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May 26, 2022 !!:30

Re: H8055 Sub A; **just yesterday**, a federal appeals court rejected a private takings challenge to a state's re-definition of shore property rights to favor public passage.

Dear Chairman Craven:

There is breaking news.

Prof. Sean Lyness' recent letter of April 10, 2022 cited the lower court opinion in the case of Pavlock v Holcomb, 532 F.Supp.3d 685 (N.D. Ind. 2021), arising in Indiana over the Lake Michigan shoreline. That takings claim has striking parallels with the litigation that we anticipate will ensue from the enactment of H8055 Sub A.

The lower court ruled in favor of the public over a year ago.

Prof. Lyness' letter explained that the lower court ruled 1) that the case did not belong in federal court (there was a lack of federal jurisdiction) and 2) in any event, as an alternative holding, there was no taking when the Indiana courts and legislature refined state property law to make the shore-front boundary along Lake Michigan a higher line, thereby allowing for greater public passage.

I have been in touch with the Indiana Attorney General to closely follow the Pavlock litigation on appeal. Just a day ago, the Seventh Circuit Court of Appeals released its opinion.

The upper court has now, **as of yesterday morning**, affirmed. This is a win for the public and a setback for those arguing that H8055 Sub A would constitute a taking.

While the upper court made a complex technical ruling, the decision is full of language that echoes — and approves of — the lower court. The appellate court positively distinguished (found irrelevant) the Cedar Point precedent (which is heavily relied upon by the current Bill's opponents).

Case opinion links are included below from both the lower and upper court.

Yesterday's opinion from upper court:

<http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2022/D05-25/C:21-1599;J:Wood;aut:T:fnOp:N:2881394:S:0>

Last year's opinion from lower court:

<https://casetext.com/case/pavlock-v-holcomb-1>

Gratefully,

Mike Rubin

cc: Committee members; Speaker's office