

THE FRANK LAW FIRM, PLLC

1017 William D. Tate Avenue, Suite 110
Grapevine, Texas 76051

Michael A. Bucek
mabucek@aol.com
April 29, 2019

Phone: (817) 949-2161
Fax: (817) 416-6292

247654

CERTIFIED MAIL NO.: 7016 0910 0001 0974 9662

Surface Transportation Board
ATTN: Filing Clerk
395 E. Street, SW
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
May 6, 2019
Part of
Public Record

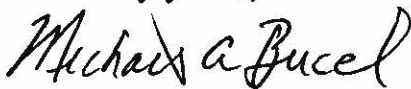
Re: Finance Docket No. 36025; TEXAS CENTRAL RAILROAD AND
INFRASTRUCTURE, INC. & TEXAS CENTRAL RAILROAD, LLC -AUTHORITY
TO CONSTRUCT AND OPERATE - PETITION FOR EXEMPTION FROM 49 U.S.C.
§ 10901 AND SUBTITLE IV - PASSENGER RAIL LINE BETWEEN DALLAS, TX
AND HOUSTON, TX; Response of JBJQ Ranch to Request for Oral Argument

Dear Clerk:

Enclosed please find an original and eleven copies of "**JBJQ Ranch's Response to Request for Oral Argument** of Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC (collectively "Texas Central")" relating to the above referenced docket. Would you please file stamp each of the JBJQ Ranch's Responses and return one of the copies of the Response in the self-addressed and stamped envelope?

Should you have any questions, please contact me at my cell phone number of 817-319-4298

Sincerely yours,



Michael A. Bucek
Of Counsel to the Firm
State Bar No. 03285500
817-319-4298 (cellular)



cc: Parties of Record
Individuals collectively known as JBJQ Ranch



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36025

TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. & TEXAS CENTRAL RAILROAD, LLC - AUTHORITY TO CONSTRUCT AND OPERATE - PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV - PASSENGER RAIL LINE BETWEEN DALLAS, TX AND HOUSTON, TX

JBQ Ranch's Response to Request for Oral Argument

JBQ Ranch would be remiss not to respond to Texas Central's request for oral argument in lieu of recent correspondence that the Surface Transportation Board (STB) has received from non-property owners along the alleged corridor for an alleged High Speed Passenger Rail Line between Dallas, TX and Houston, TX. We note that a recent submission by the Rail Passenger Association signed by Jim Matthews highlights that "*the Texas Central initiative is an important demonstration of the role private capital can and must play in building our nation's new transportation economy . . .*" The reference to the term "private capital" is what puts Texas Central at odds with the Texas Constitution when it comes to the use of Eminent Domain.

Texas Central attempts to reopen the above referenced Docket No. FD36025 solely for the purpose of trying to obtain a *new interpretation of a federal regulation* to get around the Texas Constitution and a Texas Statute which says a private entity can't use eminent domain if the taking confers a private benefit on a particular private party through the use of the property.

STB members may recall that in 2005 the U.S. Supreme Court rendered its decision in *Kelo v. City of New London*, 545 US 469. The Court held that the governmental taking of property from one private owner to give to another in furtherance of economic development constituted a permissible "public use" under the Fifth Amendment if such State's law allowed for such interpretation. Prior to this opinion, the Texas Constitution allowed eminent domain to be used for economic development and several major public/private projects condemning residential properties (e.g. City of Hurst, TX condemning homes for the expansion of Northeast Mall and the City of Arlington, TX condemning homes and apartments for the new stadium housing the Dallas Cowboys Football Team) outraged many Texans.

In 2011, following approval of a constitutional amendment (consistent with the *Kelo* case) adopted by an overwhelming vote of citizens of the State of Texas, a limitation was placed on entities using eminent domain in Texas. The applicable statute is Section 2206.001(b) which reads as follows:

(b) A governmental or private entity may not take private property through the use of eminent domain if the taking:

- (1) confers a private benefit on a particular private party through the use of the property;*
- (2) is for a public use that is merely a pretext to confer a private benefit on a particular private party;*
- (3) is for economic development purposes, unless the economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas under . . .*
- (4) is not for a public use. ...*

There is an exception for railroads in such statute but the 87th District Court in Texas has ruled that Texas Central cannot use eminent domain in Leon County (where the JBJQ Ranch is located), Freestone, or Limestone counties because it hasn't actually laid any track yet and doesn't currently operate any trains.

The Surface Transportation Board's earlier decision finding Texas Central's proposed high speed rail line is an *intrastate* line, and *is not a part of the interstate rail network* because it fails to connect with Houston's Amtrak station which is 7 miles away (45 minutes away by car during peak travel times) from the proposed high speed rail line station, was a correct decision and consistent with Federal and State Laws.

Since JBJQ Ranch's original response to Texas Central's Petition to Reopen, the U.S. Supreme Court has issued a decision in *Murphy, Governor of New Jersey, et al. v. National Collegiate Athletic Association, et al.* 138 S.Ct. 1461 (May, 2018) that may assist the STB in declining to (a) grant oral argument and/or (b) reopen its earlier decision. In the above case the State of New Jersey wanted to legalize sports gambling at casinos and horseracing tracks, but a federal law, the *Professional and Amateur Sports Protection Act*, generally made it unlawful for a State to authorize sports gambling schemes. The Court was asked to decide whether this Act is compatible with the system of "dual sovereignty" embodied in the U.S. Constitution. The Court ruled that Congress could not pass a law that would override the approval by the voters of New Jersey to repeal its laws that prohibited sports gambling schemes. It said:

- (a) As the Tenth Amendment confirms, all legislative power not conferred on Congress by the Constitution is reserved for the States. Absent from the list of conferred powers is the power to issue direct orders to the governments of the States.

Texas Central, by requesting the reopening of Docket No. FD36025, is seeking the STB to issue a direct order that its planned rail line is involved in *interstate* commerce rather than *intrastate* commerce. The *Interstate* Commerce Commission (ICC), the forerunner to the STB, was created by Congress to regulate the business practices of railroads to insure shipping rates were reasonable and just between the states. (Interstate Commerce Act of 1887, *Wikipedia*) Congress wanted to control the monopolistic power of railroads that had resulted in many abuses to the general public and in particular rate gouging. The decision of the STB in Docket No. FD36025 is consistent with the expectations of Congress when the ICC was created. Its decision in Docket

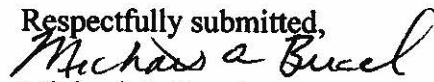
No. FD36025 is also consistent with its decision in Docket No. FD35861, (December 12, 2014) relating to the petition of the California High-Speed Rail Authority. In such decision the STB stated that "*localities retain their reserved police powers to protect the public health and safety so long as their actions do not unreasonably burden interstate commerce*". Equally importantly, the current decision of the STB is consistent with the U.S. Supreme Court decision in *United States v. Lopez*, 514 US 549 (1995). In that case the Court held the federal Gun-Free School Zones Act of 1990, which banned possession of handguns near schools, was unconstitutional because it did not have a substantial impact on interstate commerce.

The STB has correctly decided that the line proposed by Texas Central is an *intrastate* line. Such decision allows the mandate of the voters of the State of Texas to be honored - that eminent domain will not be used by a private entity to take private property. Equally important, the current STB decision allows the courts of the State of Texas, pursuant to the Tenth Amendment to the U.S. Constitution, to decide if a proposed monopolistic entity desiring to acquire private property through eminent domain is doing so for a public purpose as provided by state law.

CONCLUSION

JBQ Ranch would request that the Surface Transportation Board not grant oral argument to Texas Central and not reopen its decision in Docket No. FD 36025 and continue to hold it does not have jurisdiction in this matter.

Respectfully submitted,



Michael A. Bucek

Of Counsel to The Frank Law Firm, PLLC

1017 William D. Tate Ave., Suite 110

Grapevine, TX 76051

817-319-4298 (cellular)

817-949-2161 (office)

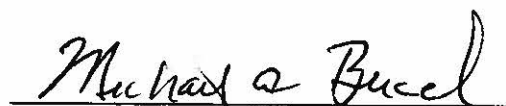
817-416-6292 (fax)

mabucek@aol.com

Attorneys for JBQ Ranch

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2019, I served a true and correct copy of the foregoing upon counsel for Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC via electronic mail and U.S. first-class mail, postage prepaid. All other parties of record, with an acceptable email address, received their copies by electronic mail. All parties without email addresses were mailed their copies via U. S. first class mail, postage prepaid.



Michael A. Bucek