

Oklahoma Law Review

Volume 73 | Number 4

2021

***Knick v. Township of Scott*: Knick Knack Paddy Whack, Give the Takings Clause a Bone**

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Recommended Citation

Gatlin Squires, *Knick v. Township of Scott: Knick Knack Paddy Whack, Give the Takings Clause a Bone*, 73 OKLA. L. REV. 795 (2021),
<https://digitalcommons.law.ou.edu/olr/vol73/iss4/7>

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Knick v. Township of Scott: Knick Knack Paddy Whack, Give the Takings Clause a Bone

I. Introduction

Picture this—you are a recent college graduate with a degree in general business. You are applying for any and every job opening that you can find. After four years of pursuing your undergraduate education and spending countless hours with the school’s career development office working on your resume, you are finally ready to enter the workforce. However, every application gets rejected for the same reason—you lack work experience. Each year, numerous college graduates face this catch-22 while seeking employment. This puzzling hurdle begs the question: how can one gain work experience when said experience is often a prerequisite for obtaining employment?

Like the new graduate, American landowners affected by governmental regulations faced a similar catch-22 scenario until a recent Supreme Court decision. Specifically, property owners could not bring a federal action challenging regulatory takings of property and the compensation provided without first pursuing a state remedy. After seeking the state remedy, however, the claimant could not challenge the state’s decision, because federal courts would defer to the state on the matter. Essentially, these plaintiffs asserting Fifth Amendment claims could only litigate the claims in state court without ever having the opportunity for a federal court to review that decision. Thankfully, the Supreme Court recently rejected these arbitrary procedural requirements in *Knick v. Township of Scott*. The *Knick* Court redefined our understanding of the Takings Clause, which will both eliminate procedural unfairness to property owners and create new questions concerning the ripeness of Takings claims.

Under the Takings Clause of the Constitution, the government may take private property for public use, but only if it provides “just compensation” to the property owner.¹ Initially, courts limited governmental takings of property to those circumstances where the government made a “physical invasion or formal appropriation of the property.”² Nevertheless, the Supreme Court of the United States expanded governmental takings of property in the early twentieth century to include regulatory takings, in circumstances where “regulation [of private

1. U.S. CONST. amend. V.

2. See ROBERT MELTZ, CONG. RSCH. SERV., 97-122, TAKINGS DECISIONS OF THE U.S. SUPREME COURT: A CHRONOLOGY 11 (2015).

property] goes too far.”³ Property owners affected by a governmental taking often have the option of filing an inverse condemnation action in state court where the claimants seek “to recover the value of property which has been taken in fact by the governmental defendant.”⁴

Prior to the Supreme Court’s decision in *Knick v. Township of Scott*, property owners could not maintain a federal action contesting the governmental taking without first pursuing a remedy in state court.⁵ Additionally, federal courts were required to give “full faith and credit” to the state’s decision, thus precluding property owners from ever bringing their takings claims in federal court.⁶ As such, landowners often found themselves in a catch-22: they lacked standing in federal court until they received a final state court decision, but a federal court could never review the state decision.

This Note examines the Supreme Court’s recent decision in *Knick* and its unfavorable treatment of previously valid Takings Clause interpretations and applications.⁷ Part I of this Note briefly introduces governmental takings and the processes by which property owners may seek just compensation. Part II explores the primary decisions that have developed current Takings Clause jurisprudence, especially those discussed and overruled by the Supreme Court in the *Knick v. Township of Scott* opinion. Part III details the specific circumstances and events that gave rise to the *Knick* litigation, and Part IV describes and explains the Supreme Court’s ruling in the case. Part V analyzes the Supreme Court’s unique interpretation of the Takings Clause and surrounding jurisprudence and the effects this decision will have on property owners across the nation. Finally, Part VI discusses conclusions regarding the new interpretation and application of the Takings Clause and the current climate of state inverse condemnation and federal takings claims.

3. *See* Pa. Coal Co. v. Mahon, 260 U.S. 393, 415 (1922) (“The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.”).

4. *See* United States v. Clarke, 445 U.S. 253, 257 (1980) (citation omitted).

5. *See* Williamson Cnty. Reg’l Planning Comm’n v. Hamilton Bank, 473 U.S. 172, 195 (1985) (“[I]f a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation.”), *overruled by* *Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019).

6. *San Remo Hotel, L.P. v. City & Cnty. of S.F.*, 545 U.S. 323, 347 (2005) (“Whatever the merits of that concern may be, we are not free to disregard the full faith and credit statute solely to preserve the availability of a federal forum.”).

7. *Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019).

II. Law Before the Case

A. The Fifth Amendment's Guarantee of Just Compensation for State and Federal Takings of Private Property

Although just compensation is a constitutional guarantee for governmental takings of private property, access to federal courts concerning the matter has not always been a guarantee for claimants. In fact, federal courts did not have jurisdiction to hear constitutional claims against the United States until Congress adopted the Tucker Act in 1887.⁸ The Tucker Act waived sovereign immunity and gave jurisdiction to the United States Court of Federal Claims for any claim “against the United States founded . . . upon the Constitution, or any Act of Congress.”⁹ Specifically, the Tucker Act provided the basis for federal litigation of takings claims arising out of the Fifth Amendment guarantee for just compensation. The Supreme Court later described a takings claim as “‘founded upon the Constitution’ and within the jurisdiction of the [Federal] Court of Claims to hear and determine.”¹⁰

Governmental takings have significantly evolved over time; initially, most takings occurred in the context of physical appropriations of private land.¹¹ Before 1922, the Court’s Fifth Amendment jurisprudence centered around physical invasions of property typically associated with “the impacts of government water projects” like flooding and reduced access.¹² However, the Supreme Court’s decision in *Pennsylvania Coal v. Mahon* expanded Fifth Amendment claims to include governmental takings that occur when a regulation “goes too far.”¹³ The Court later clarified the standard for when a governmental regulation acts to take property: instances where the former owner experiences a loss of title, occupancy, or when the governmental action’s “effects are so complete as to deprive the owner of all or most of his interest in the subject matter.”¹⁴ In the last half-century, Fifth Amendment claims decided by the Supreme Court have centered around regulatory takings.¹⁵ Instead of delving

8. See generally John W. Davis, *John Randolph Tucker: The Man and His Work*, 6 WASH. & LEE L. REV. 139, 141 (1949).

9. 28 U.S.C. § 1491(a)(1).

10. *United States v. Causby*, 328 U.S. 256, 267 (1946) (citation omitted).

11. MELTZ, *supra* note 2, at 1.

12. See *id.* at 16.

13. *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

14. *United States v. Gen. Motors Corp.*, 323 U.S. 373, 378 (1945).

15. See MELTZ, *supra* note 2, at 1 (“The regulatory taking concept . . . underlies many of the Supreme Court’s takings decisions from the 1970s on.”).

further into the substantive issues of the Takings Clause, the recent developments to the amendment's procedural requirements¹⁶ will be the focus of the remainder of this Note.

B. The State-Litigation Requirement and Preclusion Trap Endured by Property Owners Asserting Claims of Unjust Compensation for Governmental Takings

Just as it is reasonable for employers to seek employees with work experience, the decisions giving rise to the takings procedure paradox seemed logical at the time. What began with a Tennessee County Planning Commission's rejection of a developer's golf course and residential plat quickly developed into one of the most counterintuitive procedural requirements of constitutional law.

1. Williamson County Regional Planning Commission v. Hamilton Bank and the Requirement to Seek Remedy Through State Procedures First

In 1985, the Supreme Court issued its opinion in *Williamson County Regional Planning Commission v. Hamilton Bank*,¹⁷ which initiated the chain of decisions that created the catch-22 procedure of Takings Clause claims. After the County Planning Commission rejected the development plans, the new property owner (who acquired the property through foreclosure) sought compensation in the United States District for the Middle District of Tennessee.¹⁸ The claim asserted that the commission's "application of various zoning laws and regulations to [the developer's] property amounted to a 'taking' of that property."¹⁹ The jury eventually awarded the developer "\$350,000 as just compensation for the 'taking,'" which amounted to a denial of the "'economically viable' use of [the] property."²⁰ While the district court rejected the award through a judgment notwithstanding the verdict, the Sixth Circuit Court of Appeals reinstated the jury's verdict on appeal.²¹ Granting certiorari on the issue of the regulatory taking, the Supreme Court chose to reverse and remand the Sixth Circuit on procedural rather than substantive grounds.²²

Instead of addressing the petitioners' claim regarding governmental payment of money damages to private landowners for temporary takings, the Court rejected the jury verdict because the respondent had not "utilized the procedures

16. *See id.* at 3–11.

17. 473 U.S. 172 (1985), *overruled by* *Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019).

18. *Id.* at 181–82.

19. *Id.* at 175.

20. *Id.* at 175, 182.

21. *Id.* at 175.

22. *See id.* at 175–76, 200.

Tennessee provides for obtaining just compensation.”²³ As such, the Court concluded, the respondent’s claim was “not ripe” and would not become ripe “until the government entity charged with implementing the regulations ha[d] reached a final decision regarding the application of the regulations to the property at issue.”²⁴

Before *Williamson County*, the Supreme Court had previously rejected compensation in takings claims for the lack of ripeness in *Agins v. City of Tiburon*²⁵ and *Hodel v. Virginia Surface Mining & Reclamation Ass’n*.²⁶ The *Agins* decision substantially relied on the fact that the property owners had not submitted a plan for development to determine whether the local zoning ordinance applied to the property.²⁷ Drawing parallels on these facts, the *Williamson County* decision is based on the principle that Takings Clause claims will not be ripe for federal court until the administrative agency decided “how it will apply the regulations at issue to the particular land.”²⁸ Given this reasonable justification, it is unfortunate that the Court did not stop there.

In addition to a final determination applying the regulation to the property, the Court detailed that these owners must also exhaust the available state remedy procedures (such as inverse condemnation proceedings) before a Takings Clause claim is ripe for federal court.²⁹ Furthermore, the Court boldly asserted that “no constitutional violation occurs until just compensation has been denied.”³⁰ Thus, in one decision, the Supreme Court relegated the Fifth Amendment’s just compensation protections below those of other federally protected rights.³¹ Federal courts could not consider these Fifth Amendment claims until a state court weighed in on the dispute.³² Regardless of the *Williamson County* opinion’s opinion’s foundational issues, the actual consequences of the decision are best understood through the frustrations it has imposed on property owners.

23. *Id.* at 186.

24. *Id.*

25. *See* 447 U.S. 255, 260 (1980).

26. *See* 452 U.S. 264, 297 (1981).

27. 447 U.S. at 260.

28. *Williamson Cnty.*, 473 U.S. at 191.

29. *Id.* at 194.

30. *Id.* at 192 n.13.

31. *See* Michael M. Berger & Gideon Kanner, *Shell Game! You Can’t Get There from Here: Supreme Court Ripeness Jurisprudence in Takings Cases at Long Last Reaches the Self-Parody Stage*, 36 URB. LAW. 671, 687 (2004) (discussing the exclusion of property owners from the federal court system when asserting Fifth Amendment claims against governmental agencies).

32. *Id.*

2. *San Remo Hotel, L.P. v. City & County of San Francisco and the Preclusion Trap*

It is clear just how unworkable the *Williamson County* state-litigation requirement became in practice when viewed in the context of the Supreme Court's decision in *San Remo Hotel, L.P. v. City & County of San Francisco*.³³ While the *Williamson County* Court was content in "hand[ing] authority over federal takings claims to state courts" solely on the basis of local familiarity with land-use procedures, it wholly failed to distinguish why similar "challenges to municipal land-use regulations based on the First Amendment . . . or Equal Protection Clause" could advance directly to federal court.³⁴ Nevertheless, it was the *San Remo* decision that actually shut the federal courthouse doors in the faces of property owners.

In *San Remo*, a group of hotel owners brought Fifth Amendment takings claims in both state and federal court.³⁵ The state court decided against the property owners, who then requested that the United States District Court for the Northern District of California "exempt from § 1738's reach claims brought under the Takings Clause of the Fifth Amendment."³⁶ In essence, the property owners asserted that the *Williamson County* state-litigation requirement, in tandem with the full faith and credit statute, would have a preclusive effect and wholly prevent federal court access to these Fifth Amendment claims.³⁷ If only the Supreme Court had as much foresight as the petitioners in *San Remo*, then perhaps the Court would have saved itself—and many others—litigation expenses and headaches. Instead, the Court refused to resolve the consequences of the conflicting *Williamson County* doctrine and the full faith and credit statute.³⁸

The *Williamson County* Court held that Fifth Amendment claims would not ripen until property owners were denied compensation at the state level.³⁹ Thus, it is reasonable to assert that the Court expected property owners to eventually have standing in federal court. With this *Williamson County* expectation in mind, it is difficult to reconcile the *San Remo* decision, which effectively held that Fifth

33. 545 U.S. 323 (2005).

34. *Id.* at 350–51 (Rehnquist, C.J., concurring) (citations omitted).

35. *Id.* at 326 (majority opinion).

36. *Id.* at 327.

37. *See id.*

38. *See id.* at 347 ("Whatever the merits of [the property owners'] concern may be, we are not free to disregard the full faith and credit statute solely to preserve the availability of a federal forum.").

39. *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 195 (1985), *overruled by* *Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019).

Amendment claims were not just unripe, but more accurately improper for federal federal court.⁴⁰ The full faith and credit statute “provides that ‘judicial proceedings . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State.’”⁴¹ By solely reviewing the historical background and foundation for the statute, the Court refused to consider the very dilemma it created in *Williamson County* and left Fifth Amendment claims to die in state court, caught in the clutches of the preclusion trap.⁴²

As a preview of what would come, Chief Justice Rehnquist, by way of his concurrence, articulated that the “justifications for [the] state-litigation requirement are suspect.”⁴³ Furthermore, he believed “the Court should reconsider whether plaintiffs asserting a Fifth Amendment takings claim based on on the final decision of a state or local government entity must first seek compensation in state courts.”⁴⁴ It would ultimately be another thirty-four years until the Court accurately addressed and resolved the state-litigation requirement and preclusion trap preventing federal courts from having jurisdiction to hear Fifth Amendment claims.

C. Consequences of the Combined Doctrines: Lack of Federal Court Access to Plaintiffs and Gamesmanship by Defendants

In the years after *San Remo*, property owners continued to pursue just compensation for governmental takings of private property in state courts. Ironically, the government defendants—like those in *San Remo* and *Williamson County* who had sought to avoid federal court jurisdiction over takings claims⁴⁵—claims⁴⁵—began to remove takings cases to federal courts.⁴⁶ The government defendants in *City of Chicago v. International College of Surgeons*, for

40. See *San Remo*, 545 U.S. at 347 (“[A] claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue,’ consequently, 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.” (quoting *Williamson Cnty.*, 473 U.S. at 186)).

41. *Id.* at 336 (quoting 28 U.S.C. § 1738).

42. See *id.* at 338 (“Federal courts . . . are not free to disregard [the full faith and credit statute] simply to guarantee that all takings plaintiffs can have their day in federal court.”).

43. *Id.* at 352 (Rehnquist, C.J., concurring).

44. *Id.*

45. See *id.* at 326 (majority opinion); see also *Williamson Cnty. Reg’l Planning Comm’n v. Hamilton Bank*, 473 U.S. 172, 185 (1985), *overruled by* *Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019).

46. See, e.g., *City of Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 161 (1997).

example, removed a just compensation claim (alleging both federal and state constitutional violations) to federal court based on federal question jurisdiction.⁴⁷ The Supreme Court granted review to consider the jurisdictional issue.⁴⁸ Specifically, the Court contemplated whether a defendant could remove a case when it contains both: (1) claims for federal law violations by state agencies and (2) “state law claims for on-the-record review of the administrative findings.”⁴⁹ Placing the question in the context of supplemental and federal question jurisdiction, the Court determined that the federal district court could indeed exercise jurisdiction over the claims.⁵⁰

While the answers to the jurisdictional questions in *City of Chicago* are not called into question here, the resulting consequences are indicative of yet another layer of disparity and hardships imposed on takings claimants. Because of *Williamson County*, plaintiffs could not initiate a lawsuit asserting Fifth Amendment takings claims in federal court. However, after *City of Chicago*, defendants could remove these same claims to federal court and get them dismissed for lack of ripeness or exhaustion of state remedies.⁵¹

In *Warner v. City of Marathon*, plaintiffs initiated, inter alia, a takings action in Florida state court.⁵² Immediately, the defendants removed the case to federal court and argued that the state law claim arose under a federal question—the Fifth Amendment.⁵³ Thereafter, the government defendants sought to dismiss the takings claim on the ground that it was unripe, according to *Williamson County*’s exhaustion of state remedies requirement.⁵⁴ The district court agreed with the defendants and granted the dismissal; the plaintiff appealed the decision to the Eleventh Circuit Court of Appeals.⁵⁵ Correctly applying *Williamson County*, the Eleventh Circuit affirmed the lower court’s decision because a Florida court had not denied the plaintiff just compensation.⁵⁶ So, even though the plaintiff initially filed the inverse condemnation claim in state court as required by *Williamson*

47. *Id.*

48. *Id.* at 163.

49. *Id.*

50. *Id.* at 174. The Court further elaborated that ICS’s complaint alleged violations of the Fifth Amendment Takings Clause, which a federal court would have original jurisdiction over. Moreover, the state-law claims regarding the administrative procedures could be properly considered by the federal court through supplemental jurisdiction. *Id.* at 164–65.

51. *See Warner v. City of Marathon*, 718 F. App’x 834, 840 (11th Cir. 2017) (determining that plaintiffs’ claims were not yet ripe for review).

52. *Id.* at 836.

53. *See id.*

54. *See id.* at 837.

55. *Id.*

56. *Id.* at 838.

County, the defendants could remove the action and immediately dismiss the suit for lack of a state court denial. *Warner* encapsulates the gamesmanship and paradoxical effects *Williamson County* left on takings claimants.

Although the Eleventh Circuit affirmed the dismissal of the plaintiff's takings claims, other courts have begun to recognize the bad-faith nature of such actions by defendants.⁵⁷ For example, the Sixth Circuit recently affirmed a district court's denial of a defendant's motion to dismiss following the removal of a takings action to the district court.⁵⁸ Playing the same game as the *Warner* defendants, the Township of Pennfield sought dismissal for lack of ripeness.⁵⁹ Even so, the district court denied the motion and awarded attorney's fees to the plaintiffs because the defendants "lacked an objectively reasonable basis for removal" the federal court clearly lacked jurisdiction to hear the claim.⁶⁰ Even though the Sixth Circuit's ruling provided takings claimants some relief in that circuit, it did not resolve the many challenges faced by property owners in the other circuit courts. Furthermore, the procedural hurdles remained, preventing takings plaintiffs from filing their Fifth Amendment claims in federal courts.

III. Statement of the Case

A. Facts

The case that redefined the Fifth Amendment's protections—*Knick v. Township of Scott*—all started with an eighty-five-year-old man's genealogy research.⁶¹ Robert Vail, Sr., a resident of the Township of Scott, Pennsylvania ("the township"), "believed [his] ancestors were buried" on his neighbor's property after conducting a genealogy study.⁶² Unfortunately for Vail, his neighbor, Rose Mary Knick, did not welcome the idea of people roaming around her ninety-acre rural property.⁶³ Accordingly, Knick, who had lived on the

57. See, e.g., *A Forever Recovery, Inc. v. Twp. of Pennfield*, 606 F. App'x 279, 283–84 (6th Cir. 2015) (concluding that the district court did not err in determining that defendant removed the case in bad faith); *Yamagiwa v. City of Half Moon Bay*, 523 F. Supp. 2d 1036, 1110 (N.D. Cal. 2007) (concluding that defendants' efforts to seek remand back to state court after removing the action to federal court "smacks of bad faith").

58. *Forever Recovery*, 606 F. App'x at 283–84.

59. *Id.* at 282.

60. *Id.* at 281.

61. See Jessica Gresko, *Cemetery Case Puts Property Rights Issue Before High Court*, AP NEWS (Oct. 4, 2018), <http://apnews.com/86ec9d89d4d34579b528845f5f8c1642>.

62. Jason Nark, *N.E. Pennsylvania Woman Wins U.S. Supreme Court Case to Keep Grave Seekers off Her Land*, PHILA. INQUIRER (June 21, 2019), <https://www.inquirer.com/news/court-scotus-pennsylvania-property-constitution-20190621.html>; Gresko, *supra* note 61.

63. See Gresko, *supra* note 61.

property since 1970, hired an attorney to help her look for records or physical landmarks on the property that would indicate the presence of an ancient burial site.⁶⁴ When they could not find any indications of such a graveyard, Knick even “invited township officials to [find] the supposed burial site.”⁶⁵ Even so, the officials declined the offer at the time.⁶⁶ Vail, who wanted to visit the cemetery and plant flags commemorating his ancestors’ gravestones, requested help from the township.⁶⁷

In 2012, the township adopted an ordinance requiring that “[a]ll cemeteries . . . shall be kept open and accessible to the general public during daylight hours.”⁶⁸ A violation of the ordinance subjected the property owner to a fine between \$300 and \$600, and “[e]ach day that the violation exist[ed] . . . constitut[ed] a separate offense.”⁶⁹ Furthermore, the ordinance’s definition of a “cemetery” clearly encompassed the alleged graveyard on Knick’s private land.⁷⁰ Pursuant to the township’s ordinance, a code enforcement officer visited the property and “found several grave markers on Knick’s property.”⁷¹ The officer then notified Knick that that she was violating the ordinance for failure to keep the property open to the public during the day.⁷²

B. Procedural History and Issue

Upon receipt of the citation, Knick challenged the alleged regulatory taking of her property in state court, seeking declaratory and injunctive relief.⁷³ Instead of pursuing an inverse condemnation action, however, Knick asked the Lackawanna County Court of Common Pleas to declare the ordinance unconstitutional in violation of the Fifth Amendment’s Takings Clause.⁷⁴ The township then agreed

64. Rose Mary Knick, *Your View by Pa. Woman Who Won Supreme Court Case: It’s My Farm but It’s Everybody’s Constitution*, MORNING CALL (July 14, 2019, 11:00 AM), <https://www.mcall.com/opinion/mc-opi-knick-versus-scott-township-20190714-vqvtfex25rev5adtvf2xtplu3u-story.html>.

65. *Id.*

66. *Id.*

67. Gresko, *supra* note 61.

68. Scott Township, Lackawanna County, Pa., Ordinance No. 12-12-20-001 § 5 (2012).

69. *Id.* § 7.

70. *See id.* § 1(c) (defining “cemetery” as “[a] place or area of ground, whether contained on private or public property, which has been set apart for or otherwise utilized as a burial ground for deceased human beings”).

71. Knick v. Twp. of Scott, 139 S. Ct. 2162, 2168 (2019).

72. *Id.*

73. *Id.*

74. *See* Knick v. Twp. of Scott, No. 3:14-CV-02223, 2016 WL 4701549, at *2 (M.D. Pa. Sept. 8, 2016) (providing the procedural history of Knick’s state court action).

to stay enforcement of the ordinance during the pendency of the lawsuit.⁷⁵ Ironically, the lack of an ongoing enforcement action forced the state court to dismiss Knick's request for relief, because she could no longer "demonstrate the irreparable harm necessary" to enjoin the ordinance.⁷⁶

Upon dismissal of the state court action, Knick initiated another proceeding in federal district court, maintaining her belief that the ordinance violated the Fifth Amendment's Takings Clause.⁷⁷ Applying the *Williamson County* exhaustion requirement, the district court dismissed Knick's lawsuit because she had not exhausted her remedies at state law through an inverse condemnation action.⁷⁸ Then, Knick appealed to the Third Circuit Court of Appeals, which affirmed the district court's dismissal and application of *Williamson County*.⁷⁹

IV. Decision

A. The Majority Opinion

To preface the discussion of the competing views advanced by the parties, the underlying discourse in *Knick* centers on when a Takings Clause violation has occurred. Initially, the Supreme Court began its analysis by looking at the central cases that shaped the current understanding and application of the Fifth Amendment's Takings Clause.⁸⁰ First, the Court discussed *Williamson County*'s ripeness requirements of exhaustion both at the administrative level (applying the regulation to the property) and through the state's just compensation (inverse condemnation) cause of action.⁸¹ Because Knick did not challenge the first exhaustion requirement, the Court then quickly dove into discussing the purpose, context, and merits of the state just compensation requirement.⁸²

First, the Court considered the significant and "unanticipated consequences" that *Williamson County* would eventually have on property owners affected by

75. *Knick*, 139 S. Ct. at 2168.

76. *Id.*

77. *Id.*

78. *See Knick*, 2016 WL 4701549, at *5–6.

79. *Knick v. Twp. of Scott*, 862 F.3d 310, 326 (3d Cir. 2017).

80. *See Knick*, 139 S. Ct. at 2169–72.

81. *Id.* at 2169.

82. *See id.* ("According to the Court, 'if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the [Takings] Clause until it has used the procedure and been denied just compensation.'" (quoting *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 195 (1985), *overruled by Knick*, 139 S. Ct. at 2179)).

governmental takings.⁸³ Enter *San Remo* and the preclusion trap. Digging into the *San Remo* opinion, the Court recited the facts: a group of takings plaintiffs “complied with *Williamson County* and brought a claim for compensation in state court.”⁸⁴ Yet, the plaintiffs only sought relief under the state constitution takings clause, while hoping to retain “their Fifth Amendment claim for a later federal suit if the state suit proved unsuccessful.”⁸⁵ Unfortunately for the *San Remo* plaintiffs, the lower courts held—and the Supreme Court affirmed—“the full faith and credit statute, 28 U.S.C. § 1738, required the federal court to give preclusive effect to the state court’s decision.”⁸⁶ While *Williamson County* required a state proceeding and determination to give “rise to a ripe federal takings claim,” *San Remo* “simultaneously barred that claim” and wholly “prevent[ed] the federal court from ever considering it.”⁸⁷ Hence, the aptly coined phrase, preclusion trap, refers to the no-win situation that these decisions imposed on takings claimants.

Importantly, the *Knick* Court understood the detriments that these two decisions imposed on property owners. Specifically, the *Knick* majority articulated that the state just compensation requirement “relegates the Takings Clause ‘to the status of a poor relation’ among the provisions of the Bill of Rights.”⁸⁸ While other constitutional claims are guaranteed federal court access, “the state-litigation requirement ‘hand[s] authority over federal takings claims to state courts.’”⁸⁹ Before the Court further reasoned its disfavor of *Williamson County*, it stated the more appropriate interpretation of the Fifth Amendment Takings Clause, per the Court, confers a property owner with a claim of violation “as soon as a government takes his property for public use without paying for it.”⁹⁰ This understanding of the clause enables property owners to bring takings claims in federal court without enduring a state inverse condemnation action.⁹¹

With this clear predictor of the Court’s outcome, the majority opinion retraced its steps to illustrate how it developed this refined Takings Clause interpretation

83. *See id.* (“The unanticipated consequences of this ruling were not clear until 20 years later, when this Court decided *San Remo*.”).

84. *Id.* (citing *San Remo Hotel, L.P. v. City & Cnty. of S.F.*, 545 U.S. 323, 331 (2005)).

85. *Id.* (citing *San Remo*, 545 U.S. at 331–32).

86. *Id.* (citing *San Remo*, 545 U.S. at 347).

87. *Id.*

88. *Id.* (quoting *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994)).

89. *Id.* at 2170 (quoting *San Remo*, 545 U.S. at 350 (Rehnquist, C.J., concurring)).

90. *Id.*

91. *See id.* (“If a local government takes private property without paying for it, that government has violated the Fifth Amendment—just as the Takings Clause says—without regard to subsequent state court proceedings.”).

and application.⁹² *Knick* takes us back to *Williamson County*, its predecessors, and its progeny. The *Williamson County* Court believed a governmental taking gave property owners “a right to a state law procedure that [would] eventually result in just compensation.”⁹³

Part of the *Williamson County* Court’s understanding of the Takings Clause derived from *Ruckelshaus v. Monsanto Co.*, where a plaintiff sought injunctive relief against a federal statute that effected a taking.⁹⁴ In *Ruckelshaus*, though, “the statute set up a special arbitration procedure for obtaining compensation,” and the plaintiff retained the right to assert a Tucker Act claim if arbitration proved unsuccessful.⁹⁵ In rejecting the claim, the *Knick* Court noted that “[e]quitable relief is not available to enjoin” a governmental taking of property “when a suit for compensation” is available after the taking occurred.⁹⁶ When monetary relief is still available, equitable relief will not be available, which, according to *Knick*, is “consistent with [the Court’s] precedent.”⁹⁷

Even still, the *Ruckelshaus* Court further elaborated that if the plaintiff obtained any compensation through arbitration, then “no taking has occurred and the [plaintiff] has no claim against the Government.”⁹⁸ Once endorsed by *Williamson County*, this view greatly exceeded reasonable constitutional interpretation and construction. Notably, the *Williamson County* Court believed that “[i]f the government has provided an adequate process for obtaining compensation, and if resort to that process ‘yield[s] just compensation,’ then the property owner ‘has no claim against the Government’ for a taking.”⁹⁹

According to *Knick*, this view is fundamentally wrong in two respects. First, *Williamson County* correctly stated that a justly compensated plaintiff no longer has a claim, but this claim evaporates “not because there was *no taking* in the first place.”¹⁰⁰ Instead, the plaintiff no longer retains a claim “because the taking has been *remedied* by compensation.”¹⁰¹ Second, the *Williamson County* Court incorrectly believed that “taking[s] claims against the Federal Government are

92. *See id.* at 2170–78.

93. *Id.* at 2171 (citing *Williamson Cnty. Reg’l Planning Comm’n v. Hamilton Bank*, 473 U.S. 172, 195 (1985), *overruled by Knick*, 139 S. Ct. at 2179).

94. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 998–99 (1984).

95. *Knick*, 139 S. Ct. at 2173 (citing *Ruckelshaus*, 467 U.S. at 1018).

96. *Ruckelshaus*, 467 U.S. at 1016.

97. *Knick*, 139 S. Ct. at 2173.

98. *Ruckelshaus*, 467 U.S. at 1018 n.21.

99. *Williamson Cnty. Reg’l Planning Comm’n v. Hamilton Bank*, 473 U.S. 172, 194 (1985), *overruled by Knick*, 139 S. Ct. at 2179 (quoting *Ruckelshaus*, 467 U.S. at 1013, 1018 n.21).

100. *Knick*, 139 S. Ct. at 2173.

101. *Id.*

premature until the property owner” has endured the Tucker Act’s processes.¹⁰² The *Knick* majority distinctly disagreed, advancing the notion that a just compensation claim “brought under the Tucker Act is not a prerequisite to a Fifth Amendment takings claim—it *is* a Fifth Amendment takings claim.”¹⁰³ The *Knick* Court supported this contention by noting that “[a] party who loses a Tucker Act suit has nowhere else to go to seek compensation for an alleged taking.”¹⁰⁴ Accordingly, the Tucker Act, by itself, is not a claim that a plaintiff must pursue before a takings claim may be advanced. Instead, it is merely the vehicle utilized to assert a takings claim in federal court.

According to the *Knick* majority, the *Williamson County* Court also mischaracterized much of the Supreme Court’s Takings Clause precedent—most notably *Cherokee Nation v. Southern Kansas Railway Co.*¹⁰⁵ Chief Justice Roberts’s majority opinion directly addressed *Cherokee Nation* and its progeny. It highlighted that each takings claim dealt with requests for injunctive relief, which is distinguishable from demands for compensation.¹⁰⁶ Specifically, the Chief Justice expressed: just “because the property owner was not entitled to injunctive relief at the time of the taking does not mean there was no violation of the Takings Clause at that time.”¹⁰⁷

After an extensive historical analysis, the Chief Justice emphasized that Takings Clause jurisprudence has traditionally held that injunctive relief will be denied so long as “property owners ha[ve] an adequate remedy at law.”¹⁰⁸ This tradition suggests that the availability of the just compensation procedure does not itself prevent a constitutional violation from happening.¹⁰⁹ Instead, the process for obtaining just compensation is actually *the remedy* for such a constitutional violation.¹¹⁰ Ultimately, the *Knick* Court’s renewed view and redefined interpretation of the Takings Clause directly contrasts the *Williamson County* decision. As such, the Court then turned to address “whether *stare*

102. *Id.* at 2174 (quoting *Williamson Cnty.*, 473 U.S. at 195).

103. *Id.* at 2174.

104. *Id.*

105. *See id.* at 2175 (“The Court in *Williamson County* relied on statements in our prior opinions that the Clause ‘does not provide or require that compensation shall be actually paid in advance of the occupancy of the land to be taken.’” (quoting *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 659 (1890))).

106. *Id.*

107. *Id.*

108. *Id.* at 2176 (citing *Stetson v. Chicago & Evanston R.R. Co.*, 75 Ill. 74, 78 (1874)).

109. *See id.* at 2177.

110. *See id.* at 2176–77.

decisis counsel[ed] in favor of adhering to the [*Williamson County*] decision, despite its error.”¹¹¹

Considering whether to overrule *Williamson County*, the Court first emphasized how maintaining a settled rule of law is generally more important than having the rule of law settled correctly.¹¹² Because *stare decisis* is at its weakest when referring to constitutional interpretation, the Court began by weighing the competing interests and impact of overturning precedent.¹¹³ After a thorough analysis criticizing the quality of the *Williamson County* reasoning and the workability of the state-litigation rule, the *Knick* Court held that the 1985 decision did not deserve application of the doctrine of *stare decisis*.¹¹⁴ Accordingly, a landowner may challenge an uncompensated governmental taking of property in federal court.¹¹⁵ Vacating the Third Circuit Court of Appeals, the Supreme Court allowed Rose Mary Knick to continue pursuing compensation for the regulatory taking of the alleged graveyard on her property.¹¹⁶ Additionally, after thirty years of frustrating property owners affected by governmental takings, *Knick* finally abandoned the impracticality of *Williamson County*.

B. Justice Kagan’s Dissent

Joined by Justices Ginsburg, Breyer, and Sotomayor, Justice Kagan wrote fearfully of the majority’s refusal to adhere to *stare decisis*.¹¹⁷ Indeed, the dissenting justices voiced these concerns quite clearly, noting the majority’s holding “conflict[s] with precedent after precedent.”¹¹⁸ Notably, the dissent criticizes the *Knick* holding on three grounds: (1) it will cause innocent governmental actors to frequently commit constitutional violations, (2) the courts will overflow with claims that turn on the intricacies of state law, and (3) the decision encourages the rejection of *stare decisis*.¹¹⁹

111. *Id.* at 2177.

112. *Id.* (citing *Agostini v. Felton*, 521 U.S. 203, 235 (1997)).

113. *Id.*; see also *Agostini*, 521 U.S. at 235 (“[*Stare decisis*] is at its weakest when we interpret the Constitution because our interpretation can be altered only by constitutional amendment or by overruling our prior decisions.”).

114. *Knick*, 139 S. Ct. at 2178–79.

115. *Id.* at 2179.

116. *See id.*

117. *See id.* at 2181 (Kagan, J., dissenting).

118. *Id.*

119. *See id.* at 2181, 2187 (lamenting that the majority’s decision “transgresses all usual principles of *stare decisis*,” will “turn even well-meaning government officials into lawbreakers,” and “subvert[s] important principles of judicial federalism”).

The dissent criticized the majority's rejection of both *Williamson County* and the Court's historical understanding of the Fifth Amendment's protections.¹²⁰ In addition to its concerns for precedent, the dissent starkly disagreed with the Court's renewed view of the protections that the Takings Clause affords.¹²¹ In fact, Justice Kagan believed the *Knick* decision held "that a government violates the Constitution whenever it takes property without advance compensation—*no matter how good its commitment to pay*."¹²² But the Justice failed to elaborate on what commitment the municipal government had made to compensate property owners like Knick.

Nevertheless, Justice Thomas's concurrence aptly described the commitment: "the government 'implicitly promises to pay compensation for any taking' if a property owner successfully sues the government in court."¹²³ The concurring Justice further noted, "The Fifth Amendment does not merely provide a damages remedy to a property owner willing to shoulder the burden of securing compensation after the government takes property without paying for it."¹²⁴ As such, Justice Thomas expressly and adequately addressed the concerns articulated by the dissenting justices.

V. Analysis

The *Knick* decision has already left incredible consequences on Fifth Amendment jurisprudence ranging from ensuring federal court access for takings plaintiffs to preventing gamesmanship by government defendants. Before addressing the effects of the decision, Justice Kagan's dissenting views are particularly noteworthy, even to those without a stake in the development of property rights. The dissent raised two critical warnings about the majority's decision. First, and perhaps most clearly, it warned about two primary ramifications the *Knick* decision will have on the Court's Takings Clause jurisprudence.¹²⁵ Second, Justice Kagan expressed concerns for the majority's

120. *Id.* at 2180. *But see id.* at 2177 (majority opinion) ("But under today's decision every one of the cases cited by the dissent would come out the same way—the plaintiffs would not be entitled to the relief they requested because they could instead pursue a suit for compensation.").

121. *See id.* at 2181–83 (Kagan, J., dissenting).

122. *Id.* at 2181 (emphasis added).

123. *Id.* at 2180 (Thomas, J., concurring) (quoting Supplemental Letter Brief for United States as *Amicus Curiae* 5).

124. *Id.* (internal quotation marks omitted) (citation omitted).

125. *See id.* at 2187 (Kagan, J., dissenting) ("[The majority's decision] will have two damaging consequences. It will inevitably turn even well-meaning government officials into lawbreakers. And it will subvert important principles of judicial federalism.").

willingness to overturn the *Williamson County* precedent, which she believed foreshadowed more rejection of stare decisis in the future.¹²⁶

As noted above, the dissent argued that the Court's decision would detrimentally affect takings disputes in two primary ways. First, Justice Kagan believed the decision would transform innocent governmental employees into constitutional violators.¹²⁷ Moreover, she argued the new rule subjected highly localized state property law to federal courts.¹²⁸ Because these contentions are without merit, Justice Kagan's concerns for the rejection of stare decisis are exaggerated.

At first glance, the dissent's concern for innocent government employees seems to be valid, because everyday takings would become constitutional violations. Yet, Justice Thomas, once again, shed light on these misplaced fears. If the Court's decision "makes some regulatory programs 'unworkable in practice,' so be it—[the Court's] role is to enforce the Takings Clause as written."¹²⁹ As one commenter noted, Justice Kagan's argument seeks to allow "[l]ocal governments [to] run afoul of the [T]akings [C]lause precisely because they so routinely deprive people of their constitutional rights."¹³⁰ Allowing government officials to continue such a practice only out of convenience rather than "compensating property owners . . . is irrational."¹³¹ Further, the majority's decision does not affect the constitutional validity of these governmental actors' choices. The program in question does not violate the Constitution unless it concerns a taking of private property without just compensation—which is identical to the prior treatment of programs in state courts.¹³²

126. *Id.* at 2190 (noting that Justice Breyer had wondered when the majority would overrule another case and offering, "[W]ell that didn't take long. Now one may wonder yet again.").

127. *Id.* at 2187 ("[The majority's decision] will inevitably turn even well-meaning government officials into lawbreakers.").

128. *Id.* ("[T]he majority's ruling channels to federal courts a (potentially massive) set of cases that more properly belongs . . . in state courts . . .").

129. *Id.* at 2180 (Thomas, J., concurring) (quoting Supplemental Letter Brief for United States as *Amicus Curiae* 5).

130. Timothy Sandefur, *The Supreme Court Rights a Property-Rights Wrong*, GOLDWATER INST. (June 21, 2019), <https://indefenseofliberty.blog/2019/06/21/the-supreme-court-rights-a-property-rights-wrong/>.

131. *Id.*

132. See Ilya Somin, *Supreme Court Overrules Precedent That Created "Catch-22" for Property Owners Attempting to Bring Takings Cases in Federal Court*, VOLOKH CONSPIRACY (June 21, 2019, 12:04 PM), <https://reason.com/2019/06/21/supreme-court-overrules-precedent-that-created-catch-22-for-property-owners-attempting-to-bring-takings-cases-in-federal-court/> ("Exactly the same thing happens when the regulatory program in question is challenged in state court, and the latter rules that it was a taking.").

Next, the dissent voiced concerns about allowing federal judges to decide the intricacies of state law,¹³³ but this argument is also flawed. The Court does not similarly deny federal court access to any other constitutional protection simply because state officials might be more familiar with the details of the state laws.¹³⁴ Further, Justice Kagan's theory overlooks a key factor. State officials' intimate knowledge of state law does not give them any additional advantage "in property rights cases than they have in other constitutional cases where the outcome may depend on interpretations of state law."¹³⁵ As such, Justice Kagan's concern for federal judges considering state-specific property laws is unsupported by other areas of constitutional jurisprudence.

Ultimately, the dissent, arguing for stare decisis, simply chose the "wrong hill to die on."¹³⁶ Whatever justifications stare decisis holds for adherence to precedent, *Williamson County* strikes against the most fundamental protections of the Fifth Amendment. The state litigation requirement, though undisturbed for thirty years, proved to be neither supported by Takings Clause jurisprudence nor workable in practice.¹³⁷ Justice Kagan voiced concerns for "reversing legal course" when a later Court determines an earlier ruling to be incorrect.¹³⁸ These concerns, however, overstate the Court's rejection of precedent in *Knick*. *Williamson County* demonstrated more than an incorrect interpretation of the Fifth Amendment: it almost wholly barred the Amendment's protection of property owners affected by regulatory takings.

The *Knick* decision is best understood with these dissenting views in mind. First and foremost, *Knick* disposed of *Williamson County*'s state litigation requirement for takings claims.¹³⁹ Implicit in *Knick*'s overruling of *Williamson County* is the disposal of the *San Remo* preclusion trap. Nevertheless, ripeness still requires Fifth Amendment regulatory takings claims to obtain a final

133. See *Knick*, 139 S. Ct. at 2188–89.

134. Ilya Somin, *Knick v. Township of Scott: Ending a Catch-22 That Barred Takings Cases From Federal Court*, 2018-2019 CATO SUP. CT. REV. 153, 164–65 (comparing federal court considerations of the Fifth Amendment with those of the Establishment Clause of the First Amendment).

135. *Id.* at 165.

136. Robert H. Thomas, *Knick Analysis, Part IV: Why Not Let Sleeping Dogs Lie? The Dissent and Stare Decisis*, INVERSECONDEMNATION.COM (June 24, 2019), <https://www.inversecondemnation.com/inversecondemnation/2019/06/knick-analysis-part-iv.html> (criticizing Justice Kagan's description of Fifth Amendment rights after *Williamson County*).

137. *Knick*, 139 S. Ct. at 2178 ("[*Williamson County*'s] reasoning was exceptionally ill founded and conflicted with much of our takings jurisprudence."). See also *supra* Section II.C.

138. *Knick*, 139 S. Ct. at 2190 (Kagan, J., dissenting).

139. *Id.* at 2177 (majority opinion).

administrative decision before a federal court may have standing.¹⁴⁰ That aspect of *Williamson County* remains valid law.

Obviously, *Knick* has opened the federal courthouse doors to takings claims. Yet, the decision does not require these claimants to litigate in federal court. Property owners still have the option to pursue their claims in state court, so *Knick* will inevitably lead to some forum shopping on the part of property owners affected by far-reaching regulations. The property owners who assert their claims in state court, however, will likely be unable to bring a later federal lawsuit of the same nature.¹⁴¹ Additionally, if the litigation began in state court, then government defendants would have the option to remove the Fifth Amendment claim to federal court. Whereas before *Knick*, this removal would lead to a subsequent dismissal for failure to finalize state litigation,¹⁴² government defendants will no longer be able to play the removal-and-dismiss game.

Going forward, property owners wishing to litigate their takings claims in federal court should assert a 42 U.S.C. § 1983 cause of action seeking just compensation as the remedy. As noted by the *Ruckelshaus* discussion in the *Knick* opinion, property owners may not enjoin a regulatory taking in federal court unless compensation is unavailable.¹⁴³ What remains unclear is whether a state inverse condemnation claim has standing in federal court for arising under federal law.¹⁴⁴

VI. Conclusion

Unfortunately for many recent graduates, the *Knick* decision did not resolve the challenge resulting from their lack of work experience. *Knick*, however, ended

140. *See id.* (disposing only of the state-litigation requirement).

141. Despite discussing the detrimental effects *San Remo* and *Williamson County* had on property owners, the Court only overruled *Williamson County*'s state-litigation requirement. *Id.* at 2179 (“But, as we held in *San Remo*, the state court’s resolution of the plaintiff’s inverse condemnation claim has preclusive effect in any subsequent federal suit.”). Accordingly, *San Remo* still applies when property owners are denied relief in state courts—federal courts will have to give the state decision “full faith and credit.” *See San Remo Hotel, L.P. v. City & Cnty. of S.F.*, 545 U.S. 323, 347 (2005) (“[W]e are not free to disregard the full faith and credit statute solely to preserve the availability of a federal forum.”).

142. *See, e.g., Warner v. City of Marathon*, 718 F. App’x 834, 840 (11th Cir. 2017) (determining, after defendant removed the case to federal court, that plaintiffs’ claims were not yet ripe for review).

143. *Knick*, 139 S. Ct. at 2173.

144. *Id.* at 2174 n.5 (“[The Solicitor General argued] that state inverse condemnation claims ‘aris[e] under’ federal law and can be brought in federal court under 28 U.S.C. § 1331 through the *Grable* doctrine.”). The Court did not address the Solicitor General’s argument because it determined that a federal takings claim may be brought immediately through § 1983. *Id.*

ended the doctrinal paradox that has frustrated landowners for over thirty years. Ultimately, this decision is a meaningful procedural win for property owners, but the substantive merits of Rose Mary Knick's claim remain unchanged. In the end, end, *Knick* imparts only one change to Takings Clause jurisprudence: property owners challenging regulatory takings no longer have to rely on state courts as their sole tribunal. The *Knick* Court abolished a detrimental, contradictory standard that prevented federal courts from ever resolving these constitutional claims. While we may never know if a graveyard remains on Rose Mary Knick's property, one thing is clear—*Williamson County*'s state-litigation requirement has finally been laid to rest.

Gatlin Squires