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Under New U.S. Supreme Court Ruling, Regulatory Takings Challenges Will Become Easier

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In June, the U.S. Supreme Court issued its opinion in *Knick v. Township of Scott*, in which the Court ruled that a plaintiff in a takings claim need not first exhaust state-court remedies before bringing the claim before a federal court. The decision, addressing a largely procedural matter, improves prospective regulatory takings plaintiffs' access to federal courts, and likely increases the chances that local governments may be required to compensate landowners where regulation devalues private property.

The Takings Clause of the Fifth Amendment to the U.S. Constitution provides that "private property [shall not] be taken for public use, without just compensation." Uncompensated takings occur where the government physically occupies land or regulates in a manner such that the land cannot be put to an economically productive use. Uncompensated takings may also occur where the government requires the dedication of property or payment of money in connection with a land use approval, where the dedication or payment is not rationally related to the impact of the project.

Typically, when the government violates a federal constitutional provision, jurisdictional rules provide that the plaintiff can bring its claim in federal, as opposed to state, court. Nonetheless, under an earlier Supreme Court case, *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, that was not the case with respect to takings claims. That case required a landowner who sought compensation for a taking to (1) exhaust all administrative remedies at the local government level

(such as seeking a variance or a rezoning to avoid the taking) and (2) seek compensation through state courts before bringing any claim for the taking in federal court. The practical result of *Williamson County* was such that a plaintiff might unsuccessfully proceed through state court proceedings—often taking years—and then, when the takings claim went to federal court, the claim would be thrown out because it was precluded by the state courts’ decisions.

In *Knick*, a Pennsylvania township required private landowners to provide public access to cemeteries located on private land. A landowner who had such a cemetery challenged the law in federal court. After the case was dismissed under *Williamson County*, she appealed to the U.S. Supreme Court, where a five-justice majority concluded that property owners should have the right to a remedy as soon as the uncompensated taking occurs—not after one or more state courts deny the remedy. Overruling *Williamson County*, the Court observed that the uncompensated nature of the taking is unlawful, even if the government later pays the owner.

The Court’s ruling makes it more procedurally expedient for takings claimants to obtain relief. Federal courts are widely believed to be less sympathetic to government defendants than state courts. Plaintiffs’ access to federal courts will ensure that they will obtain compensation earlier, and the decision is likely to increase local governments’ risk exposure in takings cases. This decision streamlines what was a roundabout process for obtaining just compensation.

With extensive experience in eminent domain and takings law, Otten Johnson’s land use and litigation lawyers stand ready to discuss the *Knick* ruling’s impact on private property rights and regulation with any of our clients whose interests may be impacted by the decision.

Otten Johnson attorneys in our [Land Use](#) & [Eminent Domain](#) practice groups have substantial experience with regulatory takings litigation and advising landowners and local governments on eminent domain and takings matters. For more information on this Otten Johnson Alert or for help evaluating your current situation, contact any of the attorneys in the Land Use or Eminent Domain practice groups. For a listing, [click here](#).

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