

# Bond Case Briefs

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## **INFRASTRUCTURE DEVELOPMENT - MICHIGAN**

### **Detroit International Bridge Company v. Government of Canada**

**United States District Court, District of Columbia - June 21, 2016 - F.Supp.3d - 2016 WL 3460307**

Owners and operators of toll bridge and international causeway between the United States and Canada brought action against United States Department of State (USDS), alleging that USDS violated the Administrative Procedure Act (APA), when it approved agreement between state and Canada for construction of new publicly owned bridge between United States and Canada.

USDS moved for summary judgment and owners and operators cross-moved for summary judgment.

The District Court held that:

- Dismissal of action, for failure to join indispensable party, was warranted;
- Public interest exception to procedural rule governing joinder of parties did not apply;
- USDS did not violate Compact Clause when it approved agreement;
- Statute authorizing state to enter into agreement with Canada or Mexico did not require USDS to determine whether agreement was lawfully executed under state law prior to approving agreement; and
- USDS's approval of agreement without determining whether it was valid under state law was not arbitrary and capricious under APA.

State, which entered into agreement with Canada for construction of new, publicly owned bridge between United States and Canada, was necessary party to resolution of claim, asserted by owners and operators of toll bridge and international causeway between the United States and Canada, alleging that United States Department of State (USDS) violated the Administrative Procedure Act (APA) when it approved agreement between state and Canada, in that agreement was invalid under the state's law, for purposes of determining whether state was indispensable party under rule governing required joinder of parties. State had an interest in validity of agreement, and its absence could impair or impede its ability to protect that interest.

Joinder of state, for purposes of determining whether state was indispensable party, was not feasible, in action brought by owners and operators of toll bridge and international causeway between the United States and Canada, against United States Department of State (USDS), alleging that USDS violated Administrative Procedure Act (APA) when it approved agreement between state and Canada for construction of new publicly owned bridge between United States and Canada, in that agreement was invalid under the state's law. State was entitled to sovereign immunity from suit under Eleventh Amendment, and that immunity had neither been abrogated by Congress in statute authorizing state to enter agreement with Canada or Mexico for construction of bridge, conditioned on its approval by Secretary of State, nor waived by explicit authorization in state law.

District court would dismiss, for failure to join an indispensable party, action brought by owners and

operators of toll bridge and international causeway between the United States and Canada, against United States Department of State (USDS), alleging that USDS violated that Administrative Procedure Act (APA) when it approved agreement between state and Canada for construction of new publicly owned bridge. State was necessary party to resolution of owners' and operators' claim, joinder of state was not feasible because state enjoyed sovereign immunity from suit under Eleventh Amendment, state would be prejudiced by judgment rendered in its absence, and there was no way district court could avoid prejudice that would result from invalidating agreement in state's absence.

Public interest exception to procedural rule governing joinder of parties, which allows a district court to find that a necessary party is not indispensable whenever the plaintiff seeks to vindicate a public right, did not permit district court to find that state was not indispensable party in suit brought by owners and operators of toll bridge and international causeway between the United States and Canada, against United States Department of State (USDS), based on allegations that agreement was invalid under state's law. Case did not implicate matter of transcending importance of that type that prompts courts to apply exception, it did not require joining of an infeasibly large number of parties, and it would invalidate the rights negotiated in agreement between state and Canada.

United States Department of State (USDS) did not violate Compact Clause when it approved agreement between state and Canada for construction of new, publicly owned bridge between United States and Canada, regardless of whether agreement was valid under state law.

United States Department of State (USDS) was not arbitrary and capricious, in violation of the Administrative Procedure Act (APA), when it approved agreement between state and Canada, for construction of new, publicly owned bridge between United States and Canada, pursuant to statute authorizing a state to enter agreement with Canada or Mexico for construction of bridge, conditioned on its approval by Secretary of State. Even if USDS did not determine whether agreement was valid under state law prior to approving agreement; statute directed USDS to review an agreement's impact on foreign policy and the national interest, and did not direct USDS to analyze complex issues of state or foreign law.

United States Department of State (USDS) was not arbitrary and capricious, in violation of the Administrative Procedure Act (APA), when it relied on opinion of state's governor and attorney general to confirm legality of, rather than conduct its own review of legality of, agreement between state and Canada, for construction of new, publicly owned bridge between United States and Canada, prior to approving of the agreement, pursuant to statute authorizing a state to enter agreement with Canada or Mexico for construction of bridge, conditioned on its approval by Secretary of State.

To extent that United States Department of State (USDS) originally may have suggested that legislative authorization was required prior to its approval of agreement between state and Canada for construction of bridge between United States and Canada, it never articulated a formal policy or position to that effect, and did not adopt a longstanding policy that engendered serious reliance interests, and it was thus not required, under Administrative Procedure Act (APA), to provide good reasons for approving construction without legislative approval, pursuant to statute authorizing a state to enter agreement with Canada or Mexico for construction of bridge, conditioned on its approval by Secretary of State.

