



Landowners and Developers May Now Assert Compensation Claims From Adverse Land-Use Decisions Directly in Federal Court

The United States Supreme Court offers a potentially friendlier forum for developers and landowners to litigate regulatory takings claims

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Last Friday (June 21, 2019), the United States Supreme Court issued its opinion in *Knick v. Township of Scott*, 588 U.S. ____ (2019), overturning a 34-year old ban on federal court oversight of regulatory takings claims brought under the 5th Amendment to the United States Constitution. *Knick* expressly overruled the holding in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), requiring inverse condemnation claimants to exhaust all state judicial remedies before filing such claims in federal court. *Williamson County* held that before litigating a 5th Amendment inverse condemnation claim predicated on a law or regulation enacted by a state or local government, the claimant must demonstrate that it: 1) availed itself of all administrative remedies offered by the government agency imposing the law or regulation; and 2) pursued all judicial relief available in state court for the taking. According to the Supreme Court in *Williamson County*, only after pursuing such administrative and state judicial remedies may a property owner assert its federal 5th Amendment claim in federal court.

As the Supreme Court reasoned in *Knick*, the *Williamson County* opinion failed to anticipate the import of the federal full faith and credit statute (28 U.S.C. § 1738), which generally prohibits parties from relitigating in federal courts claims that have already been adjudicated in state court. This was made clear twenty years later when the United States Supreme Court issued its opinion in *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323 (2005). *San Remo* held that an inverse condemnation claimant may not pursue its 5th Amendment takings claim in federal court where the claim has already been decided against the claimant in state court. Thus, taken together, *Williamson County* and *San Remo Hotel* effectively closed the federal courts to inverse condemnation claimants seeking to litigate federal 5th Amendment regulatory takings claims. *Knick* now allows regulatory takings claims to be filed directly in federal court.

In the wake of *Knick*, there is no question that federal courts will become an attractive forum for those seeking redress for regulatory takings. This is particularly true in California where, under California Supreme Court precedent, inverse condemnation claimants face significant procedural and substantive impediments to the recovery of “just compensation” in state court. Relying principally on the U.S. Supreme Court’s holding in *Williamson County*, the California Supreme Court has held that before recovering “just compensation” for regulatory takings in state court, inverse condemnation claimants must first at least try to invalidate the law or regulation through a writ of mandamus in state court. (*Hensler v. City of Glendale*, 8 Cal.4th 1, 13-15 (1994)). The California Supreme Court reasoned that before compelling a public agency to pay money for a past taking, the property owner bears the burden of attempting to invalidate the law or regulation to avoid public agency expenditures on regulatory takings. *Knick* makes clear that the pursuit of such state judicial remedies is not a prerequisite to federal court relief and, in fact, federal courts generally will not be available to invalidate state laws and regulations upon which the takings claim is predicated. As Justice Roberts made clear in the majority opinion, State and local “[g]overnments need not fear that our holding will lead federal courts to invalidate their regulations as unconstitutional.”

Should you have any questions, please contact [Doug Dennington](#).

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