

TULANE LAW REVIEW ONLINE

VOL. 94

APRIL 2020

Knick v. Township of Scott: Redefining a Constitutional Injury to Give Takings Plaintiffs Their Day in Federal Court

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I. INTRODUCTION

Rose Mary Knick’s ninety-acre property in Scott Township, Pennsylvania, contains a small family cemetery where her neighbors’ ancestors are allegedly buried.¹ The dispute at the center of Knick’s claim for equitable relief arose when Scott Township passed an ordinance requiring “[a]ll cemeteries . . . be kept open and accessible to the general public during daylight hours.”² The ordinance also permitted the township’s “code enforcement” officers to enter and inspect any property to “determine the existence and location of a cemetery.”³ After a Township officer found grave markers on Knick’s

1. Knick v. Twp. of Scott, 139 S. Ct. 2162, 2168 (2019) (explaining that such family cemeteries are apparently “common in Pennsylvania, where ‘backyard burials’ have long been permitted”).

2. *Id.* (alterations in original).

3. *Id.*

property, she was found to be in violation of the ordinance for failing to open the cemetery to the public.⁴

Knick, the plaintiff-appellant in the noted case, responded by filing suit, seeking declarative and injunctive relief in state court and alleging that the ordinance constituted an unconstitutional taking of her property.⁵ The state court declined to issue a ruling on Knick's request for declaratory and injunctive relief because, since the state stayed enforcement of the ordinance during court proceedings, she could not show irreparable harm.⁶ Moreover, Knick did not seek compensation for the alleged taking by bringing an inverse condemnation claim under Pennsylvania state law.⁷ Knick subsequently filed an action under 42 U.S.C. § 1983 in the United States District Court for the Middle District of Pennsylvania,⁸ alleging that the ordinance "violated the Takings Clause of the Fifth Amendment."⁹ The district court dismissed the claim without prejudice on the grounds that Knick did not first pursue an inverse condemnation claim in state court and her claims were therefore not ripe for federal review.¹⁰ The United States Court of Appeals for the Third Circuit affirmed.¹¹

The United States Supreme Court granted certiorari and held that a government violates the Takings Clause of the Fifth Amendment to the United States Constitution when it takes property without just compensation and a property owner may bring a Fifth Amendment claim in federal court under 42 U.S.C. § 1983 at that time.¹²

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* As the Court explained, inverse condemnation is "a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant," while direct condemnation occurs where the government directly appropriates title to property through its eminent domain authority. *Id.* (quoting *United States v. Clarke*, 445 U.S. 253, 257 (1980)).

8. 42 U.S.C. § 1983 (2012) provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law

Id.

9. *Knick*, 139 S. Ct. at 2168.

10. *Id.* at 2167; *Knick v. Twp. of Scott*, No. 3:14-CV-02223, 2016 WL 4701549, at *6 (M.D. Pa. Sept. 8, 2016) ("Plaintiff's takings claims are ripe for review in federal court only if she first attempts to avail herself of the state's just compensation determination process.").

11. *Knick v. Twp. of Scott*, 862 F.3d 310, 314 (3d Cir. 2017).

12. *Knick*, 139 S. Ct. at 2168.

By asserting that a Fifth Amendment takings violation occurs as soon as property is taken without prior or contemporaneous compensation, the noted case widened the remedies available to takings plaintiffs by allowing them to pursue their claims directly in federal court without first exhausting state court remedies. This Note explains why the Supreme Court validly held that a violation of the Fifth Amendment occurs as soon as property is taken without compensation, regardless of the availability or adequacy of state court remedies. First, the Note discusses the precedent that informed the Court's decision, highlighting how that precedent perpetually denied the takings plaintiffs their day in federal court. Next, the Note analyzes the Court's decision to overturn that precedent including the Court's decision to redefine a constitutional injury and the valid concerns raised by the dissenting opinion. Finally, the Note concludes by discussing the practical implications of this decision for takings plaintiffs.

II. BACKGROUND

A. “Just Compensation” Under the Takings Clause

The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use “without just compensation.”¹³ In *Williamson County Regional Planning Commission v. Hamilton Bank*, the Supreme Court considered whether a plaintiff may bring a takings claim in federal court without having first utilized state court procedures available for obtaining just compensation.¹⁴ In *Williamson County*, a property developer brought a § 1983 claim after a zoning board denied his proposal for a new subdivision, arguing that the zoning board's actions constituted an uncompensated taking of property.¹⁵ The Court found that the claim was not ripe for federal review because the developer had not exhausted state court remedies for obtaining just compensation.¹⁶

In deciding whether the developer's claim was ripe for federal review, the Court relied on precedent from *Ruckelshaus v. Monsanto Co.*, which held in part that if the plaintiff obtained compensation for a taking during arbitration, “no taking has occurred and the [plaintiff] has no claim against the Government.”¹⁷ The Court also relied on *Parratt*

13. U.S. CONST. amend. V.

14. 473 U.S. 172, 185 (1985).

15. *Id.* at 180-83.

16. *Id.* at 195.

17. 467 U.S. 986, 1018 n.21 (1984).

v. Taylor, where the Supreme Court held that a prisoner deprived of his property by a state actor or employee could not assert a due process claim in federal court if the state provided adequate process after the deprivation of his property.¹⁸

Asserting that these cases established the precedent that state court compensatory remedies must be exhausted before a takings claim is ripe for federal review,¹⁹ the *Williamson County* Court held that “a property owner has not suffered a violation of the Just Compensation Clause until the owner has unsuccessfully attempted to obtain just compensation through the procedures provided by the State for obtaining such compensation.”²⁰ The *Williamson County* Court pointed to the absence of any constitutional requirement that a government compensate a property owner prior to or contemporaneously with the taking.²¹ In denying that the Fifth Amendment requires compensation to be paid in advance or simultaneously with a taking, the Court reasoned that “all that is required is that a ‘reasonable, certain and adequate provision for obtaining compensation’ exist at the time of the taking.”²²

The Court’s analysis of the structure of the Takings Clause started with the premise that the clause did “not proscribe the taking of property; it proscribe[d] taking without just compensation.”²³ From this, the Court reasoned that “if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation.”²⁴ The *Williamson County* Court thus anticipated that if the property owner could not secure just compensation through state procedures, he could then bring a “ripe” takings claim in federal court.

B. The Full Faith & Credit Statute and the San Remo “Preclusion Trap”

The *Williamson County* Court’s anticipation that a property owner could bring a ripe takings claim in federal court after exhausting state

18. 451 U.S. 527, 543-44 (1981).

19. *Williamson Cty.*, 473 U.S. at 199.

20. *Id.* at 195.

21. *Id.*

22. *Id.* at 194 (quoting Reg’l Rail Reorganization Act Cases, 419 U.S. 102, 125 (1974)).

23. *Id.*

24. *Id.* at 195.

court remedies proved to be mistaken due to the preclusive effect of the “full faith and credit” statute, which provides that records and judicial proceedings of any court of any state “shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.”²⁵ Faced with the issue that state takings plaintiffs could not pursue “ripe” takings claims in federal court, the Supreme Court considered, in *San Remo Hotel, L.P. v. City of San Francisco*, whether federal courts may carve out an exception to the full faith and credit statute for claims brought under the Takings Clause of the Fifth Amendment.²⁶ In *San Remo*, the petitioners brought a takings claim in California state court in response to the application of a city ordinance that required the petitioners to pay a \$567,000 “conversion fee.”²⁷ When the California state courts rejected the petitioners’ takings claims, they attempted to bring nearly identical claims in federal court.²⁸

Basing their arguments on *Williamson County*, the petitioners argued that unless federal courts disregard the full faith and credit statute in takings cases, “plaintiffs will be forced to litigate their claims in state court without any realistic possibility of ever obtaining review in a federal forum.”²⁹ The *San Remo* Court, however, rejected this reasoning, asserting that federal courts are not “free to disregard” the full faith and credit statute “simply to guarantee that all takings plaintiffs can have their day in federal court.”³⁰ The Court made clear that an exception to the full faith and credit statute would not be recognized unless Congress “clearly manifest[ed]” an intent to create such an exception.³¹ The Court affirmed that a state court’s resolution of a claim for just compensation under state law has *preclusive effect* in any subsequent federal suit.³²

Thus, the takings plaintiff was perpetually denied remedy in federal court and was stuck in a “preclusion trap”: the property owner could not bring a just compensation claim directly to federal court without first exhausting state court remedies, but if he exhausted state

25. 28 U.S.C. § 1738 (2012).

26. 545 U.S. 323, 326 (2005).

27. *Id.*

28. *Id.* at 326-27.

29. *Id.* at 327.

30. *Id.* at 338.

31. *Id.* at 344-45.

32. *Id.* at 346-48.

court remedies, his claim would be precluded from being brought in federal court due to the full faith and credit statute. It was against this backdrop that the Supreme Court decided the noted case.

III. ANALYSIS OF THE COURT'S DECISION

A. *The Majority Overrules Williamson County and Redefines a Constitutional Injury*

In the noted case, the Supreme Court overturned the *Williamson County* requirement that takings plaintiffs must exhaust state court remedies before bringing a takings claim in federal court.³³ The Supreme Court prefaced its decision by noting that the *San Remo* preclusion trap was a strong indication that “the state-litigation requirement rests on a mistaken view of the Fifth Amendment.”³⁴ The Court explained that the purpose of the Civil Rights Act of 1871 was to guarantee “a federal forum for claims of unconstitutional treatment at the hands of state officials”³⁵ and that the settled rule for such civil rights claims was that “exhaustion of state remedies ‘is *not* a prerequisite to an action under [42 U.S.C.] § 1983.’”³⁶ Lamenting that the guarantee of a federal forum was nonexistent for takings plaintiffs, the Court found that the state remedy exhaustion requirement “impose[d] an unjustifiable burden on takings plaintiffs, conflict[ed] with the rest of [the Supreme Court’s] takings jurisprudence, and [had to] be overruled.”³⁷

The Court first noted that the state-litigation requirement established in *Williamson County* had the effect of relegating the Takings Clause to an inferior status compared to other rights contained in the Bill of Rights, as it was the only constitutional right subject to a state-litigation requirement.³⁸ Eliminating the state-litigation requirement was thus needed to restore takings claims to the “full-fledged constitutional status the Framers envisioned.”³⁹ The Court then turned to an analysis of when a “taking” occurs for purposes of the Fifth

33. Chief Justice Roberts delivered the opinion of the Court, in which Justices Thomas, Alito, Gorsuch, and Kavanaugh joined. *Knick v. Township of Scott*, 139 S. Ct. 2162, 2166-67 (2019). Justice Kagan delivered the dissenting opinion, in which Justices Ginsberg, Breyer, and Sotomayor joined. *Id.* at 2167.

34. *Id.*

35. *Id.* (quoting *Heck v. Humphrey*, 512 U.S. 477, 480 (1994)).

36. *Id.* (alteration in original) (quoting *Heck*, 512 U.S. at 480).

37. *Id.*

38. *Id.* at 2169-70.

39. *Id.* at 2170.

Amendment, noting that the Fifth Amendment does *not* say, “Nor shall private property be taken for public use, without an *available procedure that will result in compensation.*”⁴⁰

Rather, the Fifth Amendment provides that private property shall not be taken “without just compensation.”⁴¹ As such, the government has violated the Fifth Amendment when property is taken without just compensation, regardless of the availability or adequacy of state court proceedings.⁴²

The Court supported this position by explaining that “[a] later payment of compensation may remedy the constitutional violation that occurred at the time of the taking, but that does not mean the violation never took place.”⁴³ The Court noted that earlier Supreme Court decisions established the principle that the constitutional violation occurs as soon as the property is taken, as evidenced by the Court’s jurisprudence allowing property owners to bring Fifth Amendment takings claims against the *federal government* as soon as their property is taken.⁴⁴ Moreover, the Court pointed to its previous decision considering when compensation and interest accrue where a plaintiff is found to have a valid takings claim.⁴⁵ Namely, the plaintiff is entitled to compensation “as if it had been ‘paid contemporaneously with the taking.’”⁴⁶ In other words, “the compensation must generally consist of the total value of the property when taken, plus interest from that time.”⁴⁷

Thus, a plaintiff has an entitlement to compensation under the Fifth Amendment when a government effectuates a taking without providing just compensation.⁴⁸ And, with regard to state remedies for uncompensated takings, the Court asserted that “[t]he fact that the State has provided a property owner with a procedure that may subsequently result in just compensation cannot deprive the owner of his Fifth Amendment right to compensation under the Constitution, leaving only

40. *Id.* (emphasis added).

41. *Id.* (quoting U.S. CONST. amend. V).

42. *Id.*

43. *Id.* at 2172.

44. *Id.* at 2170.

45. *Id.*

46. *Id.* (quoting *Jacobs v. United States*, 290 U.S. 13, 17 (1933)).

47. *Id.*

48. *Id.* The Court further explained that this is because the plaintiff’s claim rests on the Fifth Amendment itself, not the presence or absence of procedures the government may put into place to remedy a taking. *Id.* at 2170-71.

the state law right.”⁴⁹ In other words, state law remedies for constitutional violations cannot strip a plaintiff of his right to pursue that violation in federal court.⁵⁰

Finally, the Court in *Knick v. Township of Scott* reexamined the precedent used by the *Williamson County* Court in formulating their decision. First, the Court criticized the *Williamson County* Court’s reliance on *Monsanto Co.* because the federal statute at issue in that case required the takings plaintiff to seek compensation through arbitration before resorting to seeking compensation under the Tucker Act.⁵¹ That case offered no support for the ruling in *Williamson County* because unlike state governments, Congress is “free to require plaintiffs to exhaust administrative remedies before bringing constitutional claims.”⁵² Moreover, the *Knick* Court noted that *Williamson County*’s analogization of its state-litigation requirement to federal takings procedures⁵³ was misguided: the process provided by the Tucker Act “is not a prerequisite to a Fifth Amendment takings claim—it is a Fifth Amendment takings claim.”⁵⁴

Moreover, the Court noted that *Williamson County* was mistaken in its reliance on *Parratt* since the claim in *Parratt* was not a takings claim but rather a claim for due process.⁵⁵ As it would be largely impossible for the state to provide pre-violation compensation for the acts of an unauthorized employee, the nature of the constitutional violation is inherently different where there is a taking of property by the government itself, because the government is capable of providing prior or contemporaneous compensation.⁵⁶ The Court thus concluded

49. *Id.* at 2171.

50. *Id.* Likewise, the Court explained that the existence of a state law battery claim does not bar a plaintiff from asserting a Fourth Amendment claim of excessive force. *Id.*

51. *Id.* at 2173. As the Court noted earlier in the decision, the Tucker Act allows property owners to sue the federal government for just compensation under the Fifth Amendment. *Id.* at 2170.

52. *Id.* at 2173. “Where Congress specifically mandates, exhaustion is required.” *Id.* at 2174 (quoting *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)).

53. The Court in *Williamson County* claimed that “taking[s] claims against the Federal Government are premature until the property owner has availed itself of the process provided by the Tucker Act.” 473 U.S. 172, 195 (1985).

54. *Knick*, 139 S. Ct. at 2174. As the Court noted, a party who loses a claim brought pursuant to the Tucker Act has no other recourse to seek compensation for a federal taking. The Tucker Act grants the United States Court of Federal Claims the jurisdiction to hear cases against the United States for claims concerning, among other things, rights in tangible or intangible property. The Act waives federal sovereign immunity for certain types of claims and is thus not itself a “prerequisite” for a federal takings claim. See 28 U.S.C. § 1491 (2012).

55. *Knick*, 139 S. Ct. at 2174; *Parratt v. Taylor*, 451 U.S. 527 (1981).

56. *Knick*, 139 S. Ct. at 2174.

that the main precedent on which *Williamson County* based its decision was misguided and poorly reasoned.⁵⁷

In concluding that the *Williamson County* Court was mistaken in its rationale that there is no Fifth Amendment claim until the government denied the property owner compensation in a state court proceeding, the *Knick* Court pointed to the Supreme Court's "repeated holdings that a property owner acquires a constitutional right to compensation *at the time of the taking*."⁵⁸ And, with regards to *stare decisis* concerns that only Congress can and should reverse the *San Remo* "preclusion trap," the Court pointed out that, even if Congress did so, the takings plaintiff would still be forced to exhaust state-court remedies before pursuing a takings claim in federal court.⁵⁹ This was the unacceptable outcome to the Court, not the requirement that federal courts afford full faith and credit to state court decisions. The Court pointed out that even if the full faith and credit statute were amended by Congress, this would not have lifted the unjustified state remedy exhaustion hurdle, because *Williamson County* set forth the rule that a takings plaintiff had no federal constitutional claim until denied compensation by a state court.⁶⁰ Since this decision had no bearing on the preclusive effect of state court takings decisions, any discussion regarding whether Congress could or should have eliminated the *San Remo* preclusion trap is irrelevant: state determinations of whether a taking has occurred remain binding in federal court. The "preclusion trap" is then remedied by clarifying the nature of the constitutional violation rather than doing what Congress did not: creating an exception to the full faith and credit statute in favor of allowing takings plaintiffs to appeal state court decisions in federal court.

B. The Dissent's View of the Takings Clause: No Constitutional Violation Where Adequate State Remedy Exists

Justice Kagan wrote a lengthy dissent, rejecting the majority's claim that the Takings Clause is violated when property is taken without prior or contemporaneous compensation.⁶¹ She argued first that the majority's characterization of the Court's precedent is mistaken. Namely, she asserted that an unconstitutional taking occurs

57. *Id.*

58. *Id.* at 2175 (emphasis added).

59. *Id.* at 2179.

60. *Id.*

61. *Id.* at 2181 (Kagan, J., dissenting).

only when the government has both taken property *and* denied just compensation.⁶² Justice Kagan pointed to “over a hundred years” of Supreme Court jurisprudence that has held that “advance or contemporaneous payment was not required, so long as the government had established reliable procedures for an owner to later obtain just compensation.”⁶³ Since “a Takings Clause violation does not occur until an owner has used the government’s procedures and failed to obtain just compensation,” the exhaustion of state court remedies was necessary to complete the constitutional violation.⁶⁴ Justice Kagan argued, therefore, that a takings claim is “not yet ripe” until the property owner pursues state court remedies and is denied.⁶⁵

Moreover, Justice Kagan pointed to two potentially harmful consequences of the majority’s holding: first, that government regulators will have no way to avoid violating the constitution, and second, that the decision will subvert principles of judicial federalism.⁶⁶ Regarding the first point, Justice Kagan pointed to the difficulty lawmakers will face, particularly in the realm of regulatory takings, stating that there is “no magic formula” through which to discern “whether a given government interference with property is a taking.”⁶⁷ This, according to the dissent, will unfairly place government employees undertaking land-use regulation into the position of “constitutional malefactors.”⁶⁸

The dissent argued that the second consequence is of greater import: the noted case’s ruling will potentially channel a large set of cases that more properly belong in state court into federal court.⁶⁹ Justice Kagan correctly noted that before federal constitutional standards can come into play in a takings case, a court must discern, under state law, whether a plaintiff has an actual property interest in the thing being regulated.⁷⁰ That question is often nuanced under state law,

62. *Id.*

63. *Id.* at 2182.

64. *Id.* at 2183.

65. *Id.* (quoting *Williamson Cty. Reg’l Planning Comm’n v. Hamilton Bank*, 473 U.S. 172, 194 (1985)).

66. *Id.* at 2187.

67. *Id.* (quoting *Ark. Game & Fish Comm’n v. United States*, 568 U.S. 23, 31 (2012)).

68. *Id.*

69. *Id.*

70. *Id.* To illustrate this point, the dissent pointed to the facts of *Knick*’s underlying claim, noting that whether or not *Knick*’s constitutional rights were violated depends on whether the Township’s ordinance was merely a codification of existing Pennsylvania common law. *Id.* at 2187-88. Justice Kagan lamented that under the majority’s ruling it is now up to the district court to “resolve this question of local cemetery law.” *Id.* at 2188.

and federal courts may be ill-equipped to answer them.⁷¹ Indeed, because the land-use regulation is “perhaps the quintessential state activity,” takings claims are very different from other constitutional challenges that typically do not require resolving questions of state law.⁷² Finally, Justice Kagan pointed to the principle of *stare decisis*, noting that the majority’s focus on the *San Remo* “preclusion trap” only adds to the case for respecting the court’s precedent, as any issue caused by the *San Remo* decision can and should be reversed by Congress.⁷³

However, several factors seem to alleviate the dissent’s concerns. First, with regard to the contention that government employees effectuating land-use regulations will become violators of the constitution in simply performing “quintessential” state government duties, they will not be suddenly implicated in their personal capacity, and the burden of just compensation falls on the government entity rather than the employee.⁷⁴ Second, while it is certainly possible that federal courts will have to analyze state property law, this is not necessarily a valid reason to deny takings plaintiffs the right to pursue compensation where their property has been taken from them. The inclusion of the Takings Clause in the Fifth Amendment, combined with Congress’s intent under 28 U.S.C. § 1331 and 42 U.S.C. § 1983 to allow federal civil rights claims to be pursued in federal court, evidences Congress’s understanding that some state property law questions might find their way into federal court.⁷⁵

Moreover, while the dissent’s argument that the majority’s holding did violate previous precedent that established that the Takings Clause is not violated unless the government fails to provide “reasonable, certain and adequate provision for obtaining

71. *Id.* at 2187-88.

72. *Id.* at 2187 (quoting *FERC v. Mississippi*, 456 U.S. 742, 767 n.30 (1982)).

73. *Id.* at 2189.

74. The Supreme Court has applied the Fifth Amendment to the *states* through the Due Process and Equal Protection clauses of the Fourteenth Amendment. *See* *Mo. Pac. Ry. Co. v. Nebraska*, 164 U.S. 403, 417 (1896) (holding that the taking of property without just compensation is forbidden by the due process language of the Fourteenth Amendment); *Reagan v. Farmers’ Loan & Tr. Co.*, 154 U.S. 362, 381 (1894) (holding that the taking of private property absent just compensation is forbidden by the Equal Protection Clause of the Fourteenth Amendment).

75. As the majority noted, “The availability of any particular compensation remedy . . . cannot infringe or restrict the property owner’s federal constitutional claim—just as the existence of a state action for battery does not bar a Fourth Amendment claim of excessive force.” *Knick*, 139 S. Ct. at 2171.

compensation” after the taking⁷⁶ does seem to have merit, there are important policy as well as textual reasons for defining the constitutional injury as occurring as soon as the property is taken without just compensation. First, as Justice Thomas noted in his concurrence, the “sue me” approach to providing just compensation to takings victims is untenable because it affords only a damages remedy for plaintiffs willing (and able) to “shoulder the burden of securing compensation” after the government appropriates property without providing compensation.⁷⁷ The Constitution, in his view, makes compensation a *prerequisite* to the government’s capacity to take property for public use.⁷⁸ And if that makes certain regulatory programs untenable, “so be it”—the function of the Court is to enforce the Takings Clause of the Fifth Amendment as it is written.⁷⁹ Thus, changing the nature of the constitutional violation itself may prompt more state governments to abandon the “sue me” approach of just compensation for governmental takings. Such an approach renders obtaining just compensation costly, burdensome, and perhaps most importantly, *the responsibility of the property owner*. No other Bill of Rights guarantees are predicated on the citizen suing the governmental entity—as such, an approach that considers appropriation of private property for public use without just compensation *at the time of the taking* brings the Takings Clause of the Fifth Amendment closer in line with other constitutional rights guarantees.⁸⁰

While the dissent was also correct to point out that the Fifth Amendment does not explicitly require compensation contemporaneous with or prior to a taking, the text of the clause seems to suggest that the majority’s ruling that a constitutional violation occurs as soon as property is taken without just compensation is more in-line with the Framers’ intent.⁸¹ Until the 1870s, if an owner’s property was taken without compensation, his only recourse was to bring a trespass action; there was no specified procedure for obtaining

76. *Id.* at 2182 (Kagan, J., dissenting) (quoting *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 659 (1890)).

77. *Id.* at 2180 (Thomas, J., concurring) (quoting *Arrigoni Enters., LLC v. Town of Durham*, 136 S. Ct. 1409, 1409 (2016) (Thomas, J., dissenting from denial of certiorari)).

78. *Id.*

79. *Id.*

80. While the dissent attempted to distinguish the Takings Clause from other constitutional rights in noting that the appropriation of private property must be accompanied by a denial of just compensation, no other constitutional right requires the victim to *sue* to establish that a violation has occurred. *Id.* at 2182 (Kagan, J., dissenting).

81. *Id.* at 2175-76 (majority opinion).

just compensation after a governmental taking.⁸² If the plaintiff prevailed in such an action, his only recourse would be to obtain “retrospective damages, as well as *an injunction ejecting the government from [his] property going forward.*”⁸³ Thus, if a government effectuated a taking without previously providing just compensation to the property owner, “a court would set aside the taking because it violated the Constitution.”⁸⁴ The property would then be returned to the landowner.⁸⁵ The general absence of injunctive relief today, moreover, does not prevent the constitutional violation from happening, but rather state and federal compensation actions are remedies for a constitutional violation.⁸⁶ Thus, the judicial development of remedies for unconstitutional takings did not prevent the violation from happening but provided the property owner with a means to remedy the violation where none, other than equitable relief and damages for trespass, existed before.

This approach to takings jurisprudence, while perhaps a departure from the modern understanding, practically provides greater institutional protections for property owners whose land has been taken without just compensation. In addition to potentially mitigating the “sue me” approach to just compensation, the conceptualization most importantly allows citizens whose Fifth Amendment rights have been violated to immediately pursue their claims in federal court. As the *Knick* Court notes, the *San Remo* “preclusion trap” is an important indicator that *Williamson County* was wrongly decided and points to the fallacy in logic of the decision. The state remedy exhaustion requirement seems to rest on the idea that states cannot violate the Takings Clause: either they provide compensation through state court remedies or they deny compensation through state court remedies. Either way, no constitutional violation has occurred under the old framework. Allowing plaintiffs to pursue just compensation in federal court provides an important check on the potential of state overreaching and gives the Fifth Amendment the enforceability the Framers intended.

Finally, the decision may provide an additional recourse for takings plaintiffs. By leaving the *San Remo* decision in place, which

82. *Id.* at 2176.

83. *Id.* (emphasis added).

84. *Id.*

85. *Id.*

86. *Id.* at 2166-67.

requires federal courts to afford full faith and credit to state court decisions, the takings plaintiff may have a colorable argument that any unfulfilled judgments against local or state governments for takings claims may be enforced in federal court. In other words, if a judgment is rendered against a state or local government and that government fails to pay the amount ordered by a state court, the takings plaintiff seems to have a new recourse: filing a plenary motion to enforce the state court's judgment for just compensation in federal court.⁸⁷ While such actions are rare,⁸⁸ “[t]he most direct consequence of applying the full faith and credit statute is that a federal court must enforce a state court judgment when an action is brought for that purpose.”⁸⁹ Thus, leaving the *San Remo* decision in place while removing state-remedy exhaustion requirements may provide a recourse when state and local governments refuse to pay property owners even when judgments are entered in the property owner's favor. Where such an enforcement action may have been confined to state court prior to *Knick*, it is plausible that plaintiffs may petition federal courts to determine that a constitutional violation has occurred, notwithstanding a state-court judgment in the property owner's favor, as long as a taking has occurred and compensation has not been paid to the property owner.

IV. CONCLUSION

The Supreme Court's holding in the noted case solves the “preclusion trap” where a state or local government refuses to provide just compensation after a taking and the takings plaintiff's claim is nevertheless barred from being brought in federal court due to the full faith and credit statute. While valid concerns certainly exist that some land ownership issues that originate in state law will necessarily be decided in federal court, those concerns should not preclude the takings plaintiff from asserting his federal constitutional right to just compensation in a more disinterested federal forum. The *Knick* Court's decision, while perhaps a radical departure from the modern view of when an unconstitutional “taking” occurs, brings the Takings Clause of the Fifth Amendment more in line with other Bill of Rights guarantees,

87. For a more comprehensive discussion on the capability of federal courts to enforce state court judgments, see *Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venez*, 863 F.3d 96, 122-24 (2d Cir. 2017).

88. *Id.* at 122.

89. *Id.* (quoting 18B CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION § 4469 (2d ed. 2002)).

closer to the Framers' intent regarding when a taking occurs, and, most importantly, allows property owners to pursue federally protected guarantees in federal court.

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* © 2020 Jessica Webb. J.D. candidate 2021, Tulane University Law School; B.A. 2010, Tulane University. Thank you to the *Tulane Law Review* members and staff for all of their comments, feedback, and assistance. I would also like to thank my family and friends for their continuous love and support.