LEGAL UPDATES

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Proposed Texas Bullet Train Has Eminent Domain Authority

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On June 24, 2022, the Supreme Court of Texas held that Texas Central Railroad & Infrastructure Inc. and its related entities have eminent domain authority to acquire property for a proposed high-speed rail between Dallas and Houston. This ruling gives the Texas Central entities broad power to condemn land across Texas for this and other high-speed bullet train rail projects.

Statutory grant of authority

The Texas Central entities, Texas Central Railroad & Infrastructure, Inc. and Integrated Texas Logistics, Inc., collectively "Texas Central," were chartered for the purpose of constructing and operating an electric railway between Dallas and Houston to transport passengers. The Texas Supreme Court held that under Chapter 131 of the Texas Transportation Code, such corporations are interurban electric railways with eminent domain authority to condemn land.

Opponents argued that the type of high-speed railway at issue did not exist when the statute's predecessor was enacted in 1907. That prior statute was generally used by municipal trolley-scaled railways to acquire right of way on city streets, but the Texas Supreme Court held that Texas Central still fell under the statute's scope of authority for two reasons.

First, the high-tech nature of Texas Central's project did not change the fact that the proposed bullet train complied with Chapter 131's statutory language. For example, Chapter 131 authorizes corporations to obtain and lay rights-of-way no greater than 200 feet in width for the purpose of constructing railways and embankments. Texas Central's project requires 40-foot embankments and rights-of-way of up to 100 feet. The Texas Supreme Court noted that the statute does not set further requirements on "the speed a train may reach in

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traveling along the anticipated railway," "the size of the train," or "the distance between the municipalities in this state that the railway connects"—all factors that the project's opponents argued made the statute inapplicable. The Court's statutory analysis simply looked at the statute, looked at the proposed project, and found the project to comply with the statute.

Second, the Texas Supreme Court noted that other Texas statutes conferring eminent domain authority have previously been expanded to include later-developed technologies. When (as here) the statutory language is "broad enough to embrace a subsequently developed method," technology developed after the statute can still fall within the statute's scope. Chapter 131 contemplates electric railways transporting passengers between municipalities in Texas. If high-speed rails had existed at the time of the statute's passing, the legislature would not have needed a separate statute to accommodate them.

Reasonable probability of completion

The Texas Supreme Court also held that entities cannot simply prove eminent domain authority by declaring that they have it, or "checking a box." But, the Supreme Court rejected the opponent's argument that Texas Central was required to prove with "reasonable probability" that the project will be completed. Even if such a test had applied, the Texas Supreme Court noted that Texas Central had provided evidence that it had engaged in activities in furtherance of this proposed railway. Those activities included:

Spending over $125 million on the project

Engaging nearly 100 technical experts and 200 employees and contractors for the project

Completing over 2,000 surveys and executing hundreds of option contracts to purchase land needed for the railway

Signing an agreement with Amtrak to connect the railway with Amtrak's interstate rail system

Retaining, as a consultant, a company that built and successfully operates the high-speed train in Japan

Retaining, as a project manager, an engineering company that had completed more than 300 major train and subway projects

Spending several years obtaining the necessary permits and safety rules from various state and federal regulators

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Although the “reasonable-probability-of-completion” test might provide another layer of protection to the landowner, the Texas Supreme Court declined to adopt it given the constitutional and statutory landowner protections already in place. In declining to subject Texas Central to this test, the Court struck a balance between the landowner’s interests in a condemnation and the public benefits of eminent domain.

What this means to you

By resolving this legal challenge in Texas Central’s favor, the Texas Supreme Court indicated that the applicable statutory text will still be the first and last word for condemning entities whose eminent domain authority is challenged.

Contact us

If you have questions about this ruling or how it might affect your business, please contact Kate David, Robert Eckels, Mike Stafford, Sandy Hellums-Gomez, Ben Stephens, Logan Leal or your Husch Blackwell attorney.

The Real Estate, Development & Construction team wishes to gratefully acknowledge summer associate Caroline Thompson’s significant contribution to this legal alert.

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