

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

RANDALL PAVLOCK, KIMBERLEY	)	
PAVLOCK, and RAYMOND	)	
CAHNMAN,	)	
	)	
Plaintiffs,	)	Case No.: 2:19-CV-0466-TLS-APR
	)	
v.	)	
	)	
ERIC J. HOLCOMB, in his official	)	
capacity as Governor of the State of	)	
Indiana; CURTIS T. HILL, in his	)	
official capacity as Attorney General of	)	
the State of Indiana; CAMERON F.	)	
CLARK, in his official capacity as the	)	
Director of the State of Indiana	)	
Department of Natural Resources, and	)	
TOM LAYCOCK, in his official	)	
capacity as Acting Director for the	)	
State of Indiana Land Office.	)	
	)	
Defendants.	)	

DEFENDANTS' MOTION TO DISMISS

Defendant's, Eric J. Holcomb, in his official capacity as Governor of the State of Indiana; Curtis T. Hill, in his official capacity as Attorney General of the State of Indiana; Cameron F. Clark, in his official capacity as the Director of the State of Indiana Department of Natural Resources, and Tom Laycock, in his official capacity as Acting Director for the State of Indiana Land Office (Defendant's) respectfully file this motion to dismiss Plaintiffs' Complaint. In support, the Defendants simultaneously file a Memorandum in Support of Motion to Dismiss, and further state:

1. On December 5, 2019, Plaintiffs' filed their Complaint against Defendants, alleging that their property was taken without just compensation as a result of an Indiana Supreme Court decision, *Gunderson v. State*, 90 N.E.3d 1171 (Ind. 2018), *cert. denied sub nom. Gunderson v. Indiana*, 139 S. Ct. 1167 (2019).
2. Plaintiffs' claim is not a viable cause of action and should be dismissed because the United States Supreme Court has not held that a judicial taking is allowed under the under the Takings Clause of the Fifth Amendment.
3. Plaintiffs' claim raises special sovereignty interests, as in *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261 (1997), such that sovereign immunity bars their takings claim.
4. Plaintiffs' two claims for injunctive relief should be dismissed because this Court cannot provide the requested relief.
5. Plaintiffs' claim for a declaratory judgement is barred by the State's sovereign immunity and does not fall under the *Ex Parte Young* exception because it may be used to obtain damages in state court.
6. The Governor of Indiana, the Indiana Attorney General, and the Acting Director for the Indiana State Land Office are not proper parties to this case because they cannot provide any of the requested relief.

WHEREFORE, Defendants request that this lawsuit be dismissed in its entirety and for all other appropriate relief.

Respectfully submitted,

Curtis T. Hill, Jr.
Attorney General of Indiana
Attorney No. 13999-20

By: Andrea E. Rahman
Deputy Attorney General
Attorney No. 32728-29

Amanda Terrell
Deputy Attorney General
Attorney No. 32487-49

Jefferson S. Garn
Deputy Attorney General
Attorney No. 29921-49

Office of the Indiana Attorney General
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Phone: (317) 232-6332
Fax: (317) 232-7979
Andrea.Rahman@atg.in.gov