

R.I. Court Holds 2023 Shore Access Law Is An Unconstitutional Taking

Description

By [Robert K. Taylor](#)

In June 2023, the Rhode Island General Assembly enacted legislation granting the public expanded “privileges of the shore,” including but not limited to the right to fish from the shore, to swim in the sea and to pass along the shore. Until 2023, the area where those public privileges could be exercised stopped at the mean high water mark (MHW), measured by an average of the tides over many years. The 2023 law moved the public access boundary inland to the “recognizable high tide line” plus an additional ten feet. In practice, the 2023 shore access law for the first time granted the public rights to use a 50 to 70 foot wide swath of shore that from Colonial times was always private property.

Shoreline property owners in South Kingstown and Westerly challenged the 2023 law. In a pair of decisions on July 12, 2024, Judge Taft-Carter of the Rhode Island Superior Court held that the 2023 law is an unconstitutional taking of private property, for which property owners must be compensated by the state. Judge Taft-Carter wrote that the Rhode Island General Assembly “appropriated a public right of access onto private property when it designated up to 10’ landward of the recognizable high tide line as the access point for the public’s rights and privileges,” and that this “confiscated the Plaintiff’s property resulting in an unconstitutional taking.” Judge Taft-Carter also held that the 2023 shore access law violated the separation of powers doctrine by infringing on the powers of the Rhode Island Supreme Court to interpret the Rhode Island Constitution.

Judge Taft-Carter’s rulings affirm a basic principle of U.S. and Rhode Island law: that the state cannot take private property for public use, no matter how compelling or desirable the reason, without paying just compensation.

For more information on this ruling and its potential impact on land use in Rhode Island, please connect with Attorney [Robert K. Taylor](#). For additional information and resources, visit the firm’s [Development, Land Use & Zoning](#) page.

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