

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **EMINENT DOMAIN - INDIANA**

### **Gerlach v. Rokita**

**United States Court of Appeals, Seventh Circuit - March 6, 2024 - F.4th - 2024 WL 956858**

Owner of dormant property, some of which she had reclaimed, brought § 1983 action against Indiana officials in their official and individual capacities, alleging that they violated the Fifth Amendment's Takings Clause by failing to pay her for interest accrued while reclaimed property was in state custody, and seeking just compensation as well as declaratory and injunctive relief.

Defendants moved for judgment on the pleadings. The United States District Court for the Southern District of Indiana granted defendants' motion and dismissed complaint with prejudice. Owner appealed, and while appeal was pending, Indiana modified governing statute to require that interest be paid on all property recovered thereunder, even if that property did not earn interest prior to state taking custody.

The Court of Appeals held that:

- In light of the change to the Revised Indiana Unclaimed Property Act, owner's claim for prospective relief was moot;
- Even if the Fifth Amendment Takings Clause created an implied direct cause of action by its text alone, owner's claims against Indiana officials in their official capacities for past Takings Clause violations, which were, in effect, claims against the State of Indiana itself, were barred by Eleventh Amendment sovereign immunity;
- Owner's § 1983 claim for compensatory relief against current and former Indiana officials in their individual capacities was really a claim against the state; and
- Because owner's § 1983 claim for compensatory relief against current and former Indiana officials in their individual capacities was really a claim against the state, it was doubly barred, first because § 1983 did not create a cause of action against the state and, second, because Indiana enjoyed sovereign immunity under the Eleventh Amendment.