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### ZONING AND LAND USE PLANNING

# SCOTUS May Alter Process for 'Takings' Claims Against Govt's

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**M**ore than three decades ago, the U.S. Supreme Court issued its decision in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), setting forth two requirements that a property owner must meet before a claim that a local government has violated the Fifth Amendment prohibition on taking property without just compensation is ripe to be heard in federal court.

First, the court said, the “finality rule” requires that the government has reached a final decision regarding the application of the regulation to the owner’s property. Second, the owner must seek and be denied just compensation using the state’s procedures, provided those procedures are adequate.

Over the years, the second requirement has become immersed in some degree of controversy. A case from the U.S. Court of Appeals for the

Third Circuit, *Knick v. Township of Scott, Pennsylvania*, No. 17-647, now presents the Supreme Court with the opportunity to reaffirm or, perhaps much more likely, to change that requirement.

### Background

The Third Circuit decision, *Knick v. Township of Scott*, 862 F.3d 310 (3d Cir. 2017), arose after the Township of Scott in Lackawanna County, Pennsylvania, enacted an ordinance regulating cemeteries. Among other things, the ordinance contained a “public access” provision that compelled property owners to hold their private cemeteries open to the public during daylight hours without charging any fee.

Rose Mary Knick brought a lawsuit in the U.S. District Court for the Middle District of Pennsylvania arguing, among other things, that the ordinance took her private property without just compensation in violation of the Fifth Amendment’s prohibition of the taking of private property “for public use, without just compensation.”

The district court, relying on the second “ripeness” requirement set forth in *Williamson County*, ruled that Knick’s Fifth Amendment claims were not ripe until she sought and was denied just compensation using Pennsylvania’s inverse-condemnation procedures.

Knick appealed to the Third Circuit, arguing that the district court had erred by requiring that she exhaust state law remedies for her takings claim. In particular, she contended that her takings claim was exempt from the exhaustion prong of *Williamson County* and that the circuit court should overlook the *Williamson County* requirement in the interest of efficiency.

### Third Circuit’s Decision

The Third Circuit affirmed the district court.

In its decision, the circuit court ruled that *Williamson County*’s second prong was applicable to Knick’s case.

The Third Circuit reasoned that, under *Williamson County*’s second prong, if a plaintiff’s claim is based on a lack of compensation—that is,

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the plaintiff's claim arises under the Just Compensation Clause of the Fifth Amendment to the U.S. Constitution—then the plaintiff must first seek compensation under state law (provided the state's procedures are adequate).

Knick's claims, the circuit court found, were "unavoidably" claims for compensation and, therefore, were subject to exhaustion under *Williamson County*. That was so, the circuit court said, because Knick alleged that the Township had violated the Fifth Amendment by taking her property without just compensation.

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Whether the court will take the opportunity to reject the second prong of *Williamson County* remains to be seen. Does the court want to encourage takings cases being brought in federal court? Will it paint with a broad brush and open access to federal courts for property owners complaining about local government actions?

The Third Circuit was not persuaded by Knick's argument that invalidation of the ordinance was appropriate because the ordinance did not provide a self-contained mechanism for compensating property owners. According to the court, the Fifth Amendment does not require that just compensation be paid in advance of, or contemporaneously with, a taking; all that is required is that a "reasonable, certain and adequate provision for obtaining compensation exist at the time of the taking." The adequate provision in this

case, the court said, was the inverse-condemnation law under Pennsylvania's Eminent Domain Code.

Accordingly, the court concluded that Knick's claims arose under the Just Compensation Clause, was subject to exhaustion under *Williamson County*, and had to be exhausted using inverse-condemnation proceedings.

Finally, the court disagreed with Knick's argument that her case was an appropriate case to overlook the *Williamson County* requirement. It acknowledged that other circuit courts of appeals, including the Fourth and Ninth Circuits in *Sansotta v. Town of Nags Head*, 724 F.3d 533 (4th Cir. 2013); *Town of Nags Head v. Toloczko*, 728 F.3d 391 (4th Cir. 2013); and *Guggenheim v. City of Goleta*, 638 F.3d 1111 (9th Cir. 2010), had declined to enforce *Williamson County*'s requirements based on the equities presented. In *Sansotta*, for example, the Fourth Circuit overlooked *Williamson County* because the defendant removed the action to federal court, thwarting the plaintiff's effort to exhaust. The Fourth Circuit found that the defendant's "manipulation" provided strong equitable reasons to overlook exhaustion. The *Guggenheim* court reasoned that it "would be a waste of the parties' and the courts' resources to bounce the case through more rounds of litigation."

The Third Circuit, however, observed that Knick did not argue that inverse-condemnation proceedings would be unavailable or futile but, rather, that allowing her claims to proceed in federal court would be

more efficient and would avoid piecemeal litigation. The court explained that because Knick's Just Compensation Clause claims were all that remained in the case, there was no risk of piecemeal litigation, and it found no exceptional circumstance—such as the township "thwarting her access to inverse-condemnation proceedings as in *Sansotta*" —that suggested that *Williamson County*'s second prong should be ignored.

The Third Circuit concluded that Pennsylvania's inverse-condemnation mechanism was "better equipped to value Knick's land than the federal courts." Therefore, it affirmed the district court's order dismissing Knick's takings claims without prejudice pending her exhaustion of Pennsylvania's compensation remedies.

### At the Supreme Court

The Supreme Court granted Knick's petition for certiorari on the question of whether it should reconsider the portion of *Williamson County* requiring property owners to exhaust state court remedies to ripen federal takings claims. She asserted that the need to take action in a state court left takings claimants in an impossible position if the government defendant removed a takings case from state court to federal court—and then moved to dismiss on the ground that the claimants had not exhausted state remedies.

In her brief, Knick argued that litigating for just compensation in state court did not "ripen federal judicial review of a takings claim" but, instead, barred it because the "the state court action triggers claim and issue preclusion

barriers at the federal court that prevent it from hearing a takings claim related to the prior suit.”

In support of the Third Circuit’s ruling, the township asserted that, under the Just Compensation Clause, the right to recover just compensation for property lawfully taken for public use was secured “if the property owner has a reasonable, certain, and adequate means

proved incorrect” because, under 28 U.S.C. 1738, state court judgments in inverse-condemnation actions have claim- and issue-preclusive effect.

Accordingly, the government asserted, a property owner who unsuccessfully seeks compensation in state court generally is barred from bringing a subsequent action in federal court.

The government suggested the court could clarify that *Williamson County* applies only to suits under 42 U.S.C. §1983 and poses no obstacle if a property owner invokes a different cause of action. Alternatively, the government suggested the court could decide that a property owner should be regarded as having been “depriv[ed] of a[] right[]... secured by the Constitution” within the meaning of Section 1983 if the property owner had not yet received compensation—even if an adequate state compensation mechanism is available.

### Conclusion

Over the years, a number of justices have suggested that the court should reconsider the aspect of *Williamson County* at issue in Knick’s case. See *Arrigoni Enterprises v. Town of Durham*, 136 S. Ct. 1409 (2016) (Thomas, J., joined by Kennedy, J., dissenting from denial of certiorari); *San Remo Hotel v. City and County of San Francisco*, 545 U.S. 323, 348 (2005) (Rehnquist, C.J., joined by O’Connor, Kennedy, and Thomas, JJ., concurring in judgment).

Whether the court now will take the opportunity to reject the second prong of *Williamson County*, in

whole or in part, remains to be seen. Does the court want to encourage takings cases being brought in federal court? Will it paint with a broad brush and open access to federal courts for property owners complaining about local government actions? Can it limit application of the second prong of *Williamson County* to cases that are not facial challenges to local government actions?

It certainly is not clear how the court may rule. Argument was held on Oct. 3, but on Nov. 2, the court restored the case to the calendar for reargument on the question of whether a local government’s failure to provide or guarantee compensation at the time it takes an action that is challenged as a taking is, in and of itself, a taking “without just compensation” regardless of what a state court might do.

Property owners, developers, community members, and local governments all should be closely watching this case.

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to recover compensation; and one such means is an inverse-condemnation suit instituted by the owner after property is taken.”

The U.S. government contended in its amici brief that the Third Circuit’s opinion should be vacated. The government reasoned that *Williamson County* appeared to assume that an owner required to pursue a state compensation mechanism would be able to seek relief in federal court if the state court procedure was adequate but the owner was dissatisfied with the result. That assumption, according to the government, “has