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"*KNICK*" KNOCKS PRECEDENT: SHARPLY DIVIDED U.S. SUPREME COURT OPENS FEDERAL COURT DOORS TO TAKINGS CLAIMS

In a sweeping decision directly overturning U.S. Supreme Court precedent, a slim majority of the Supreme Court has held that inverse condemnation plaintiffs may immediately proceed to federal court and file actions seeking compensation for alleged takings. In *Knick v. Township of Scott, Pennsylvania* (2019) ___U.S.___, Justice Roberts, writing for the majority, held that a takings claim is ripe, and may be pursued in federal court, prior to any attempt to seek compensation in state court. The decision has broad implications for public agencies, and could lead to a substantial increase in inverse condemnation litigation challenging local land use regulation.

FACTUAL BACKGROUND AND THE COURT'S HOLDING

Rose Mary Knick lived on a 90-acre family farm in the Township of Scott, Pennsylvania, where she grazed horses and other animals. The property included a small graveyard, where the ancestors of Knick's neighbors are allegedly buried. In 2012 the Township enacted an ordinance requiring all cemeteries to "be kept open and accessible to the general public during daylight hours."

In 2013, a Township officer found several grave markers on Knick's property, and notified her of the violation. Knick responded by filing a state court action for declaratory and injunctive relief. Critically, she did not seek compensation for the alleged taking under an inverse condemnation theory, but only asked for a judicial declaration that the ordinance violated the Takings Clause, and an injunction against enforcement. The Township voluntarily stayed enforcement of the ordinance, which ended the state court case.

Knick then filed an inverse condemnation action in federal court. The federal district court dismissed the case because Knick had not first filed an action for compensation for the alleged taking in state court. The court relied upon *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City* (1985) 473 U.S. 172 (*Williamson*), which held that property owners must seek fair compensation under state law in state court before bringing federal takings claims. The *Williamson* court reasoned that a property owner's federal takings claim is not ripe until the property owner has first followed state court procedure, and been denied adequate compensation.

In *Knick*, the Third Circuit affirmed the district court's dismissal, despite noting that the ordinance was "extraordinary and constitutionally suspect." The Supreme Court reversed. It held that a property owner has a federal claim for a violation of the Takings Clause as soon as the government takes property for public use without paying for it.

The Court rejected the argument that *stare decisis* counseled in favor of adhering to *Williamson.* It characterized *Williamson*'s reasoning as "exceptionally ill-founded and conflict[ing] with much of our takings jurisprudence."

In the Supreme Court's view, the *Williamson* holding led to an untenable Catch-22. The full faith and credit statute requires that a federal court must give preclusive effect to a state

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court's decision, blocking any subsequent consideration in federal court of whether a plaintiff had suffered a taking within the meaning of the Fifth Amendment.

In a blistering dissent, Justice Kagan, joined by Justices Ginsburg, Breyer and Sotomayor, described the majority opinion as "smash[ing] a hundred-plus years of legal rulings to smithereens." The dissent noted that the Takings Clause does not prohibit takings—just takings without just compensation. According to the dissent, because Knick had not yet used the state's procedures for obtaining compensation (*i.e.*, by filing an action in state court), her takings claim simply was not ripe.

The dissent characterized the majority opinion as turning "even well-meaning government officials into lawbreakers." Further, the dissenters feared it could flood the federal courts with cases that properly belong in state court, and force federal judges to decide complex land use issues that are traditionally the domain of the states.

IMPLICATIONS FOR FUTURE PRACTICE

Knick is highly significant for its treatment of the *stare decisis* doctrine. It is notable that, on a 5-4 majority, the Court was willing to overturn a prior Supreme Court case directly on point. In the words of the dissent, "Today's decision can only cause one to wonder which cases the Court will overrule next."

Practically, the decision will likely make it easier for property owners to challenge local land use regulation based on the Takings Clause. California courts have been notably more supportive of government actions than federal courts. Before *Knick*, a landowner unhappy with a local land use ordinance was required initially to seek compensation for an alleged taking in the California courts, giving local agencies, like the Township, the opportunity to repeal or suspend enforcement of the ordinance in question, often before being required to pay compensation. Now, post-*Knick*, property owners may mount a federal court challenge to a local ordinance on constitutional grounds, and simultaneously seek compensation. This could discourage the enactment of land use ordinances where there is the threat of a takings challenge.

In California, plaintiffs have long sought to invalidate inclusionary housing ordinances as exactions that must be justified by a nexus study. While this effort was rejected by the California Supreme Court, plaintiffs may now seek to obtain different rulings from the federal courts. Further, in evaluating fees and dedications, the California Supreme Court has distinguished between adjudicative requirements (*e.g.*, project-specific impact fees) and broadly applicable requirements (*e.g.*, legislation that implements impact fees). At least Justice Clarence Thomas has indicated an interest in reviewing whether this is a proper distinction.

For more information on state and federal takings issues, please contact Dolores Bastian Dalton, Barbara Kautz, Eric Phillips, Justin Bigelow, or any other Goldfarb & Lipman attorney at 510-836-6336.

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