



Environment, Land Use & Natural Resources ADVISORY ■

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Supreme Court Ruling Could Dramatically Change the Playing Field for Takings Claims

by [Paul Beard](#) and [Matt Wickersham](#)

On June 21, 2019, the U.S. Supreme Court decided perhaps one of the most important property rights cases in over 30 years.

In [*Knick v. Township of Scott*](#), the issue was whether to overturn an older Supreme Court decision ([*Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*](#)) that required federal “taking” claimants to litigate that claim in state court (and be denied just compensation) before bringing their claim in federal court. Over the years, the requirement morphed into a functional bar to bringing a federal taking claim in federal court because, under the Full Faith and Credit Clause, the federal courts would provide preclusive effect to a state court’s dismissal of a federal takings claim.

Now the Court, by a slim majority, has overruled the older decision and held that federal taking claims can be brought in federal courts. A steady stream of new claims against laws and regulations that deprive (or significantly impair) an individual’s or business’s property interests can be expected.

In the energy-regulation space, we can expect more—and more successful—challenges to statutes and ordinances that, to take examples from recent trends, destroy or significantly damage oil, gas, and mineral rights. In increasing numbers, local governments have adopted ordinances or been the subject of initiative elections that have obstructed the continued operation of existing oil leases, either by banning new drilling or preventing well stimulation or hydraulic fracturing activities that are necessary for the practical extraction of hydrocarbons from the underlying formations. Because oil and gas operators and royalty owners could lose all value from the mineral interests remaining in the ground, constitutional claims are frequently made seeking just compensation for the government’s taking of these property rights. Until today, these claims have mainly been relegated to state court since federal courts have refused to hear claims under the ripeness grounds set forth in *Williamson County*.

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Based on the recent ruling in *Knick*, not only do we expect to see an increase in federal takings claims brought in federal courts across the country, but like other groundbreaking property rights cases over the years that have made it easier to sue public entities for takings, *Knick* may also serve as a prophylactic against attempts to pass more onerous laws and regulations, which may now never see the light of day for government fear of protracted and costly litigation.

Knick is noteworthy, too, in that it restores property rights—enshrined in the Bill of Rights—to its rightful place among other vital constitutional rights. Before this decision, a federal takings claim was the only kind of constitutional claim that was effectively barred from *federal* court review; that is no longer true with today's decision.

In short, the opinion in *Knick* fundamentally changes the options available to property owners who have had their property rights taken by invasive or overly burdensome government regulations and actions. Property owners now have an additional venue where these claims may be brought, and careful scrutiny must be provided in determining which venue will be the appropriate choice for pursuing their claims.

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