

REAL PROPERTY- EMINENT DOMAIN: ASSESSING THE TAKINGS CLAUSE AND ENDING THE STATE-LITIGATION REQUIREMENT

Knick v. Township of Scott, 139 S. Ct. 2162 (2019)

ABSTRACT

The United States Constitution and many state constitutions include takings clauses stating that private property shall not be taken for public use without just compensation. In *Knick v. Township of Scott*, the United States Supreme Court assessed the Takings Clause of the Fifth Amendment under the Constitution. The Supreme Court *held* property owners have an actionable Fifth Amendment takings claim when the government takes private property without just compensation, and therefore property owners may bring their claims in federal court under 42 U.S.C. § 1983 at that time. Plaintiff Rose Mary Knick is a landowner in rural Pennsylvania. Knick's property includes a small graveyard where her ancestors are allegedly buried. The Township of Scott passed an ordinance requiring all cemeteries to be open and accessible to the public during the day and authorized enforcement officers to enter upon any property to determine the existence and location of any cemetery. Knick filed a 42 U.S.C. § 1983 action in federal court, alleging that the ordinance violated the takings clause of the Fifth Amendment. Prior to *Knick v. Township of Scott*, the state-litigation requirement required property owners to seek just compensation under state law in state court before bringing a federal takings claim under § 1983. However, plaintiffs who lost their takings claim in state court found themselves without recourse in federal court, because the full faith and credit statute required the federal court to give preclusive effect to the state court's decision. This effectively prevented federal courts from ever considering these takings claims. In *Knick v. Township of Scott*, the Supreme Court ultimately overruled the state-litigation requirement, allowing takings plaintiffs to sue in federal court as soon as their property was taken without just compensation. The decision in *Knick* removed a significant legal barrier that for decades barred property owners from challenging local ordinances in federal court.

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I. FACTS

In December 2012, Scott Township, Pennsylvania (“Township”) passed an ordinance requiring that “[a]ll cemeteries . . . be kept open and accessible to the general public during daylight hours.”¹ Rose Mary Knick (“Knick”) lives in a house on 90 acres of land in the Township.² Knick’s property includes a small graveyard where the ancestors of Knick’s neighbors are allegedly buried.³ The ordinance defined a 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 place for deceased human beings.”⁴ Further, the ordinance authorized Township “code enforcement” officers to determine the existence and location of a cemetery upon any property.⁵

In 2013, a Township officer identified several grave markers on Knick’s property and informed Knick that she was violating the ordinance by failing to open the cemetery to the public during the day.⁶ Knick sought declaratory and injunctive relief in state court on the ground that the ordinance was a taking of her property.⁷ Knick did not seek compensation for the taking by

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

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

bringing an “inverse condemnation.”⁸ The Township withdrew the violation notice and agreed to stay enforcement of the ordinance during the state court proceedings.⁹ Without an ongoing enforcement action, the state court declined to rule on Knick’s request for declaratory and injunctive relief because she could not establish the irreparable harm necessary for equitable relief.¹⁰

Instead of waiting to be fined and restarting the state litigation process, Knick filed an action in Federal District Court under 42 U.S.C. § 1983, alleging that the ordinance violated the Takings Clause of the Fifth Amendment.¹¹ The District Court dismissed Knick’s takings claim pursuant to *Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City*,¹² because she had not pursued an inverse condemnation action in state court.¹³ On appeal, the Third Circuit Court of Appeals stated the Township’s ordinance was “extraordinary and constitutionally suspect,”¹⁴ but affirmed in light of *Williamson County*.¹⁵ The Supreme Court granted certiorari, vacated the judgement of the United States Court of Appeals for the Third Circuit, and remanded the case.¹⁶

II. LEGAL BACKGROUND

The Takings Clause of the Fifth Amendment states “private property [shall not] be taken for public use, without just compensation.”¹⁷ The purpose of the Takings Clause “is to prevent the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be

8. *Id.* (quoting *United States v. Clarke*, 445 U.S. 253, 257 (1980) (defining inverse condemnation as “a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant”). *See also* *Clark v. City of Williamsburg, Kan.*, 388 F. Supp. 3d 1346, 1268-69 (D. Kan. 2019) (explaining an inverse condemnation claim is essentially the reverse of an eminent domain claim: where, in eminent domain, a governmental authority institutes an action to take property, while inverse condemnation proceedings are brought by a party who owns property alleging the property was taken for public use without the initiation of condemnation proceedings by the government).

9. *Id.*

10. *Id.*

11. *Id.* Section 1983 provides, “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law” 42 U.S.C. § 1983 (2018).

12. 473 U.S. 172 (1985).

13. *Knick*, 139 S. Ct. at 2169.

14. *Knick v. Twp. of Scott*, 862 F.3d 310, 314 (3d Cir. 2017).

15. *Id.* at 326 (finding *Knick* failed to comply with the second *Williamson County* prong to exhaust state-law compensation remedies by not pursuing inverse condemnation proceedings).

16. *Knick*, 139 S. Ct. at 2179.

17. U.S. CONST. amend. V.

borne by the public as a whole.”¹⁸ *Knick v. Township of Scott* addresses the issue of when a property owner has an actionable Fifth Amendment takings claim under 42 U.S.C. § 1983.¹⁹

A. RIPENESS DOCTRINE

The ripeness doctrine serves to avoid premature adjudication.²⁰ It protects the agencies from “judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.”²¹ The Court has implemented these policies in the takings context by requiring plaintiffs to refrain from asserting a claim until a government action limiting property rights is concrete and final.²² In *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, the Supreme Court imposed two ripeness requirements on plaintiffs bringing takings claims into federal court: a finality requirement and a state-litigation requirement.²³

The finality requirement calls for a takings plaintiff to obtain a “final decision regarding the application of the regulations to the property at issue” from the government entity implementing the regulation.²⁴ The finality requirement looks to whether the initial decision maker has arrived at a final position on the issue in question.²⁵ The Supreme Court has addressed the issue that a court cannot determine whether a regulation has gone “too far” unless it knows how far the regulation goes.²⁶ However, the Supreme Court in *Knick*, noted that the finality requirement was not at issue in the case because *Knick* did not contest its validity.²⁷ Instead, the Supreme Court addressed the second requirement, the state-litigation requirement.²⁸

18. *Murr v. Wisconsin*, 137 S. Ct. 1933, 1943 (2017) (quoting *Palazzolo v. Rhode Island*, 533 U.S. 606, 617-18 (2001)).

19. *Knick*, 139 S. Ct. at 2167.

20. *See Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967).

21. *Id.* at 148-49.

22. *Hodel v. Virginia Surface Mining & Reclamation Ass’n*, 452 U.S. 264, 297 (1981).

23. *Id.*

24. *Id.* at 186.

25. *Id.* at 193.

26. *See Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922); *see also Macdonald v. City of Yolo*, 477 U.S. 340, 348 (1986);

27. *Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2169 (2019).

28. *Id.*

B. THE STATE-LITIGATION REQUIREMENT

The second requirement established in *Williamson County* is the state-litigation requirement, which required takings plaintiffs to seek compensation through the State provided procedures.²⁹ The Supreme Court in *Knick*, overruled this requirement.³⁰ *Williamson County* explained the exhaustion requirement “refers to the administrative and judicial procedures by which an injured party may seek review of an adverse decision and obtain a remedy if the decision is found to be unlawful or otherwise inappropriate.”³¹

In *Williamson County*, the Williamson County Regional Planning Commission approved a preliminary plat for a property developer for the development of residential areas.³² In the following years when an ordinance changed, the Commission disapproved plats proposing further development of the remainder of the property.³³ Hamilton Bank (“Hamilton”) foreclosed on the developer and acquired interests in the partially completed subdivision.³⁴ When Hamilton resubmitted a plat for the final phase of the subdivision, the Commission rejected it and Hamilton then sued in federal court, alleging the Commission’s denial had taken its property interest without giving just compensation.³⁵

The Supreme Court granted certiorari to address the question of whether the government must pay money damages to a landowner whose property allegedly has been taken temporarily by the application of government regulations.³⁶ However, the Supreme Court never answered that question, instead the Court was concerned with the procedural question of whether the claim was ripe for review and concluded the claim was premature.³⁷

The *Williamson County* Court justified the state-litigation requirement by the text of the Takings clause to determine that it “does not proscribe the taking of property, it proscribes taking without just compensation.”³⁸ The

29. *Williamson Cty. Reg’l Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194 (1985).

30. *Knick*, 139 S. Ct. at 2179.

31. *Williamson Cty.*, 473 U.S. at 193.

32. *Id.* at 177.

33. *Id.* at 178-79.

34. *See id.* at 181.

35. *Id.* at 181-82.

36. *Id.* at 185. This question was later answered in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*. 482 U.S. 304, 318 (1987) (holding that a property owner is entitled to compensation for the temporary loss of his or her property).

37. *Williamson Cty.*, 473 U.S. at 185.

38. *Id.* at 194.

Court reasoned that if the government provided an “adequate process for obtaining compensation, and if resort[ing] to that process ‘yield[s] just compensation,’” the property owner “‘has no claim against the Government’ for a taking.”³⁹ Thus, a property owner could not claim a violation of their Fifth Amendment right until the state court procedures actually denied just compensation.⁴⁰ As discussed later, *Knick* criticized this requirement as going against takings jurisprudence and unjustifiably burdening takings plaintiffs.⁴¹

C. THE PRECLUSION TRAP

The *Williamson County* Court anticipated that if the property owner failed to obtain compensation in state court, the property owner would be able to bring a ripe takings claim in federal court, however, that was not the case after *San Remo Hotel, L.P v. City and County of San Francisco*.⁴² In *San Remo*, hotel owners wanted to turn their residential rooms into tourist rooms but an application under an ordinance required them to pay a \$567,000 fee.⁴³ Due to the state litigation requirement from *Williamson County*, the hotel owners first sued for compensation in state court, reserving their federal takings claims for federal court, and lost their state law claim.⁴⁴ Once in federal court, both the district court and the United States Court of Appeals for the Ninth Circuit held the state court judgment precluded the federal claim.⁴⁵

The Supreme Court affirmed and held the federal claim was precluded because the full faith and credit statute requires federal courts to give “preclusive effect to any state court judgement that would have preclusive effect under the laws of the State in which the judgment was rendered.”⁴⁶ The Court reasoned that parties should not be allowed to relitigate issues that have been resolved by courts of competent jurisdiction.⁴⁷

The Supreme Court refused to make an exception to the full faith and credit statute that would guarantee a federal forum to takings plaintiffs who are required to ripen their takings claims in state court and reasoned that it was up to Congress to explicitly state in a statute.⁴⁸ The Court concluded by recognizing that “a significant number of plaintiffs will necessarily litigate

39. *Id.* (quoting *Ruckelshaus v. Monsato Co.*, 467 U.S. 986, 1013 (1984)).

40. *Id.* at 194-95.

41. *Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2167 (2019).

42. 545 U.S. 323 (2005).

43. *San Remo*, 545 U.S. at 329.

44. *Id.* at 331.

45. *Id.* at 334-35.

46. *Id.* at 335-36; 28 U.S.C. § 1738 (1948); *see also* U.S. CONST. amend. IV, § 1.

47. *San Remo*, 545 U.S. at 336.

48. *Id.* at 344-45.

their federal takings claims in state courts.”⁴⁹ There was concern that it would be unfair to give preclusive effect to state court decisions required to ripen federal takings claims.⁵⁰ The Court responded “[w]hatever 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.”⁵¹ Thus a state court decision that, according to *Williamson County*, should ripen a federal takings claim also simultaneously barred that same claim, closing the door to federal court.⁵²

III. ANALYSIS

In *Knick v. Township of Scott*, the Supreme Court reconsidered its holding in *Williamson County* that property owners must seek just compensation under state law in state court before bringing a federal takings claim under 42 U.S.C. § 1983.⁵³ The majority concluded the state-litigation requirement imposed an unjustifiable burden on takings plaintiffs, conflicted with takings jurisprudence and needed to be overruled.⁵⁴ While the dissent, written by Justice Kagan, joined by Justice Ginsburg, Justice Breyer, and Justice Sotomayor, argued that overruling *Williamson County* went against a century’s worth of precedent and will send a mass amount of local cases involving complex state-law issues into federal courts.⁵⁵

A. THE MAJORITY OPINION

The Court began by explaining its second holding of *Williamson County*, “a property owner whose property has been taken by a local government has not suffered a violation of his Fifth Amendment rights and thus cannot bring a federal takings claim in federal court until a state court has denied his claim for just compensation under state law.”⁵⁶ “In *Williamson County*, a property developer brought a takings claim under § 1983 against a zoning board that had rejected the developer’s proposal for a new subdivision.”⁵⁷ The *Williamson County* Court held that the developer’s Fifth Amendment Takings claim was premature because he had not sought compensation through the state

49. *Id.* at 346.

50. *Id.* at 347.

51. *Id.*

52. *Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2169 (2019).

53. *Id.*

54. *Id.* at 2167.

55. *Id.* at 2181.

56. *Id.* at 2167.

57. *Id.* at 2169.

provided procedures.⁵⁸ According to the *Williamson County* 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.”⁵⁹ The Court in *Williamson County*, concluded that because the property developer had not sought compensation for the taking through the State’s inverse condemnation procedure, his claim was not ripe for review.⁶⁰ Thus, under *Williamson County*, a governmental taking did not give a right to compensation, and instead conferred a right to a state law procedure that would eventually lead to just compensation.⁶¹

The *Williamson County* Court assumed that if the property owner failed to obtain compensation in state court, the property owner would be able to bring a ripe takings claim in federal court. The unintended consequences of *Williamson County* were not clear until the Court decided *San Remo Hotel, L.P. v. City and County of San Francisco*.⁶² This case involved “takings plaintiffs [who] complied with *Williamson County* and brought a claim for compensation in state court” and reserved their Fifth Amendment claim for a later federal suit if the state suit failed.⁶³ When their state suit failed, the plaintiffs proceeded to federal court, and found out their federal claim was barred by the full faith and credit statute which requires “the federal court to give preclusive effect to the state court’s decision blocking any subsequent consideration of whether the plaintiff had suffered a taking within the meaning of the Fifth Amendment.”⁶⁴ The Court explained, “The takings plaintiff thus finds himself in a ‘Catch-22,’” meaning “[h]e cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court.”⁶⁵ In other words, if a property owner sued in federal court for a federal takings claim without first losing in state court, the claim was unripe under *Williamson County*, but if the property owner satisfied the state-litigation requirement then their claim was barred in federal court by the full faith and credit statute.⁶⁶

58. *Id.* (citing *Williamson Cty. Reg’l Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194 (1985)).

59. *Id.* (citing *Williamson Cty.*, 473 U.S. at 195).

60. *Id.* (citing *Williamson Cty.*, 473 U.S. at 197).

61. *Id.* at 2171.

62. 545 U.S. 323 (2005).

63. *Knick*, 139 S. Ct. at 2169 (citing *San Remo*, 545 U.S. at 331-32).

64. *Id.* (citing *San Remo*, 545 U.S. at 347); 28 U.S.C. § 1738 (2018).

65. *Knick*, 139 S. Ct. at 2167; *see also San Remo*, 545 U.S. at 351 (Rehnquist, J., concurring) (“[O]ur holding today ensures litigants who go to state court to seek compensation will likely be unable later to assert their federal takings claims in federal court.”).

66. *Knick*, 139 S. Ct. at 2167.

The Supreme Court explained, “the state-litigation requirement imposes an unjustifiable burden on takings plaintiffs, conflicts with takings jurisprudence, and must be overruled.”⁶⁷ The Court reasoned the state-litigation requirement downgraded the Takings Clause “to the status of a poor relation among the provisions of the Bill of Rights” because any other constitutional claim is guaranteed a federal forum under § 1983.⁶⁸ In overruling *Williamson County*, the Court held “a property owner has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it.”⁶⁹ The Court reasoned the text of the Takings Clause states “nor shall private property be taken for public use, without just compensation,” not “nor shall private property be taken for public use, without an available procedure that will result in compensation.”⁷⁰

The Court pointed to *Jacob v. United States*,⁷¹ which affirmed the principle that “the right to full compensation arises at the time of the taking, regardless of post-taking remedies that may be available to the property owner.”⁷² The Court explained *Jacob* made clear that a property owner has a Fifth Amendment right to compensation as soon as the government takes his property without paying for it no matter what kind of procedures the government puts in place to remedy a taking.⁷³

The Court explained the availability of any particular compensation remedy cannot infringe or restrict the property owner’s federal constitutional claim.⁷⁴

The fact that the State has provided a property owner with a procedure that may subsequently result in just compensation cannot deprive the owner of his Fifth Amendment right to compensation under the Constitution, leaving only the state law right. This is critically important, because it is the existence of the Fifth Amendment right that allows the owner to proceed directly to federal court under § 1983.⁷⁵

67. *Id.*

68. *Id.* at 2169-70 (quoting *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994)); *see also* *Patsy v. Bd. of Regents of Fla.*, 457 U.S. 496, 516 (1982) (holding that plaintiffs suing under § 1983 are not required to have exhausted state administrative remedies).

69. *Knick*, 139 S. Ct. at 2170.

70. *Id.*

71. 290 U.S. 13 (1933).

72. *Knick*, 139 S. Ct. at 2170.

73. *See id.* The Court clarified that although *Jacob v. United States* concerned a taking by the Federal Government, the same reasoning applies to takings by the States. *Id.*

74. *Id.* at 2171.

75. *Id.*

*First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*⁷⁶ returned to the understanding that “the Fifth Amendment right to compensation automatically arises at the time the government takes property without paying for it.”⁷⁷ The Court explained that because of the “self-executing character” of the Takings Clause, a property owner obtains an “irrevocable right to just compensation immediately upon a taking.”⁷⁸

The Court explained a payment after the taking may remedy the constitutional violation but that does not mean the violation never occurred.⁷⁹ The Court analogized “[a] bank robber might give the loot back, but he still robbed the bank.”⁸⁰ Thus:

The availability of a subsequent compensation remedy for a taking without compensation no more means there never was a constitutional violation in the first place than the availability of a damages action render negligence conduct compliant with the duty of care.⁸¹

The Court determined that *Williamson County* was not just wrong, but its reasoning was “exceptionally ill founded.”⁸² The Court explained that *Williamson County* wrongly relied upon *Ruckelshaus v. Monsanto Co.*⁸³ *Monsanto* did not involve a takings claim for compensation rather it involved an effort to enjoin a federal statute because it effected a taking instead of obtaining compensation through a special arbitration procedure or bringing a takings claim pursuant to the Tucker Act if arbitration did not provide adequate compensation.⁸⁴ The *Monsanto* Court stated if the plaintiff received compensation in arbitration, then “no taking has occurred and the [plaintiff] has no claim against the Government.”⁸⁵ The Court in *Knick*, explained there is no subsequent claim against the government because the taking had been remedied by compensation not because there was no taking to begin with.⁸⁶ The Court pointed out that the statute in *Monsanto* required the plaintiff to attempt to assert its claim for compensation through arbitration before proceeding

76. 482 U.S. 304 (1987).

77. *Knick*, 139 S. Ct. at 2171.

78. *See id.* at 2171-72; *see also* *San Diego Gas & Elec. Co. v. San Diego*, 450 U.S. 621, 654 (1981) (Brennan, J., dissenting) (“As soon as private property has been taken, whether through formal condemnation proceedings, occupancy, physical invasion, or regulation, the landowner has already suffered a constitutional violation.”).

79. *Knick*, 139 S. Ct. at 2171-72.

80. *Id.*

81. *Id.*

82. *Id.* at 2178.

83. *Id.*; 467 U.S. 986 (1984).

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

85. *Id.* (quoting *Ruckelshaus*, 467 U.S. at 1018, n. 21).

86. *Id.*

under the Tucker Act.⁸⁷ The Court explained Congress is free to require plaintiffs to exhaust administrative remedies before bringing constitutional claims, but it does not support the Court’s conclusion in *Williamson County*, that a takings plaintiff must seek state compensation before bringing its takings claim in federal court.⁸⁸

The Court concluded that its decision in *Williamson County* ignored *Jacobs* and many subsequent decisions, proved to be unworkable because takings plaintiffs never had the opportunity to reach a federal forum, and faced repeated criticism over the years.⁸⁹ The Court overruled *Williamson County* and held “a government violates the Takings Clause when it takes property without compensation, and a property owner may bring a Fifth Amendment claim under § 1983 at that time.”⁹⁰

B. THE DISSENTING OPINION

Justice Kagan, joined by Justice Ginsburg, Justice Breyer, and Justice Sotomayor dissented with the majority. Kagan’s main argument stems from the Takings Clause, quoting *Williamson County*, “[t]he Fifth Amendment does not proscribe the taking of property; it proscribes taking without just compensation.”⁹¹ Justice Kagan argued it another way, “the government can take private property for public purposes, so long as it fairly pays the property owner.”⁹² Kagan explained that the Takings Clause is unique amongst the Bill of Rights because the Takings Clause does not prohibit takings but rather it places a condition that the government must pay just compensation for the taking.⁹³ Kagan explained, “[w]hen the government ‘takes and pays,’ it is not violating the Constitution.”⁹⁴ Kagan argued the majority’s decision to overrule *Williamson County*, goes against precedent by holding a government taking private property for public purposes must pay compensation at that moment or in advance.⁹⁵ Kagan stated for over a hundred years, advance or contemporaneous payment was not required as long as reliable procedures were set in place to obtain just compensation.⁹⁶

87. *Id.* at 2173.

88. *Id.* at 2174.

89. *Id.* at 2178-79.

90. *Id.* at 2177.

91. *Id.* at 2182 (Kagan, J., dissenting) (quoting *Williamson Cty. Reg’l Planning Comm’n v. Hamilton Bank*, 473 U.S. 172, 194 (1985)).

92. *Id.* at 2181 (Kagan, J., dissenting).

93. *Id.*

94. *Id.* at 2181.

95. *Id.* at 2183.

96. *Id.* at 2182.

The dissent argued the majority's overruling of *Williamson County* will have two damaging consequences.⁹⁷ First, government officials will have no way to avoid violating the Constitution because there is no way to know in advance whether implementing a regulatory program will be considered a taking.⁹⁸ Second, the majority's decision will undermine important principles of judicial federalism because it will allow a mass amount of cases involving complex state-law issues in federal courts.⁹⁹

IV. IMPACT

Knick will undoubtedly affect property owners involved in future takings cases because *Knick* has opened the door for property owners to pursue their takings cases in federal court. A study captured the dilemma of reaching the federal courts, in 290 federal decisions involving alleged takings by states or municipalities, more than 40 percent of the claims were decided on ripeness grounds.¹⁰⁰ North Dakota practitioners should be aware of this change in law because local takings plaintiffs may go directly to federal court without first having to go to state court.

North Dakota eminent domain proceedings are not new. The North Dakota Constitution states “[p]rivate property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner.”¹⁰¹ The North Dakota Supreme Court has interpreted the state constitution provision more broadly than the federal takings clause.¹⁰² It is important to note the North Dakota Constitution provides compensation to property owner’s for damaged property and not just for property that is “taken.”¹⁰³ Under North Dakota law, “[t]hrough its power of eminent domain, the State has the authority to ‘take’ or ‘damage’ private property for public use so long as it compensates the private property owner for the taking or damaging.”¹⁰⁴ Thus, “[w]hen the State takes or damages private property without first commencing eminent-domain proceedings, in order to obtain

97. *Id.* at 2187.

98. *Id.*

99. *Id.*

100. James E. Krier & Stewart E. Sterk, *An Empirical Study of Implicit Takings*, 58 WM. & MARY L. REV. 35, 77 (2016).

101. N.D. CONST. art. I, § 16.

102. *See Wild Rice Estates, Inc. v. City of Fargo*, 2005 ND 193, ¶ 16, 705 N.W.2d 850 (“This Court has said our state constitutional provision is broader in some respects than its federal counterpart because the state provision “was intended to secure to owners, not only the possession of property, but also those rights which render possession valuable.”).

103. *See Schnaible v. Bismarck*, 275 N.W.2d 859, 865 (N.D. 1979).

104. *Irwin v. City of Minot*, 2015 ND 60, ¶ 6, 860 N.W.2d 849 (internal citations omitted).

‘just compensation’ the property owner must take the initiative by commencing an action for inverse condemnation.”¹⁰⁵

After the Supreme Court’s decision in *Knick*, a property owner no longer “must” proceed under state law and may now bring their takings claim directly to federal court. Before *Knick*, it was not an option to go to federal court and North Dakota takings plaintiffs had to pursue their takings claim under state law first.

Even the Eighth Circuit Court of Appeals has addressed the state litigation issue in *Knutson v. City of Fargo*.¹⁰⁶ In *Knutson*, an owner’s property was flooded by a water pipe owned by the City of Fargo.¹⁰⁷ The state court granted the City’s motion for summary judgment.¹⁰⁸ *Knutson* filed a § 1983 claim in federal court where the District Court dismissed the case based on lack of jurisdiction and *Knutson* appealed.¹⁰⁹

The Eighth Circuit concluded the District Court erred in its dismissal based on lack of subject matter jurisdiction and addressed the state exhaustion requirement and full faith and credit statute.¹¹⁰ *Knutson* argued that they raised only issues of state law in state court and reserved the Fifth Amendment issue for federal court.¹¹¹ The Eighth Circuit court explained the state-litigation requirement required a property owner to use the state procedure and be denied just compensation before a property owner can claim a violation of the Takings Clause, but the court noted that the full faith and credit statute requires federal courts “to give the same preclusive effect to state court judgments.”¹¹² The Eighth Circuit court concluded that the issue sought to be litigated in federal court was “necessarily litigated ... and decided” by the state courts.¹¹³ However, the court noted:

[T]he *Knutsons*’ takings claim, although ultimately rejected by the state courts, may have benefitted from an analysis more charitable to their position than that claim would have been entitled to in federal court.¹¹⁴

105. *Id.*

106. 600 F.3d 992, 996 (8th Cir. 2010).

107. *Knutson*, 600 F.3d at 994.

108. *Id.*

109. *Id.* at 994-95.

110. *Id.* at 996.

111. *Id.* at 997.

112. *Id.* at 996.

113. *Id.* at 997.

114. *Id.*

The court supported their statement by stating the North Dakota constitution is broader in some respects than its federal counterpart.¹¹⁵

The Eighth Circuit Court of Appeals' comment is important because it gives a little insight into how the court may interpret a takings claim in federal court. Prior to *Knick*, the Eighth Circuit Court of Appeals applied both the state-litigation and the full faith and credit statute but hinted that because North Dakota's Constitution provision is broader that a state court may give a more favorable analysis.¹¹⁶ Courts will apply the reasoning of *Knick* to acknowledge that a taking without compensation violates the Fifth Amendment at the time of the taking, giving a property owner an immediate right of action.¹¹⁷ Courts will no longer require takings plaintiffs to pursue state procedures for obtaining compensation before bringing a federal claim.¹¹⁸

Knick removed a significant legal barrier that for decades kept property owners from pursuing their taking claims in federal court. Now with the state-litigation requirement gone, takings plaintiffs no longer have to chase local government into state courts. Instead, plaintiffs may file a takings claim immediately upon a taking without just compensation in federal court.

V. CONCLUSION

The Supreme Court in *Knick v. Township of Scott* overruled established precedent that a property owner must exhaust state court procedures before suing in federal court.¹¹⁹ The Supreme Court held that a property owner has a claim under § 1983 in federal court for a violation of the Takings Clause as soon as the government takes private property for public use without just compensation.¹²⁰ The Court's decision restores property ownership as a fundamental right protected by the Constitution.¹²¹ Property owners no longer have to sit in state court waiting for their turn in federal court.

*Ashley Vander Wal**

115. *Id.*

116. *Id.*

117. *Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2172 (2019).

118. *Id.* at 2177.

119. *Id.*

120. *Id.*

121. *Id.* at 2170 (“[R]estoring takings claims to the full-fledged constitutional status the Framers envisioned when they included the Clause among the other protections in the Bill of Rights.”).

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