

**State of Illinois
In the Circuit Court of the Eleventh Judicial Circuit
McLean County**

BROOKE DOOLEY, a minor, by her)
mother and next friend, **WENDY DOOLEY**,)
DAYNE WIGGINS, a minor, by his mother)
and next friend, **LISA WIGGINS**,)
JESSICA CLARK, a minor, by her mother)
and next friend, **ANGIE CLARK**, and)
OUTLAW OUTFITTERS, LTD., an)
Illinois Corporation,)
)
)
Plaintiffs,)

vs.)

Case No.: _____)

ILLINOIS DEPARTMENT OF)
NATURAL RESOURCES,)
An Agency of the State of Illinois,)
)
)
Defendant.)

**VERIFIED COMPLAINT FOR EQUITABLE
AND DECLARATORY RELIEF**

Now Comes the Plaintiffs, BROOKE DOOLEY, a minor, by her mother and next friend, WENDY DOOLEY, DAYNE WIGGINS, a minor, by his mother and next friend, LISA WIGGINS, JESSICA CLARK, a minor, by her mother and next friend, ANGIE CLARK, and OUTLAW OUTFITTERS, LTD., an Illinois Corporation, by and through their attorney, Thomas J. Pliura, and complaining of Defendant, ILLINOIS DEPARTMENT OF NATURAL RESOURCES, an Agency of the State of Illinois, states as follows:

COUNT I
Injunctive Relief

The Plaintiffs complain of Defendant, Illinois Department of Natural Resources, hereinafter referred to as "IDNR", as follows:

1. Defendant is an Agency of the State of Illinois, created by statute at 20 ILCS 801/1-1 *et seq.*
2. Plaintiffs Brooke Dooley, Dayne Wiggins, and Jessica Clark are minor citizens of the state of Illinois.
3. Plaintiff Outlaw Outfitters, LTD, is an Illinois corporation in good standing that currently and for many years has maintained a concessionaire contract with Defendant IDNR to provide horseback riding and related activities to children and adults at Moraine View State Park, LeRoy, McLean County.
4. On or about August 28, 2008, Defendant IDNR announced that it would close to the public, effective November 1, 2008, certain state parks including;
 - a. Castle Rock State Park, Oregon, Ogle County,
 - b. Lowden State Park, Oregon, Ogle County,
 - c. Hennepin Canal Parkway State Park, Sheffield, Bureau County,
 - d. Illini State Park, Marseilles, LaSalle County,
 - e. Channahon Parkway State Park, Channahon, Will County,
 - f. Gebhard Woods State Park, Morris, Grundy County,
 - g. Hidden Springs State Forrest, Strasburg, Shelby County,
 - h. Kickapoo State Park, Oakwood, Vermilion County,
 - i. Moraine View State Park, LeRoy, McLean County
 - j. Weldon Springs State Park, Clinton, DeWitt County, and
 - k. Wolf Creek State Park, Windsor, Shelby County.
5. Said state parks are statutorily designated State Parks of the State of Illinois under the State Parks Designation Act, 20 ILCS 840/1.

6. Pursuant to 20 ILCS 835/1, Defendant, IDNR, “shall have the care, control, supervision and management of all State parks heretofore acquired by the State, or which may hereafter be acquired, and all easements appurtenant or contributory thereto; such parks to be open to and to be for the benefit and enjoyment of all the people of this State, subject to the rules and regulations of the Department.” (Emphasis added)

7. The power and authority of Defendant, IDNR, with respect to the statutory obligation described above is established by 20 ILCS 835/4, which states,

“Sec. 4. The Department of Natural Resources has the power:

(1) To make rules and regulations necessary to carry out its duties under this Act, including rules and regulations for the use, care, improvement, control and administration of lands under its jurisdiction, and to enforce the same.

(2) To employ such custodians, keepers, clerks, assistants, laborers and subordinates as may be necessary to carry out the provisions of this Act.

(3) To lay out, construct and maintain all needful roads, parking areas, paths or trails, bridges, and docks, camp or lodge sites, picnic areas, beach houses, lodges and cabins and any other structures and improvements necessary and appropriate in any state park or easement thereto; and to provide water supplies, heat and light, and sanitary facilities for the public and living quarters for the custodians and keepers of state parks.

(4) To replant any devastated native plant areas of any State park or increase or supplement the same when necessary with plant material indigenous to such park.

(5) To cooperate with the United States government and with other states in matters relating to the care, improvement, control and administration of national or interstate parks.

(6) To cooperate and contract with any agency, organization or individual in a manner consistent with the purposes of this Act and the powers granted the Department herein.

(7) To accept and administer gifts, grants and legacies of money, securities or property to be used by the Department of Natural Resources for the purposes of this Act and according to the tenor of such gift, grant or legacy. (Source: P.A. 89-445, eff. 2-7-96.)”

8. Additional duties and powers of Defendant IDNR not specifically related to state parks, are found in its authorizing statute at 20 ILCS 801/1-1 *et seq.*

9. A State Agency, including Defendant IDNR, has no general or common law authority.

The only powers it possesses are those granted to it by the legislature, and any action it

takes must be authorized by statute. (see *Business & Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill.2d 192, 243-44, 144 Ill.Dec. 334, 555 N.E.2d 693 (1989)).

10. Neither 20 ILCS 835/4 nor 20 ILCS 801/1-1 *et seq.* bestow upon Defendant IDNR the authority to close and remove from the public benefit and enjoyment any of the statutorily designated State Parks.
11. It is the public policy of this state to acquire and maintain a system of State Parks which will, *inter alia*, preserve the most historic sites and events which are connected with early pioneer or Indian history, to set aside areas that have unusual scenic attraction caused by geographic or topological formations such as moraines, and to preserve large forested areas around bodies of water and for such areas designated by the legislature as State Parks to be open to and to be for the benefit and enjoyment of all the people of this State. (The State Parks Act, 20 ILCS 835/0.01, *et seq.*)
12. It is the public policy of this State to support, permit and provide for recreational hunting upon the lands entrusted by the legislature to the management of IDNR. (The Illinois Hunting Heritage Protection Act, 520 ILCS 30/1 *et seq.*)
13. It is the public policy of this State that all agencies of the State shall work to further the purposes of the Endangered Species Protection Act and its charge of identifying and protecting the continued existence of Illinois-listed endangered and threatened species and the essential habitat of such species. (The Illinois Endangered Species Protection Act, 520 ILCS 10/1 *et seq.*)

14. Defendant's announced plan to close the identified State Parks is inconsistent with the legislative purpose of IDNR, contrary to the public policy of the State and outside the statutory scope of Defendant's authority.
15. This Court has the authority to restrain Defendant from undertaking actions which are contrary to public policy and exceed Defendant's statutory authority.
16. The Plaintiffs have a clearly ascertainable right to and substantial interest in the use and enjoyment of the identified State Parks.
17. Plaintiffs have no alternative remedies at law or in equity.

WHEREFORE, Plaintiffs pray for the following injunctive relief:

- A. A Preliminary Injunction and Permanent Injunction thereafter, enjoining Defendant from closing the State Parks listed in Paragraph 4 above to public use, benefit and enjoyment absent specific statutory authority to do so.
- B. Such other and further relief as this Court may deem proper.

COUNT II
Injunctive Relief

The Plaintiffs complain of Defendant, Illinois Department of Natural Resources, hereinafter referred to as "IDNR", as follows:

1. Defendant is an Agency of the State of Illinois, created by statute at 20 ILCS 801/1-1 *et seq.*
2. Plaintiffs Brooke Dooley, Dayne Wiggins, and Jessica Clark are minor citizens of the state of Illinois.
3. Plaintiff Outlaw Outfitters, LTD, is an Illinois corporation in good standing that currently and for many years has maintained a concessionaire contract with Defendant IDNR to

provide horseback riding and related activities to children and adults at Moraine View State Park, LeRoy, McLean County.

4. On or about August 28, 2008, Defendant IDNR announced that it would close to the public, effective November 1, 2008, certain state parks including;
 - a. Castle Rock State Park, Oregon, Ogle County,
 - b. Lowden State Park, Oregon, Ogle County,
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 - d. Illini State Park, Marseilles, LaSalle County,
 - e. Channahon Parkway State Park, Channahon, Will County,
 - f. Gebhard Woods State Park, Morris, Grundy County,
 - g. Hidden Springs State Forrest, Strasburg, Shelby County,
 - h. Kickapoo State Park, Oakwood, Vermilion County,
 - i. Moraine View State Park, LeRoy, McLean County
 - j. Weldon Springs State Park, Clinton, DeWitt County, and
 - k. Wolf Creek State Park, Windsor, Shelby County.

5. Pursuant to 520 ILCS 10/11(b);

“It is the public policy of all agencies of State and local governments to utilize their authorities in furtherance of the purposes of [The Illinois Endangered Species Protection] Act [520 ILCS 10/1 *et seq.*] by evaluating through a consultation process with the Department [of Natural Resources] whether actions authorized, funded, or carried out by them are likely to jeopardize the continued existence of Illinois listed endangered and threatened species or are likely to result in the destruction or adverse modification of the designated essential habitat of such species, which policy shall be enforceable only by writ of mandamus; and where a State or local agency does so consult in furtherance of this public policy, such State or local agency shall be deemed to have complied with its obligations under the "Illinois Endangered Species Act", provided the agency action shall not result in the killing or injuring of any Illinois listed animal species, or provided that authorization for taking a listed species has been issued under Section 4, 5, or 5.5 of this Act. This paragraph (b) shall not apply to any project of a State agency

on which a biological opinion has been issued (in accordance with Section 7 of the Federal Endangered Species Act) prior to the effective date of this amendatory Act of 1985 stating that the action proposed by said project will not jeopardize the continued existence of any federal listed endangered or threatened species.”

6. Pursuant to 520 ILCS 10/6, the Illinois Endangered Species Protection Board has identified those endangered and threatened species known to exist in Illinois and have created a registry of the sightings of those species throughout the state. A copy of the list of Endangered and Threatened Species is attached hereto as **Exhibit A**. A copy of the current registry of sighted species is attached hereto as **Exhibit B**.
7. Upon information and belief, those endangered and threatened species known to be present in the Counties of Ogle (40 Species), Bureau (13 Species), La Salle (32 Species) Will (58 Species), Grundy (25 Species), Shelby (12 Species), Vermilions (36 Species), McLean (6 Species) and DeWitt (3 Species), as listed in **Exhibit B**, are present in the State Parks located in those Counties.
8. Upon information and belief, Defendant IDNR has not conducted a thorough study into the impact of its planned park closings upon endangered and threatened species as required by 520 ILCS 10/11(b), nor has the IDNR prepared an Environmental Impact Statement assessing the potential impact the proposed closing will have upon these threatened and endangered species.
9. This Court has the authority to restrain Defendant from undertaking actions that violate state law and/or are contrary to Public Policy.
10. The Plaintiffs have a clearly ascertainable right to and substantial interest in the preservation and protection of endangered and threatened species within this State.
11. Plaintiffs have no alternative remedies at law or in equity.

WHEREFORE, Plaintiffs pray for the following injunctive relief:

- A. A Preliminary Injunction and Permanent Injunction thereafter, enjoining Defendant from closing the State Parks (listed in Paragraph 4, above) from public use, benefit and enjoyment prior to conducting or in a manner inconsistent with the findings of a thorough study into the impact of its planned park closings upon endangered and threatened species, as required by 520 ILCS 10/11(b).
- B. Such other and further relief as this Court may deem proper.

COUNT III
Declaratory Relief

The Plaintiffs, complaining of Defendant, Illinois Department of Natural Resources, hereinafter referred to as “IDNR”, seek declaratory relief as follows:

- 1.- 14. Plaintiffs reallege Paragraphs 1 through 14 of Count I as Paragraphs 1 through 14 of this Count III.
- 15.- 18. Plaintiffs reallege Paragraphs 5 through 8 of Count II as Paragraphs 15 through 18 of this Count III.
19. Pursuant to 735 ILCS 5/2-701, Plaintiffs seek a declaration of the rights of the parties as to the Defendant IDNR’s authority to close the identified State Parks to public use, benefit and enjoyment.

WHEREFORE the Plaintiffs seeks a declaration of rights of the parties as to the authority of the Defendant to close the State Parks listed in Paragraph 4 above to public use, benefit and enjoyment absent specific statutory authority to do so and without conducting a thorough study into the impact of its planned park closing upon endangered and threatened species as required by 520 ILCS 10/11(b).

Respectfully Submitted,

Thomas J. Pliura,
Attorney for Plaintiffs

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Wendy Dooley, as mother and Next Friend
of Brooke Dooley, Plaintiff

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EXHIBITS

Due to the size of the exhibits, they have been omitted from this electronic copy. However, the documents can be found at the following IDNR websites:

Exhibit A. Illinois Endangered and Threatened Species List can be found at:

<http://www.dnr.state.il.us/esp/datelists.htm>

Exhibit B: Sighted Endangered and Threatened Species Roster by Illinois County can be found at:

http://www.dnr.state.il.us/ORC/list_tande_bycounty.pdf