now, with a morning wasted and their patience growing thin, they take their business to Seaside Heights instead. Belmar's parking situation imposes a discriminatory burden on daily visitors.

As of 2017, Belmar has a population of 5,720 thousand people, with the largest ethnic groups being white.<sup>1</sup> With only 2.41% of the population being Black, it is very likely that the racial diversity seen today on Belmar's beaches is a product of day trippers and the tourist industry (DataUSA, 2020). However, it is the lack of available visitor parking that inhibits robust numbers of out-of-town visitors from enjoying the sands, keeping the shoreline primarily used by those who own a house there or are renting for the week. Not only is the metered parking expensive, \$1 to \$2 per hour depending on the zone and time of day, but it is limited in the sense that there are only three available zones to park in daily (The Borough of Belmar New Jersey, 2012).

The Borough of Belmar is no stranger to the courtroom when it comes to the apparent discrimination against daily visitors. *Slocum v. Borough of Belmar* (1989) is a case in which the plaintiff accused Belmar's municipality of unreasonable beach fee increases and misuse of the funds with no traceable records to hold the town accountable. At the time, the beach tag fees had

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<sup>1</sup> White (non-Hispanic) at 81.6% and white (Hispanic) at 11.5%

been raised to \$3 for weekdays, \$6 for weekends, and \$40 for seasonal. The plaintiff argued that the town should maintain a flat rate of \$2 no matter the day of the week to ensure that the revenue matched the expenses. The Court determined that “Belmar's price structure for beach fees discriminates against nonresidents by imposing a disproportionately and inequitably high fee on daily and weekend beach badge purchasers,” due to the rate at which the daily badges fees were raised compared to the seasonal ones. They also concluded when comparing reasonable expenditures to the fee itself, the fee was deemed unreasonable under N.J.S.A. 40:61-22.20 (*Slocum v. Borough of Belmar*, 1989).

*Slocum* was then cited 30 years later in *Susko v. Borough of Belmar* (2019). This case challenged the misallocation of beach fee funds in response to the devastation caused by Superstorm Sandy. The plaintiffs accused the Borough of allocating beach raised funds to pay for expenditures that were not beach related, as outlined by the beach fee statute enacted pursuant to the Public Trust Doctrine. *Susko* also involved an increased fee for beach parking and the allocation of those funds. The Court held that the metered parking fees are tantamount to a beach fee, and affirmed that there was substantial evidence that the increase to \$2 an hour “was not imposed to pay for permissible beach-related costs, but was instead aimed at increasing the Borough’s general revenues to avoid raising taxes on residents” (*Susko v. Borough of Belmar*, 2019). Thus, the act was favoring the residents of Belmar to the detriment of the visitors, since parking was, and still is, free everywhere else in town. Though *Susko* was affirmed in part, the same parking rules still apply as of this writing.

Having dealt with the cases of both *Slocum* and *Susko*, Belmar’s reputation for improperly favoring its residents on beach access matters has been less than flattering to the town’s image. In a recent article by Cathy Goetz on the apparent “rowdy” visitors that are

currently plaguing Belmar's beaches, she tells the stories of residents and employees in the area having to deal with unsavory out-of-town guests. Of course, the 2020 Coronavirus pandemic has caused a lot of uproar in shore towns, but the current 7,500 daily limit on beach tag sales seems a little too similar to Belmar's past hiccups. Goetz writes that Council President Thomas Brennan "...related a story about two younger mothers and four children who arrived in Belmar on Sunday afternoon after driving two hours — only to find out that daily badges sales had been suspended, leaving one of the girls crying inconsolably" (Goetz, 2020). While Belmar can certainly update its website and social platforms daily to prevent this scenario from reoccurring, the limit nevertheless favors the over 90% white residential population, who can get their hands on those beach tags much faster than visitors. Applying that same principle, the uncertain parking situation also favors Belmar's white residents.

### 3. Asbury Park: Beach Tag Prices

- \$5 daily weekday
- \$7 daily weekend
- \$70 seasonal (SOLD OUT)
- \$20 for seniors age 65+, youth adults 13-17
- Free for children 12 and under, active military, and disabled veterans (Koob & Roland, 2020)

Of the three beach towns covered in this case study section, Asbury Park arguably holds the title for most longstanding and impactful history with respect to racial discrimination.

Founded in 1871 by a known racist, manufacturer James A. Bradley, the boardwalk and beaches

of this shore town were the dream resort of white patrons from all across Jim Crow America (Asbury Park Boardwalk, 2018). Public beaches were closed or limited to the Black community in the 1880s, and the area's politicians viewed "African Americans as a necessary evil in providing a quality vacation experience" (Greason, 2013). Local entrepreneurs started businesses in Asbury Park, and thrived from hiring Black citizens. These Black citizens then started to reside on what became the west side of town to do the manual labor to support white tourism.

A reprieve from the discrimination occurring in Asbury Park during this time, however, manifested in the form of a booming music scene. From the settlement of its first band in 1904 by trombonist Arthur Willard Pryor, Asbury Park has since become the music epicenter of New Jersey. Clubs stretched along every street, and a few of the originals, like The Stone Pony, still stand today (JerseyShoreVibe, 2019).

Beginning in the 1930's depression era, Asbury Park's reputation as a vacation destination struggled with the emergence of a larger suburban community. However, the music scene remained an integral part of the community, and the west side of town fed Black residents the music of Billie Holiday, Count Basie, and Lionel Hampton in the neighborhood clubs (City of Asbury Park; Asbury Park Housing Authority, 2017). A restoration process in 2007 has since brought new life to the shore town, but two realities remain: a rich music scene and a division of races on either side of Asbury Park's train tracks.

Separated by the New Jersey Transit from the newly constructed booming businesses and housing properties of the East Side sits the West Side, a predominantly minority community that received little to no attention following the 2007 restoration. This is due to the reputation the West Side has held, harboring microaggressions from the white community deeming the area as "dangerous." Seventy-three percent of the West Side's population is Black, sparking a popular



assumption that race is the reason for the crime and poverty rates in the neighborhood (City of Asbury Park; Asbury Park Housing Authority, 2017).

In reality, Asbury Park as a whole was a victim of the 1930's practice of redlining, which has since burdened particular areas of the town. Redlining was a selective loan distribution tactic used by federal and local governments to impose a burden on the basis of race (Conover, 2017). Coming off the heels of the Great Depression, the Home Owner's Loan Corporation took cities across America and "graded" neighborhoods into four categories, based in large part on their racial makeup. Neighborhoods with minority occupants were marked in red — hence "redlining — and considered high-risk for mortgage lenders" (Domonoske, 2016). While laws now exist to protect against the practice of redlining, the communities impacted in the past still experience the systematic segregation today. The schools, housing developments, and businesses in the West Side still have yet to prosper following Asbury's economic turnaround, and the segregated taxing and loans from the early 1900's are to blame. Today, having faced the aforementioned 1970 race riots, the 1990 economic downturn, and the 2000's housing crisis, the West Side still experiences financial barriers and debilitating stereotypes that keeps its residents apart from the rest of the shore town (West Side Choice , 2020).

While Asbury Park's daily beach tag rates are on the cheaper end of the scale as compared to neighboring beach towns, they are still an investment even for a family making a household income deemed average on the socioeconomic scale. For the typical family living on the West Side of Asbury, these fees are outrageous. The West Side's median household income is \$25,395, per capita income is \$16,450, the unemployment rate is 11%, and the youth population is 33%. Compared to the rest of Asbury Park's statistics (in the same order: \$32,459,

\$23,428, 6.9%, and 18%), the disparities are clear (City of Asbury Park; Asbury Park Housing Authority, 2017).

To avoid the burden of paying fees to attend the beach that is, quite literally, in their backyard, Black residents from the West Side either opt to visit the beach after lifeguarding hours, a safety issue similar to Cape May Point, or not visit at all. This has detrimental effects on the youth population, who are not charged a fee but are too young to attend by themselves. While their family members work shifts in the East Side of town's tourism industry during the summer season, the children's designated guardians may not have the funds available to take them to Asbury's beaches during the safety and convenience of the daytime. Though James A. Bradley is long gone, Asbury Park's legacy of catering to the white tourist and turning a blind eye to the West Side persists.

## II. THE EXISTING LEGAL FRAMEWORK

### A. Public Trust Doctrine

New Jersey's Public Trust Doctrine is the overarching instrument regarding the public's access to beaches and waterways. Originating from Roman law, the Public Trust Doctrine traces its origins to Book II of the Institutes of Justinian, which provides: "By the law of nature these things are common to mankind – the air, running water, the sea, and consequently the shores of the sea. No one, therefore, is forbidden to approach the seashore, provided that he respects habitations, monuments, and the buildings, which are not, like the sea, subject only to the law of nations" (Mulvaney & Weeks, 2007; State of New Jersey, 2020). Those same principles then

merged into English law. The King held the properties of coast in trust for protection of use by his citizens. The establishment of New Jersey as a state vested the rights in the people and codified what is now known as the Public Trust Doctrine (Kennedy, 2017).

Application of the doctrine to the 21<sup>st</sup> century holds the same ideals as Roman and English law, but now with more specificity and a more expansive scope. New Jersey, being a “high water state,” applies public trust to tidal waterways to the ordinary high water line and the lands that are beneath them. In essence, this includes oceans, bays, lakes, and rivers, the land submerged by the bodies of water, pieces of properties located near their entrances, and particular dry sand areas adhering to certain considerations. Once a body of water is considered subject to the public trust, there are many protections that apply. The three types of access rights the public has are linear/lateral, perpendicular, and visual. Linear/lateral access refers to the water’s edge in which the public can fish, swim, boat, walk, and lounge. Perpendicular access refers to the ability to enter onto the beach. Dunes must have proper trails and walkovers and private properties must not block entrances. Finally, visual access means that views must not be unnecessarily obstructed at the expense of the public (State of New Jersey, 2020).

Defined as a “common law” doctrine, the Public Trust Doctrine acts as a living, breathing legal principle, molded through the rulings of judges in past cases (Kennedy, 2017; Mulvaney & Weeks, 2007). New Jersey is unique with its application of the universal Public Trust Doctrine, for the state has an expansive interpretation when it is applied to issues of public access. Two significant access cases that have helped shape New Jersey’s Public Trust Doctrine are *Matthews v. Bay Head Improvement Assoc.* (1981) and *Raleigh Ave. Beach Assoc. v. Atlantis Beach Club* (2005). In *Matthews*, Bay Head Improvement Association was sued by a resident of Point Pleasant for limiting the only six non-privately owned beaches to use by Borough residents only.

While the general public was never stopped from setting foot on the beaches, a lack of street access made it virtually impossible to reach the upland dry sand. Referring to the Public Trust Doctrine, the New Jersey Supreme Court's decision stated that the public has a right to access private upland dry sand "where it is essential or reasonably necessary" for public enjoyment. Ultimately, the Association's six beaches were deemed as "quasi-public bodies" and, since the Borough lacked any public beaches, the six were required to be made available for easy access (Kennedy, 2017).

The 2005 case of *Raleigh* then took public access a step further in a challenge to the Atlantis Beach Club, which only allowed member access to the beaches on its property. This, in turn, blocked a public street access, which caused a resident to be accused of trespassing onto Atlantis' property when trying to reach the beach. Prior to the lawsuit, Atlantis only allowed public access to a three-foot horizontal strip on the high water line, but the New Jersey Supreme Court confirmed that the public both has vertical access across the property, as well as to Atlantis' upland sands. NJDEP was also deemed to have authority over the beach fees that Atlantis was charging members, a topic of public access that will be addressed below (Kennedy, 2017).

Gov. Phil Murphy's 2019 signing of Senate Bill 1074 further strengthened the doctrine by codifying it as a statute rather than holding it under case law. Essentially, the legislation reinforces many aspects of the doctrine that have been misconstrued due to vagueness. This includes determining any authority the New Jersey Department of Environmental Protection may have on enforcing public access rules, which is an issue that arose from *Hackensack Riverkeeper, NY/NJ Baykeeper v. NJ DEP*, as well as requiring approval by the NJDEP that all projects including public and federal funding are consistent with the funding. The legislation also

addresses marina development as it correlates with permits distributed by the NJDEP (McKillop, 2019).

While Senate Bill 1074 makes significant strides in the attempt to establish more concise interpretations of the doctrine, it seems to only touch the tip of the iceberg that is public access. Avoiding the issue beach tag fees and proper accessibility in general, the legislation may have put itself in hot water if lawsuits are what the state wants to avoid. A quote by executive director of the New Jersey Sierra Club, Jeff Tittel, sums the issue up nicely: “They want money for the beaches, paid for by the public. They just don’t want the public on those beaches” (Parry, 2019).

## B. Beach Fee Statute

Related to New Jersey’s Public Trust Doctrine, it is clear that the beach fee statute, N.J.S.A. 40:61-22.20, needs some major revamping. However, before taking a look at N.J.S.A. 40:61-22.20, other beach access cases that helped shape the statute are relevant to consider. First introduced in the late 1920s, beach tags were used by Asbury Park’s Bradley Beach as a way to get people from out of town off the sand by only being distributed to locals. By the 1970s, tags were adopted in towns along the entire coast (Goldcoast Sotheby's International Realty, 2015). In *Borough of Neptune v. Avon-by-the-Sea* (1972), Avon was sued for a 1970 ordinance allowing the borough to charge a higher admission to municipally owned beaches for non-residents. The court held that when applying the Public Trust Doctrine, the beach in question was open for the public for recreational purposes, thus making the higher charges a violation of the common-law rights (Kennedy, 2017). The court reasoned that, “it was valid for municipalities to charge

reasonable fees for the use of their beaches, but not in a way that may ‘discriminate in any respect between their residents and non-residents’” (State of New Jersey, 2020).

Six years later, Deal found itself in quite the pickle in *Van Ness v. Borough of Deal* (1978). The beach adjacent to Deal Casino, which was owned by the municipality, restricted entrance to only patrons of the casino. Membership was only available to Deal residents and property owners, and though the beach was connected seamlessly to the public stretches, it was still privatized for the benefit of Deal Casino patrons. Public Advocate for New Jersey, Stanley Van Ness, filed suit to contest this discriminatory practice, stating that the general public had a right to use all beaches. The Court cited to *Borough of Neptune v. Avon-by-the-Sea* (1972) in its decision, determining that Deal was acting contrary to the public trust doctrine’s protections and that the beaches must be made equal to all with no preference (Kennedy, 2017; State of New Jersey, 2020). While this case did not pertain to beach tags specifically, the same theme of separated beaches depending on who pays and who does not is seen today in many towns, like the above referenced Cape May Point.

These cases, plus a multitude of additional instances, have shaped the New Jersey beach fee statute from its enactment in 1955 into its current form (State of New Jersey, 2020). Section 40:61-22:20, “Municipal control over beaches, etc.; fees,” provides that

“1. a. The governing body of any municipality bordering on the Atlantic Ocean, tidal water bays or rivers which owns or shall acquire, by any deed of dedication or otherwise, lands bordering on the ocean, tidal water bays or rivers, or easement rights therein, for a place of resort for public health and recreation and for other public purposes shall have the exclusive control, government and care thereof and of any boardwalk, bathing and recreational facilities, safeguards and equipment, now or hereafter constructed or provided thereon, and may, by ordinance, make and enforce rules and regulations for the government and policing of such lands, boardwalk, bathing facilities, safeguards and equipment; ... Any such municipality may, in order to provide funds to improve, maintain and police the same and to protect the same from erosion, encroachment and damage by sea or otherwise, and to provide facilities and safeguards for public bathing and recreation, including the employment of lifeguards, by ordinance, make and enforce

rules and regulations for the government, use, maintenance and policing thereof and provide for the charging and collecting of reasonable fees for the registration of persons using said lands and bathing facilities, for access to the beach and bathing and recreational grounds so provided and for the use of the bathing and recreational facilities, but no such fees shall be charged or collected from children under the age of 12 years” (New Jersey, 2019). It is then up to the discretion of town municipalities to “...provide that no fees, or reduced fees, shall be charged to: (1) persons 65 or more years of age; (2) persons who meet the disability criteria for disability benefits under Title II of the federal Social Security Act (42 U.S.C. s.401 et seq.); (3) persons in active military service in any of the Armed Forces of the United States and to their spouse or dependent children over the age of 12 years; (4) persons who are active members of the New Jersey National Guard who have completed Initial Active Duty Training and to their spouse or dependent children over the age of 12 years...; and (5) persons who have served in any of the Armed Forces of the United States and who were discharged or released therefrom under conditions other than dishonorable and who either have served at least 90 days in active duty or have been discharged or released from active duty by reason of a service-incurred injury or disability....” (New Jersey, 2019).

The most vital piece of the beach fee statute for this analysis is the provision that if money is to be raised from beach tags, it must be “...to account for maintenance and safety costs associated with them” (State of New Jersey, 2020). This encapsulates lifeguard and police protection, dune maintenance, trash removal, and parking upkeep. Essentially, since the only other taxes that most New Jersey shore towns collect are property taxes, beach tags are a way to keep the towns’ vital assets up and running (D’Ambrosio, 2019). However, if even a penny of that revenue goes towards something regarding the center of town and not the beachfront, the mandates of the Public Trust Doctrine are violated. This lawbreaking act happens more regularly than one might think.

### C. Beach Tag Revenue Spending

Questions that daily beachgoers often ask themselves are, “Did I remember the sunscreen?” or “Where did I put the cash for some ice cream?” or even “How can the sand be

*this hot?*”. The question they often fail to ponder over, however, is “What does the town do with the money that I just gave them in exchange for my daily beach pass?” Once that \$10 bill is nestled into the fanny pack of the beach tag collector, it seems like a mystery as to what happens with that money next. As required by the beach fee statute, all funds raised from beach fees must be spent on only beach-related items; however, most shore towns do not entirely disclose every purchase, or they make it incredibly difficult to access this information. Looking at the three case studies above, the author’s efforts to access public beach fee records will be discussed below.

#### 1. Cape May Point

The key to locating any town budget account is through the municipal clerk and the Open Public Records Act (OPRA). On the borough of Cape May Point’s website, this portal is available through the “Departments” section of the home page. The OPRA request form is at the very top of the page, and with a simple click, reveals a printable, four-page form that can be delivered to the municipal building. The form requires detailed specification of the documents requested and even has a payment portion, with a small fee for the printing and delivering of the products. Due to the current state of the 2020 Coronavirus pandemic, this method of in-person form delivery is not possible. However, one call to the clerk revealed that an email specifying the OPRA request would suffice, at no charge. The request was fulfilled via e-mail in one day (Borough of Cape May Point, 2020).

The 2019 beach fee budget and appropriations were requested for all three of the towns. Cape May Point’s came in the form of a single page of “General Appropriations” where four



departments are listed: Director's Office, Beach Fee Program, Lifeguards, and Municipal Court. Beside these departments are two rows reading "salaries and wages" and "other expenses." Naturally, the salaries and wages totals were higher than the other expenses totals in every department. The outlier is the Municipal Court, however, whose only section is "other expenses." In 2019, \$14,200 was appropriated in that department, but the purpose of those expenses was not specified (Borough of Cape May Point, 2019).

If it is specificity that a person is after, the budget account status and transaction audit trail for one of the departments, the Beach Fee Program, was provided as well. In this three-page document, the payrolls of the employees and the expenditures of the "other expenses" are listed as a flurry of large numbers and abbreviated, advanced phrases. The other expenses are revealed to be the physical beaches tags, uniforms, and gear for the employees (Borough of Cape May Point, 2019). Devoting an entire document to simply naming these expenses seems quite pointless since they could have been easily disclosed in the budget and appropriations document.

## 2. Belmar

Belmar's system for obtaining documents is quite the step up from Cape May Point's. Primarily a remote, online system, no contact with a professional is necessary, as long as a person knows exactly what they are seeking. On Belmar's website, under the municipal section, a long side bar of separate pages is available. Once the "Open Public Records Act" link is clicked, the borough's original website transforms into a search or request engine. The search option filters through 632 prior requested items and hidden in that field of documents is the yearly beach utility budget (Belmar Borough, 2020).

Belmar has a beach utility account as its main source for all expenditures beach related, which resulted from the 1989 case *Slocum v. Borough of Belmar*. As stated on its website, “By law, all beach badge revenue is maintained in a separate Beach Utility Account and is used only to fund the direct and indirect costs of operating and maintaining Belmar’s beaches” (The Borough of Belmar New Jersey, 2020). Belmar’s 2019 beach utility budget is set up exactly the same as Cape May Point’s; however, it is greatly expanded by covering more departments. Sheet 35a-2, for example, specifies three types of maintenance: parking meter, road, and equipment. Though there are more than twenty additional sections compared to Cape May Point’s document, they do share a common feature: the dreaded “other expenses” category (The Borough of Belmar, 2019). With totals never surpassing the salaries and wages, the question remains: what are these other expenses and why can they not be itemized in a separate document?

### 3. Asbury Park

Of the three document-requesting experiences, Asbury’s is by far the easiest to maneuver. Visiting the City of Asbury Park’s website and scrolling to the bottom of the front page reveals a yellow symbol and link clearly labeled “Submit an OPRA Request.” Once clicked, an online form is available to be filled out and automatically sent to the municipal clerk. Once again, extreme precision is required when filling out the record request information. If filed during the clerk’s office hours, results only take up to an hour to land in an email mailbox (City of Asbury Park, 2020).

The document received was a 22-page audit of both the salaries and the other expenses paid for by the beach utility fund money. Jarring length and cluttered layout aside, Asbury

provided every single purchase on one available document, transparency for which they can be commended. However, that makes it very easy to locate questionable spending, provided that one takes the time to read the fine print. In April of 2020, for example, Asbury Park spent \$56,929.66 on “Kubota Litter Scooters,” or ATVs. Utilized by beach patrol to safely travel along the sands, ATVs do not run cheap and surely experience some wear and tear. Perhaps this was the year to buy all new ones, but if this is an annual occurrence for Asbury, it seems like a pretty steep price tag when there are other sources that could use the money. The second largest price in the other expenses sections goes to the “2020 [Tyvek] Wristbands” at a whopping \$10,160.00. A simple internet search shows that these paper wristbands, used for events, only cost \$0.01 each. While they are a necessary purchase, surely some of them end up unused in Asbury’s trash bins by the end of the year (City of Asbury Park, 2020).

### III. THE PROPOSAL

#### A. The New Jersey Beach Fund Spending Initiative

Shining light on the racial disparities resulting from beach fees in particular towns, as well as their tendencies to mistreat the requirements outlined in the beach fee statute on spending those funds, underscores the need for reform. “The New Jersey Beach Fund Spending Initiative” is a proposed statewide mandate that the author proposes to require all shore towns to publish on their websites a detailed, yet easy-to-read, itemized list regarding yearly purchases of beach expenditures. The Initiative will hold towns accountable on two matters: (1) unnecessary fee inflation and (2) improper spending on unnecessary items, ultimately uncovering funds that can

be better allocated for aspects that benefit the Black community. First, The Initiative will introduce the itemized beach spending list's guidelines, highlighting how this list requirement will address any shortcomings from current town OPRA systems and budget sheets as described above. Second, in the hopes that additional funds are uncovered by the full disclosure of a spending list, recommendations are offered for how the towns discussed can utilize that money in more serviceable ways.

The featured case study towns' budgets, and the means to access them, are currently a confusing experience for the average beachgoer. The itemized spending list that The Initiative would impose is an attempt to combat that challenge. The list will be published at the top of every fiscal year, as a budgeted plan, then updated at the end of the year to show the differences in budgets versus appropriations. Its contents will include the salaries and wages as well as reports of additional spending for the following beach-related departments:

- Lifeguards
- Beach tag checkers
- Public buildings and grounds office (vary between towns, must specify each department)
- Police (beach patrolling, parking meter attendants, radio and communication)
- Garbage and recycling removal
- Physical maintenance of beachfront (boardwalk, road, or shore repairs)
- Public events occurring on beach or boardwalk

An absence of clear and understandable language is currently one limitation of town beach budgets. Usually, each section contains two rows, "salaries and wages" and "other

expenses.” Without any specifications following “other expenses,” it may appear that the towns have something to hide within their expenditures. They very well could be hiding inappropriate purchases, and that is why vague language will not be permitted in the Initiative’s required itemized lists. Full disclosure from the municipality is vital for visitors’ and locals’ trust. Beachgoers should not be obligated to request and weed through an overwhelming number of receipts to determine how beach tag revenues are being spent.

Regarding information requests, the itemized spending lists will be made available on both the homepage of the towns’ websites, and as hard copies in town municipal buildings. Gone are the days of insufferable OPRA requests and illegible 20-page documents. Not only will the spending lists be available at the community’s leisure, but also written and designed in a fashion that is inviting and informative. The U.S. Department of Health and Human Services notes that documents are better understood with visually appealing formatting and layout. Most readers skim pages before looking more in depth, with their eyes drawn to visual clues. Thus, the departments of spending and total monetary amounts should be the most eye-catching parts of the list, making it understandable and enticing to every level of reader (U.S. Department of Health and Human Services, 2017).

Beach tags provide necessary funding that, if eliminated entirely, would have negative effects on the infrastructures of the towns that currently use them. That is why The Initiative does not change the requirements of charging for beach tags, but rather adds an additional layer to ensure towns are in full compliance with the state’s beach fee statute. Towns that do not charge for beach tags will be required to implement the spending list as well, substituting beach tag income for the other ways they collect money to pay for beach expenditures. This can include parking meter revenue and general tax revenue, fully disclosing when taxpayers’ dollars go

towards useful town spending. In the long run, requiring the publishing of an itemized beach list will diminish unnecessary tag fee or tax inflation, but also uncover better ways the funds raised can be utilized. The excess funds will then be put towards the areas that are burdening the Black communities in New Jersey shore towns in the present day.

#### B. Appropriate Fund Allocation Applied to Case Study Towns

Section I. B. discussed three beach towns as case studies, highlighting the areas where current ordinances are lacking and burdening beach access opportunities for Black visitors and residents. Following the plans of The Initiative, funds raised from beach tag fees can be better allocated to cover these areas and create safer, more inclusive environments. Detailed below are some examples of possible solutions that can be funded.

Cape May Point's issue is the lack of lifeguard patrolling on the two end beaches, the state and Sunset Beach, which do not charge a fee for access. This creates a big risk for those who choose to attend the free beaches as a way to bypass the need for beach tags, and also creates a sharp divide on the races who occupy those beaches as compared to the beaches in between. If a Black family cannot afford the prices charged for a daily beach pass, their safety should not be compromised as a result. To combat this problem, the town can budget more money towards the salaries and necessary gear for lifeguards to station guards on both end beaches. This would create a safer, more inviting environment to those who cannot afford beach tags. Cape May Point might be hesitant to lose the incentive used to buy them: the ability to swim on guarded waters. Though that is blatantly segregative, that technique is seen as a good money maker. To keep this idea, Cape May Point can station lifeguards on free beaches for a

limited number of hours. As opposed to the longer hours of the paid beaches of 10 a.m. to 5 p.m., the free ones can offer swimming from noon to 3pm daily, as an example. That way, beachgoers who want longer swimming hours can pay for a tag if they choose. While this might still pose a safety risk to rule breakers who swim outside of those hours, it still provides some protection to those who otherwise might not receive it. The lifeguard offices are located right next to the free state beach, after all.

Next comes the battle of Belmar's parking. Only providing metered parking along the front of the boardwalk and free parking along each street, which is almost exclusively occupied by property owners that do not have personal driveways, Belmar's parking situation disproportionately benefits its locals as compared to daily visitors. This is because when both the street parking and the limited metered parking gets filled, day visitors are at a loss for a parking spot. A solution to this situation can be to fund the building of a parking lot attached to the beachfront, if excess beach fee money and physical space allows. While it may seem like a big investment initially, with construction and zoning fees to take into account, Belmar has the option of making it a metered lot like the metered spots along the boardwalk. This would provide revenue year after year, benefiting town income and, most importantly, increase yearly visiting rates by giving more opportunities to park their cars and enjoy what the town has to offer.

Finally, Asbury Park's history of racial tension and redlining has resulted in a divide between races in town to this day. If Belmar appears to favor their locals over visitors, it is the opposite problem in Asbury Park. Black families living below the poverty line, who reside in the West side of town, feel the impact of rising beach tag prices immensely, causing parents and guardians to avoid going to the tourist-populated beaches entirely. If a child under 12 years of age who is not required to purchase a beach tag is not permitted to attend the beach by

themselves, their guardians experience the burden of purchasing tags to attend. If that family does not have the money available for such, it may be the case that the child, though living minutes from the beach, is not able to go and enjoy it.

Recently, “GoFundMe” pages and other donation-based programs have been initiated to give low income families in Asbury Park the proper beach tags to enjoy a summer on the sand. The Asbury Park Beach Community Fund, organized by Lisa Cramp, is an example of this, providing seasonal tags for the West Side’s Boys & Girls Club and Trinity Church for three years. Donations are not always promised, and the 2020 Coronavirus pandemic has impacted Cramp’s income negatively as compared to years past, which means less tag distribution in the long run (Cramp, 2018). Financial backing from Asbury Park’s beach fee income can be provided as an aid to projects like Cramp’s, since it is projects like those that provide a necessary support to the children of the community. The local Asbury Park elementary schools can develop a program that offers free or reduced charges on beach tags to the families of children based on household income, financing such a program from beach tag income. Disclosure of this program on the itemized spending list, made available to locals and visitors, may even give an incentive to buy tags. Get a beach tag, give a beach tag, and make Asbury Park the most inclusive shore town in New Jersey!

## CONCLUSION

New Jersey beach towns are the pinnacle for summertime fun in the sun. For years, they have provided families with memories to last a lifetime. Unfortunately, a trend of these towns is to charge consistently higher fees for beach tags or parking or both to simply access their



beaches. This practice places indirect discriminatory burdens on lower income families and out-of-town visitors, ultimately marginalizing the Black community. As a result, those who wish to bypass these prices are forced to either attend the beaches once the lifeguards and tag checkers are off duty or not attend at all. Furthermore, once fees are collected, town municipalities do not always apply the money raised to the required beach expenditures as outlined in N.J.S.A. 40:61-22.20, instead engaging in questionable budget allocation and not making such knowledge easily attainable to the general public. When Jersey beach towns participate in both the acts of charging astronomical fees to attend a public space and then do not even implement that revenue to make their beaches more safe and inclusive to visitors, the towns show where their priorities lie: on themselves and the permanent residents of their town, most of whom are white.

In the wake of the 2020 Black Lives Matter movement, it is more relevant than ever to hold all levels of government accountable for contributing to racial injustices. Many of the aggressions towards the Black community today are indirect and pass under the noses of those who are not affected, especially when the aggressions are taking place in the backyards of New Jersey. The backyards that include sand, sun, and the Atlantic ocean, all of which are protected under the Public Trust Doctrine to be freely available for the use of all persons.

In the three case study towns of Cape May Point, Belmar, and Asbury Park, where the towns themselves are not outwardly deemed to be racially insensitive, their shortcomings in safety, accessibility, and inclusion in regard to beach fees were highlighted. This showed that each town has its flaws with respect to beach access and they do not attempt to fix these flaws in any way. Not only are the town documents disclosing beach expenditures not always easily accessible or clear to read, but the lack of specificity leaves a lot to the imagination of the reader and even more opportunity for the towns to make unjustified spending.

The New Jersey Beach Fund Spending Initiative is the proposal for towns to engage in complete transparency and better spending habits when they charge for user taxes like beach tags and parking fees. An itemized spending list published publicly at the top and end of every fiscal year will not only make beachgoers more knowledgeable about what their beach tag fees are being used, but also will hold towns accountable for how they are spending the money and whether it is directly benefiting the beaches and community.

After implementing these lists, the hope is that excess funds, or more beneficial fund destinations, will be uncovered to help make Jersey shore towns better serve the Black community. The suggestions for fund allocation outlined in III. B. for the case study towns are just the beginning of how New Jersey can embrace well deserved inclusivity for all its inhabitants. Beaches are a right held in public trust to be made available to everyone, regardless of race, income, sexual or gender identification, or anything else that sets one person apart from the next. The only thing that Jersey beachgoers should worry about for their day on the sand is how much SPF they have applied!

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