



Sending Williamson County Out to Pasture: State Court Exhaustion No Longer Required for Federal Takings Claims

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Foster Swift Agricultural Law News

July 24, 2019

The Takings Clause of the Fifth Amendment states that “private property [shall not] be taken for public use, without just compensation.” The Takings Clause applies to the federal government, as well as state and local governments.

In *Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), the United States Supreme Court held that a property owner must satisfy two requirements where property is taken by local governments (the “government”) prior to the property owner bringing a Fifth Amendment Takings Claim in federal court.

First, the government’s action (the taking) must be final. This is known as the finality requirement. The finality requirement is straightforward as it only requires the government’s action to be complete. The property owner’s only option must be to file a lawsuit against the government because no alternative administrative procedure is available to redress the taking.

Second, and most substantial, is that a property owner is required to pursue his or her state law remedies in state court prior to filing a Fifth Amendment Takings Claim in federal court. This is known as the state court exhaustion requirement.

The Supreme Court in Williamson County anticipated that if a property owner failed to secure just compensation under state law in state court, the property owner would be able to bring a “ripe” federal takings claim in federal court. However, twenty years after Williamson County, in *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323 (2005), the Court ruled that satisfying the state court exhaustion requirement generally precluded any subsequent federal lawsuit for violation of the Fifth Amendment stemming from the same facts.

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After *San Remo*, property owners faced a proverbial Catch-22: The property owner “cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court.” *Knick v. Township of Scott*, No. 17-647, p. 2 (slip opinion).

In *Knick v. Township of Scott*, the Supreme Court, recognizing the judicial dilemma imposed on Takings Claim plaintiffs, partially overruled Williamson County to the extent it imposed the state court exhaustion requirement. In *Knick*, a township enacted an ordinance requiring “[a]ll cemeteries . . . [to] be kept open and accessible to the general public during daylight hours.” *Id.* at 3.

The ordinance defined “cemetery” as “a place or area of ground, whether contained on private or public property, which has been set apart for or otherwise utilized as a burial place for deceased human beings.” *Id.* The plaintiff’s property contained several “backyard” burial sites where previous owners or neighbors of the property owner had buried their ancestors.

Under the township’s enacted ordinance this meant the plaintiff’s property had to be accessible to the public during daylight hours. The plaintiff filed suit in federal court alleging violation of the Fifth Amendment Takings Clause; the plaintiff did not exhaust her state law remedies in state court.

Unsurprisingly, the lower courts dismissed the plaintiff’s suit under Williamson County for failure to satisfy the state court exhaustion requirement. The Supreme Court overruled Williamson County’s state court exhaustion requirement, stating instead the new standard for when a takings plaintiff may bring a federal takings claim in federal court: “A property owner may bring a Takings Claim under §1983 upon the taking of his property without just compensation by a local government.” *Id.* at 23.

In other words, there is no requirement that a state’s highest court deny compensation before bringing a “ripe” federal Takings Claim. In the Court’s view, this approach would treat the Takings Clause, and claims made under it, similar to other protection provided by the Bill of Rights. Interestingly, the Court also noted that “as a practical matter [the Court’s decision does not] mean that government action or regulation may not proceed in the absence of contemporaneous compensation. Given the availability of post-taking compensation, barring the government from acting will ordinarily not be appropriate.” *Id.* at 20.

To summarize, the government is not required to provide compensation immediately upon the taking; rather, the taking may move forward and the property owner has the right to pursue compensation after the fact.

However, the property owner ordinarily will not be able to obtain an injunction to halt or prevent the taking. The finality requirement was not at issue and, therefore, remains a prerequisite for takings plaintiffs seeking compensation in federal court.

The practical implication of *Knick* is that takings plaintiffs can bring federal takings claims in federal court without the need to pursue state law remedies in state court, assuming the finality requirement is satisfied. In addition, takings suits will now begin to look like more traditional litigation where all claims are joined in one action and forum, whereas Williamson County imposed a piecemeal litigation tract.



Finally, *Knick* will likely result in an increase in the number of Takings Claims being filed in federal court. Takings are ordinarily a matter of local government action, which means the trial court will likely be part of the local community. Avoiding local politics that may play a role in the taking could incentivize more takings plaintiffs to go to a court unconnected to the community (i.e., federal court). However, as with any precedent the Supreme Court sends out to pasture, only time will reveal the full extent of the post-Williamson County takings world.
