

OAAA's Ken Klein On Property Rights



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Happy birthday, James Madison (born March 16, 1751).

The "Father of the Constitution," Madison gets credit for the Fifth Amendment, which includes the "Takings Clause" that protects private property.

" . . . nor shall private property be taken for public use, without just compensation."

Takings Clause,
Fifth Amendment

This principle is found in the federal law that regulates billboards, the Highway Beautification Act. It took decades, but most states also require just compensation to billboard and land owners when government removes billboards. This means:

- Protection against uncompensated billboard removal is fundamental to billboard value
- Government policy favors cash compensation for billboards, rather than non-cash "amortization" (the billboard right expires over time, such as five years)

"Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law . . ."

23 US Code 131(g)
Highway Beautification Act

Both Madison and the Takings Clause have been overshadowed; Madison by the taller Thomas Jefferson and the Takings Clause by the Fifth Amendment's better known protection against self-incrimination.

Soft-spoken and diminutive, Madison drove the convention that created the Constitution and the Bill of Rights. He came prepared. For months at the second-floor study at his home in Virginia ("Montpelier"), Madison researched other attempts at self-government.

For more, I recommend [The Bill of Rights: Original Meaning and Current Understanding](#). UC- Berkeley Law Professor Harry Scheiber wrote the chapter on the Takings Clause.



James Madison at the Constitutional Convention

"Only a few years before the (Constitutional) Convention, a wave of confiscation had swept the colonies as the property of loyalists was seized and disposed of by the revolutionary state governments," wrote Scheiber. "Moreover, takings had long been an instrument of government action in normal times, both in Great Britain and the American colonies."

Historians describe the Takings Clause as an early form of log-rolling, attached to the must-pass ban on self-incrimination.

For the latest US Supreme Court ruling affirming property right, [click here](#).

Thank you, James Madison.

Fun Facts

- Madison was short, probably 5'4"
- Multi-lingual, Madison graduated from Princeton in two years
- James and Dolley Madison had no children. Her son from her first marriage (John Payne Todd) was a disappointment. Madison paid \$40,000+ to the stepson's creditors. His debts contributed to the dismantling of the once prosperous Montpelier estate.
- Madison was the last surviving Founding Father. He died in 1836 at age 85.