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Supreme Court Opens Federal Courts to Takings Claims by Private Property Owners against State and Local Governments

By Ned Nicholson and Grayson Lambert July 2019

Every June, when the Supreme Court's term comes to an end, a few high-profile cases generate an avalanche of media coverage. Typically, these cases involve the most contentious political issues of the day.

But every June, the Court also decides myriad other cases that may have just as great, if less widely discussed, impact. One such case this year was *Knick v. Township of Scott, Pa.*, which focused on the Fifth Amendment's Takings Clause. This decision fundamentally changed how a plaintiff can bring a Takings claim against state and local governments. In particular, private property owners, from homeowners to real estate developers, for the first time in decades have a meaningful avenue to fight unconstitutional land use restrictions by governments. Before *Knick*, a property owner fighting a governmental land use restriction (i.e., zoning) that would deprive the owner of substantially all of its beneficial use of its property had a long and tortuous path to vindicate its constitutional rights through a legal battle first in state courts, followed by more of the same in federal courts.

The Takings Clause prohibits all levels of government from taking "private property . . . for public use, without just compensation." In its 1985 decision in *Williamson County Regional Commission v. Hamilton Bank of Johnson City*, the Court held that a plaintiff's claim against a local government entity brought in federal court was not ripe until a plaintiff had first exhausted any procedures a state had provided for obtaining just compensation. In practice, this rule required that a plaintiff first bring a Takings claim against a state or local government in state court (in most states through an inverse condemnation proceeding). Only then could the plaintiff potentially bring that claim in federal court, which many plaintiffs consider a forum more likely to grant relief on a Takings claim. This had two practical effects. First, this meant that a state court Takings claim could languish in state court for years, and then if the state's final court of appellate review finally heard the case, there would only be a direct appeal to the United States Supreme Court. Second, as the Supreme Court only takes a few of the thousands of petitions a year, it was highly unlikely that it would ever take an appeal of this nature from a state's highest court. Federal court review of Takings claims was thus nearly unattainable.

However, in *Knick*, the Supreme Court overruled this requirement that a plaintiff first go to state court. In a 5-4 decision authored by Chief Justice Roberts, the Court explained that a Takings violation occurs as soon as the government takes property. A plaintiff does not have to exhaust some post-deprivation procedure for the taking to be complete. In other words, the Court held that *Williamson County* was simply wrong in its interpretation of the Takings Clause and when a taking had occurred.

As noted, this decision has significant ramifications for state and local governments, as well as people and entities whose property is taken. State and local governments must now be aware that Takings plaintiffs may bring claims immediately in federal court, denying state and local governments a first shot at defending their actions in a presumably friendly state-court forum. Indeed, state and local governments should probably expect most plaintiffs with Takings claims to go straight to federal court now.

On the other side, private property owners whose property is taken should be excited by *Knick*. Private property owners can now (1) avoid a state court forum that may be more friendly to local governmental land use restrictions; (2) avoid the extra tier of state court review prior to federal court review, which will shorten the time to obtain a decision; and (3) avoid the additional cost of litigating through the state courts first. Additionally, they should realize that not going to federal court first now may well prevent them from later going to federal court on their Takings claim if they are not first successful in state court. In other words, in most jurisdictions there would be little incentive to file a Takings claim first in state court.

Knick is likely to reshape how Takings claims are litigated across the country. Everyone should be aware of this decision as they make decisions if their property is taken by a state or local government. However, notwithstanding *Knick*, a Takings claim can be very difficult to prove as property owners have a high burden to show that a governmental action is an unconstitutional Taking. In those rare cases where there is a Taking, the road to resolution is now likely much clearer and faster.

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