

# DAILY REPORT

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## Supreme Court of Georgia Waives Sovereign Immunity in Property Owner's Suit Against GDOT

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Governmental legal protections offered through sovereign immunity won't get the Georgia Department of Transportation off the hook after its eminent domain installation of a highway



Justice Nels Peterson, Supreme Court of Georgia.

allegedly caused a Ware County woman's land to flood.

In a **decision** from the Supreme Court of Georgia Tuesday, the

high court greenlit property owner Cathy Mixon's legal pursuit of damages and an injunction against the state's transportation department, after determining a just-compensation provision waiver to sovereign immunity applied.

"The Georgia Constitution provides that, as a general matter, 'private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid,'" read the high court opinion drafted by Justice Nels S. D. Peterson. "This court has long held that this provision waives sovereign immunity for inverse condemnation claims seeking monetary compensation."

Inverse condemnation refers to an action "brought by a private landowner under the Just Compensation Provision, alleging the taking or damaging of the private property for public purposes without the initiation of eminent domain proceedings," according to the high court.

In the high court opinion, Peterson pointed out that the Just Compensation Provision also waived sovereign immunity



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for inverse condemnation claims seeking injunctive relief.

### 'Difficult to Anticipate'

Ware County State Court Judge Douglas L. Gibson represented Mixon in the matter, acting in his capacity as an attorney with Gibson & Associates in Waycross, Georgia.

"I'm glad we're making forward progress in the case," Gibson said. "What I have thought from the very beginning is that it just cannot be that the state can dump water on you, turn your commercial property into wetlands and you just can't get it stopped. Now, you can get it stopped."

Mixon's lawsuit alleged her property value had been reduced by "regular flooding, drainage,

(Courtesy photo)



Doug L. Gibson of Gibson & Associates.

and erosion problems ‘within and around’ her property,” after a GDOT road-widening project along Victory Drive diverted water onto her property.

According to her complaint, because the flooding resulted from GDOT’s failure to maintain its storm water drainage system, the damage caused amounted to a taking of her property without “just and adequate compensation” in violation of the Georgia Constitution.

With the exception of Presiding Justice Michael Boggs, who had been excluded from the case, the unanimous high court panel agreed.

“We recognize that it may sometimes be difficult to anticipate in advance that a given action on public property will create a nuisance amounting to a constitutional damaging of private property,” the high court opinion read. “But the Just Compensation Provision does not contain an exception for a taking or damage on the basis that that it is difficult to foresee.”

On Mixon’s behalf, Gibson sought “just and adequate compensation” for the alleged taking, as well as additional money damages, attorney fees and a permanent injunction preventing

“future nuisance and continual trespass.”

“This is a significant case,” Gibson said. “It’s an issue that’s been bubbling for a long time. It needed to be resolved, and I think the Supreme Court [of Georgia] has done an excellent job of outlining the background and came to only decision that you really could come to.”

**Dismissal Denied**

Represented by the Office of the Attorney General of Georgia, GDOT denied Mixon’s allegations.

The state agency filed a motion to dismiss the case on the grounds of sovereign immunity but failed in both the trial court and before the Georgia Court of Appeals on

an interlocutory appeal.

Like the lower courts, the Supreme Court of Georgia also ruled against the state’s transportation department, finding it failed



Georgia Attorney General Chris Carr (Courtesy photo)

to provide adequate proof that would nix the Just Compensation Provision waiver.

“There is no suggestion in the record that GDOT has afforded Mixon compensation for this alleged taking; indeed, her complaint seeks money damages,” Peterson wrote. “Nor is there



(Photo: John Disney/ALM)

any suggestion that GDOT has availed itself of legal process to exercise its eminent domain power over Mixon’s property.”

**‘Viable on the Merits’**

Although the high court decision determined sovereign immunity did not bar Mixon’s claim, Peterson cautioned jurists against interpreting the opinion to be a validation of merit.

“We are not holding that Mixon actually is entitled to obtain injunctive relief,” Peterson wrote. “A waiver of sovereign immunity says nothing about whether a claim is viable on the merits.”

Peterson pointed out in the opinion that during oral argument Mixon’s attorney, Gibson, acknowledged money could make his client whole while arguing that she was not limited to that remedy.

“Although Mixon seeks a permanent injunction ‘in order to prevent future nuisance and continual trespass from being inflicted upon’ her property, her complaint contains no allegation that her damages claim does not provide her an adequate remedy for such a tort.”