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June 25, 2019

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Changes Ahead For Property Owners: After More Than 30 Years, Supreme Court Reopens Federal Courthouse Door To Property Rights Claims

Heads up, property owners: last week the U.S. Supreme Court issued a landmark ruling changing the way property rights lawsuits have been handled for the last thirty years. In *Knick v. Township of Scott*, the Court allowed property owners who sue to enforce their federal right to compensation because a municipal government has taken their property in violation of the U.S. Constitution's Fifth Amendment by overregulating its use, to bring the lawsuit in federal court.



You might reasonably ask: how could it be that since 1985, property owners who alleged a *federal* constitutional violation were barred from suing in *federal court*? Well, the lawyers in our firm's Land Use Practice Group who represent property owners in these type of cases had long asked the very same question. The details of why the Supreme Court—in the case *Williamson County Regional Planning Commission v. Hamilton Bank* (1985)—had barred federal takings plaintiffs from federal court are not terribly important, and it is sufficient to understand that until *Knick*, these kind of claims had to be raised exclusively in state court. No other federal constitutional right was subject to this requirement, only federal property rights. *Williamson County* assigned to state judges and state courts the exclusive responsibility for enforcing the federal constitutional right to own and use private property. In *Knick*, the Supreme Court revisited the *Williamson County* prohibition on federal court, and overruled it.

The facts in *Knick* were straightforward. The Township of Scott, Pennsylvania, adopted an ordinance requiring owners of all cemeteries, public or private, to maintain them. The ordinance has two troublesome provisions. First, it requires cemetery owners to keep them open to the public during the day. Second, it allows the Township's code inspectors to enter "any property" to inspect and determine if there's a cemetery there, and if so, whether it is in compliance. A Township code inspector entered Rose Mary Knick's property without a warrant and told her in so many words "these stones on your land are actually grave markers, and you better clean up this cemetery and let the public in." Knick's response was "what cemetery?" She thought there wasn't a cemetery there, and the "head stones" were merely rocks. Not buying it, the inspector wrote her up for violating the ordinance.

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Ms. Knick sued in Pennsylvania state court, seeking to shut down the enforcement action. The Township withdrew the violation and agreed to stay enforcement actions. But after it issued Ms. Knick a second violation, she sued in federal court asserting a violation of her Fourth Amendment rights against warrantless searches and her Fifth and Fourteenth Amendment property rights. She argued that the Township's invitation to the public to enter her land without her permission to visit the "cemetery" was a taking for which the U.S. Constitution requires payment of just compensation. But the federal courts threw out her case under *Williamson County*. Her claims, they concluded, could only be raised in a Pennsylvania state court.

Last year, the U.S. Supreme Court agreed to review the case and revisit the three-decade prohibition on property owners vindicating their federal constitutional rights in federal court. Continuing with Damon Key's long tradition of cutting-edge advocacy on behalf of private property owners began by Charlie Bocken and Diane Hastert's landmark Supreme Court victory in *Kaiser Aetna v. United States* (1979), we [filed a friend-of-the-court](#) brief supporting Ms. Knick's right to have her federal constitutional takings claim heard in federal court. Our brief pointed out that over the past thirty-plus years, the *Williamson County* rule not only prevented property owners from having their federal rights vindicated by a federal court, but was often employed by municipal lawyers to run property owners through an unnecessary (and expensive) legal maze in state courts, for no good reason. And under *Williamson County's* rule, it would often take years to resolve takings cases.

Last Friday, the Court agreed with Ms. Knick and overruled *Williamson County*. At long last, the federal courthouse door is open again to property claims. By doing so, the Justices restored property owners' rights to the "full fledged constitutional status they should enjoy," as Chief Justice Roberts wrote. The Court recognized that property rights claims as just as important as other civil and constitutional rights enshrined in the Bill of Rights, and are not "poor relations." The majority opinion was a strong recognition of the importance of property rights and of limiting the regulatory zeal of municipal officials who often regulate with such a heavy hand that owners cannot make reasonable economic use of their own property.

So now that federal court is an option for property owners' federal takings claim, what does that mean? Several important thoughts for Hawaii property owners who might have such claims:

- You can go straight to federal court to claim that a county ordinance or regulation has violated your Fifth Amendment rights, if the regulation allows the public to enter your land, or severely restricts your uses of your property. You no longer need to go to state court at all. You still may *choose* to do so—and there may be good reasons why you may want to consider state court—but you cannot be *forced* to.
- There may be advantages to federal court: life-tenured judges insulated from politics, who are used to protecting federal constitutional rights; a fast docket (Hawaii's federal court has one of the fastest civil dockets in the nation); the federal courthouse is in Honolulu not on a neighbor island, so lawsuits against neighbor island counties no longer need be brought there with the associated expenses; and federal juries are selected from a statewide pool, unlike Hawaii circuit court juries which are county-by-county.

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- Critically, if a property owner is successful in her federal civil rights claim, she is entitled to an award of reasonable attorneys' fees and costs. Hawaii law does not recognize the same right in state court.
- Appellate review of the Hawaii federal district court is by the U.S. Court of Appeals for the Ninth Circuit comprised of judges from across the western states. Property owners who bring their federal takings claims in federal court can avoid appellate review by the Hawaii Supreme Court, a forum which is not reputed terribly property-rights friendly.
- This does not mean that if a local government affirmatively condemns your property by eminent domain that you can sue to stop it in federal court. *Knick* is, for now, reserved for claims alleging takings where a regulation so burdens a private owner's reasonable uses, that the local government should pay compensation.

The most important takeaway from the Supreme Court's decision in *Knick* is that Hawaii's property owners have many more options for fighting back against oppressive government regulation of property than they did last week.

There is much more to this issue that we can set out in this brief summary. If you have questions or want to find out more, please contact any of the lawyers in our Land Use law practice group: Kenneth R. Kupchak, Gregory W. Kugle, Mark M. Murakami, or Robert H. Thomas.

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