

# *Knick v. Township of Scott, Pennsylvania* and 2019 Developments in Connecticut Land Use Law





# When Is A Right Not A Right?

## The Bill of Rights:

## To vindicate this right, you:

Freedom of speech

Sue in federal court

Freedom of the press

Sue in federal court

Freedom of assembly

Sue in federal court

Right to bear arms

Sue in federal court

Right to jury, trial

Sue in federal court

Right to be free from cruel and unusual punishment

Sue in federal court

Right to just compensation if your private property is taken for public use

Sue in *state court; lose; and then...*

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# Fifth Amendment Takings Clause, U.S. Constitution

**“[N]or shall private property  
be taken for public use,  
without just compensation.”**





# Condemnation vs. Inverse Condemnation

- Eminent domain:
  - ◆ Government takes action to take title to property for a public use, and pays the owner “just compensation”
- Inverse condemnation:
  - ◆ Government imposes restrictions on land use that diminish its use / value; claims “police power” authority do so, without paying compensation



# Types of Inverse Condemnation Claims

- 1** Physical occupation (block access to property)
- 2** Exaction (requirement to convey land or pay \$\$\$ as a permit condition)
- 3** Regulatory taking (regulations limit or prevent development)





## Challenging Condemnation Actions

- Not for public use (*Kelo v. New London*)
- Condemnation unnecessary for public use
- Agency lacks power to condemn
- Procedural error in eminent domain process
- Just compensation  $\neq$  fair market value



# Claiming Inverse Condemnation

- A reminder about the federal system:
  - ◆ **“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved for the States respectively, or to the people.”**  
U.S. Constitution, 10th Amendment
  - ◆ The federal Constitution is the floor, but states can provide more protection
- 42 U.S.C. § 1983:
  - ◆ Procedure for enforcing federal civil rights in federal court



# Regulatory Takings: Brief History

- “[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” *Pennsylvania Coal Co. v. Mahon* (U.S. 1922)
- The Takings Clause “was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States* (U.S. 1960)
- Three factors are of “particular significance” in assessing a regulatory taking : (1) “economic impact”; (2) “distinct investment-backed expectations”; and (3) “character of the governmental action.” *Penn Central Transportation Co. v. City of New York* (U.S. 1978)
- “[T]he Fifth Amendment is violated when land-use regulation denies an owner economically viable use of his land.” *Lucas v. South Carolina Coastal Council* (U.S. 1992)





## ***Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City (U.S. 1985):***

- Local commission revokes permits issued to residential subdivision developer after beginning construction started
- Bank, which foreclosed after developer declared bankruptcy, files inverse condemnation suit against the commission in federal court
- Supreme Court establishes two procedural requirements for takings claims:
  - ◆ Finality: More than one development plan needed to determine what government will allow
  - ◆ Exhaustion: Must go to state court first



## Consequences of *Williamson County*:

- The *Williamson* Trap:
  - ◆ U.S. Constitution's Full Faith & Credit Clause: property owners go to state court, lose, and the federal courts must honor the state court judgment
- Delay in state court often meant cases lost before they can be tried in federal court
- Few developers want to litigate two cases to conclusion
- In short, state-court-first became no-federal-claim



## ***Santini v. Connecticut Hazardous Waste Management Service (1993 - 2003)***



- State agency designates under-construction subdivision in Ellington as a finalist for a nuclear waste depository, halting development for more than two years
- Six years later, the Connecticut Supreme Court finds no taking
- Developer sues in federal court, and U.S. Court of Appeals for the Second Circuit became the first to hold that *Williamson County* should be overruled
- But, in *San Remo Hotel*, the Supreme Court reaffirms *Williamson County*, with concurrence by Chief Justice Rehnquist and three other Justices arguing to overrule *Williamson County*





## ***Knick v. Township of Scott (2017 - 2019)***

- Township declares that a cemetery on Ms. Knick's farm is a public park
- Ms. Knick sues in state court, loses
- In federal court, loses in light of *Williamson County*
- The Supreme Court grants review to reconsider *Williamson County*





## ***Knick* in the U.S. Supreme Court**

- October 2018: An eight-member Supreme Court hears oral argument
- January 2019: After Justice Kavanaugh's confirmation, second oral argument
- June 2019: The Court, in a 5-4 decision, with Justice Kavanaugh siding with the majority, overrules *Williamson County's* state-court-first requirement



## ***Knick v. Township of Scott:*** **Four Key Holdings**

- Property owners may proceed directly to federal court with their takings claims
- A takings claim arises when the government takes action that restricts development rights, not when it fails to pay just compensation
- The Court is “restoring takings claims to the full-fledged constitutional status the Framers envisioned when they included the [Takings] Clause among the other protections of the Bill of Rights.”
- Attorneys' fees for violations





# Caveats to *Knick*

Federal court "off-ramps" remain:



Finality



Abstention



Certifying  
questions of state  
law



The "denominator  
problem." See  
*Murr v. Wisconsin*  
(U.S. 2017).

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## How Will *Knick* Play a Role?

**Climate change  
regulation**



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graph TD; A[Climate change regulation] --> B[Cities are saying "no" to coastal development and waterfront proposals]; A --> C[Cities are demanding resiliency planning: limited or no building in weather-vulnerable areas];
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Cities are saying “no” to coastal development and waterfront proposals

Cities are demanding resiliency planning: limited or no building in weather-vulnerable areas



## Other 2019 Connecticut Developments

- Section 8-30g is alive and well
  - ◆ *Autumn View v. Planning and Zoning Commission of Town of East Haven* (Conn. App. 2019)
  - ◆ *Dakota Partners v. Newington Town Planning and Zoning Commission* (Super. Ct. 2019)





## Other Major Cases:

- Westport and Newtown
- *Lime Rock Park v. Planning and Zoning Commission of Town of Salisbury*
- Property tax exemption appeal – group homes
- *Francis v. Kings Park Manor* (2nd Cir. 2019)





# Our Presenters



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# Questions?



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