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UPDATE: Takings Plaintiffs Need Not Litigate Claims in State Court

Last week the Third Circuit formally revived the matter styled *Knick v. Township of Scott* at Case No. 16-3587, following a divided June 21, 2019, United States Supreme Court decision which overruled the longstanding precedent that “a property owner whose property has been taken by a local government has not suffered a violation of his Fifth Amendment rights and cannot bring a federal takings claim in federal court until a state court has denied his claim for just compensation under state law.” See *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S. Ct. 3108 (1985).

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A recent decision from the United States Supreme Court could have far-reaching effects on energy policies and regulations, particularly at the local level. The decision in *Knick v. Township of Scott, Penna., et al.*, 558 U.S. ____ (2019), authorizes landowners asserting a claim under the Takings Clause to file suit directly in federal court and bypass the procedural framework established in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985).

In 2012, Scott Township, Pennsylvania, passed an ordinance requiring that all cemeteries be kept open and accessible to the public during daylight hours. The ordinance applied to cemeteries on both public and private property, including Knick’s property which houses a small graveyard where the ancestors of her neighbors are allegedly buried. In 2013, Knick was cited for violating the township ordinance, as the cemetery was not made open to the public.

Knick sued the Township in state court arguing that the ordinance was a “taking” of her property. The Township revoked the violation and declined to enforce the ordinance. As a result, Knick’s claim was dismissed. Knick proceeded to file a takings claim in federal court. However, the District Court and Third Circuit Court of Appeals both held that she was precluded from bringing a federal claim because she did not obtain an unsuccessful “judgment” from a state court. The “state-court prerequisite” was based on the holding in *Williamson County*, which states that until a state court denies a property owner’s claim for just compensation under a takings claim, a property owner has not suffered a violation of their Fifth Amendment rights.

Noting that this prerequisite has proved unworkable and placed an unjustifiable burden on takings plaintiffs, the Supreme Court explicitly overruled *Williamson County* and held that a landowner may immediately bring a takings claim in federal court under Section 1983. The *Knick* Court noted that the Civil Rights Act of 1871 guarantees “a federal forum for claims of unconstitutional treatment at the hands of state officials,” and the general rule is that “exhaustion of state remedies ‘is not a prerequisite under [42 U. S. C.] § 1983.’” Chief Justice Roberts, writing for the majority, clarified and emphasized that “[a]s soon as private property has been taken ... the landowner has already suffered a constitutional violation” and is entitled to just compensation. In its decision, the Court imparted that local laws, ordinances, and regulations would not be invalidated due to an effectual unconstitutional taking claim as long as just compensation remedies were available.

For the energy sector, *Knick* may result in landowners and developers having more success in challenging local ordinances and regulations that impede oil, gas, and mineral operations, including bans on fracking and setback requirements, as by their enactment the state has “taken” value from the land without providing just compensation to

the landowner. For example, the Colorado legislature put forth a bill requiring oil and gas operations to be setback from “occupied and vulnerable” areas. Should this ordinance have the effect of precluding a landowner from developing their land to the maximum extent possible, the landowner may be able to assert a federal claim that value was taken from their land and that they are entitled to just compensation. Some also predict that, as a result of the *Knick* ruling, state and local governments may be hesitant to enact laws, or may rollback existing laws, that regulate mineral development for fear of facing an influx of takings claims. The overall impact of the *Knick* decision remains to be seen but could produce a wave of claims in defense of mineral development.

For questions regarding the *Knick* decision or a copy thereof, please contact the Energy Group at Dickie, McCamey & Chilcote, P.C.



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