

# **Bond Case Briefs**

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## **EMINENT DOMAIN - OHIO**

### **Vary v. City of Cleveland**

**United States District Court, N.D. Ohio - June 28, 2016 - F.Supp.3d - 2016 WL 3580769**

Property owner brought action against city, alleging that water main break damaged her property, and seeking writ of mandamus to compel city to engage in proper appropriation proceedings for involuntary taking of owner's property.

City moved to dismiss for failure to state claim.

The District Court held that district court would abstain from issuing writ of mandamus.

District court, sitting in diversity, would abstain from issuing writ of mandamus in name of state of Ohio to compel city to engage in appropriation proceedings with property owner related to alleged taking that occurred when water main break damaged property. It was unclear under Ohio law whether other remedies, such as action for trespass or nuisance, provided adequate remedy such that property owner would not be entitled to writ of mandamus, court would have to address complex questions of fact and law to determine whether city's activity with respect to water main break amounted to an appropriation, and ordering city to institute state proceedings would be intimately involved with state's sovereign prerogative.