

Knick v. Township of Scott: SCOTUS Opens Pandoras Box for Developers and Municipalities

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A recent U.S. Supreme Court decision could have far-reaching effects for property owners, real estate developers and municipalities, both for property regulations and condemnations.

The U.S. Supreme Court recently decided *Knick v. Township of Scott, Pennsylvania*, holding that a government violates the Takings Clause of the U.S. Constitution when it takes or condemns property without paying just compensation at the time of the taking.

As a result, a property owner may bring a civil rights violation claim under 42 U.S.C. 1983 at the time of the taking. The decision expressly overrules *Williamson Planning Comm'n v. Hamilton Bank of Johnson City*, where the Court ruled that a claimant must exhaust their just compensation claims through the state's court system before bringing a civil rights claim to federal court. The Court held that unanticipated consequences arose from the *Williamson* decision, requiring the claimant to lose its just compensation claim in state court prior to bringing the civil rights claim in federal court. However, under the Court's later holding in *San Remo Hotel, L. P. v. City and County of San Francisco*, the state decision is to be given "full faith and credit," thus precluding the matter from federal court consideration. *Knick* avoids this proverbial 'Catch-22' and holds that a government violates the Takings Clause as soon as property is taken without compensation and the property owner may bring a civil rights claim in federal court right away.

In *Knick*, the plaintiff sued her local municipality, Scott Township, just north of Scranton, Pa., seeking declaratory and injunctive relief for an unconstitutional property taking after the township began enforcement of an ordinance which purported to force the plaintiff to allow public access to a small graveyard located on her property. The Township enacted its ordinance, began enforcement, and did not - at any point - pay the plaintiff for such public access nor provide a mechanism to compensate owners for such public access across their properties. The Township withdrew the violation notice and stayed enforcement and the state court then declined to rule. In this case, the regulatory requirement allegedly constituted an "inverse condemnation," whereby the plaintiff would have to take legal action against the government to recover the value of the taken property through a regulatory enactment, since none was given. No just compensation action was filed by the plaintiff. The plaintiff did, however, file a civil rights case in federal court. Chief Justice Roberts, on behalf of the majority, indicated "that property owners may bring Fifth Amendment claims for compensation as soon as their property has been taken, regardless of any other post-taking remedies that may be available to the property owner."

The implications of *Knick* will be far-reaching, affecting both private landowners and local governments. For instance, development fees, in-lieu fees, property set asides for natural areas, and even zoning regulations

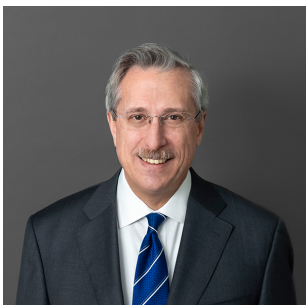
may be challenged - in many cases as "inverse condemnations" without compensation - by filing a civil rights case in federal courts. Municipalities should be cognizant of their regulatory enforcement tactics. A municipality should seek to devise strategies to avoid inverse condemnation claims pursued as an immediate civil rights claim, by providing immediate compensation or a mechanism to provide compensation promptly after the taking. Additionally, municipalities should be diligent in examining their insurance coverage for these new civil rights claims and obtaining legal guidance to protect themselves from liability. Note that a civil rights claim under [42 U.S.C. Section 1983](#) may also result in a judgment for the plaintiff's reasonable attorney's fees ([42 U.S.C. 1988](#)). Developers and property owners may wield the *Knick* decision as both a shield and a sword, when faced with regulations or development demands that they view as inappropriate and rising to the level of a taking of property requiring compensation.

Justice Kagan, joined by three other dissenters, penned a comprehensive dissent, opining that the decision "will inevitably turn even well-meaning government officials into lawbreakers." Since there is a constitutional violation at the time of condemnation or deprivation of property rights, even when there is a procedure to provide just compensation, government officials may be accused of violating the Takings Clause by their enforcement of their local ordinances, subjecting them to an immediate civil rights claim, even though the claimant hasn't sought compensation. As a result, states may seek to revise their just compensation legal procedures to address the holding in *Knick*.

If you have any questions about this decision or its implications, please contact [Timothy G. Dietrich](#) or any member of the [Barley Snyder Municipal & Municipal Authority Industry Group](#).

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