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When Is a State Court Case a Federal Case? Or Can State Trial-Court Cases of an Appellate Nature Be Taken to Federal Court?

by Jay E. Grenig

Case at a Glance

Federal law allows the defendant in a state-court civil case to move the case to federal district court if the case is one over which the district court would have had original jurisdiction. Here the City of Chicago, a defendant in two state-court civil cases, moved the cases to federal district court. The plaintiffs objected, asserting that their state-court cases are really appellate-like cases, not trial-like cases, and so cannot be moved to federal court. Now the Supreme Court decides which side is right.

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Issue

Does a federal district court have original jurisdiction over a case raising state-law and federal-law challenges to the actions of a municipal administrative agency, when applicable state procedural law provides that a state court would decide the case as if on appeal by conducting a deferential, on-the-record review of the agency's decision rather than retrying the case?

Facts

The International College of Surgeons (the "College") owns two main buildings and a rear coach house on North Lake Shore Drive in Chicago, Illinois. The College's buildings have historical significance, and in July 1988 the Commission on Chicago Historical and Architectural Landmarks (the "Landmarks Commission" or the "Commission") made a preliminary determination that the College's buildings, together with five others nearby, met the criteria for landmark designation.

The Commission notified the College by mail of its preliminary determination. But before the Chicago City Council acted on the Commission's determination, the College entered into a contract for the sale and redevelopment of the property. Among other things, the developer, Robin Construction Corporation, contemplated erecting a 41-story building on the property.

The sale was contingent on the College's ability to obtain all necessary permits and approvals. As might be expected, the College was unsuccessful. On the Commission's recommendation and over the College's strenuous objections, the City Council enacted an ordinance on June 28, 1989, officially designating the College's property and the other five parcels as "The Seven Houses on Lake Shore Drive Landmark District." Acting pursuant to the designating ordinance and after holding a public hearing at which the College was denied the opportunity to present

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evidence on the proposed project, the Commission rejected the College's 1990 application for demolition permits. In 1991 the Commission issued a final administrative decision denying the College's request for demolition permits; that decision prompted the College to file a state court lawsuit seeking judicial review of the Commission's decision.

The College, however, continued to seek permits for the redevelopment project. Close on the heels of its lawsuit, the College applied to the Landmarks Commission for an economic hardship exception to the Commission's earlier refusal to issue demolition permits.

The hardship application was denied, prompting the College to file another state court lawsuit against the City, the Landmarks Commission, and various City officials (collectively, the "City"). Like the College's first suit, this one sought administrative review of the Commission's decision, alleging that denial of the economic hardship application violated the Due Process and Equal Protection Clauses, U.S. CONST. amend. XIV, § 1, as well as the Takings Clause, U.S. CONST. amend. V, cl. 3. The College also alleged that the Commission's decision violated its rights under the Illinois constitution. The College further alleged that the Commission's action violated the City's Landmarks Ordinance, which is the Commission's governing ordinance, as well as the Commission's rules and regulations, all claims arising under state law.

The College's two state court suits, as just noted, sought judicial review of the Landmarks Commission's final decisions. Under Illinois law, judicial review of the Commission's decisions would be limited to a deferential review of the record developed by the Commission as it considered the College's permit requests. In other words, although it is a trial court and not an appellate court, the Illinois state court hearing the College's cases against the Landmarks Commission would not retry the entire administrative matter; rather, in the fashion of an appellate court, the Illinois court would review the administrative record to determine if the record supported the decision being challenged.

The City responded to the College's two state court suits by removing them to federal district court where they were consolidated. In the City's view, the federal court, which is a trial court, had jurisdiction over the cases because they presented issues of federal law.

More maneuverings transpired between the parties culminating in a victory for the City. In an unreported decision, the district court dismissed several of the College's claims and held for the City on the remaining claims.

The College appealed to the Seventh Circuit which decided the case on the basis of an issue neither party had raised: Whether the College's lawsuits were removable; that is, whether the cases were civil cases over which a federal district court would have had original jurisdiction. 91 F.3d 981 (7th Cir. 1996).

The answer, said the Seventh Circuit, was no. The appeals court explained that Illinois law which requires that a state court give deferential review to final decisions of state and local administrative agencies, converts such cases into a species of appeal. But, said the Seventh Circuit, an appellate-like case is not an original civil action for purposes of the federal removal statute. 28 U.S.C. § 1441 (1994).

The Seventh Circuit held that the College's lawsuits should have been heard in the courts of Illinois and entered orders to that effect.

The Seventh Circuit's decision is now before the Supreme Court which granted the City's petition for a writ of certiorari. 117 S. Ct. 1424 (1997).

CASE ANALYSIS

The City maintains that suits in which a plaintiff claims rights under federal law are within a district court's original jurisdiction even when the federal claims are joined with claims based on state law. The City argues that the College's lawsuits alleged federal-law claims as well as state-law claims and, accordingly, were removable to federal district court.

The City also points to the plain language of 28 U.S.C. § 1367, the supplemental jurisdiction statute, which provides that a federal district court can hear and decide state-law claims that are so related to the federal claims "that they form part of the same case or controversy." The City contends that the College's state-law claims easily satisfy this test because they, like the federal claims, arose from the same dispute — the Commission's refusal to issue demolition and construction permits.

The City also maintains that the mere fact that the College's suits arose from decisions of an administrative agency has no bearing on the district court's jurisdiction. Acknowledging that a proceeding before an administrative agency is not a civil case and may not be removed to federal court, the City nonetheless contends that once the administrative proceeding ends and a party seeks judicial review by filing the appropriate complaint in a

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state trial court, the resulting judicial proceeding is a civil case for purposes of removal.

The City relies on Supreme Court decisions holding that federal district courts have original jurisdiction to review federal administrative-agency decisions and also holding that federal courts have original jurisdiction to review state and local administrative-agency decisions, if a standard allowing full and de novo — that is, independent — review, rather than deferential review, is applicable. According to the City, federalism's respect for state and local decisionmaking is not advanced by permitting federal district courts to hear de novo attacks on state and local administrative decisions, while denying to those courts the ability to give deference to those decisions. In addition, the City says that federalism is not served by denying state and local agencies the forum of their choice when they are called on to defend their decisions.

The College responds by stressing that the Supreme Court's modern decisions make clear that when a state court is asked to consider the propriety of an administrative agency's decision, determining the standard of review to be applied by the state court is crucial in deciding if the state court case is a civil case for purposes of a federal district court's jurisdiction. The College observes that the majority of federal appeals courts to have addressed the issue have held that federal district courts do not have jurisdiction to conduct an on-the-record, deferential review of the final decisions of state or local administrative agencies. *See Labiche v. Louisiana Patients Compensation Fund Oversight Bd.*, 69 F.3d 21 (5th Cir. 1995); *Fairfax County Redev. & Hous. Auth. v. W.M. Schlosser Co.*, 64 F.3d 155 (4th Cir. 1995); *Armistead v. C & M Transp., Inc.*, 49 F.3d 43 (1st Cir. 1995); *FSK Drug Corp. v. Perales*, 960 F.2d 6 (2d Cir. 1992).

The College contends that the City ignores the fact that the plain language of all the jurisdictional statutes at issue here presupposes the existence of a civil case over which the federal district courts have original jurisdiction. Removal, says the College, requires a case to be tried, not reviewed. Asserting that its challenges to the Commission's decisions arise under the Municipal Code of Chicago and the Illinois Administrative Review Act, the College says that the federal issues raised are inextricably intertwined with Illinois' administrative review scheme. That review scheme calls for judicial deference to the record and decision of the administrative agency and essentially requires a court to act in an appellate-like, rather than trial-like, capacity.

The College also asserts that federalism principles militate against federal district courts — essentially, trial-level courts — sitting as appellate courts with respect to decisions by state and local administrative agencies. The College says that even if the district court had jurisdiction over its administrative-review lawsuits, it should have sent the cases back to state court on abstention grounds. (*Abstention* is a judge-made doctrine premised on principles of federalism. It provides that even if they have jurisdiction, federal courts have discretion to refrain from deciding certain cases out of deference to state courts and out of respect for the appropriate balance between state and federal interests.)

The College reasons that abstention is appropriate here because its consolidated case raises a number of important state-law claims relating to the City's comprehensive Landmarks Ordinance, claims that implicate purely local policies. The College contends that land use cases are matters peculiarly within the jurisdiction of states and municipalities and, accordingly, are best resolved in state court. The College also maintains that this case presents important and unsettled questions of state law that should be decided before the federal constitutional issues are even addressed.

SIGNIFICANCE

The Supreme Court has held that a state-court civil case seeking review of the final decision of a state or local administrative agency may be removed to federal district court when applicable state law permits de novo judicial review of the decision, which means in essence that the case is retried. *Chicago, Rock Island & Pacific R.R. Co. v. Stude*, 346 U.S. 574 (1954). The Court also has held that a district court may hear an attack on a federal agency's decision even though applicable federal law requires deferential and on-the-record review. The Court, however, has never ruled on whether a district court may hear an attack on a state or local agency's decision when applicable state law requires deferential, on-the-record review.

It has been suggested that a victory for the College will increase the barriers faced by private property owners in having their Fifth Amendment claims for just compensation heard in federal court; they will have to have their federal constitutional claims heard by a state court or forgo their state-law claims if they want their federal claims decided in federal court. More narrowly, a decision for the College sends the matter back to state court for resolution. As the dispute

between the College and the City began nearly a decade ago, returning it to state court adds ever more years to the litigation.

A decision for the City will make it easier for an aggrieved party to challenge state or local administrative-agency decisions in federal court or for defendants to remove such cases to federal court. Since it is relatively easy for a party to allege that an administrative agency's decision deprived the party of due process or equal protection, a decision for the City would make it possible for a federal district court to exercise jurisdiction over virtually every lawsuit challenging a state or local administrative agency's decision.

The Court could take a different tack, however. It could hold that the district court had jurisdiction over the College's state court lawsuits, but also hold that the district court should have abstained and allowed the dispute to play out in state court.

Attorneys of the Parties

For City of Chicago; Commission on Chicago Historical and Architectural Landmarks; and Peter C.B. Bynoe, Joseph A. Gonzales, John W. Baird, Kein L. Burton, Marian Despres, Albert M. Friedman, Seymour Persky, Larry Parkman, Christopher R. Hill, and Cherryl Thomas (Lawrence Rosenthal, Deputy Corporation Counsel of the City of Chicago; (312) 744-5337).

For International College of Surgeons; United States Section of the International College of Surgeons; Robin Construction Company; 1500 Lake Shore Drive Building Corporation; and North Lake, Astor, Lake Shore Drive Association (Kimball R. Anderson; Winston & Strawn; (312) 588-5600).

Amicus Briefs

In support of City of Chicago et al.

Joint brief: National Trust for Historic Preservation, National Alliance of Preservation Commissions, and Landmarks Preservation Council (Counsel of Record: Paul M. Smith; Jenner & Block; (202) 639-6000).

In support of neither party but supporting reversal

Defenders of Property Rights (Counsel of Record: Nancie G. Marzulla; Defenders of Property Rights; (202) 686-4197).