

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.)

EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

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 respectfully moves this Honorable Court, pursuant to 735 ILCS 5/11-101, for entry of an immediate temporary restraining order entered upon the pleadings and thereafter, a preliminary injunction, entered following the requisite hearing, restraining Defendant, ILLINOIS DEPARTMENT OF NATURAL RESOURCES, hereinafter referred to as "IDNR", from closing the State Parks listed in Paragraph 3 below to public use, benefit and enjoyment. In support of said Motions for immediate temporary restraining order entered upon the pleadings and

thereafter, a preliminary injunction, entered following the requisite hearing, Plaintiffs state 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. 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)).
8. No statute bestows upon Defendant IDNR the authority to close and remove from the public benefit and enjoyment any of the statutorily designated State Parks.
9. 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.*)

10. 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.*)
11. 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.*)
12. 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.
13. This Court has the authority to restrain Defendant from undertaking actions which are contrary to public policy and exceed Defendant's statutory authority.
14. The Plaintiffs have a clearly ascertainable right to and substantial interest in the use and enjoyment of the identified State Parks.
15. Plaintiffs have contemporaneously filed a complaint seeking preliminary and permanent injunctive relief and declaratory relief, and there is a substantial likelihood that Plaintiffs will succeed on the merits of said complaint where defendant's actions are contrary to the law and public policy.
16. Plaintiffs have no alternative remedies at law or in equity.
17. The injunctive relief Plaintiffs seek is necessary to maintain the *status quo* and to protect Plaintiffs, the public, and the environment from the substantial and irreparable injury that will be sustained if Defendant is permitted to close said parks.

18. A narrowly drawn proposed temporary restraining order, which Plaintiffs seek to have entered immediately upon the pleadings under the authority of 735 ILCS 5/11-101 is attached hereto.

WHEREFORE, Plaintiff prays for the entry of the following orders:

- a. A temporary restraining order without Bond entered immediately upon the pleadings under the authority of 735 ILCS 5/11-101, restraining Defendant from closing the above-identified State Parks and extending until such time as the Court may hear Plaintiffs' Motion for Preliminary Injunction.
- b. An order providing for a prompt hearing date on Plaintiffs' Motion for Preliminary Injunction as provided for under 735 ILCS 5/11-101; and
- c. A Preliminary Injunction enjoining Defendant from closing the above-identified State Parks or any other similar facilities absent specific legislative/statutory authority to do so.

Respectfully Submitted,

Thomas J. Pliura, Attorney for Plaintiffs

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**EMERGENCY TEMPORARY
RESTRAINING ORDER**

This matter coming before the Court on Plaintiffs’ Emergency Motion for Temporary Restraining Order under the authority of 735 ILCS 5/11-101, Notice having/having not been given and Defendant having/having not appeared through Counsel; this Court having considered Plaintiffs’ Complaint, Plaintiff’s Emergency Motion for Temporary Restraining Order and supporting documentation, and the Court having considered the arguments of counsel, finds as follows;

1. Plaintiffs have shown they have a clearly ascertainable right in need of protection;
2. Plaintiffs have shown that there is a fair question that they will succeed on the merits of their contemporaneously filed complaint;
3. Plaintiffs have shown that they, the public, and the environment will suffer immediate and irreparable harm if injunctive relief is not issued; and

4. Plaintiffs have shown that they have no adequate remedy at law or in equity.

WHEREFORE IT IS HEREBY ORDERED AS FOLLOWS:

A. Defendant, Illinois Department of Natural Resources, is temporarily restrained from closing any State Park as designated by statute (20 ILCS 840/1).

B. This Temporary Restraining Order entered pursuant to the Court's authority at 735 ILCS 5/11-101 shall remain in full force and effect pending hearing on Plaintiffs' Motion for Preliminary Injunction unless sooner modified or dissolved.

C. For good cause shown, bond is waived.

D. Hearing on Plaintiffs' Motion for Preliminary Injunction is set for _____, 2008 at _____ am/pm.

F. This Temporary Restraining Order is entered this _____ day of _____, 2008 at _____ am/pm.

Judge