

Bond Case Briefs

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EMINENT DOMAIN - NEW YORK

Kurtz v. Verizon New York, Inc.

United States Court of Appeals, Second Circuit - July 16, 2014 - F.3d - 2014 WL 3443956

Building owners brought § 1983 putative class action against telephone company, alleging that installation of telephone terminal boxes on their properties violated their right to procedural due process under the Fourteenth Amendment and right to be free from a taking without just compensation under the Fifth Amendment. The District Court dismissed action for lack of subject matter jurisdiction. Owners appealed.

The Court of Appeals held that:

- *Williamson County Regional Planning Com'n v. Hamilton Bank of Johnson City* applies to regulatory and physical takings alike;
- Claim alleging physical taking was not ripe for review;
- Ripeness requirement of finality and exhaustion as stated in *Williamson County* applies to procedural and substantive due process claims arising from the same circumstances as a taking claim; and
- Procedural due process claim was not ripe for review.

Court of Appeals holds that building owners' claim alleging physical taking against telephone company through installation of telephone terminal boxes on their properties was not ripe for review in federal court due to their failure to seek compensation at state level first. Although finality requirement had been satisfied by installation, inverse condemnation proceeding under New York's Eminent Domain Procedure Law provided facially reasonable, certain, and adequate procedure for obtaining compensation.