

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

November 23, 2022

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No. 21-40750

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Lyle W. Cayce  
Clerk

RICHARD DEVILLIER; WENDY DEVILLIER; STEVEN DEVILLIER;  
RHONDA DEVILLIER; BARBARA DEVILLIER; ET AL.,

*Plaintiffs—Appellees,*

*versus*

STATE OF TEXAS,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Southern District of Texas

USDC No. 3:20-CV-223

USDC No. 3:20-CV-379

USDC No. 3:21-CV-104

USDC No. 4:21-CV-1521

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Before HIGGINBOTHAM, SOUTHWICK, and HIGGINSON, *Circuit  
Judges.*

J U D G M E N T

This cause was considered on the record on appeal and was argued by  
counsel.

No. 21-40750

IT IS ORDERED and ADJUDGED that the judgment of the District Court is VACATED and REMANDED to the District Court for further proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that each party bear its own costs on appeal.



Certified as a true copy and issued  
as the mandate on Mar 23, 2023

Attest:

*Jyle W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit

REVISED 1/10/2023

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Before HIGGINBOTHAM, SOUTHWICK, and HIGGINSON, *Circuit  
Judges.*

PER CURIAM:

The State of Texas appeals the district court's decision that Plaintiffs' federal Taking Clause claims against the State may proceed in federal court. Because we hold that the Fifth Amendment Takings Clause as applied to the states through the Fourteenth Amendment does not provide a right of action

for takings claims against a state,<sup>1</sup> we VACATE the district court’s decision and REMAND for further proceedings. Nothing in this opinion is intended to displace the Supreme Court of Texas’s role as the sole determinant of Texas state law.<sup>2</sup>

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<sup>1</sup> See *Hernandez v. Mesa*, 140 S. Ct. 735, 742 (2020) (“[A] federal court’s authority to recognize a damages remedy must rest at bottom on a statute enacted by Congress.”); *Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992) (holding that a takings plaintiff has “no cause of action directly under the United States Constitution”), *cert. denied*, 506 U.S. 1081 (1993).

<sup>2</sup> The Supreme Court of Texas recognizes takings claims under the federal and state constitutions, with differing remedies and constraints turning on the character and nature of the taking. See *City of Baytown v. Schrock*, 645 S.W.3d 174, 178 (Tex. 2022) (“Under our [federal and state] constitutions, waiver occurs when the government refuses to acknowledge its intentional taking of private property for public use. A suit based on this waiver is known as an ‘inverse condemnation’ claim.”); see also *Gutersloh v. Texas*, No. 93-8729, 25 F.3d 1044, 994 WL 261047, \*1 (5th Cir. 1994) (unpublished per curiam) (“[The State] . . . admits, the courts of the State of Texas are open to inverse condemnation damage claims against state agencies on the basis of the Fifth Amendment, as applied to the states through the Fourteenth Amendment, as well as on the basis of the Texas Constitution and laws.”); *Allodial Ltd. P’ship v. N. Tex. Tollway Auth.*, 176 S.W.3d 680, 683–84 (Tex. App.—Dallas 2005, pet. denied) (noting that Texas courts apply a two-year limitations period to takings claims for “damaged” property and a ten-year limitations period to takings claims for “taken” property).

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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Suite 115  
NEW ORLEANS, LA 70130

March 23, 2023

Mr. Nathan Ochsner  
Southern District of Texas, Galveston  
United States District Court  
601 Rosenberg Street  
Room 411  
Galveston, TX 77550-0000

No. 21-40750      Devillier v. State of Texas  
USDC No. 3:20-CV-223  
USDC No. 3:20-CV-379  
USDC No. 3:21-CV-104  
USDC No. 4:21-CV-1521

Dear Mr. Ochsner,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Nancy F. Dolly, Deputy Clerk  
504-310-7683

cc: Mr. Daniel Henry Charest  
Mr. Charles William Irvine  
Ms. Natalie Deyo Thompson  
Mr. Emery Lawrence Vincent  
Mr. Benjamin D. Wilson