

Knick v. Township of Scott, No. 17-647 (U.S. June 21, 2019).

“It’s Alive!” In Rose Mary Knick’s family graveyard the U.S. Supreme Court breathes new life into the once popular 42 USC §1983 claim for regulatory takings violations by local governments.

“[N]or shall private property be taken for public use, without just compensation.” The Fifth Amendment’s prohibition, of course, applies against the States [and local governments] through the Fourteenth Amendment.”

Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City, 473 U.S. 172, 176 n.1 (1985)

INTRODUCTION

In 1985, in *Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985)* the Supreme Court all but killed federal court claims under 42 USC §1983 where local government regulation took away all economically viable use of an owner’s property. The Court held that a property owner claiming their property had been taken by a local government due to a regulatory denial of a permit has not suffered a Fifth Amendment violation (and cannot bring a federal court takings claim) until a state court has first denied a claim for just compensation under state law. The result of that decision was to effectively eliminate nearly all ability to rely upon §1983 as a vehicle to challenge local government land use regulations that were overly aggressive and resulted in takings of landowners’ property. Inserting the arduous state court inverse condemnation process as a condition precedent to being able to get into a more objective federal court meant that most owners were unable to use federal courts to test the validity of such land use over-regulation or to receive compensation when the regulations were deemed justified.

The June 21, 2019 decision in *Knick* may signal a change. As explained by Justice Roberts writing for the majority, under the overturned *Williamson County* rule:

“The takings plaintiff thus finds himself in a Catch-22: He cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court. The federal claim dies aborning.” *Knick v. Township of Scott, No. 17-647, at *5-6 (U.S. Jun. 21, 2019)*

Knick may revive that seemingly dead cause of action.

I. Opening the family graveyard to the public

In rural Scott Township, Pennsylvania, Rose Mary Knick owns a 90 acre property that contains a small family graveyard. The Township passed an ordinance that required that all cemeteries be kept open and accessible to the general public during daylight hours. It also authorized code enforcement officers to enter property to determine whether a graveyard exists. Knick was given a Notice of Violation for failing to keep her property open to the public. She

filed suit in state court for declaratory and injunctive relief, but did not file for inverse condemnation. To sidestep its exposure, the Township withdrew its NOV and agreed to stop any enforcement action, so the state court declined to rule on Knick's claims in the absence of any demonstrated "irreparable harm."

Knick then went to federal court and filed a 42 USC §1983 claim for violation of the Fifth Amendment Takings Clause. ("Section 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . ." ") *Knick v. Township of Scott*, No. 17-647, at *8 n.2 (U.S. Jun. 21, 2019). The federal court dismissed Knick's claim based on *Williamson County* since she had not first filed in state court for inverse condemnation. On appeal, the Third Circuit found the ordinance to be "constitutionally suspect," but affirmed the trial court based upon *Williamson County*. The Supreme Court granted certiorari review to reconsider *Williamson County*.

II. Williamson County revisited

The developer in *Williamson County* owned 676 acres on which he had obtained preliminary plat approval to build 736 residential units (2/3 of which were shown as platted lots). He built the roads, water and sewer infrastructure and had Final Plat approval for 212 units. The Preliminary Plat had been approved four times over the ensuing years. However, during that time the land use rules changed and more open space was required. Ultimately the Final Plat for the balance of development was only approved with conditions that limited the remaining development to between 69 and 390 units (depending upon whose version was to be believed). The developer calculated his loss at \$1 million dollars and filed suit for a regulatory takings claim under §1983. A jury agreed that the denial was a taking and awarded \$350,000 (apparently for the temporary taking between the denial and the eventual jury verdict). However, the judge overturned the jury verdict and ruled in favor of the Planning Commission. On appeal the Sixth Circuit reversed in favor of the property owner and found a vested right to continue to develop consistent with the prior plat approvals due to the owner's reasonable investment-backed expectations. The Supreme Court agreed to review:

Whether money damages must be paid by Federal, State and Local Governments to property owners whose land is taken temporarily due to the application of government regulations?

Williamson County argued that an unconstitutional regulation is a violation of the 14th Amendment's prohibition against the deprivation of due property without due process and must therefore be unenforceable. So, no §1983 violation could occur unless it was a Fifth Amendment "taking without just compensation" violation. Despite its initial reason for accepting the case, the Supreme Court decided that the case was not ripe for review under either the Fifth or 14th Amendments and remanded it as being premature for two reasons:

1. There was a variance process available to relieve some of the conditions that led to the diminished value of the development; and
2. The applicant had not sought compensation through the state court inverse condemnation process.

In *Knick*, 24 years later, again the Court was faced with an owner who had skipped the state inverse condemnation step. But subsequent history had proven informative. In 2005 the Court had been faced with an owner who followed the state inverse condemnation route and, when denied compensation at that level, filed the §1983 Fifth Amendment takings claim. [*San Remo Hotel, L. P. v. City and County of San Francisco*, 545 U. S. 323 (2005)]. There, although the claim was ripe, the Court determined that the Federal Full Faith and Credit Statute precluded federal claims when a prior state court decision denied just compensation, hence Justice Roberts' "Catch-22" observation. Upon review the *Knick* majority determines that first requiring the state court process in order to prove ripeness had imposed an "unjustifiable burden" on those who would file takings claims under federal law.

The *Knick* majority examines and clarifies other takings cases that led up to, or later struggled to rationalize, the *Williamson County* decision. *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U. S. 304 (1987) recognized that the Takings Clause was "self-executing" and did not require a preliminary hoop to jump through. The Court held that even a temporary loss of property required compensation from the time of taking. Recognizing that in *First English* the court had adopted the merits of Justice Brennan's dissent in *San Diego Gas & Elec. Co. v. San Diego*, 450 U. S. 621, 654, 657 (1981), Justice Roberts cites that dissent which noted that:

"once there is a 'taking,' compensation *must* be awarded" because "[a]s soon as private property has been taken, whether through formal condemnation proceedings, occupancy, physical invasion, or regulation, the landowner has *already* suffered a constitutional violation." *Id.*, at 654. "

Knick v. Township of Scott, No. 17-647, at *13 (U.S. Jun. 21, 2019). Justice Roberts clearly agrees and makes the point that even if a bank robber returns his loot, the crime has still been committed. He restates that the general rule that a §1983 claim for a civil rights violation may be brought without first using a state court remedy also applies to regulatory takings claims. *Id.* at *16.

III. What doesn't it mean?

In response to the obvious concern raised by Justice Kagan's dissent (joined by Justices Ginsburg, Breyer and Sotomayor) that the decision will lead to injunctions that stop governmental takings for legitimate purposes, the majority pointed out that available post-taking state court remedies would give courts the needed tools to assure recompense to owners even in the absence of immediately contemporaneous compensation. Justice Roberts seems to signal that the court wasn't inviting federal court challenges where legitimate purposes lead to compensated takings. In his concurring opinion, Justice Thomas is much less concerned about the possibility of overturned regulations. In his view, the Takings Clause makes just compensation a

prerequisite to the legitimate exercise of governmental authority, and if the actions are overturned because such compensation was not provided for, then:

“so be it—our role is to enforce the Takings Clause as written.”

Knick v. Township of Scott, No. 17-647, at *29 (U.S. Jun. 21, 2019).

Similarly, the majority distinguishes the concerns raised by Justice Kagan’s dissent that this decision does injustice to the rule of *stare decisis* and the precedential effect of prior decisions. Citing numerous criticisms over the years and the inability to rationalize or justify the “state court first” rule where a Fifth Amendment violation exists, the majority noted that the *Knick* decision does not open up local governments to new claims, but simply allows takings claims to be brought in federal court where they otherwise would have been state inverse condemnation claims.

IV. Going forward

In *Knick*, regulatory and other Takings Clause claims are restored to their “full-fledged constitutional status” as envisioned when the Fifth Amendment was adopted. *Knick* at *10. The decision may not open a floodgate of actual challenges to the validity of governmental regulation gone too far. However, the specter of federal court review of validity and for compensation due to such over-regulation may cause some jurisdictions to pause before enacting overly aggressive regulations rather than simply whistling in the dark through the graveyard.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.

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