

PROPERTY RIGHTS IN TEXAS

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Fredericksburg, Texas

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Texas Public Policy Foundation

www.TexasPolicy.com

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Problems with Texas Property Rights Law

- “Property owners do not acquire a constitutionally protected vested right in property uses.”
- Texas courts give too much deference to local governments
- Courts do not consider all circumstances or facts that might effect the present market value
- There is no requirement that property taken for a public use is used for that public use
- Great confusion between “public use” and “public purpose”
- Can’t challenge the public necessity of a project

A faded background image of a two-story house with a porch and a chimney. The house has light-colored siding and a dark roof. A chimney is visible on the right side. The porch has a white railing. The text "Some Examples" is overlaid in the center in a bold, orange font.

Some Examples

Woodard Paint & Body



Applewhite Reservoir



Applewhite Reservoir



Western Seafood



Right of Way Acquisition



Frank Newsom & the Malcomson Road Utility District



Texas Legislature - SB 18

- Prohibits ED takings that are not for a public use.
- Changes “public purpose” to “public use” in some cases
- Grants more leeway to roads crossing easements
- Requires entities to report that they have ED authority
- Requires payment for relocation expenses
- Material impairment of direct access to remaining property can be considered in compensation
- Poorly crafted buyback provision
- Procedural safeguards
 - Requires bonafide offer equal to or greater than the appraised value by a certified appraiser
 - Requires vote by governing body
 - Requires access to all appraisals by condemnor

What's Ahead?

- Not a lot of momentum
- Cities, counties, & private condemnors on alert
- Possible Activity in 2013
 - Buyback provision
 - Regulatory takings
 - Public use v. public purpose
 - Blight reform
 - More compensation reforms

Texas Supreme Court

- Four recent decisions have pumped new life into property rights
 - Texas Rice Land Partners, Ltd. And Mike Latta v. Denbury Green Pipeline-texas, Llc.
 - In Re State Of Texas v. Laws
 - City Of Dallas v. Heather Stewart
 - Barbara Robinson v. Crown Cork & Seal Company, Inc.

Texas Rice Land Partners v. Denbury

“Merely registering as a common carrier does not conclusively convey the extraordinary power of eminent domain or bar landowners from contesting in court whether a planned pipeline meets statutory common-carrier requirements. Nothing in Texas law leaves landowners so vulnerable to unconstitutional private takings.”

In Re State Of Texas v. Laws

“Though the State has a right to define the property being taken, it does not have the power to constrain the owners’ evidence of competing conceptions of the best economic unit by which the taken property should be valued.”

City Of Dallas v. Heather Stewart

“The protection of property rights, central to the functioning of our society, should not—indeed, cannot—be charged to the same people who seek to take those rights away. ... [W]e believe that unelected municipal agencies cannot be effective bulwarks against constitutional violations.”

Robinson v. Crown Cork & Seal Company, Inc.

“Judges are properly deferential to legislative judgments in most matters, but at some epochal point, when police power becomes a convenient talisman waved to short-circuit our constitutional design, deference devolves into dereliction.”

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