Let's hope Justice Kagan is wrong about this ominous prediction in her dissenting opinion in *Knick v. Township of Scott* [2]: “today’s decision means that government regulators will often have no way to avoid violating the Constitution.”

In a 5-4 opinion the Supreme Court held that a property owner may proceed directly to federal court with a takings claim. In *Knick* the Court overturned *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City* [3] (1985), which held that before a takings claim may be brought in federal court, a property owner must first seek just compensation under state law in state court. The State and Local Legal Center (SLLC) amicus brief [4] urged the Court to keep *Williamson County*.

The Township of Scott adopted an ordinance requiring cemeteries, whether located on public or private land, to be open and accessible to the public during the day. Code enforcement could enter any property to determine the “existence and location” of a cemetery.

The Constitution’s Takings Clause states that “private property [shall not] be taken for public use, without just compensation.” Rose Mary Knick sued the county in federal (rather than state) court claiming the ordinance was invalid per the Takings Clause after code enforcement went onto her property without a warrant looking for (and finding) a cemetery not open to the public during the day.

In an opinion written by Chief Justice Roberts the Court held that the state-litigation requirement of *Williamson County* is overruled. The Court reasoned the Takings Clause doesn’t say: “Nor shall private property be taken for public use, without an available procedure that will result in compensation.” “If a local government takes private property without paying for it, that government has violated the Fifth Amendment—just as the Takings Clause says—without regard to subsequent state court proceedings. And the property owner may sue the government at that time in federal court for the ‘deprivation’ of a right ‘secured by the Constitution.’”

The majority of the Justices were willing to overturn precedent in this case because *Williamson County* wasn’t just “wrong.” “Its reasoning was exceptionally ill founded and conflicted with much of our takings jurisprudence.”

The SLLC amicus brief [4] argued the Supreme Court should not overturn *Williamson County* because lower courts have ensured that the state-compensation requirement is not “gamed to deprive property owners of their day in court.”

The brief also explained why state courts are a better forum for deciding these cases than federal courts. State courts are much more familiar with state property law and “are far more expert in the state statutory issues that so often accompany takings claims.” In her dissent Justice Kagan was sympathetic of this argument noting that the consequence of *Knick* “is to channel a mass of quintessentially local cases involving complex state-law issues into federal courts.”

Matt Zinn, Andrew Schwartz, and Laura Beaton, Shute, Mihaly & Weinberger LLP, wrote the SLLC amicus brief [4] which was joined by the National Governors Association, National Conference of State Legislatures [5], the Council of State Governments [6], the National Association of Counties [7], the National League of Cities [8], the United States Conference of Mayors [9], the International City/County Management Association [10],...

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