

KNICK v. TOWNSHIP OF SCOTT: **SUBSTANTIAL CHANGES** **COMING IN** **MUNICIPAL TAKINGS** **LITIGATION**

League of California Cities
City Attorneys' Department Webinar

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Presented by
GLEN HANSEN

SENIOR COUNSEL, ABBOTT & KINDERMANN, INC.

I. BACKGROUND ON THE CASE OF *KNICK v. TOWNSHIP OF SCOTT, PENNSYLVANIA*, __ U.S. __, 139 S.Ct. 2162, 204 L.Ed.2d 558 (2019).

A. Factual Background

- Rose May Knick’s neighbors believed there were burial plots and tombstones of their ancestors on her rural property.
- Ms. Knick stopped her neighbors from coming on to her property to view the purported burial site.
- The Township enacted an ordinance that “All cemeteries within the Township shall be kept open and accessible to the general public during daylight hours.”
- A Township code enforcement agent entered Ms. Knick's property without permission and found several tombstones on her property.
- The Township and Ms. Knick dispute whether her property qualifies as a “cemetery” under the ordinance.

B. State Court Litigation

- Ms. Knick filed a complaint in the Pennsylvania state court for injunctive relief but not inverse condemnation action for an alleged unconstitutional taking of her property by the Township.

C. Federal Court Litigation

- Ms. Knick filed an action in United States District Court for the Middle District of Pennsylvania, seeking, among other things, facial and as-applied takings claims under the Fifth and Fourteenth Amendments of the United States Constitution.
- The Township moved to dismiss on the ground that the case was not ripe under *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985).

D. Lower Federal Courts Held That Plaintiffs' Claims Were Barred By The *Williamson County* Doctrine.

- Under the *Williamson County* doctrine, a property owner whose property had been taken by a local government had not suffered a violation of the owner's Fifth Amendment rights—and thus could not bring a federal takings claim in federal court—until a state court had denied the owner's claim for just compensation under state law.
- The District Court dismissed Ms. Knick's takings claim because it was not ripe under *Williamson County*: "Plaintiff must attempt to avail herself of the just compensation procedures provided for under Pennsylvania law before re-filing these takings claims in federal court."
- The Third Circuit Court of Appeals affirmed the District Court's dismissal in light of the *Williamson County* doctrine.
- The United States Supreme Court granted certiorari to reconsider that doctrine.

II. THE SUPREME COURT OVERRULES *WILLIAMSON COUNTY* AND ALLOWS PLAINTIFFS TO DIRECTLY SUE IN FEDERAL COURT FOR GOVERNMENT TAKINGS, WITHOUT HAVING TO FIRST PURSUE AN INVERSE CONDEMNATION ACTION IN STATE COURT.

A. Chief Justice Roberts Announces A New Procedural Rule For Federal Takings Claims.

- On June 21, 2019, by a 5-4 vote, the Supreme Court in *Knick v. Township of Scott, Pennsylvania* overruled the 34-year-old precedent in *Williamson County*.
- Chief Justice Roberts wrote in the Majority Opinion: "A property owner may bring a takings claim under [42 U.S.C.] §1983 upon the taking of his property without just compensation by a local government."
- **The key summary holding of the case reads as follows:**

We now conclude that the state-litigation requirement imposes an unjustifiable burden on takings plaintiffs, conflicts with the rest of our takings jurisprudence, and must be overruled. A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it. That does not mean that the government must provide compensation in advance of a taking or risk having its action invalidated: So long as the property owner has some way to obtain compensation after the fact, governments need not fear that courts will enjoin their activities. But it does mean that the property owner has suffered a violation of his Fifth Amendment rights when the government takes his property without just compensation, and therefore may bring his claim in federal court under §1983 at that time.

B. Reasons Why The Supreme Court Overruled The *Williamson County* Doctrine.

- The *Williamson County* doctrine was “unworkable in practice” due to the “preclusion trap sprung by *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323 (2005).”
- The reasoning in *Williamson County* was “exceptionally ill founded”
- *Williamson County* was criticized for years.
- No reliance interests on the state-litigation requirement.

III. IMPLICATIONS OF THE KNICK DECISION

A. Will there be more takings claims in federal court?

B. How will the federal courts address state property law issues?

1. Takings cases often involve unresolved issues of state law. Does the plaintiff even have the alleged property right under state law that plaintiff alleges was unconstitutionally taken by the governmental agency?
2. Should questions of state law that are raised in the federal litigation be certified to the state courts?

3. Will the Pullman Abstention Doctrine apply to federal takings cases that challenge local land use decisions?

- There are three criteria for the abstention doctrine to apply:
 - (i) The complaint touches a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open;
 - (ii) Such constitutional adjudication plainly can be avoided if a definitive ruling on the state issue would terminate the controversy;
 - (iii) The possibly determinative issue of state law is doubtful. (*Sinclair Oil Corp. v. County of Santa Barbara*, 96 F.3d 401, 409 (9th Cir. 1996).)

- Case study:

EHOF Lakeside II, LLC v. Riverside County Transportation Commission et al., Central District of California, Eastern Division – Riverside, case no. 5:19-cv-01693, on appeal to the Ninth Circuit as case no. 19-56451.

- Plaintiffs’ argument against applying the Pullman Abstention doctrine: “It would have made little sense for the Supreme Court to issue *Knick*, removing what the Court labeled the ‘*San Remo* preclusion trap,’ if takings plaintiffs then immediately found themselves ensnared in a ‘Pullman trap’ and clocked from federal court”
- Issues being considered by, or relevant to, the Ninth Circuit’s consideration:
 - Does the local rule/regulation require an interpretation of state law for Pullman Abstention to apply to land use cases?
 - How much uncertainty of state law must there be?
 - Does the existence of a parallel state court proceeding impact Pullman Abstention?

- Is it “obvious” (as plaintiff suggests) that state courts are “not neutral” on takings claims against local agencies?

C. Will federal courts enjoin a local land use regulations?

- Chief Justice John Roberts wrote that agencies “need not fear that our holding will lead federal courts to invalidate their regulations as unconstitutional” because “[a]s long as just compensation remedies are available ... injunctive relief will be foreclosed.”
- But what are “compensation remedies [that] are available” the could prevent invalidation of the local land use regulations?

D. Are there substantive differences in takings claims between state courts and federal courts?

- Will the “normal” regulatory delays defense be valid in federal court, as it has been in California under *Landgate v. California Coastal Commission* (1998) 17 Cal.4th 1006?
- Will the factored analysis for regulatory takings in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978) be applied differently?

E. Is there a difference between legislative exactions and adjudicatory exactions? Why does that matter after *Knick*?

- To avoid regulatory takings litigation under the strict scrutiny analysis in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), which could increase after *Knick*, local agencies should shift away from adjudicatory exactions and toward legislative exactions, which are generally-applied and have no administrative discretion.

IV. QUESTIONS AND ANSWERS / DISCUSSION.