

# **Bond Case Briefs**

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## **EMINENT DOMAIN - TEXAS**

### **Love Terminal Partners, L.P. v. United States**

**United States Court of Appeals, Federal Circuit - May 7, 2018 - F.3d - 2018 WL 2090316**

Lessees of portion of airport property on which they constructed six-gate airline terminal filed suit against United States, claiming Fifth Amendment taking effected by federal Wright Amendment Reform Act (WARA), partially codifying private agreement in which city agreed to bar use of lessees' gates for commercial air transit and to acquire and demolish their terminal.

The United States Court of Federal Claims granted lessees summary judgment and awarded \$133.5 million to lessees as just compensation for regulatory and physical takings of their property. Government appealed.

The Court of Appeals held that:

- Regulatory taking was not effected by Congress' failure to repeal amendment;
- Regulatory taking was not effected by Congress' failure to extend WARA benefits to lessees;
- Regulatory taking was not effected by WARA preventing lessees' use of property for air service; and
- Physical taking was not effected by WARA, which did not codify portion of agreement to demolish gates.

Congress' failure to repeal Wright Amendment, limiting allowable uses of airport property including leased portion on which lessees' constructed six-gate airline terminal, did not effect Fifth Amendment regulatory taking of lessees' leasehold right to use their property for commercial air passenger service, since government could not be liable for takings by failure to act, but only for affirmative acts.

Congress' failure to extend to lessees, who constructed six-gate airline terminal on leased portion of airport property, benefits of federal Wright Amendment Reform Act (WARA), partially codifying private agreement in which city agreed to permit airlines to sell tickets from airport to any other destination but also agreed to bar use of lessees' gates for commercial air transit, did not effect Fifth Amendment regulatory taking of lessees' leasehold right to use their property for commercial air passenger service, since government could not be liable for takings by inaction or by legislatively favoring one party over another.

Federal Wright Amendment Reform Act (WARA), partially codifying private agreement in which city agreed to permit airlines to sell tickets from airport to any other destination but also agreed to bar use of lessees' gates for commercial air transit, did not effect Fifth Amendment regulatory taking of lessees' leasehold right to use their leased airport property for commercial air passenger service, since lessees' use of their property for commercial air passenger service under pre-WARA regulatory regime had no economic value, as they suffered net income loss of roughly \$13 million between their acquisition of lease and enactment of WARA, and at no time had revenue exceeded lessees' carrying costs so as to constitute economically beneficial use of property.

Federal Wright Amendment Reform Act (WARA), partially codifying private agreement in which city agreed to permit airlines to sell tickets from airport to any other destination but also agreed to bar use of lessees' gates for commercial air transit, did not effect Fifth Amendment physical taking of lessees' property, even though city acquired and demolished lessees' gates at their terminal pursuant to agreement, since WARA did not codify portions of agreement in which city agreed to acquire and demolish lessees' gates, and instead prohibited federal funds from being used for removal of lessees' gates.

Any codification in federal Wright Amendment Reform Act (WARA) of part of private agreement in which city agreed to acquire lessees' gates in terminal they constructed on leased parcel of airport property and then to demolish those gates did not effect Fifth Amendment physical taking of lessees' property, even though city acquired and demolished lessees' gates pursuant to agreement, since WARA's incorporation of that part of agreement at most required city to negotiate with lessees and then, if negotiations were unsuccessful, bring condemnation proceeding allowing lessees to receive just compensation, but acquisition of lessees' property through negotiation would be voluntary rather than required by government, and compensation would be provided in event of need for condemnation.

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