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Barring the Cemetery Gate May Push More to the Federal Courthouse Door: Supremes Set to Revisit Ripeness Doctrine for Takings Claims

Barring the Cemetery Gate May Push More to the Federal Courthouse Door: Supremes Set to Revisit Ripeness Doctrine for Takings Claims

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Mat Payne, *Staff Editor*^[1]

Rosemary Knick probably wasn't out to try and get the United States Supreme Court to reverse a 30-year-old precedent on takings claims when she filed her initial claim seeking an injunction on a local ordinance that allowed members of the public access to her property — she just wanted people to stay out of her yard.

A couple months ago, the high court agreed to hear oral arguments in *Rose Mary Knick v. Scott Township*^[2] to reexamine its position on whether a Plaintiff bringing a Takings Claim must exhaust all state court remedies before a federal takings claim will become ripe; and whether current precedent allows review of takings claims that are characterized as being facially unconstitutional in the absence of the plaintiff's own rights being violated.^[3] In plain language, the path to a federal remedy for takings claimants could be significantly shortened should the Court choose to reverse its current position on these issues, ending a decades long streak of pushing constitutional Takings claims through the state court systems.

In deciding the case, the Supreme Court will offer resolution to a circuit-split on the ripeness issue and offer clarity to or overrule the currently controlling case on the issue, *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank*.^[4]

Ms. Knick's path to the Supreme Court began in 2012, following the passage of the "Ordinance of the Township of Scott Township [sic], Lackawanna County, Pennsylvania, Relating to the Operation and Maintenance of Cemeteries and Burial Places."^[5] The ordinance required all cemeteries within the township to be held open to the general public during daylight hours, regardless of whether they were positioned on public or private property.^[6] Enforcement of the ordinance was to be carried out by the townships code enforcement officers, who were empowered to "enter upon any property within the Township for purposes of determining the existence of and location of any cemetery in order to determine compliance."^[7]

Roughly six months after the ordinance passed, a code enforcement official entered Ms. Knick's property without an administrative warrant and observed several stones that were determined to be grave markers, and subsequently issued a Notice of Violation.^[8] After filing an initial suit seeking



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injunctive and declaratory relief in the Township of Lackawanna County Court of Common Pleas, both parties agreed that the Township would withdraw its Notice of Violation and stipulated that it would stay any enforcement action against Ms. Knick.^[9] Following a hearing on the matter, the court declined to render a decision on the grounds that “the case is not in the proper posture for a decision to be rendered on the Plaintiff’s requested form of relief.”^[10] A second Notice of Violation was issued 10 days later, giving rise to a Petition for Contempt of Court, which was denied.^[11]

Unhappy with this result, Ms. Knick filed a complaint in the United States District Court for the Middle District of Pennsylvania, alleging violations of the Fourth, Fifth, and Fourteenth Amendments, namely that the Township was maintaining a system of warrantless inspections in violation of the Fourth Amendment, and that the ordinance took her property without just compensation.^[12] The district court dismissed all counts of the complaint. Ms. Knick appealed to the United States Court of Appeals for the Third Circuit, challenging the dismissal of her Fourth Amendment facial challenge and the requirement that she exhaust her state-law remedies before the case would ripen for federal jurisdiction.^[13]

The Court of Appeals affirmed the District Court’s holding on the facial Fourth Amendment claim based on a determination that Ms. Knick failed to establish Article III standing based due to a lack of injury-in-fact and it not being redressable.^[14] The Third Circuit also affirmed the District Court’s determination that the case in its current state was not yet ripe in agreement with *Williamson*.^[15]

In her petition for certiorari, Ms. Knick not only focused on the high burden of exhausting state remedies before her claim could ripen, but with its conjunctive interpretation with the Full Faith and Credit statute which prohibits federal courts from hearing a case after a state court has issued a ruling on it, often resulting in claimants never reaching the federal courtroom.^[16]

Should the court decide to overturn *Williamson* the federal system will likely see a great influx in takings claims cases that would have previously been channeled through the states systems. Notwithstanding the effect that such an increase in docket size and the corresponding budget increases they would necessitate, this decision could signal the rapid development of a more nuanced jurisprudence on takings claims as more channeled through the federal system.

Increasing the scope of takings claims is a double-edged sword that requires careful balance of personal versus public benefits. With the expansion of personal property rights through greater ease of takings claims, the court could shake the present balance between landowners and local governments, effectively hindering larger more comprehensive projects and community plans to be taken up for fear of litigation from disgruntled landowners. Conversely the current system places such a high burden on litigants that most will never see their case heard by a federal court, limiting their access to justice. Oral arguments on the case will likely take place this fall or early next year.

^[1] J.D. Candidate (2019).

^[2] 862 F.3d 310 (3d Cir. 2017), cert. granted, 2018 WL 1143827 (Mar. 5, 2018).

^[3] Amy Howe, *Justices grant review in two new cases*, SCOTUSBLOG (Mar. 5, 2018, 11:31 AM), <http://www.scotusblog.com/2018/03/justices-grant-review-two-new-cases/>.

^[4] 473 U.S. 172 (1985).

^[5] *Knick*, 862 F.3d at 314 (3d Cir. 2017).

^[6] *Id.*

^[7] *Id.* at 315.

^[8] *Id.*

^[9] *Id.*

^[10] *Id.*

^[1] *Id.*

^[2] *Id.* at 315–16.

^[3] *Id.* at 316.

^[4] *Id.* at 317.

^[5] *Id.* at 326.

^[6] Beveridge & Diamond PC, *Supreme Court Poised to Overrule Requirement that Takings Claims be Filed in State Court*, LEXOLOGY (Mar. 13, 2018), <https://www.lexology.com/library/detail.aspx?g=19a05d30-aed8-4ea6-a805-4157f24d305d>.

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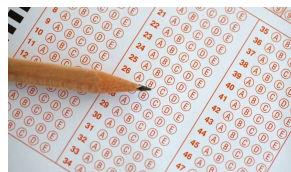
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