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municipal matters

High court decision is a game changer for land use litigation

By Derek Cole

For years, property-rights advocates have decried the U.S. Supreme Court's holding in *Williamson County Regional Planning Com'n v. Hamilton Bank of Johnson City,* 473 U.S. 172 (1985). This precedent, a mainstay of the court's takings jurisprudence, held that a regulatory taking claim in federal court — one asserting a local agency's action "goes too far" — is not ripe until the plaintiff exhausts state judicial remedies.

Last month, in *Knick v. Township of Scott*, 2019 DJDAR 5491, property-rights advocates got what they have long wanted — the overturning of *Williamson County*. In *Knick*, the Supreme Court held that a takings claim may be filed in federal court immediately after an agency takes the challenged action. In so holding, the Court announced a groundbreaking decision that will significantly change the complexion of California land-use litigation.

Factually, *Knick* was brought by a plaintiff who owned 90 acres of land in Pennsylvania. As is customary in her state, the plaintiff's land included a small family "backyard burial" site, which a township ordinance declared to be a cemetery for which public access was required. Claiming that such compelled public access took her property without compensation, the plaintiff sued her township in state court. After that action was dismissed on procedural grounds, she filed a takings claim in federal court, which was also dismissed before eventually making its way to the Supreme Court.

For the *Knick* majority, Chief Justice John Roberts observed that *Williamson County*'s exhaustion requirement had put plaintiffs like *Knick* in a Catch-22. Once a state court has resolved a plaintiff's state-law inverse-condemnation claim, he noted, that resolution attains preclusive effect, barring the plaintiff from proceeding to federal court. As a practical matter, this means the plaintiff has no federal forum to assert violation of a right she possesses under the federal Constitution.

To relieve plaintiffs from this dilemma, the Supreme Court held that regulatory takings claims are actionable as soon as the challenged government action is taken. Aggrieved property owners need no longer pursue relief in state court; they may file in federal court immediately. The court repudiated *Williamson County*, which Chief Justice Roberts described as suffering from "poor" and "exceptionally ill founded" reasoning. Justices Clarence Thomas, Samuel Alito, Neil Gorsuch and Brett Kavanaugh joined in his opinion.

Writing for a minority that included Justices Ruth Bader Ginsburg, Stephen Breyer and Sonia Sotomayor. Justice Elena Kagan dissented, offering a robust defense of *Williamson County*. She forcefully accused the majority opinion of misreading the Fifth Amendment takings clause, which does not prohibit takings, only uncompensated ones. In her view, a state cannot violate the clause unless it fails to provide property owners a mechanism for receiving just compensation. Believing Supreme Court decisions had endorsed this view for many years before *Williamson County*, Justice Kagan characterized the majority opinion as having "smashe[d] a hundred-plus years of legal rulings to smithereens."

Echoing this criticism, many commentators have observed that *Knick* is another in a growing line of cases in which the Supreme Court's conservative majority has overruled longstanding precedent. A month earlier, a dissenting Justice Breyer pointedly remarked that the Court's decision in a different case "can only cause one to wonder which cases the Court will overrule next." *Franchise Tax. Bd. of Cal. v. Hyatt*, 2019 DJDAR 3960. In her *Knick* dissent, Justice Kagan quoted this statement and wryly added, "Well, that didn't take long."

Whatever trend it may signal for other established precedent, *Knick* is a game changer for California land use litigation. State courts long ago implemented *Williamson County* by requiring takings plaintiffs to exhaust agency administrative remedies then attempt to overturn the agency actions through administrative mandamus (Code Civ. Proc., Section 1094.5). As a result, inverse condemnation claims have almost universally been pled in state court concurrently with — and tried only after — mandamus claims. *See Hensler v. City of Glendale*, 8 Cal. 4th 1, 14 (1994).

Now that takings plaintiffs can immediately sue in federal court, many will no doubt choose to do so. Rightly or wrongly, superior court judges are believed to be sympathetic toward agencies in their jurisdictions. And given California's leftward political leaning, property-rights advocates perceive state judges as favoring environmental values. With the federal courthouse doors now wide open, these advocates are ecstatic at the prospect of bypassing the state courts.

But should they be? Regulatory takings cases turn on complex and technical issues of state planning and environmental laws. For this reason, plaintiffs asserting federal takings claims may still encounter a judicial attitude that their claims belong in state courts. Indeed, reported decisions are full of statements hostile toward federal court involvement in local matters. As an example, one court has stated that adjudicating zoning disputes "simply is not the business of the federal courts." *Gardner v. City of Baltimore Mayor & City Council*, 969 F.2d 63, 67-68 (4th Cir. 1992).

Even with federal courts now open to them, takings plaintiffs will have a significant strategy call in deciding if that forum is best. They may also have viable state-law claims that could more quickly (and less expensively) reverse the challenged actions. Although federal courts may exercise supplemental jurisdiction over these claims, it seems doubtful federal judges unversed in the complexities of California land use and environmental law would be better suited than state judges to decide them.

For agencies, the opening of federal courts to takings claims will make monetary exposure a more important consideration in deciding litigation strategy. As takings plaintiffs need no longer seek relief in state courts, the Catch-22 Chief Justice Roberts spoke of no longer exists. As a result, many more takings cases may become triable, requiring agencies to carefully consider the advantages of monetary settlements and exposure to compensation-phase verdicts.

Overall, *Knick* is sure to significantly increase the time and energy California parties devote to takings litigation. With the removal of the *Williamson County* rule, property owners have ample incentive to pursue takings claims in federal court with renewed vigor. Local agencies will need to respond accordingly.

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