

Chair Westman and Members of the Committee

Chair Westman asked today what difference it would make in the end if the legislature acted on legal trails now or later. I think the answer is that it would make a lot of difference to the hundreds of property owners affected by this proposed policy change, but only a modest difference to a few bikers.

If the trails language in the T bill were enacted in this session, and it were subsequently determined (in our pending case or otherwise) that the statutes do not now grant towns trail maintenance authority, then the legislature will have unconstitutionally taken the property rights of all of the landowners, according to the constitutional analysis presented to you by Damian Leonard. Very few landowners would be in a position to mount an expensive takings lawsuit against the State and towns, with the result that the violation of the constitutional rights of most of these landowners would go completely unrecognized and unremedied. The State would be running over the landowners.

On the other hand, if the legislature waited a year, the legislature would obtain an authoritative judicial resolution of the trail maintenance dispute. If the court ruled in favor of the town, the takings issue would disappear, and the legislature could proceed to change the statute without hesitation. If the plaintiffs win, the responsible course would be to set up an eminent domain/just compensation process so that landowners could be compensated for their constitutional injury. The legislature could still proceed to change the law regarding trail maintenance, but with difference that the legislature would recognize that in making this change it is adversely affecting the property rights of its citizens. Instead of landowners having to sue the State, the government would admit the taking and come forward with an offer to pay. The citizens' valuable constitutional rights would be honored and protected. The State would not be running over the landowners.

As to the bikers, across the state towns could continue to do whatever it is they have been doing (or not doing) in terms of trail maintenance and trail use. No Towns other than Tunbridge are involved in litigation and those other towns are entitled to stick to their current practices, at least until there a state Supreme Court decision on this issue, which could not conceivably be issued in this case until the very end of the year. The exception is Tunbridge because the town has represented to the court that it does not intend to commence maintenance until the pending court case is completed. Given that Tunbridge has never before maintained any of its legal trails since they were created nearly 40 years ago, one year of additional delay is hardly a big deal.

On balance, taking into account the interests of landowners whose constitutional rights are at stake in this debate, and not only the interests of bikers, waiting much better serves the overall public interest than acting now.

Respectfully,
John Echeverria