

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE
TOWNSHIP OF ADDISON,

Plaintiff/Appellee,

v
JERRY KEIN BARNHART,
JERRY CLINE BARNHART,

Defendant/Appellant.

Supreme Court
Docket No. _____

Court of Appeals *opa 4-10-12*
Docket No. 301294

Oakland County Circuit Court
Case No. 2009-~~DA~~8918-AV
Hon. Leo Bowman

52-3 Judicial District Court
Case No. 05-010900-OM
Hon. Julie A. Nicholson

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TOWNSHIP OF ADDISON,

Plaintiff/Appellee,

v
JERRY CLINE BARNHART,

Defendant/Appellant.

Supreme Court
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Court of Appeals
Docket No. 272942

Oakland County Circuit Court
Case No. 06-DA8457-AV
Hon. Steven N. Andrews

52-3 Judicial District Court
Case No. 05-010900-OM
Hon. Julie A. Nicholson

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JERRY CLINE BARNHART'S
APPLICATION FOR LEAVE TO APPEAL

FILED

MAY 22 2012

CLARENCE M. DAVIS
CLERK
MICHIGAN SUPREME COURT

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ORDERS BEING APPEALED AND RELIEF SOUGHT

Defendant/Appellant Jerry Cline Barnhart ("Barnhart") seeks leave to appeal from two Michigan Court of Appeals decisions. The first, *People of the Township of Addison v Barnhart*, Docket No. 272942, 2008 Mich App LEXIS 510 (March 13, 2008) ("*Barnhart I*") (Exhibit 1), reversed and remanded for further proceedings the Oakland County Circuit Court's opinion and order which affirmed the 52-3 Judicial District Court's ruling granting a directed verdict in favor of Barnhart.

The second, *People of the Township of Addison v Barnhart*, Docket No. 301294, 2012 Mich App LEXIS 655 (April 10, 2012) ("*Barnhart II*") (Exhibit 2), affirmed the Oakland County Circuit Court's opinion and order which reversed the 52-3 Judicial District Court's opinion and order granting judgment in favor of Barnhart following the remand ordered in *Barnhart I*.

Both decisions were based upon the Court of Appeals' patently erroneous construction of the Michigan Sport Shooting Ranges Act ("SSRA"), MCL 691.1541, *et seq.*, which held that the SSRA does not apply to any range that is in any way operated as a business, but instead applies only to ranges for which there is no basis to suggest that they are owned or operated for any business or commercial purposes.

Barnhart seeks reversal of both Court of Appeals¹ decisions and entry of judgment in his favor.

¹ MCR 7.302(C)(4)(c) provides that "[i]f the decision of the Court of Appeals remands the case to a lower court for further proceedings, an application for leave may be filed within . . . 42 days . . . after . . . the Court of Appeals decision disposing of the case following the remand procedure, in which case an application may be made on all issues raised in the Court of Appeals, including those related to the remand question."

QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court should grant leave and reverse the Court of Appeals' holding that the Michigan Sport Shooting Ranges Act ("SSRA"), MCL 691.1541, *et seq.*, which provides sport shooting ranges immunity from criminal and civil liability and local regulation, does not apply to a shooting range that is in any way operated for business or commercial purposes where:

A. the SSRA expressly defines a "person" who "owns or operates or uses a sport shooting range" to mean, among other things, a "proprietorship, partnership, [or] corporation," which are quintessential business and commercial entities;

B. no language in the SSRA limits its application to sport shooting ranges that are not operated for business or commercial purposes; and

C. hundreds of Michigan's sport shooting ranges, and the thousands of individuals who use them, would be denied the protections the Legislature sought to provide them in the SSRA if the Court of Appeals decision is not reviewed and reversed?

Appellant Barnhart answers "Yes."

The Court of Appeals presumably would answer "No."

2. Whether this Court should reverse the Court of Appeals' holding that the SSRA is inapplicable to Appellant Barnhart's range, and order reinstatement of the District Court's entry of judgment in his favor, where:

A. the SSRA expressly allows ranges existing as of July 5, 1994 that comply with "generally accepted operation practices," even if not in compliance with an ordinance of a local unit of government, to do anything authorized under generally accepted operation practices, including expanding or increasing membership, public participation, events and activities;

B. firearms training, instruction, and charging fees (which are actions the Court of Appeals determined constituted "business" activities in this case) are authorized under generally accepted operation practices; and

C. the District Court found as a matter of fact that Barnhart's range was built and operated in compliance with generally accepted operation practices?

Appellant Barnhart answers "Yes."

The Court of Appeals presumably would answer "No."

**I. INTRODUCTION AND SUMMARY OF THE REASONS
THE COURT SHOULD GRANT LEAVE TO APPEAL**

Defendant-Appellant Jerry Cline Barnhart ("Barnhart") built and began operating a shooting range on his 80-acre property in 1993, consistent with the zoning and other regulations of the Township of Addison ("the Township"). In 2005, more than a decade later, the Township cited him for violating a zoning ordinance by operating the range. The District Court directed a verdict in Barnhart's favor on the ground that Michigan's Sport Shooting Ranges Act ("SSRA"), MCL 691.1541, *et seq.*, provided him immunity from civil and criminal liability, and immunity from local regulation. After several years of appeals, remands, and further proceedings, the Court of Appeals held that the SSRA's protections do not apply to shooting ranges that do anything that might "suggest" that they are operating for any "business or commercial purposes." The SSRA says "persons" who "own and operate" sport shooting ranges include "proprietorships, partnerships and corporations," which are of course kinds of business entities. Moreover, nothing in the SSRA limits its application to only "non-commercial," "non-business," or private shooting ranges, and nothing in the SSRA says that it does *not* apply to sport shooting ranges that are run as businesses. Under the guise of "construction," the Court of Appeals fundamentally re-wrote the SSRA and eviscerated its broad remedial protections by making the Act inapplicable not only to Barnhart, but to any of Michigan's hundreds of shooting ranges that offer shooting lessons, firearms training, charge a user fee, or do anything that might suggest they are operating for "business or commercial purposes." This Court should grant leave and reverse the Court of Appeals' patently erroneous decisions.

A. History and Purpose of the Sport Shooting Range Act

In 1989, the Michigan Legislature enacted the Sport Shooting Range Act, MCL 691.1541 *et seq.* ("the SSRA") to preserve and protect shooting ranges from lawsuits and local ordinances

that threatened their existence and continued operation. The SSRA, which was amended effective July 5, 1994, "was modeled after the Right to Farm Act, MCL 286.471 *et seq.*; MSA 12.122(1) *et seq.*, and was passed in response to problems that arose as urban sprawl brought new development into rural areas, creating conflicts between shooting ranges and their new neighbors." *Township of Ray v B&BS Gun Club*, 226 Mich App 724, 727; 575 NW2d 63, 65 (1997). The "SSRA as amended [in 1994] provides various forms of protection to shooting ranges, including providing immunity" from legal actions and ordinances for "shooting ranges that comply with generally accepted operation practices." *Id.* "Generally accepted operation practices" ("GAOP's") are the practice guidelines set out in the National Rifle Association's The Range Sourcebook: A Guide to Planning and Construction, sections of which the Natural Resources Commission of the Department of Natural Resources & Environment ("DNRE") has adopted pursuant to the SSRA, MCL 691.1541(a). *See also B&BS Gun Club, supra*, 226 Mich App at 733; 575 NW2d at 67 (the SSRA "charges the Commission of Natural Resources with the responsibility of adopting a set of [generally accepted operation] practices," and the "commission has adopted the National Rifle Association's range manual for this purpose").

The SSRA broadly protects shooting ranges that comply with "generally accepted operation practices" from: (1) "civil liability or criminal prosecution in any matter relating to noise or noise pollution," MCL 691.1652(1); (2) any "action for nuisance" related to noise, MCL 691.1542(2); and (3) all "[r]ules or regulations adopted by any state department or agency for limiting levels of noise" MCL 691.1542(3).

The July 5, 1994 SSRA amendments also protect shooting ranges from new or amended ordinances if the range was not violating existing law when the new ordinance was enacted, or when an existing ordinance was amended. MCL 691.1542a(1). For shooting ranges like

Barnhart's that existed as of July 5, 1994 and which comply with generally accepted operation practices, the SSRA says that "**even if not in compliance with an ordinance of a local unit of government,**" the range is statutorily permitted, to: (1) "[r]epair, remodel, or reinforce any conforming or nonconforming building or structure" to "secure the continued use of the building or structure," MCL 691.1542a(2)(a); (2) "[r]econstruct, repair, restore, or resume the use of a nonconforming building damaged by fire, collapse, explosion, act of God, or act of war," MCL 691.1542a(2)(b); and (3) "**[d]o anything authorized under generally accepted operation practices, including**" increasing or expanding its "membership or opportunities for public participation" and increasing or expanding its "events and activities." MCL 691.1542a(2)(c) (emphasis added).

Lastly, MCL 691.1543 says that "*[e]xcept as otherwise provided in this act,* this act does not prohibit a local unit of government from regulating the location, use, operation, safety, and construction of a sport shooting range" (emphasis added). One exception provided in the SSRA is for sport shooting ranges that existed as of July 5, 1994 and which complied with generally accepted operation practices. Such ranges (which indisputably includes Barnhart's range) are statutorily permitted under MCL 691.1542a(3) to expand or increase membership, public participation, events and activities that are authorized under generally accepted operation practices, even if not in compliance with an ordinance of a local unit of government.²

The SSRA is thus a remedial statute that broadly protects Michigan sport shooting ranges that comply with generally accepted operation practices from a wide variety of civil and criminal

² That freedom from local regulation applies only to ranges like Barnhart's that existed as of July 5, 1994 and complied with generally accepted operation practices. The SSRA "does not free sport shooting range operators from local zoning controls regarding construction of *new* facilities." *Fraser Township v Linwood-Bay Sportsman's Club*, 270 Mich App 289, 297; 715 NW2d 89 (2006) (emphasis added).

liability and local regulation that the Michigan Legislature determined threaten their existence, and guarantees their ability to expand and increase membership and activities that are consistent with generally accepted operation practices.

B. The Court of Appeals Decisions Sought to be Reviewed

The SSRA, and the protections it provides, does not distinguish between "commercially operated" and "non-commercially operated" sport shooting ranges, nor does it in any way distinguish between sport shooting ranges that are operated as businesses, and those that are not. To the contrary, the SSRA expressly provides that sport shooting range owners and operators *include* business entities such as proprietorships, partnerships and corporations, in addition to individuals. Nonetheless, the Court of Appeals erroneously held in *Barnhart I* that the SSRA does not apply to any shooting range for which "there [is evidence] to suggest that . . . operation of a shooting range [is] for business or commercial purposes." Saying that it was bound by the law of the case doctrine, the Court of Appeals in *Barnhart II* applied *Barnhart I's* erroneous holding and concluded that the SSRA was inapplicable to Barnhart's shooting range because "defendant acknowledged that . . . he received payment for instructing a student on the range," and his range was therefore a "business" and not a "sport shooting range" protected by the SSRA. *Barnhart II*.

The Court of Appeals' erroneous decisions in *Barnhart I* and *II* have judicially re-written the SSRA to mean that shooting ranges are not protected by the SSRA if there is *any* evidence *suggesting* that the range is operated "for business or commercial purposes."

This Court should grant Barnhart's application and reverse the Court of Appeals' erroneous construction of the SSRA for the following reasons:

1. The issue involves a substantial question as to the validity and scope of a legislative act (MCR 7.302(B)(1)).

On its face and by its terms, the SSRA protects *all* sport shooting ranges, not merely those that are non-commercial or are not operated as a business. The Court of Appeals' decision makes the SSRA inapplicable to any range that charges a user fee, provides firearm training or lessons, or does anything that involves the exchange of money or "suggests" that it is operating for a business or commercial purpose. That holding has essentially invalidated the SSRA by making it inapplicable to almost all sport shooting ranges in Michigan.

2. The issue has significant public interest and the case is one involving a subdivision of the state (MCR 7.302(B)(2)).

This case involves the Township of Addison, which is a subdivision of the state. More importantly, the issue presented has significant public interest. The Michigan DNRE's "2010 Michigan Shooting Range Survey Results" stated that there are "400 known ranges" in the State of Michigan (Exhibit 3). Except for Alger and Lake Counties, 81 of Michigan's 83 counties have sport shooting ranges, some counties with as many as 8 shooting ranges (Kent and Saginaw). Of the ranges responding to the DNRE's survey, the vast majority (almost 70%) provide shooting instruction to patrons. Twenty-five percent of ranges are "commercial," which the Survey "defined as ranges owned and operated by an individual(s), usually as a business." All ranges that are open or partially open to the public (77%) charge fees.

If left unreviewed, the Court of Appeals decisions in this matter will remove hundreds of sport shooting ranges from the SSRA's protections whenever a range charges a user fee, provides firearms instruction, or does anything that "suggests" that it is in any way operated for business or commercial purposes. The Court of Appeals decisions have effectively eliminated the protections that the Legislature provided to Michigan's hundreds of shooting ranges. There is

thus significant and widespread public interest in the issue presented, for which this Court should grant leave.

3. The Court of Appeals decisions are clearly erroneous, will cause material injustice, and conflict with other decisions of the Court of Appeals (MCR 7.302(B)(5)).

The Court of Appeals decisions are clearly erroneous. The SSRA expressly defines a "person" who "owns or operates or uses a sport shooting range" to mean "an individual, proprietorship, partnership, corporation, club, governmental entity, or other legal entity" MCL 691.1541(c) (emphasis added). Proprietorships, partnerships, and corporations are business and commercial entities. The Court of Appeals holding that a shooting range is not within the SSRA's protection if any aspect of its operation is "commercial" or "business" is contrary to the SSRA's express recognition that sport shooting ranges can be owned and operated as proprietorships, partnerships, and corporations. That interpretation violates numerous well-established canons of statutory construction.

Second, the SSRA does not distinguish between ranges that are commercial, non-commercial, business, non-business, private, governmental, for-profit or non-profit. The SSRA protects *all* "sport shooting ranges," regardless of *who* operates them or whether they provide "sport shooting" as a business or commercial enterprise. The SSRA expressly defines the term "sport shooting range" to mean "an area designed and operated for the use of archery, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any similar sport shooting." MCL 691.1541(d). Instead of accepting and applying that statutory definition of the phrase "sport shooting range," and without finding it ambiguous, the Court of Appeals erroneously resorted to and imported a dictionary definition of the single word "sport" to mean a "diversion [or] recreation," and then leaped to the conclusion that a "recreational shooting range" excludes any shooting range that is operated as a business or for commercial purposes. Beyond ignoring the

SSRA's broad and express definition of "sport shooting range," the Court of Appeals read into the SSRA terms and restrictions that simply do not exist in it.

Third, *Barnhart I* and *II* are inconsistent with other Court of Appeals decisions. *Linwood-Bay* applied the SSRA to a shooting range whose president testified that it "wanted to continue to do pistol [and] rifle [shooting], mostly pistol," because pistol shooting was "one of [its] biggest income [producers] next to shotguns." *Linwood-Bay*, 270 Mich App at 300. Although the Court of Appeals held that the SSRA did not protect the range from local ordinances because it involved new construction, the court applied the SSRA to the range even though testimony clearly established that the range generated income from shooting. That is diametrically opposite to *Barnhart I* and *II*'s holding that the SSRA does not apply to any range for which "there [is] testimony to suggest that . . . operation of a shooting range [is] for business or commercial purposes." *Barnhart I*.

This Court has not decided a case under the SSRA in the Act's 23 year history.³ It is imperative that the Court grant leave in this case to review a patently erroneous interpretation that renders the Act impotent and ineffectual with respect to hundreds of sport shooting ranges that the SSRA was designed to protect.

II. STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

In late 1993, Barnhart built a shooting range on his 80-acre agriculturally-zoned property in the Township of Addison. It was originally intended for his and his family's use and use by friends, and "persons other than [Barnhart's] immediate family did, in fact, use the range subsequent to November 1993." (3/31/06 District Court Opinion, Tr at 5) (Exhibit 4). Between

³ *Linwood-Bay* observed that in the Court of Appeals the SSRA "has not been the subject of extensive litigation at the appellate level," and that "there is only one published opinion concerning the Act, *Ray Twp v B&BS Gun Club*." 270 Mich App at 293.

1993 and July 1994, the "character of the type of shooting ... on the range" was "competition recreational shooting" that involved Barnhart, friends, family and invited guests, and "one individual that ... paid [Barnhart] for a one-day class" in recreational shooting (11/21/08 Evidentiary Hearing, Tr at 24) (Exhibit 5). In the years following 1994, use of the range increased and expanded as Barnhart taught firearms lessons and gun shooting instruction.

On November 22, 2005 -- more than decade after Barnhart built the range -- a warrant was issued on Barnhart for violating the Township's Zoning Ordinance No. 300 for operating a shooting range without a zoning compliance permit. (5/09/06 District Court Opinion and Order at 1) (Exhibit 6).⁴ The Township "alleged that public shooting ranges are not a permitted use in the agricultural district where [Barnhart's] property is located and that [he] as such is in violation of the zoning ordinance because he has exceeded the scope of private use." (3/31/06 District Court Opinion, Tr at 3-4).

A. Proceedings In *Barnhart I.*

1. The Initial District Court Proceeding.

The 52-3 District Court held a bench trial on March 14, 2006. Barnhart moved for a directed verdict at the close of the Township's proofs. The District Court granted his motion, holding that MCL 691.1542a, which became effective July 5, 1994, "provides that a sport shooting range that is in existence as of the effective date of this section and operates in compliance with generally accepted operation practices, even if not in compliance with an ordinance of a local unit of government, shall be permitted to expand or increase opportunities for public participation and expand or increase events or activities." (3/31/06 District Court

⁴ Before citing Barnhart for violating Ordinance No. 300, the Township attempted to close Barnhart's range for violating a Township noise ordinance. That claim was summarily dismissed because the noise ordinance did not apply to districts zoned agricultural.

Opinion at 5-6). Because Barnhart's range was in existence before July 5, 1994, the District Court held that the SSRA permitted the range "to expand or increase opportunities for public participation" regardless of any "local government regulation." *Id.*

The District Court denied the Township's motion for reconsideration by Opinion and Order of May 9, 2006.

2. The Oakland County Circuit Court

The Township appealed to the Oakland County Circuit Court, which affirmed the District Court in a July 21, 2006 Opinion and Order. It held that the SSRA permits a range to expand or increase public participation and that because Barnhart's range existed in 1993, before the SSRA's July 5, 1994 amendment, Barnhart's range was "entitled to the protection afforded by the SSRA. (7/21/06 Circuit Court Opinion and Order at 6) (Exhibit 7). The Circuit Court denied the Township's motion for reconsideration on August 21, 2006.

3. The Michigan Court of Appeals' Opinion in *Barnhart I.*

The Township appealed to the Court of Appeals by leave granted, which reversed and remanded for further proceedings. *Barnhart I* first held that "the term 'sport' has been defined as an 'athletic activity' or a 'diversion [or] recreation,'" and therefore the Sport Shooting Range Act "appears to apply to a recreational shooting range, to the exclusion of all other types of shooting ranges," and that "to the extent that there was testimony to suggest that [Barnhart's] operation of a shooting range was for business or commercial purposes, MCL 691.1542a(2)(c) does not provide freedom from local compliance with local zoning controls."

Second, *Barnhart I* said the "district court failed to address whether the proofs established that [Barnhart] was operating a sport shooting range in compliance with generally accepted operation practices" because the case was disposed of by directed verdict, and

remanded to the District Court to "conduct an evidentiary hearing to resolve the underlying factual questions surrounding the application of the SSRA." *Barnhart I*, n7.

Barnhart did not seek reconsideration or leave to appeal from *Barnhart I*, nor was he required to do so to challenge its holding after remand. *See supra* n1 at vi.

B. Proceedings in *Barnhart II*.

1. The District Court's First Proceeding On Remand.

On remand, the parties stipulated that Barnhart's range "was used for recreational and business shooting range purposes" prior to July 5, 1994 (Exhibit 8), and that "recreational shooting uses started before the business use,"⁵ which Barnhart testified involved giving a single one-day lesson to a *recreational* shooter (11/21/08 Hearing Trans at 24).

The District Court first held that the SSRA does not define "sport shooting range" to mean an area "designed or operated solely or exclusively for sport shooting" (12/22/08 District Court Opinion at 6) (Exhibit 9) (emphasis in original), but instead statutorily defines "sport shooting range" as "an area designed or operated for the use of archery, rifles, shotguns, pistols, silhouettes, skeet trap, black powder, or any similar sport shooting." *Id.* The District Court held that based on the stipulation, Barnhart's "range was operated as a sport shooting range as that term is defined in MCL 691.1541(d) because it was operated for recreational purposes in addition to business purposes." *Id.*

Second, after an evidentiary hearing on November 21, 2008, and after considering other evidence that Barnhart submitted, the District Court found that "the DNR relies on the [NRA] Range Guide to determine generally accepted operational [sic] practices in accordance with the

⁵ The handwritten stipulation originally said "business uses," but was changed from plural to singular to reflect that Barnhart had given a single, one-day recreational shooting lesson for payment before July 5, 1994.

requirements set forth in MCLA 691.1541(a) " (12/22/08 Opinion at 9). Barnhart testified about both his current compliance with generally accepted operation practices, as well as when the range was first built and operated in 1993 (Exhibit 5). The District Court expressly found that Barnhart's range was operated in compliance with generally accepted operation practices:

Given [the documentary evidence and] Defendant's testimony at the Evidentiary Hearing, this Court concludes that Defendant was operating the range in compliance with the generally accepted operation practices as set forth by the DNR and the NRA. Therefore, Defendant is entitled to the protections afforded by MCLA 691.1542(a).

(12/22/08 Opinion at 9).

2. The Township's Appeal To The Circuit Court And Remand To The District Court For Further Proceedings.

The Township appealed to the Oakland County Circuit Court, which remanded to the District Court "to examine the provisions of the SSRA as a whole and consider whether "MCL 691.1542a(2) applies to local ordinances attempting to regulate shooting ranges, not all ordinances, including zoning ordinances'." (Opinion and Order at 3) (Exhibit 10).

On remand, the District Court held that Barnhart was "entitled to the protections of MCL 691.1542a(2)(c) as it relates to all ordinances, and is not subject to future zoning ordinances enacted by the Township of Addison." (4/14/10 Opinion and Order at 5) (Exhibit 11).

3. The Circuit Court's Disposition On Appeal

On September 13, 2010, the Oakland County Circuit Court reversed the District Court because *Barnhart I* "unequivocally indicated that 'to the extent that there was testimony to suggest that defendant's operation of a shooting range was for business or commercial purposes, MCL 691.1542a(2)(c) does not provide freedom from compliance with local zoning controls'." (9/13/10 Opinion at 9) (Exhibit 12). The Circuit Court concluded that because Barnhart "uses

his range for both business and commercial purposes," the SSRA does not apply and therefore it "must reverse the District Court's ruling that [Barnhart] operates a 'sport shooting range' under the SSRA." (9/13/10 Opinion at 9).

The Circuit Court agreed with the Township's allegation that in 2004 (more than a decade after the range began operating, and a decade after the SSRA's amendment which allowed sport shooting ranges to expand or increase public participation, events or activities if the range complies with generally accepted operating practices), Barnhart advertised to the public to "be educated in combat arms," and that "firearms classes held on the property would make it a commercial or public use." (9/13/10 Opinion at 8). The Circuit Court did not consider whether such uses occurred in 1993 or as of July 5, 1994, or whether firearms education, training or instruction is a use authorized under generally accepted operation practices such that a sport shooting range existing before July 5, 1994 could expand or increase its activities to include firearms education and training.

The Circuit Court did not disturb the District Court's fact determination that Barnhart's range was built and operated according to generally accepted operation practices, and to the contrary commented that the "district court conscientiously examined all of the evidence tending to support that [Barnhart] was in compliance with generally accepted operating practices." (9/13/10 Opinion at 9).

4. The Michigan Court of Appeals' Opinion in *Barnhart II*

Barnhart appealed to the Court of Appeals by leave granted, which affirmed the Circuit Court. *Barnhart II* woodenly applied *Barnhart I*'s construction of the SSRA that "operation of the range for business or commercial purposes would preclude [him] from obtaining the protections of MCL 691.1542a." *Barnhart II* at 2. *Barnhart II* said the "undisputed facts . . .

established defendant was operating the range for both recreational and business purposes as of the effective date of MCL 691.1542a," and the "law of the case required the conclusion that defendant's range was not a sport shooting range within the meaning of SSRA." *Barnhart II* at 2-3.

In *Barnhart II*, Barnhart argued that because "sport shooting ranges must charge fees in order to perpetuate their existence," the "receipt of income from the range did not constitute a business or commercial purpose." He also argued that "inclusion of the terms 'proprietorship' and 'corporation' in the SSRA definition of 'person' demonstrates that the SSRA encompasses business operations." *Id.* *Barnhart II* summarily refused to consider those arguments because Barnhart "neither requested reconsideration of the *Barnhart I* decision, nor applied for leave of [the] Supreme Court," and under law of the case could not "challenge the validity of the *Barnhart I* decision" in *Barnhart II*. *Id.*

Barnhart seeks leave to appeal, and reversal of, *Barnhart I* and *II*.

III. LEGAL ARGUMENT

A. The Court of Appeals Erroneously Held that the SSRA Does Not Apply to Sport Shooting Ranges That Are Owned or Operated for Businesses or Commercial Purposes.

1. Standards of Review and Statutory Construction

"Issues of statutory interpretation are questions of law that this Court reviews de novo." *Lash v City of Traverse City*, 479 Mich 180, 186; 735 NW2d 628 (2007) (citing *Jenkins v Patel*, 471 Mich 158, 162; 684 NW2d 346 (2004)). See also *Paige v City of Sterling Heights*, 476 Mich 495, 504; 720 NW2d 219 (2006); *Reed v Yackell*, 473 Mich 520, 528; 703 NW2d 1 (2005). This Court thus reviews de novo *Barnhart I's* conclusion that the SSRA does not apply to any sport shooting range that is owned or operated as a business or for commercial purposes.

Several well-worn canons of statutory construction -- which the Court of Appeals did not apply or consider -- compel reversal of the Court of Appeals holding that the SSRA does not extend to sport shooting ranges that are in any way operated for business or commercial purposes.

First, the paramount concern in construing a statute fidelity to legislative intent, as determined by the words used in the statute:

An anchoring principle of our jurisprudence, and the foremost rule of statutory construction, is that we are to effect the intent of the Legislature. In doing so, we begin with the language of the statute -- if the Legislature has crafted a clear and unambiguous provision, we assume that the plain meaning was intended, and we enforce the statute as written.

People v Wager, 460 Mich 118, 123 n7; 594 NW2d 487 (1999) (numerous citations omitted).

When the "language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted." *Lash, supra*, 479 Mich at 187. Because the "proper role of the judiciary is to interpret and not write the law, courts simply lack authority to venture beyond the unambiguous text of a statute." *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002).

Second, a court may not add or read into a statute words, provisions, or limitations that the Legislature did not include. See *Ford Motor Co v Unemployment Compensation Commission*, 316 Mich 468; 25 NW2d 586 (1947) ("[t]he court is not at liberty to read into the statute provisions which the legislature did not see fit to incorporate, nor may it enlarge the scope of its provisions by an unwarranted interpretation of the language used"). See also *In re Request for Advisory Opinion*, 479 Mich 1, 15; 740 NW2d 444 (2007) ("[w]e presume that the Legislature intended the meaning of the words used in the statute, and we may not substitute alternative language for that used by the Legislature"); *Elezovic v Ford Motor Co*, 472 Mich 408,

425; 697 NW2d 851 (2005) ("[t]he Legislature is held to what it said" and "[i]t is not for us to rework the statute"); *Lesner v Liquid Disposal, Inc*, 466 Mich 95, 101; 643 NW2d 553 (2002) ("our duty is to apply the language of the statute as enacted, without addition, subtraction, or modification"); *Omne Financial, Inc. v Shecks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999) ("nothing may be read into a statute that is not within the manifest intent of the Legislature as derived from the act itself"); *Empire Iron Mining Partnership v Orhanem*, 455 Mich 410, 421; 565 NW2d 844 (1997) ("[w]e will not judicially legislate by adding language to the statute"); *Rusnak v Walker*, 271 Mich App 567, 587; 723 NW2d 210 (2006) (rejecting a construction that "would be reading a provision into the statute that clearly is not there"); *People v Lange*, 251 Mich App 247, 254; 650 NW2d 691 (2002) ("nothing should be read into a statute that is not within the manifest intent of the Legislature as indicated by the act itself"); *Alexander v Employment Security Commission*, 4 Mich App 378, 382; 144 NW2d 850 (1966) ("a court must not read into a statute provisions which the legislature did not include").

Third, "[w]here a statute defines a term, that definition supercedes a commonly accepted or dictionary definition, and it is binding on the courts." *Welch Foods, Inc v Attorney General*, 213 Mich App 459, 462; 540 NW2d 693 (1995). *See also Cain v Waste Management Inc (After Rem)*, 472 Mich 236, 245 n4; 697 NW2d 130 (2005) ("when a statute specifically defines a given term, that definition alone controls"); *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 136; 545 NW2d 642 (1996). A "statutory definition supercedes the commonly-accepted, dictionary, or judicial definition," and "[w]here an act passed by the legislature embodies a definition, it is binding on the courts." *Erlandson v Genesee County Employees' Retirement Commission*, 337 Mich 195, 204; 59 NW2d 389 (1954). *See also People v Lanzo Construction Co*, 272 Mich App 470, 474; 726 NW2d 746 (2006) ("[w]hen a statute sets forth its own definitions of certain terms,

those terms must be applied as defined"); *People v Schultz*, 246 Mich App 695, 703; 635 NW2d 491 (2001) ("[w]here a statute supplies its own glossary, courts may not import any other interpretation but must apply the meaning of the terms as expressly defined"). Thus, a court may not resort to common dictionary definition of terms where the Legislature has provided an express statutory definition of the word or phrase.

Fourth, statutes must be construed as a whole and their provisions harmonized. See *Drouillard v Stroh Brewing Co*, 449 Mich 293, 303; 536 NW2d 530 (1995) ("in the interpretation of statutes, effect must be given, if possible, to every word, sentence and section and, to that end, the entire act must be read to be a harmonious and consistent enactment as a whole"); *Nowell v Titan Ins Co*, 466 Mich 478, 482; 648 NW2d 157 (2002) ("provisions of a statute that could be in conflict must, if possible, be read harmoniously"); *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001) ("[w]e construe an act as a whole to harmonize its provisions"); *World Book, Inc v Treasury Dept*, 459 Mich 403, 416; 590 NW2d 293 (1999) ("provisions of a statute must be read together to produce an harmonious whole").

Fifth, a statute should not be given a construction that renders meaningless or nugatory other parts of the statute. *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001) ("every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory"); *Brown v Genesee Bd of Comm'rs (After Remand)*, 464 Mich 430, 437; 628 NW2d 471 (2001) ("interpretation should not render any part of the statute nugatory").

Finally, it is a "rule of statutory construction that remedial statutes . . . are to be liberally construed in favor of the persons intended to be benefitted." *Dudewicz v Norris Schmid*, 443

Mich 68, 77; 503 NW2d 645 (1993) (citing *Bierbusse v Farmers Ins Group*, 84 Mich App 34, 37; 269 NW2d 297 (1978); *Holmes v Haughton Elevator Co*, 75 Mich App 198, 200; 255 NW2d 6 (1977), *aff'd* 404 Mich 36; 272 NW2d 550 (1978)).

2. The Court of Appeals in *Barnhart I* Erroneously Interpreted the SSRA to Apply Only to Ranges That Are Not Operated for Business or Commercial Purposes.

These basic canons of construction demonstrate that the Court of Appeals erred in construing the SSRA to apply only to ranges that are not operated for business or commercial purposes.

In holding that a shooting range is not a "sport shooting range" under the SSRA if it is operated as a business, the Court of Appeals' *entire* analysis in *Barnhart I* is as follows:

. . . MCLA 691.1541(d) defines "Sport shooting range" as "an area designed and operated for the use of archery, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting." A definition of the term "sport" is not contained within the statute. However, the term "sport" has been defined as an "athletic activity" or a "diversion [or] recreation." Random House Webster's College Dictionary (1997). Thus, the statute appears to apply to a recreational shooting range, to the exclusion of all other types of shooting ranges. See *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 712, 665 NW2d 193 (2003) ("the expression of one thing suggests the exclusion of all others"). Thus, to the extent that there was testimony to suggest that defendant's operation of a shooting range was for business or commercial purposes, MCL 691.1542a(2)(c), does not provide freedom from compliance with local zoning controls.

Barnhart II simply followed and applied as law of the case *Barnhart I*'s conclusion that Barnhart's "operation of the range for business or commercial purposes would preclude defendant from obtaining the protections of MCL 691.1542a." *Barnhart II*.

a) **The Court of Appeals Ignored the Plain Terms of the SSRA**

The SSRA's plain terms say that it covers sport shooting ranges that are owned or operated by businesses such as proprietorships, partnerships and corporations, which is diametrically opposite the Court of Appeals' conclusion that if a range is operated for business or commercial purposes, it cannot be a "sport" shooting range covered by the SSRA. The SSRA applies to any "person who owns or operates or uses a sport shooting range that conforms to generally accepted operation practices . . ." MCL 691.1542. Under the SSRA, "person" means an individual, *proprietorship*, *partnership*, *corporation*, club, governmental entity, or other legal entity." MCL 691.1541(c) (emphasis added). The Court of Appeals simply and completely ignored those plain terms.

Courts presume the Legislature intends words in a statute to carry their common dictionary meaning. *Chandler v County of Muskegon*, 467 Mich 315, 320-21; 652 NW2d 224 (2002). The common meaning of "proprietorship," "partnership" and "corporation" is that they are "businesses."

"Partnership" is defined as: "an association of persons joined as partners *in business*" (The American College Dictionary); "a legal relation existing between two or more persons contractually associated as joint principals *in a business*" (Webster's Ninth New College Dictionary); "an association of persons who share risks and profits *in a business*" (The New Lexicon Webster's Dictionary of the English Language); "[a] contract entered into by two or more persons in which each agrees to furnish a part of the capital and labor *in a business enterprise*" (The American Heritage Dictionary of the English Language); and "a voluntary contract between two or more competent persons . . . in lawful *commerce or business*" (Black's Law Dictionary, 5th Ed.).

"Proprietorship" is defined as: a "*business*, usually unincorporated, owned and controlled exclusively by one person" (Black's Law Dictionary, 5th ed.), and its root word "proprietor" is defined as "the owner of a *business establishment*" (The Random House Dictionary of the English Language); "the owner (or manager) of a *business establishment*" (The American College Dictionary); and "[t]he owner or owner-manager of *a business*" (The American Heritage Dictionary of the English Language).

"Corporation" is defined as: "a large company or *business organization*" (The MacMillan Dictionary); "a *business* with legal status" (Heinle's Newbury House Dictionary of American English); "an organization formed with state governmental approval to act as an artificial person to carry on *business* (or other activities)" (The People's Law Dictionary).

By its plain, unambiguous terms (terms which the Court of Appeals did not even consider, much less apply), the SSRA applies to sport shooting ranges that are owned or operated by proprietorships, partnerships and corporations, which are business entities. The Court of Appeals' conclusion that the SSRA does not apply to any range that is operated for any "business or commercial purposes" ignores the plain terms of the SSRA.

b) The Court of Appeals Failed to Apply the Statutory Definition of "Sport Shooting Range"

The SSRA has its own express statutory definition of "sport shooting range" which is not limited to "non-business" or "non-commercial" shooting ranges. MCL 691.1541(d) states:

"Sport shooting range" or "range" means an area designed and operated for the use of archery, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or any similar sport shooting.

The statutory definition focuses exclusively on how the area is designed, operated and used, not whether it is run as a business or not, and it is devoid of any language suggesting that a range is only a sport shooting range if it is not in any way operated for business or commercial purposes.

It was undisputed that Barnhart's range was "an area designed and operated for the use of," at a minimum, "rifles [and] pistols," and thus satisfied the express statutory definition of "sport shooting range." However, the Court of Appeals improperly departed from that express statutory definition in concluding that the SSRA is limited to non-business ranges.

Barnhart II acknowledged that the "term 'sport shooting range' has a specific statutory meaning, defined in MCL 691.1541(d)," and that the "SSRA protections at issue in this case apply to sport shooting ranges *as defined in the act.*" *Barnhart II* at 2 (emphasis added). Despite acknowledging that express statutory definition, *Barnhart I* failed to apply it. *Barnhart I* instead parsed the statutorily-defined phrase "sport shooting range" by looking solely at the word "sport," and then resorted to a dictionary definition of "sport" to conclude that "sport shooting range" means "a recreational shooting range to the exclusion of all other types of shooting ranges" *Barnhart II*.

When a "statute specifically defines a given term, that definition alone controls," *Cain*, 472 Mich at 245 n4, and it "supersedes a commonly accepted dictionary definition." *Welch Foods*, 213 Mich App at 462.

The Court of Appeals was obligated to apply the express statutory definition of "sport shooting range" that the Legislature provided, and was not at liberty to further define it, refine it, or "import any other interpretation" to it. *Shultz*, 246 Mich App at 703. It improperly did so by resorting to a dictionary definition, analyzing the SSRA as though it applies exclusively to "recreational" shooting, asserting that a "recreational shooting" range must be exclusive of a shooting range that is operated for any business or commercial purpose, and concluding that the Act does not apply if a range is run for a commercial or business purpose.

c) The Court of Appeals' Construction of the SSRA Adds Terms that Are Not in the Statute

A court may not add or read into a statute terms or limitations that do not exist. *Lesner*, 466 Mich at 101; *Orhanem*, 455 Mich at 421; *Elezovic*, 472 Mich at 425.

Barnhart I read into the SSRA words and limitations that simply do not appear in the Act. The court substituted the word "recreation" for the word "sport," and concluded that the SSRA "appears to apply to a recreational shooting range, to the exclusion of all other types of shooting ranges," and excludes ranges operated "for business or commercial purposes." Those terms and limitations simply do not appear in the statute, and *Barnhart I's* construction was therefore erroneous.

d) The Court of Appeals' Construction of the SSRA Renders Clauses Inconsistent and Terms Nugatory

Statutes must be construed in their entirety, their provisions harmonized, and no clause rendered ineffective or nugatory. *Drouillard*, 444 Mich at 303; *Nowell*, 466 Mich at 482; *Murphy*, 464 Mich at 159.

The Court of Appeals' holding that a range is not a "sport shooting range" under MCL 691.1541(d) if it is operated for any business or commercial purposes directly and irreconcilably conflicts with MCL 691.1541(c) and MCL 691.1541(1) and (2). MCL 691.1541(1) and (2) provide protections to "a *person* who owns or operates ... a sport shooting range." MCL 691.1541(c) says a "person" means, among other things, a proprietorship or partnership, which are business entities. Saying, as *Barnhart I* does, that a range cannot be a sport shooting range if it is operated for any business or commercial purposes is flatly contrary to the SSRA's definition of a "person" who can "own[] or operate[] ... a sport shooting range" as including business entities like proprietorships, partnerships and corporations.

That disharmony and inconsistency evaporates if "sport shooting ranges" are held to include ranges owned or operated for business or commercial purposes, and all terms of the SSRA are given meaning and effect.

e) The Generally Accepted Operation Practices Which the SSRA Incorporates Contemplate That Ranges Can Be Operated As Businesses

The SSRA incorporates provisions of the NRA Range Manual as "generally accepted operation practices." ⁶ Those practices, which are "used to determine the propriety of the activities of a shooting range" under the SSRA, provide a "single specifically adopted standard" under the SSRA to which "[s]hooting ranges may refer ... to determine whether their operation conforms. ..." *B&BS Gun Club*, 226 Mich App at 733. The SSRA thus is understood with reference to those provisions of the NRA Range Manual.

Generally accepted operation practices applicable to shooting ranges under the SSRA authorize ranges to charge user fees, provide firearms training and shooting lessons, and all other actions which the Court of Appeals held constituted business activities that prevented Barnhart's range from being deemed a sport shooting range. *See infra* Section III(B)(2).

The generally accepted operation practices recognize that ranges should have revenue and expenditure forecasts, set range fees, hold fund-raising events and similar business concerns. (NRA Range Manual Section II, Chapter 1, Article 4 §4.04.3 at II-1-8) (Exhibit 14). That section specifically advises shooting range owners and operators that the "objective of any well-planned budget is to balance expenditures with available revenues, plus provide back-up

⁶ The NRC has adopted as "generally accepted operation practices" the following portions of the NRA Range Manual, among others: Section I, Chapter 1, Articles 1-4; Section I, Chapter 2, Articles 1-4; Section I, Chapter 5, Articles 1-5; Section II, Chapter 14, Articles 1-4; and Section II, Chapter 17, Articles 1-2 and 4 (Exhibit 13). Parts of the NRA Range Manual cited in this Application are contained in Exhibit 14.

reserves" (§4.04.3 at II-1-8), and to calculate "income sources against which expenditures are budgeted." *Id.* It discusses "projected user fees or dues," "range fees" and how they will be charged, and "discretionary expenses and income," which include "[s]hooting activity development" and "[t]raining activities." *Id.* Section 4.04.3.1 sets out the "basic ingredients for an operating budget" and notes that shooting range "revenues may ... range from one or two categories to multiple accounts based on the complexities of the operation."

The generally accepted operation practices' that are incorporated into the SSRA unambiguously provide that shooting ranges under the SSRA will be involved in such business concerns as setting budgets, establishing and collecting user fees, obtaining income from training activities, and a host of other revenue and expense issues with which sport shooting ranges must deal, and all of which would constitute activities "suggesting" that a range is operating for a "business or commercial purpose."

The Court of Appeals' holding that the SSRA does not apply to any shooting range for which there is any evidence "to suggest that [the] operation of a shooting range [is] for business or commercial purposes" is contrary to the generally accepted operation practices that are incorporated into the SSRA, making *Barnhart I* and *II* completely inconsistent with the statutory protections the Michigan Legislature has established.

**f) The SSRA Must Be Liberally Construed
in Favor of Covering Shooting Ranges**

The SSRA is a remedial statute through which the Michigan Legislature intended to "provide[] various forms of protection to shooting ranges" as "urban sprawl brought new development into rural areas, creating conflicts between shooting ranges and their new neighbors." *B&BS Gun Club*, 226 Mich App at 727.

It is a "rule of statutory construction that remedial statutes ... are to be liberally construed in favor of the persons intended to be benefitted." *Dudewicz*, 443 Mich at 77. Shooting ranges and their owners and operators are the intended beneficiaries of the SSRA's protections. In construing the SSRA, any doubt regarding the scope of its coverage must be resolved in favor of ranges. Thus, assuming there is uncertainty whether the SSRA applies to shooting ranges owned or operated for business purposes (and Barnhart maintains there is no uncertainty), any uncertainty should be resolved by an interpretation that favors shooting ranges, the vast majority of which are owned and operated for business or commercial purposes in Michigan.

B. Barnhart Is Entitled To Entry of Judgment In His Favor If The SSRA is Correctly Interpreted

Barnhart was deprived of the SSRA's protections solely because of the Court of Appeal's erroneous construction that the SSRA does not apply if any evidence suggests a range is operated for a business or commercial purpose. If the SSRA is properly construed and applied to Barnhart, he is entitled to entry of judgment based upon the undisputed fact-findings of the District Court, none of which have ever been disturbed on appeal.

1. Standard of Review

When a "judge sits as a trier of fact, the standard of review on appeal is whether the trial judge's findings of fact are clearly erroneous." *Mazur v Blendea*, 409 Mich 858; 294 NW2d 827 (1980). Under that standard, a reviewing court cannot "substitute its judgment for that of the trial court," and "if the trial court's view of the evidence is plausible, the reviewing court may not reverse." *Beason v Beason*, 435 Mich 791; 460 NW2d 207 (1990).

2. Barnhart's Range Indisputably Complied With Generally Accepted Operation Practices

MCL 691.1542(a) provides:

A sport shooting range that is in existence as of the effective date of this section [July 5, 1994] and operates in compliance with generally accepted operation practices, *even if not in compliance with an ordinance of a local unit of government*, shall be permitted to do all of the following within its pre-existing geographic boundaries if in compliance with generally accepted operation practices:

* * *

- (c) Do anything authorized under generally accepted operation practices, including, but not limited to:
 - (i) Expand or increase its membership as opportunities for public participation.
 - (ii) Expand or increase events and activities.

The District Court found as a matter of fact that Barnhart's range was built and in existence in 1993, and therefore was in existence as of the July 5, 1994 effective date of MCL 691.1542a.

The District Court also found as a matter of fact that the range was built and operated in compliance with generally accepted operation practices. Those fact findings were never reversed (or challenged) on appeal.

Because it complied with generally accepted operation practices and was in existence as of July 5, 1994, the SSRA allowed Barnhart, even if he was not in compliance with a Township ordinance, to expand and increase opportunities for public participation at the range, and to expand and increase events and activities at the range. MCL 691.1542a. Thus, assuming *arguendo* that Barnhart's range did not comply with the Township zoning ordinance he was charged with violating, because it indisputably complied with generally accepted operation

practices, Barnhart was allowed to do anything authorized under generally accepted operation practices regardless of any ordinance to the contrary. MCL 691.1542a.

The generally accepted operation practices set out in the NRA Range Manual authorize firearms training and instruction, as well as charging user fees, charging fees for training and instruction, and other kinds of "business" activities.

The NRA Range Manual Introduction provides that "shooting ranges are places where people may participate in recreation, competition, *skill development and training with ... firearms,*" and the "purpose of a shooting range is to provide a location where people can enjoy various shooting sports." (§1.01.1 - 1.01.2 at I-3).

Section I, Chapter 1, Article 1, discusses safeguards in "*training of members*" (§1.01.1 at I-1-4) (emphasis added). Chapter 1, Article 2 acknowledges that a shooting range's emphasis can be both "on *training or competitive activities*" (§2.02.2(D) at I-1-5) (emphasis added). It also acknowledges that "special uses" that can "be made of the facility" are uses "such as law enforcement" (§2.02.2(G) at I-1-5). Moreover, "other potential users" of a range include "law enforcement agencies" (§2.07.1 at I-1-8 at I-1-8). Section I, Chapter 2, Article 3 states that one group "[w]ho is authorized to use the facility" can include "*law enforcement,*" and that "*[t]raining activities are an important part of the scheduled use*" of a range. (Article 3, §3.02.1(A) and (G) at I-2-8) (emphasis added).

Section I, Chapter 5, Article 2 provides that any management guidebooks should "[i]nclude any *training or shooting programs offered*" at the range (Article 2, §2.01.1(H) at I-5-4) (emphasis added), and to provide "information on *training programs,* including outlines, instructor report forms," and similar material (Article 2, §2.02.2.7 at I-5-5) (emphasis added). Article 3 says that "*training materials and brochures are available from the NRA Education and*

Training Division or from other shooting sports governing bodies," and that the "materials provide guidance on how to set up youth shooting programs, *basic and advanced marksmanship and instructor certification*" training. (Article 3, §3.03.1 at I-5-6) (emphasis added).

Section II, Chapter 14, Article 1 "provides information on how to construct small arms ranges on which '*training in the use of firearms*' may be conducted" (Article 3, §1.01.01 at II-14-4) (emphasis added). Article 2 sets out "Safety Rules for *Training Ranges*" (Article 2, §2.01.2 at II-14-6) (emphasis added).

Section II, Chapter 17, Article 2 says that "[s]everal impact areas for the *rifle training course* are required," and that by "utilizing draws, ravines or other terrain features, it's possible to have a quality *rifle training facility*" at a range. (Section 2.01.1 at II-17-5) (emphasis added).

In addition, as set out in section III(A)(2)(e) of this Application, charging user fees and dues, charging range fees for, among things, training activities, and generating revenues from those activities are all things authorized under generally accepted operation practices. *See* NRA Range Manual Section II, Chapter 1, Article 4, §§4.04.3, 4.04.31.

Without question, charging for use of a range, and providing skill development and firearms training, including training for law enforcement officers, are all authorized under generally accepted operation practices. Such uses are therefore permissible and protected under MCL 691.1542a regardless of any local ordinance to the contrary for any ranges that, like Barnhart's, existed before July 5, 1994 and complied with generally accepted operation practices.

Moreover, any increased or expanded public participation, events and activities at Barnhart's range that involved firearms training, education and instruction -- whether provided to individuals or law enforcement personnel for a fee -- were authorized under generally accepted

operation practices, and are uses which MCL 691.1542a allows to continue free of local ordinances.

Because it is undisputed that Barnhart's range existed before July 5, 1994 and complied with generally accepted operation practices, and charging fees and providing public firearms education and training are authorized under generally accepted operation practices, MCL 691.1542a allows him to continue such operation of his range notwithstanding any contrary Township ordinance. He is therefore entitled to entry of judgment in his favor.

IV. CONCLUSION AND RELIEF REQUESTED

This Court should grant leave to appeal, reverse the lower courts' holding that the SSRA does not apply to any shooting range that is operated for any business or commercial purposes, and enter judgment in Barnhart's favor.

Respectfully Submitted,

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Dated: May 22, 2012