

U.S. Supreme Court Expands the Right of Property Owners to Immediately Challenge Land Use Decisions Concerning Their Property in Federal Court

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Property owners objecting to a land use decision by a city, county or other public agency can now bring a federal civil rights action for damages resulting from those decisions directly in federal court without first challenging the decision in state court.

On June 21, 2019, the U.S. Supreme Court issued its decision in *Knick v. Township of Scott, Pennsylvania*. This decision expressly overruled the Supreme Court's 1985 decision requiring that the claims by property owners for damages from improper land use decisions ("regulatory takings") be tried in state court first.

The Fifth Amendment to the United States Constitution provides "nor shall private property be taken for public use, without just compensation." A "regulatory takings" claim is one in which the property owner claims that his or her right to develop their property in a particular manner has been "taken" by the city, county or other public agency without just compensation in violation of the Fifth Amendment. Prior to the *Knick* decision, the cases held that a property owner challenging a local land use decision or regulation as a regulatory taking in a federal Section 1983 civil rights action for damages was required to: (1) submit at least one meaningful development application which was rejected, and apply for a variance, CUP, rezoning, or general plan amendment and obtain a "final decision" from the local land use authority; and (2) seek just compensation in a state court inverse condemnation action. A federal takings claim did not mature into a claim that was "ripe" for federal court decision until these two steps were completed, including denial of just compensation by the state court.

ATTORNEYS

Saskia T. Asamura

The U.S. Supreme Court's decision in *Knick* expressly overruled the second aspect of the current law. *Knick* holds that the Fifth Amendment right to just compensation arises at the moment the owner claims the "government takes his property without paying for it" and does not require the property owner to first seek compensation through the state courts.

Cities, counties and other public agencies should work closely with their legal counsel in the wake of the *Knick* decision.

If you have any questions, or would like more information about how this decision may affect your agency, or takings law in general, please contact **Saskia Asamura**.