U.S. Supreme Court Opens Federal Courts to Federal Takings Claims

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Overruling a decades-old precedent, the U.S. Supreme Court has held that property owners no longer need to exhaust state-court procedures before bringing federal takings claims in federal court. The author of this article discusses the decision.

The Takings Clause of the U.S. Constitution prohibits governments from taking private property or imposing certain types of restrictive land use regulations unless the government provides "just compensation" to the property's owner. However, since the *Williamson County* decision in 1985, the U.S. Supreme Court has prohibited property owners from bringing as-applied takings claims in federal court until the owners first exhausted all efforts to achieve compensation through state-level inverse condemnation procedures and litigation.[1] Two decades after *Williamson County*, the Supreme Court held that even when litigants spend years "ripening" their federal claim by pursuing state-court procedures, litigants *still* cannot get their day in federal court, because federal courts are required to give preclusive effect to state-court decisions rejecting the property owner's claim.[2] These precedents have been heavily criticized for effectively making state courts the conclusive arbiters of a federal constitutional guarantee.

Knick v. Township of Scott, Pennsylvania

Recently, in *Knick v. Township of Scott, Pennsylvania*, a 5-4 opinion written by Chief Justice John Roberts and joined only by the Court's Republican-appointed justices, the Supreme Court overruled *Williamson County*'s requirement that a property owner exhaust state-court remedies before bringing a taking claim in federal court. Now, "[a] property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it," and may bring an action in federal court at that time.[3]

Knick will be much discussed for what it says about the Roberts Court's willingness to overrule previously decided Supreme Court precedents. But for property owners, development applicants and public officials, the most significant repercussion of *Knick* is that there is now, for the first time in decades, a potential forum for bringing as-applied takings claims against state and local governments that have long been inviable in state courts.

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For example, California courts are required to apply the California Supreme Court's precedents, which endorse a narrow reading of the federal Takings Clause. Under the Takings Clause, a government must establish that any "exaction" it imposes on a development applicant has a "nexus" and "proportionality" to the development's impact.[4] The California Supreme Court, however, has held that the "exactions doctrine" applies only to exactions that are imposed on an *ad hoc* basis on a specific property, and that the Takings Clause imposes no limit on broadly applicable, legislatively imposed exactions.[5] In addition, although the U.S. Supreme Court has held that the "exactions doctrine" applies when the government demands that developers pay money as a condition of development, the California Supreme Court has held that such monetary demands are exempt from "exactions" scrutiny unless the payments are "a substitute for the property owner's dedication of property to the public."[6] In contrast, other courts do not uniformly apply these limitations on the scope of the Takings Clause.[7]

Conclusion and Considerations

With as-applied federal takings claims effectively being decided by California courts, takings claimants had no viable means to advance arguments rejected by the California Supreme Court. But after *Knick*, litigants may be able to litigate these and other takings arguments in federal court, where state-court views of the federal Takings Clause are entitled to consideration but are not given controlling weight.

It remains to be seen whether federal courts will provide, in the long run, significantly greater protections to takings claimants than state courts have. And as Justice Elena Kagan emphasized in her dissent in *Knick*, there are longstanding doctrines of federal abstention that some federal courts may use to decline to adjudicate takings claims that are bound up in complicated questions of state or local law.[8] At the very least, however, *Knick* is likely to open up a new and interesting front in the ongoing battle over the scope of the federal Takings Clause.

NOTES:

[1] *Williamson County Regional Planning Com'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985) (overruled by, Knick v. Township of Scott, Pennsylvania, 139 S. Ct. 2162 (2019)).

[2] *San Remo Hotel, L.P. v. City and County of San Francisco, Cal.*, 545 U.S. 323, 338, 125 S. Ct. 2491, 162 L. Ed. 2d 315 (2005).

[3] *Knick v. Township of Scott, Pennsylvania*, 139 S. Ct. 2162, 2167 (2019).

[4] *Nollan v. California Coastal Com'n*, 483 U.S. 825, 839, 107 S. Ct. 3141, 97 L. Ed. 2d 677, 26 Env't. Rep. Cas. (BNA) 1073, 17 Envtl. L. Rep. 20918 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 391, 114 S. Ct. 2309, 129 L. Ed. 2d 304, 38 Env't. Rep. Cas. (BNA) 1769, 24 Envtl. L. Rep. 21083 (1994).

[5] *San Remo Hotel L.P. v. City And County of San Francisco*, 27 Cal. 4th 643, 671, 117 Cal. Rptr. 2d 269, 41 P.3d 87, 32 Envtl. L. Rep. 20533 (2002).

[6] *California Building Industry Assn. v. City of San Jose*, 61 Cal. 4th 435, 459, 189 Cal. Rptr. 3d 475, 351 P.3d 974 (2015) (distinguishing Koontz v. St. Johns River Water Management Dist., 570 U.S. 595, 612, 133 S. Ct. 2586, 186 L. Ed. 2d 697, 76 Env't. Rep. Cas. (BNA) 1649 (2013)).

[7] *See, e.g.*, *Levin v. City and County of San Francisco*, 71 F. Supp. 3d 1072, 1083–84 (N.D. Cal. 2014), appeal dismissed and remanded, 680 Fed. Appx. 610 (9th Cir. 2017) (Judge Charles Breyer, striking down legislatively imposed ordinance requiring property owners wishing to withdraw their rent-controlled property from the rental market to pay sum to displaced tenants); but see also *Bldg. Indus. Ass'n-Bay Area v. City of Oakland*, 289 F. Supp. 3d 1056, 1059 (N.D. Cal. 2018), aff'd, 775 F. App'x 348 (9th Cir. 2019) (Judge Vincent Chhabria disagreeing with *Levin*, holding legislatively imposed fee ordinance exempt from *Nollan/Dolan* scrutiny); *see also California Bldg. Indus. Ass'n v. City of San Jose, Calif.*, 136 S. Ct. 928, 194 L. Ed. 2d 239 (2016) (Thomas, J., concurring in

denial of cert.) ("For at least two decades. . . lower courts have divided over whether the *Nollan/Dolan* test applies in cases where the alleged taking arises from a legislatively imposed condition rather than an administrative one").

[8] *Knick v. Township of Scott, Pennsylvania*, 139 S. Ct. 2162, 2188 (2019).