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SCOTUS Reversal of Precedent Provides Right to Federal Forum in Takings Cases

By David N. Cinotti

Can a property owner who says the government took her property without paying for it and therefore violated the Fifth Amendment Takings Clause sue the government in federal court? That seemingly straightforward question has spawned decades of litigation and commentary.

In a 1985 decision, *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985), the Supreme Court said no, not unless the property owner first sues in state court if state procedures to obtain compensation are available, because "just compensation" has not been denied under the Takings Clause until the property owner has followed the state compensation process. Then, in a 2005 decision, *San Remo Hotel v. City & County of San Francisco*, 545 U.S. 323 (2005), the Supreme Court held that a property owner who has sought compensation in state court, as required under *Williamson County*, is barred under principles of preclusion and full faith and credit from later suing for compensation in federal court. Those decisions together effectively prevented property owners from bringing takings claims for compensation in federal district court.

In *Knick v. Township of Scott*, decided on June 21, 2019, the Supreme Court reversed its prior case law and held that takings plaintiffs no longer must seek compensation in state court when they claim that the government has taken their property without paying for it. This article summarizes the *Knick* decision and then discusses the consequences of the decision for future takings litigation. After *Knick*, federal courts will have more opportunities to consider what government actions are, and are not, takings. They will also likely generate more case law on valuation of property rights under the Takings Clause. What is less clear is whether federal courts will become involved in state eminent-domain cases, where state and municipal entities typically declare the intent to take property and sue in state-court condemnation proceedings if the property owner refuses to sell. The question there will be when the governmental entity has taken the property for purposes of the Fifth Amendment. If it is before compensation is paid, *Knick* may allow a federal-court action under the Takings Clause.

David N. Cinotti

Summary of 'Knick v. Township of Scott'

In 2012, the Township of Scott, Pennsylvania, passed an ordinance that required all cemeteries to be accessible to the general public during daylight hours and authorized municipal officers to enter onto any property to determine the existence and location of cemeteries. Because Pennsylvania allows "backyard" burials on private property, the ordinance affected residential landowners like the plaintiff, Rose Mary Knick. In 2013, municipal officers entered Knick's land and found grave markings; she was therefore required to open her property to the public during the day. Knick sued in state court

but did not seek compensation under state inverse-condemnation law, which allows a property owner to sue a state entity for the value of property allegedly taken. *Knick v. Twp. of Scott*, __ U.S. __, 139 S. Ct. 2162, 2168-69 (2019).

After the state courts denied relief, Knick filed an action in federal district court under 42 U.S.C. §1983, alleging that the ordinance violated the Takings Clause's prohibition on taking private property without just compensation (among other claims). The Third Circuit held that Knick's claim was not ripe under *Williamson County* because she had not first sought and been denied compensation in a state inverse-condemnation proceeding. *Id.* at 2169. The Supreme Court reversed.

In a 5-4 decision by Chief Justice Roberts, the court overruled what it called the *Williamson County* state-litigation requirement and held that a plaintiff has a federal cause of action against state actors under Section 1983 for a taking without just compensation "as soon as a government takes his property for public use without paying for it." *Id.* at 2170. The majority and dissenters disagreed on whether a taking occurs before the state determines the amount of compensation due. According to the majority, state-compensation procedures were a potential remedy to an already completed constitutional violation, but that did not prevent property owners from instead suing under Section 1983 in federal court: "A later payment of compensation

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may remedy the constitutional violation that occurred at the time of the taking, but that does not mean the violation never took place." *Id.* at 2172. The dissenters maintained that no violation of the right to just compensation has occurred if the property owner can seek compensation through state procedures. As Justice Kagan put it for the four dissenters: "according to the Court's repeated decisions, a Takings Clause violation does not occur until an owner has used the government's procedures and failed to obtain just compensation." *Id.* at 2183 (Kagan, J., dissenting).

Impact on Future T akings Cases

Takings claims for compensation involve two primary questions: Has there been a "taking"? And, if so, what compensation is due the property owner as a result of the taking? (Property owners may also challenge the government's authority to take private property because the taking is not for a public use, but those are not claims for compensation; they are claims that the government cannot have the property at any price.) Under *Williamson County* and *San Remo Hotel*, claims that a government act or regulation took private property without just compensation were more often decided in state court. If state procedures could potentially provide compensation for a taking, the property owner did not have a ripe takings claim under *Williamson County* until she followed that procedure. And, a state-court decision on whether there was a taking, and whether and how much compensation was owed, would normally bar relitigation of those issues in federal court under *San Remo Hotel*.

Indeed, the Supreme Court recognized in *San Remo Hotel* that, "as a practical matter, a significant number of plaintiffs will necessarily litigate their federal takings claims in state courts." *San Remo Hotel*,

545 U.S. at 346. The court noted that "there is scant precedent for the litigation in federal district court of claims that a state agency has taken property in violation of the Fifth Amendment's Takings Clause. To the contrary, most of the cases in our takings jurisprudence … came to us on writs of certiorari from state courts of last resort." *Id.*at 347.

But the Supreme Court accepts relatively few cases for review, thus severely limiting federal-court precedent on issues such as what actions constitute a taking and what compensation is "just" for takings. As Justice Kagan noted in her dissent, "[t]here are a nearly infinite variety of ways for regulations to affect property interests. And under modern takings law, there is 'no magic formula' to determine 'whether a given government interference with property is a taking.'" *Knick*, 139 S. Ct. at 2187 (Kagan, J., dissenting (quoting *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 31 (2012); citation omitted)). After *Knick*, the lower federal courts will have many more opportunities to decide when state regulations amount to a taking and how property rights should be valued under the Fifth Amendment.

Another question is whether *Knick* will affect state entities' use of their eminent-domain authority to take property for public use. Unlike inverse-condemnation suits, which the property owner institutes to demand compensation, the government initiates eminent-domain proceedings to terminate private property rights. The answer may depend on the procedure that the condemning authority follows. *Knick* allows a federal-court suit once there has been a taking. A claim for just compensation before there has been a taking would likely still be unripe after *Knick*.

In the ordinary eminent-domain process, the state entity declares the intent to take property, seeks to acquire the property from the owner voluntarily, and then, when necessary, sues in state court to enforce its right to eminent domain; the judicial process determines how much compensation is owed to the property owner. *See, e.g.*, New Jersey Eminent Domain Act, N.J.S.A. 20:3-6. In *Danforth v. United States*, 308 U.S. 271 (1939), the Supreme Court considered whether the federal government had taken private property without just compensation when it followed a similar process to condemn land under the Flood Control Act of 1928. The court held that authorizing condemnation was not itself a taking; rather, the taking occurred once compensation was ascertained and paid. *Id.* at 284-85. If that is equally true under state eminent-domain law, a property owner might not have a ripe takings claim for compensation before the state court has established the compensation due.

But what if the condemning authority takes title to, or possession of, the property before a court has decided compensation? Under New Jersey law, for example, the condemning authority can record a "declaration of taking," stating that it has taken possession of the property, and deposit the amount of estimated compensation with the court before the compensation process is completed. *See* N.J.S.A. 20:3-17(a), 20:3-18. Title and the right to possession pass to the condemning authority upon the declaration of taking and deposit of funds. N.J.S.A. 20:3-19; *Monmouth Cty. v. Wissell*, 68 N.J. 35, 38 (1975). At that point, it would seem that the property owner has been deprived of property without the (pre-)payment of compensation, since the condemning authority puts the money in escrow rather than paying it to the property owner; under *Knick*, further state proceedings would therefore appear unnecessary to ripen the federal claim. Whether and when property owners have ripe federal claims for compensation in ordinary condemnation cases will be among the issues to be addressed after *Knick*.

David Cinotti *is a litigation partner with Pashman Stein Walder Hayden in Hackensack.*