

Supreme Court Removes Obstacle to Takings Claims

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In a 5-4 decision, the Supreme Court held on June 21 that the Takings Clause of the Fifth Amendment guarantees property owners a right to just compensation at the time a taking occurs. The majority opinion in *Knick v. Township of Scott, Pennsylvania, et al*, No. 17-647, explicitly overrules *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U. S. 172 (1985), which required plaintiffs to seek compensation in state courts first before bringing federal constitutional claims under the Fifth Amendment.

The case began when local officials found that Pennsylvania landowner Rose Mary Knick was violating a Township cemetery ordinance because her land contained a small graveyard where her neighbors' ancestors were buried. Because the ordinance required cemetery plots to be open to the public during daylight hours, Ms. Knick viewed it as a "taking" of her private property for public use and sought injunctive relief in state court. But the Township agreed to stay enforcement until her case was decided, so the state court refused to rule on her claim because she could not show irreparable harm. Ms. Knick then filed an action under 42 U.S.C. §1983 in federal district court, alleging a violation of the federal Takings Clause. The district court dismissed her claim because she had not pursued an "inverse condemnation" action in state court first, and the Third Circuit affirmed the dismissal in light of *Williamson County*.

The Supreme Court reversed. Writing for the majority, Chief Justice Roberts concluded that fidelity to the text of the Takings Clause "requires overruling *Williamson County* and restoring 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."

While *Williamson County* viewed the Takings Clause as only providing a right to a "state law procedure that would eventually result in just compensation," the majority explained that the Takings Clause ensures a *constitutional* right to just compensation *at the time* of the taking.

The majority explained its departure from precedent by looking to more recent cases, including *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U. S. 304 (1987), decided two years after *Williamson County*. In *First English*, the Court held that even a plaintiff's temporary loss of property must be compensated, because the owner's claim arises at the time of the taking. The majority also looked to history, recognizing that only injunctive relief, not compensation, was available to plaintiffs at the Founding, and that the Fifth Amendment's original purpose was to discourage the government from taking private property in the first place.

Today, both the Tucker Act (28 U.S.C. §1491) and §1983 allow plaintiffs to bring federal claims under the Takings Clause, and the majority affirmed this right regardless of whether plaintiffs litigate in state court first.

In a brief concurrence, Justice Thomas addressed the concern expressed by the United States in its *amicus* brief that the majority’s approach will enable courts to enjoin government programs that do not immediately compensate property owners. He explained that “ordinary remedial principles” will still apply to takings claims and tort claims such as trespass, but also emphasized that “our role is to enforce the Takings Clause as written,” even if this increases the complexity of some regulatory programs in practice.

In a vigorous dissent joined by Justices Ginsburg, Breyer, and Sotomayor, Justice Kagan criticized the majority’s departure from clear precedent in *Williamson County* and provided textual and historical arguments in support of a different understanding of the Takings Clause. She pointed out that unlike other constitutional rights, such as the Fourth Amendment’s prohibition on the use of excessive force, the Fifth Amendment does not *prohibit* the government from taking property for public use, but merely requires just compensation for such a taking. The dissenters saw no inherent requirement for the payment to be contemporaneous with the taking.

Justice Kagan also cited practical concerns with the majority’s approach, expressing fear that it will turn “well-meaning government officials into lawbreakers,” since complex federal land-use regulations do not lend themselves to speedy or advance payments. The dissenters also argued that the decision subverts federalism by sending a flood of traditionally state court cases into federal court, and that state court is a more effective forum because local land disputes are best resolved under state law.

The immediate result of the *Knick* decision is that property owners can more easily bring takings claims in federal court. As both the concurrence and the dissent suggest, however, the decision could have significant practical effects on government land regulation. The full ramifications of *Knick* for governments and property owners will become apparent only as it is litigated going forward in the federal courts.

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