

1a

**APPENDIX A**

REVISED 1/10/2023

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

No. 21-40750

---

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

*Plaintiffs—Appellees,*

*versus*

STATE OF TEXAS,

*Defendant—Appellant.*

---

Appeal from the United States District Court  
for the Southern District of Texas  
No. 3:20-CV-223

---

**FILED**  
**November 23, 2022**  
**Lyle W. Cayce**  
**Clerk**

---

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>

---

<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–Pacífico, 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condemnation’ claim.”); see also *Gutersloh v. Texas*, No. 93-8729, 25 F.3d 1044, 994 WL 261047, \*1 (5th Cir. 1994) (unpublished per curiam) (“[The

*[ intentionally left blank ]*

---

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).