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Knick v. Township of Scott: THE SUPREME COURT'S PROPER CONCLUSION
OVERRULING AN UNCONSTITUTIONAL EXHAUSTION REQUIREMENT USING
AN INAPPROPRIATE ANALYSIS

*Katherine Lingold**

I. INTRODUCTION

This Note analyzes the Pennsylvania case of *Knick v. Township of Scott*,¹ appealed to the United States Supreme Court to determine whether a property owner's Fifth Amendment right to compensation from governmental takings was dependent on the type of court in which the property owner's claim was initially filed. The Court's discussion focused on precedent from the case *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*,² which demanded plaintiffs alleging a taking to unsuccessfully seek recourse through state law procedures before they would be permitted to file a federal claim. The Supreme Court found the *Williamson County* decision had created a poorly reasoned exhaustion requirement that violated the Takings Clause and was unworkable. In light of its findings, the Court chose not to adhere to the principals of *stare decisis* and overruled *Williamson County*.

Part II of this Note will give a short summation of the facts and procedural history of *Knick v. Township of Scott*. Part III will describe the background and history of the relevant law on the Fifth Amendment, the Takings Clause, and claims for compensation. Part IV will explain the majority, concurring, and dissenting opinions in the instant case. Part V will argue that the outcome was rightly decided but suggests that the Supreme Court relied on an inappropriate analysis in coming to its decision and should have taken a formalistic approach using principles of constitutional ripeness. Part VI will conclude that the Court in *Knick v. Township of Scott* properly overruled *Williamson County* despite the majority opinion's lack of analysis regarding constitutional basis.

* Katherine Lingold is a December 2020 graduate of Mississippi College School of Law. The author would like to sincerely thank Professor Alina Ng for her assistance and support throughout the process of drafting this Casenote. Additionally, the author would like to extend her appreciation to her friends and family for their encouragement and support.

1. *Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019).

2. *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985), overruled by *Knick v. Twp. of Scott*, Pennsylvania, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019).

II. FACTUAL SUMMARY AND PROCEDURAL HISTORY OF *Knick v. Township of Scott*

A. *Factual Summary of Knick v. Township of Scott*

In December 2012, Scott Township, Pennsylvania (“Township”) passed an ordinance requiring “all cemeteries” to “be kept open and accessible to the general public during daylight hours.”³ The ordinance defined ‘cemetery’ as “a place or area of ground, whether contained on private or public property, which ha[d] been set apart for or otherwise utilized as a burial place for deceased human beings.”⁴ The ordinance gave “code enforcement” officers authority to “enter upon any property” in order to search for and locate cemeteries.⁵ Petitioner Rose Mary Knick (“Knick”) owned a plot of land in Scott Township, Pennsylvania, comprised of her residence and a grazing pasture for her horses and farm animals.⁶ Members of the community alleged Knick’s property also contained the site of a small graveyard where her neighbors’ ancestors were buried.⁷ In 2013, upon alleged authority granted by the ordinance, a Township officer entered Knick’s property looking for the supposed graveyard site and purportedly discovered a cemetery with multiple grave markers.⁸ Thereafter, the Township mailed Knick notice asserting she was in violation of the ordinance by failing to open the cemetery on her property to the public during daytime hours.⁹

B. *Procedural History of Knick v. Township of Scott*

Knick first filed a complaint in the Lackawanna County Court of Common Pleas and requested the “court declare the ordinance unconstitutional, void, ineffective and without force of the law; declare Scott Township precluded from enforcing the ordinance against her and the decree of Notice of Violation nullified; and grant equitable relief by special injunction.”¹⁰ After the action was filed, the Township made an

3. Knick, 139 S. Ct. at 2168.

4. *Id.* Private property was included because personal property had historically been permitted to be used for “backyard burials” for many years.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. Knick v. Scott Twp., No. 3:14-CV-2223st, 2015 U.S. Dist. LESXIS 146861, at *5 (M.D. Pa. Oct. 29, 2015) aff’d sub nom. Knick v. Twp. of Scott, 862 F.3d 310 (3d Cir. 2017), vacated and remanded sub nom. Knick v. Twp. of Scott,

arrangement with Knick and agreed to withdraw the violation notice and delay enforcement of the ordinance for the duration of state court proceedings.¹¹ However, as a result of that withdrawal, the state court declared there was no longer an active enforcement action, the case was not in the “proper posture for a decision on the requested forms of relief,” and it was not the proper venue; and therefore, refused to rule on her action.¹²

Knick then filed suit in the United States District Court for the Middle District of Pennsylvania and requested declaratory judgment on the grounds that the ordinance effected a Fifth Amendment taking without compensation and deprivation of rights under statute 42 U.S.C. § 1983.¹³ In response, the Township filed a motion to dismiss her suit for failure to state a claim upon which relief could be granted.¹⁴ The district court rejected the Township’s motion and proceeded to consider the claims Knick put forth.¹⁵

It based a portion of its decision on the United States Supreme Court rule formed in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City* (“Williamson County”), construed as requiring a claimant to pursue state procedures for seeking recourse from a taking and for those procedures to be fruitless, before the claimant had a valid and ripe federal claim.¹⁶ The district court concluded that Knick failed to show the ordinance constituted a governmental taking as enacted, and therefore dismissed her takings claim without prejudice¹⁷ for failure to meet her burden.¹⁸

Pennsylvania, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019), and vacated, 932 F.3d 152 (3d Cir. 2019).

11. *Id.* at *6.

12. *Id.*

13. *Id.* at *7-8. Her complaint under § 1983 contained five different claims: (1) violation of the Fourth Amendment by the Township’s search; (2) violation of the Fourteenth Amendment for failure to train officers; (3) Fourth and Fourteenth Amendment claims against Ferraro [code enforcement officer]; (4) First, Fourth, Fifth, and Fourteenth Amendment claims for vagueness, penal regulation, unreasonable provisions, public taking, nuisance, due process, and retaliation; and (5) declaratory judgment and temporary restraining order. *Id.*

14. *Id.* at *11.

15. *Id.* at *19-56.

16. *Id.* at *42.

17. *See id.* at *56 (explaining the district court dismissed Count IV and V without prejudice on the grounds that it was not certain amendment of those claims would be futile. Instead, the court permitted Knick one opportunity to amend her complaint in order to state a claim for relief. Conversely, the court stated Counts I-III were dismissed with prejudice based on the belief that it would be futile to permit amendments to such claims).

18. *Id.* at *32, *41-43.

Knick subsequently amended her complaint and filed in the Pennsylvania district court for a second time.¹⁹ Count II of Knick's complaint contained a Takings Clause claim and alleged that the Township ordinance effected an uncompensated physical taking of her property in violation of the Fifth Amendment.²⁰ The district court noted that for a physical taking, the property owner must suffer a permanent physical invasion of their property and the government must fail to provide the owner just compensation.²¹

In its discussion on Knick's amended complaint, the court more heavily emphasized *Williamson County* precedent and the implied exhaustion requirement, evidenced by the court's statement that "the federal court cannot address the merits of the claim, [until] the plaintiff [has] satisf[ie]d the unique ripeness requirements."²² The district court determined that Knick had yet to pursue recourse through Pennsylvania's state law procedure – an inverse condemnation statute,²³ and as a result, held that Knick had not satisfied the ripeness requirements.²⁴ In response, Knick argued she had satisfied the state procedure requirement since she had initially filed a state court action before filing any federal complaint.²⁵ The district court discerned that, although she had filed a state action first, her state action had not included a petition to initiate the process for seeking compensation, and thus failed to satisfy *Williamson County* requirements.²⁶ Consequently, the court dismissed Knick's amended complaint without prejudice.²⁷

19. Knick v. Scott Twp., No. 3:14-CV-02223, 2016 U.S. Dist. LEXIS 121220, at *7 (M.D. Pa. Sept. 7, 2016), *aff'd sub nom.* Knick v. Twp. of Scott, 862 F.3d 310 (3d Cir. 2017), *vacated and remanded sub nom.* Knick v. Twp. of Scott, 139 S. Ct. 2162 (2019), *vacated and remanded*, 932 F.3d 152 (3d Cir. 2019); *See id.* at *10-21 (explaining Count I alleged warrantless search previously dismissed with prejudice. Accordingly, the district court dismissed Count I with prejudice again. Count II included a claim for a Fourth Amendment seizure violation which was already discussed and dismissed with prejudice in the prior litigation, resulting in the court dismissing the seizure claim with prejudice a second time. Count III sought declaratory judgment and injunctive relief, but the court declined to grant either since Knick's takings claim was not ripe for consideration).

20. *Id.* at *11.

21. *Id.* at *11-12.

22. *Id.* at *12-13.

23. An inverse-condemnation proceeding is a state law action against a local or state government entity for compensation of property taken. *See Cowell v. Palmer Twp.*, 263 F.3d 286 at *290 (3d Cir. 2001).

24. Knick, 2016 U.S. Dist. LEXIS 121220 at *18

25. *Id.* at *16-18.

26. *Id.*

27. *Id.* at *20.

Knick appealed the district court's decision, on the grounds that the court erred in requiring her to exhaust state-law remedies for compensation.²⁸ Knick maintained her argument that the ordinance resulted in an uncompensated taking by mandating she open her land to the public and to Township officers.²⁹ The United States Court of Appeals for the Third Circuit cited *Williamson County* precedent as well, and asserted that plaintiffs needed to abide by the two requirements imposed in *Williamson County*: the finality rule and the state-procedure exhaustion requirement.³⁰ Interestingly, the court of appeals stated in a footnote that *Williamson County*'s exhaustion requirement "is not a 'true' exhaustion requirement, but merely addresses a unique aspect of just compensation takings claims."³¹ While defendant Township contended that Knick failed to use inverse-condemnation procedures and failed to satisfy the exhaustion requirement, Knick proclaimed she was not required to pursue inverse-condemnation proceedings.³² Knick argued: her facial³³ takings claim was exempt from exhaustion; she had complied with *Williamson County* by suing for relief in state court unsuccessfully; and in the interest of efficiency, that the court should overlook the prudential requirements.³⁴

In its discussion, the court of appeals specified one single situation which excused a plaintiff from pursuing state-law exhaustion requirements: if the plaintiff challenged the basis for the validity of an act of taking, such as violating due process, then denial of compensation was immaterial to a ripeness determination and *Williamson County*'s exhaustion requirement did not apply.³⁵ The claims Knick had included in her amended complaint that were presented to the court of appeals were subject to the requirements however, because they were claims for compensation, not claims

28. *Knick v. Twp. of Scott*, 862 F.3d 310, 316-18 (3d Cir. 2017), *vacated*. *Knick v. Twp. of Scott*, Pennsylvania, 139 S. Ct. 2162 (2019), *and remanded*, 932 F.3d 152 (3d Cir. 2019).

29. *Id.* at 323.

30. *Id.*

31. *Id.* n.10.

32. *Id.* at 323-25.

33. *See id.* at 324-25 (explaining the court of appeals belief that the Supreme Court has used the word "facial" in two ways: (1) "facial taking," and (2) "facial challenge." A "facial taking" is a type of taking in which the simple act of enacting a statute effectuates a taking. Nonetheless, a "facial taking" is not automatically considered unconstitutional; rather, it gives rise to an entity's constitutionally based obligation to compensate the property owner. On the other hand, a "facial challenge" attempts to invalidate the ordinance claimed to constitute a taking, instead of providing compensation).

34. *Id.* at 323.

35. *Id.* at 325-26.

challenging the validity of the Township's taking.³⁶ Similar to the district court's holding, the court of appeals disagreed with Knick's compliance argument and found her state action had not included a request for compensation and had not satisfied the exhaustion requirements.³⁷

Lastly, Knick argued permitting her claims to proceed without returning to state court for the mere purpose of satisfying *Williamson County*'s requirements would be more efficient and would avoid potential piecemeal litigation.³⁸ Unconvinced, the court of appeals determined the only claim that remained in Knick's complaint was her just compensation claim, which showed no risk of piecemeal litigation, did not indicate any exceptional circumstance interfered with Knick's ability to pursue inverse-condemnation proceedings, and had not identified any change in applicable law.³⁹ It declared that exemptions to the requirements should only be granted in narrow circumstances and that state courts are better equipped to calculate the amount of compensation owed.⁴⁰ The court of appeals affirmed the dismissal of Knick's amended complaint, even though it was suspicious of the ordinance's constitutionality, specifically stating "it is difficult to imagine a broader authorization to conduct searches of privately owned property."⁴¹

Knick proceeded to appeal the decision dismissing her complaint to the United States Supreme Court, which granted certiorari to review *Williamson County* and reevaluate the exhaustion requirement imposed.⁴² The Supreme Court found that the government violated the self-executing Takings Clause at the exact moment it took property; therefore, the property owner had grounds for a federal takings claim at the moment of the taking.⁴³ As a result, the Court overruled the *Williamson County* exhaustion requirement and held that property owners seeking compensation under the Fifth Amendment may bring federal claims, such as 42 U.S.C. § 1983 claims, at the time of the taking.⁴⁴

36. *Id.* at 326.

37. *Id.* at 327.

38. *Id.* at 328.

39. *Id.*

40. *Id.* at 327-28.

41. *Id.* at 322, 328.

42. *Knick v. Twp. of Scott*, 139 S. Ct. at 2169.

43. *Id.* at 2179.

44. *Id.* The Supreme Court also held a government entity violates the self-executing Takings Clause at the exact moment it takes property without giving the property owner compensation; and found respondents read prior opinions too broadly stating the Takings Clause does not stipulate compensation must in fact be paid prior to the taking, and instead, only requires "a reasonable, certain and adequate provision for obtaining compensation after a taking" (citing *Cherokee Nation v. Southern Kansas R. Co.*, 135 U.S. 641, 659, 10 S. Ct. 965, 34 L. Ed. 295. (1890)). *Id.* at 2166.

III. BACKGROUND AND HISTORY OF THE LAW ON TAKINGS AND THE RIGHT TO COMPENSATION UNDER THE FIFTH AMENDMENT

A. *The Ripeness Doctrine*

Courts apply the “ripeness” doctrine to a multitude of claims.⁴⁵ As a general rule, the ripeness doctrine prevents a court from ruling on certain matters, otherwise known as “unripe” matters, that for one reason or another are not ready for review yet or that contain an injury to the plaintiff considered too speculative.⁴⁶ Courts have formed two main classifications of “ripeness” related to property takings claims: constitutional command ripeness and prudential ripeness.⁴⁷

Constitutional command ripeness, as it pertains to the “*Williamson County* ripeness puzzle” and just compensation, has been further classified into two subcategories based on where the command comes from: “constitutional command grounded in Article III’s case-or-controversy limitation,” and “constitutional command grounded in the Fifth Amendment.”⁴⁸ Constitutional ripeness under Article III holds that the statutory language of Article III “limits federal court jurisdiction to cases and controversies... for resolution of concrete and ‘fully crystalized’ disputes.”⁴⁹ Similarly, “because the Fifth Amendment proscribes takings *without just compensation*, no constitutional violation occurs until just compensation has been denied,” meaning a claim is not ripe until compensation has been intentionally denied.⁵⁰ In other words, for constitutional ripeness under the Fifth Amendment, compensation is portrayed as a substantive element of a federal takings claim.⁵¹

Conversely, prudential ripeness rests “as a principle grounded in policy considerations,” based on the idea that some matters “are more appropriately resolved in another forum” or “will be better decided later.”⁵² Prudential ripeness has been deemed non-jurisdictional and susceptible to exceptions consistent with policy considerations recognized by courts; for instance, creating an exception “to enhance the accuracy of [a court’s] decisions and to avoid [courts from] becoming embroiled in adjudications

45. Katherine Mims Crocker, A PRUDENTIAL TAKE ON A PRUDENTIAL TAKINGS DOCTRINE, 117 Mich. L. Rev. 39, 40 (2018).

46. *Id.*; Katherine Mims Crocker, JUSTIFYING A PRUDENTIAL SOLUTION TO THE WILLIAMSON COUNTY RIPENESS PUZZLE, 49 Ga. L. Rev. 163, 174 (2014).

47. Crocker, *supra* Note 45 at 40.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

that later may turn out to be unnecessary.”⁵³ Relevant to the compensation prong, federalism concerns such as a state court’s ability to decide federal constitutional claims or a state court’s extensive experience and knowledge with property disputes, are pertinent grounds for consideration of prudential ripeness.⁵⁴

B. Imposition of the Exhaustion Requirement and Williamson County

The takings claim exhaustion requirement was first recognized in relation to *Williamson County*, but the Supreme Court had extensively considered whether takings claims should include exhaustion requirements three years prior in *Patsy v. Board of Regents of State of Florida* (“*Patsy*”).⁵⁵ Background on the Court’s opinion in *Patsy* is important because its analysis was based on constitutional factors and highlighted a test for determining whether courts were allowed to impose exhaustion requirements. In *Patsy*, plaintiff filed a 42 U.S.C. § 1983 claim against her employer in federal court and alleged she had been denied employment opportunities, but the court dismissed her claim for failure to exhaust administrative remedies.⁵⁶ Plaintiff then appealed to the Supreme Court, where the issue posed was whether exhausting administrative remedies was required prior to filing a 42 U.S.C. § 1983 federal action.⁵⁷ The Court initially rejected the theory that 42 U.S.C. § 1983 claims should impose exhaustion requirements on administrative remedies, based on the federal court’s duty to protect constitutional rights.⁵⁸ Nonetheless, the Court proceeded to review the lower courts’ rationale and analyzed reversal of the exhaustion requirement using two factors: interpretation of the statute’s meaning when compared to legislative history and whether congressional intent was consistent with overruling the exhaustion requirement.⁵⁹

The Supreme Court found legislative history granted Congress complete authority to impose exhaustion requirements on federal claims and granted courts only a very limited authority to impose exhaustion requirements under narrow circumstances.⁶⁰ However, the courts had been vested with the authority to decide the limits of those requirements.⁶¹ The Court determined congressional intent of 42 U.S.C. § 1983 was prefaced

53. Crocker, *supra* Note 45, at 44; Crocker, *supra* Note 46 at 174.

54. Crocker, *supra* Note 45, at 45.

55. *Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496 (1982).

56. *Id.* at 496, 102 S. Ct. 2557-58.

57. *Id.* at 498-500.

58. *Id.* at 500-01.

59. *Id.* at 501-02.

60. *Id.*

61. *Id.*

by the Civil Rights Act of 1871 and concluded the purpose of that Act was to balance the protection of citizens' federal rights with the exercise of state powers.⁶² Congressional intent indicated Congress was skeptical of whether state courts were fairly and constitutionally protecting people's rights and if not, Congress wanted to provide relief through access to less prejudicial federal courts.⁶³ Consequently, the *Patsy* Supreme Court held the history underlying 42 U.S.C. § 1983 did not support the exhaustion requirement implemented by the lower courts, especially if the requirement had potential to prevent a plaintiff from escaping prejudice, deprivation of rights, or threats.⁶⁴

In *Williamson County*, respondent was a residential building developer and petitioner was the Williamson County Regional Planning Commission ("Commission").⁶⁵ Under Tennessee law, in order for a developer to begin construction, their building plans needed the Commission's approval and approval was contingent on compliance with the zoning ordinances and land regulations.⁶⁶ The Commission implemented new zoning ordinances and new regulations in 1973, and then modified the zoning ordinances shortly thereafter in 1977.⁶⁷

Notably, the initial building plans for the plot of land at issue were done by respondent's predecessor-in-interest ("developer") and respondent had not actually acquired the property until 1981.⁶⁸ Developer submitted an initial plan with proposed construction to the Commission in 1973.⁶⁹ The Commission approved the initial plan and construction promptly began.⁷⁰ The initial plan was subsequently submitted for renewal by developer each year from 1974 to 1977 and was approved by the Commission all four times.⁷¹ When the plan was submitted for renewal in 1978 after the ordinances had been modified, the Commission decided to continue applying the original 1973 ordinances rather than the modified ordinances

62. *Id.* at 502-04.

63. *Id.* at 504-06.

64. *Id.* at 502-07; *See also* Parratt v. Taylor, 451 U.S. 527 (1981), overruled by Daniels v. Williams, 474 U.S. 327 (1986) (holding 42 U.S.C § 1983 legislation was enacted to prevent prejudice, passion, neglect, and intolerance in state courts by allowing plaintiffs into federal court, and ruling that two necessary elements of a § 1983 claim were that the alleged act was committed while defendant acted under state law and that the plaintiff was deprived of a Constitutional right because of defendant's action).

65. Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. at 175, overruled by Knick, 139 S. Ct. 2162 (2019).

66. *Id.* at 177.

67. *Id.* at 178-79.

68. *Id.* at 177, 181.

69. *Id.* at 177.

70. *Id.*

71. *Id.* at 178.

and renewed approval.⁷² Amidst the 1979 process for renewal, the Commission revoked its prior decision and instructed the 1977 modified ordinances to be applied instead.⁷³ It stated the initial plan had multiple survey errors, included land the state had since condemned between 1973 and 1980, and failed to plan out acreage marked ‘reserved.’⁷⁴ The Commission therefore mandated that developer submit a revised initial plan according to the 1977 ordinances.⁷⁵ An updated plan was then submitted by developer in 1980, but the Commission purportedly found eight problems and refused to grant approval.⁷⁶

After the 1980 rejection, respondent obtained ownership of the land through foreclosure and then submitted two development plans to the Commission.⁷⁷ One plan was identical to the developer’s 1973 initial plan, and the second was akin to the developer’s 1980 rejected plan but included corrections and updates.⁷⁸ Despite the corrections, the Commission refused to approve either of respondent’s plans, which lead respondent to sue the Commission in federal court on the grounds that the zoning ordinances and regulations effected a ‘taking’ of property.⁷⁹

At trial, the jury found that the Commission had denied respondent of economically viable use of his land and that the just compensation clause had been violated.⁸⁰ The court disagreed with the jury, however, finding that respondent was only temporarily deprived of use and thus, concluded no taking had occurred yet.⁸¹ Upon its findings, the court instructed respondent to re-submit his plans and ordered the Commission to re-evaluate them based on the 1973 ordinances.⁸² Respondent disregarded the court’s order and appealed the decision to the Supreme Court before re-submitting his plans.⁸³

On appeal, the Supreme Court addressed whether federal, state, and local governments were required to compensate a property owner for an alleged taking when the land was ‘taken’ in a temporary manner by government regulations.⁸⁴ The Commission argued a Fifth Amendment

72. *Id.*

73. *Id.* at 178-179.

74. *Id.* at 179.

75. *Id.*

76. *Id.* at 179-80.

77. *Id.* at 181.

78. *Id.*

79. *Id.* at 181-82.

80. *Id.* at 182-83.

81. *Id.* at 183.

82. *Id.*

83. *Id.* at 183-84.

84. *Id.* at 185.

'taking' could not be interpreted to include government regulations.⁸⁵ After examination, the Court concluded respondent's claim indicated a lack of finality, since respondent had yet to receive a final decision on the status of his application under the 1973 ordinances or seek any variances.⁸⁶ Therefore, the Court ruled respondent's claim premature and not ripe for review.⁸⁷

Despite the fact that the Court had already ruled respondent's claim premature for lack of finality, the Court needlessly continued its examination.⁸⁸ The Supreme Court declared that the Fifth Amendment did not prohibit the taking of property altogether, rather, only prohibited taking property without providing the owner just compensation.⁸⁹ It asserted that under the Fifth Amendment, payment for just compensation was not required prior to or at the time of the taking, rather only a reasonable, certain, and adequate provision for a property owner to acquire compensation was required.⁹⁰ The Court opined that a landowner did not have a Fifth Amendment 'takings' claim against a state if the state had implemented a sufficient procedure to seek compensation and use of those procedures would result in just compensation.⁹¹ In circumstances where zoning ordinances have effected a 'taking,' a Tennessee statute provided landowners the opportunity to seek just compensation through an inverse condemnation action.⁹² The Court found that Tennessee provided

85. *Id.* The Commission instead argued that it was a Fourteenth Amendment violation and stated due process violations do not require "just compensation." They claimed a regulation which resulted in property appropriation for public use should be viewed as violating due process rights since it is equivalent to government police powers effecting a result only allowed by use of eminent domain powers. *Id.*

86. *Id.* at 186-94.; Furthermore, since the Court held respondent's claim was premature, the Court was prevented from answering the question presented. *Id.*

87. *Id.*

88. *Id.* at 200.

89. *Id.* at 194.

90. *Id.* at 194-95.; *See also* Cherokee Nation v. S. Kan. Ry. Co., 135 U.S. 641 (1890) (holding that the Constitution did not explicitly state compensation was required to be paid in advance and interpreted the Takings Clause to indicate a property could not be taken or touched until a reasonable, certain and adequate procedure was in place for a property owner to obtain compensation); Crozier v. Fried. Krupp Aktiengesellschaft, 224 U.S. 290 (1912) (holding that unless there was a specific constitutional provision which explicitly mandated compensation be given first, all that was required was a reasonable, just and prompt provision for the property owner to seek compensation); Hurley v. Kincaid, 285 U.S. 95 (1932) (holding that the Fifth Amendment did not grant the property owner the right to payment prior to the taking); Yearsley v. W.A. Ross Const. Co., 309 U.S. 18 (1940) (holding that the Fifth Amendment did not give the property owner the right to advanced compensation, especially when a statute allocating a simple and sufficient remedy existed).

91. *Id.* at 195.

92. *Id.* at 196.

respondent the ability to file an inverse condemnation action against the Commission, but respondent had not used the procedure or shown that it was unavailable or inadequate.⁹³ Thus, it concluded respondent's 'takings' claim was also premature and unripe for failure to use state procedures to obtain compensation first, and ruled respondent's claim further precluded.⁹⁴ The consequence of *Williamson County*'s holding was the implied creation of a state-litigation exhaustion requirement for takings plaintiffs.⁹⁵ Although the *Williamson County* Supreme Court had, in effect, imposed a takings claim exhaustion requirement, the Court had not specifically called it or referred to it as such.⁹⁶

C. *Evolution of the Takings Clause and Exhaustion Requirement*

After *Williamson County* was decided, the Supreme Court referred to the state-litigation exhaustion requirement in the context of the ripeness doctrine in *Lucas v. South Carolina*.⁹⁷ Plaintiff in that case owned beachfront property in South Carolina that he planned to build homes on, but South Carolina Coastal Council enacted a statute which prevented him from building on his property.⁹⁸ Plaintiff filed a takings claim against the council and alleged the statute effected a taking of property without just compensation in violation of the Fifth and Fourteenth Amendments.⁹⁹ In the process of concluding that the statute effected a taking of plaintiff's property for loss of economically beneficial use, the Supreme Court stated the *Williamson County* requirements "went only to the prudential 'ripeness' of" the claim.¹⁰⁰ However, the Court had not elaborated any further as to why it declared the requirements prudential.¹⁰¹

The Supreme Court then cited the *Williamson County* exhaustion requirement in *Suitum v. Tahoe Regional Planning Agency*, where it called the requirements "prudential hurdles."¹⁰² Opposite of *Lucas*, the *Suitum*

93. *Id.* at 196-97. *See also* First English Evangelical Lutheran Church of Glendale v. Los Angeles Cty., Cal., 482 U.S. 304 (1987) (affirming that advanced compensation was not required prior to a taking, ruling in opposition of *Williamson County*, and stating that an immediate constitutional claim for a taking has arisen at the time of a taking because the Constitution required just compensation and there was an implied agreement to pay in the choice to act under the Takings Clause).

94. *Id.* at 200.

95. *Id.*

96. *Id.*

97. *See generally* Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992).

98. *Id.* at 1008.

99. *Id.* at 1009.

100. *Id.* at 1013.

101. *Id.*

102. *Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725, 733-734 (1997).

Court explained that the “compensation hurdle” which required exhaustion “stems from the Fifth Amendment's provision that only takings without ‘just compensation’ infringe that Amendment.”¹⁰³ Nonetheless, the Court’s holding in *Suitum* was decided on finality grounds and had not warranted further discussion on compensation.¹⁰⁴

Subsequently, the Supreme Court encountered *Williamson County*’s exhaustion requirement in *San Remo Hotel, L.P. v. City & County of San Francisco, California* where it addressed whether a federal court was allowed to create a Fifth Amendment Takings Clause exception to the Full Faith and Credit Clause.¹⁰⁵ Interestingly, though the Court had referred to the exhaustion requirement as ‘prudential’ in prior cases, it omitted any consideration of the ripeness doctrine in *San Remo*. Petitioners owned the San Remo Hotel (“Hotel”) in San Francisco and had leased it to be run and operated as a bed and breakfast inn.¹⁰⁶ Years after petitioners bought the hotel, the San Francisco Board of Supervisors (“Board”) enacted an ordinance to regulate conversions of residential hotel units into tourist units.¹⁰⁷ The ordinance required conversion permits and stated a permit would only be given for building new units, restoring old units, or when the builder paid the city an ‘in lieu’ fee.¹⁰⁸ When petitioners submitted an application for a conversion permit, the Board approved their permit, but conditioned approval on payment of a hefty ‘in lieu’ fee.¹⁰⁹ Petitioners then filed an action against the Board in the federal district court and asserted claims under both federal and state law on the grounds that the ordinance effected a ‘taking’ as applied to their hotel, which the Board responded to by filing for summary judgment.¹¹⁰

The district court determined petitioners’ claims were premature and granted the Board’s summary judgment motion.¹¹¹ Petitioners appealed and specifically asked the court of appeals to only rule on the issue of whether the claims were premature and not to rule on their substantive federal claims, since those federal claims would become moot if the case moved to state court.¹¹² The court agreed, and then affirmed the lower courts’ decision that the takings claim was premature due to petitioners’

103. *Id.*

104. *Id.*

105. *San Remo Hotel, L.P. v. City & Cty. of San Francisco, Cal.*, 545 U.S. 323, 125 S. Ct. 2491, 2495 (2005).

106. *Id.* at 327-28

107. *Id.* at 328.

108. *Id.*

109. *Id.* at 328-29.

110. *Id.* at 330.

111. *Id.*

112. *Id.*

failure to use state inverse condemnation proceedings.¹¹³ However, the court also granted petitioners the ability to raise their federal claims in federal court at a later time, but stipulated they had to specifically reserve that right in state court.¹¹⁴

Thereafter, petitioners filed a complaint in state court which listed additional claims not included in their initial federal complaint and the court dismissed the complaint entirely.¹¹⁵ Upon further examination, the state court found that the additional claims were similar in structure to the federal claims and had not been specifically reserved by petitioners like the federal court of appeals had instructed.¹¹⁶ Therefore, the state court deduced that it had in fact handed down a judgment on petitioners' federal claims simultaneously with their state claims.¹¹⁷ Petitioners appealed the decision to the California Supreme Court, but the decision to dismiss the complaint was upheld.¹¹⁸ Rather than appeal the state court decision to the United States Supreme Court, petitioners went back to the federal district court and amended their initial federal complaint.¹¹⁹ The district court subsequently held that petitioners' claims were barred by issue preclusion on the grounds that their complaint contained claims previously adjudicated in state court.¹²⁰

Essentially, petitioners' claims were dismissed after filing in federal court, but petitioners were also granted the ability to reserve those claims during the required state proceedings.¹²¹ Nonetheless, after petitioners proceeded through state court and later filed in federal court, their claims were barred on the grounds of issue preclusion.¹²² Petitioners appealed to the Supreme Court and argued that federal courts should give zero deference to state court decisions regarding takings claims in order to ensure decisions on the merits.¹²³ They based their argument on the fact that the Court in *Williamson County* held a property owner could not even attempt to get into federal court until compensation had been denied through state procedures.¹²⁴

113. *Id.* at 330-31.

114. *Id.* at 331.

115. *Id.* at 332.

116. *Id.* at 331.

117. *Id.*

118. *Id.* at 331-32.

119. *Id.* at 334.

120. *Id.* at 335.

121. *San Remo Hotel, L.P. v. City & Cty. of San Francisco, Cal.*, 545 U.S. 323, 125 S. Ct. 2491 (2005).

122. *Id.* at 334.

123. *Id.* at 338.

124. *Id.* at 341-42.

The Supreme Court noted that courts can only make a departure from traditional rules of preclusion, such as a Takings Clause exception from the Full Faith and Credit Clause, when Congress specifically stated or indicated it was allowed.¹²⁵ Further, the Court disagreed with petitioners' argument regarding entry into federal court and stated that not all takings plaintiffs deserved a day in federal court.¹²⁶ It found Congress had not given any authority for departure from preclusion rules for takings actions, and therefore, ruled federal courts were not allowed to disregard the Full Faith and Credit Clause for the sole purpose of ensuring every takings plaintiff had a chance in federal court.¹²⁷ Additionally, the Court determined that petitioners could have refrained from including language resembling their federal claims in their state action and prevented preclusion issues, but they failed to do so.¹²⁸ For these reasons, the Supreme Court affirmed the dismissal of petitioner's complaint.¹²⁹ *San Remo Hotel* reaffirmed the *Williamson County* exhaustion requirement and denied that such exhaustion requirement created a catch-twenty-two preclusion issue in that case, though it was denied inadvertently without using "ripeness" verbiage.¹³⁰

On the contrary, the concurring opinion written by Chief Justice Rehnquist, did specifically discuss the ripeness doctrine.¹³¹ Chief Justice Rehnquist noted that the *Williamson County* Court had "purported to interpret the Fifth Amendment in divining this state-litigation requirement," but "recently, we have referred to it as merely a prudential requirement."¹³² He went further and explained it was "not obvious that either constitutional or prudential principles require claimants to utilize all state compensation procedures before they can bring a federal takings claim," and cited *Patsy's* holding that concluded exhaustion was not required for 42 U.S.C. § 1983 claims.¹³³

Classification of *Williamson County's* requirement then evolved more in *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, where the Supreme Court declared that the compensation prong of takings claims was non-jurisdictional.¹³⁴ In that

125. *Id.* at 344-45.

126. *Id.* at 336-39.

127. *Id.* at 344-45.

128. *Id.* at 345-46.

129. *Id.* at 342-47.

130. *Id.* at 341-47.

131. *Id.* at 348-49. (Rehnquist, J., concurring).

132. *Id.*

133. *Id.*

134. *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env'tl. Prot.*, 560 U.S. 702, 130 S. Ct. 2592, 177 L. Ed. 2d 184 (2010).

case, the issue before the Court was whether judicial action could violate the Takings Clause wherein respondents argued that petitioner's takings claim was unripe because petitioner had not attempted to seek recourse through state procedures and thus, had not satisfied the requirements of *Williamson County*.¹³⁵ The Court disagreed with respondents and held that it could waive both the finality and exhaustion requirements "since neither is jurisdictional," and ultimately concluded there had not been a taking.¹³⁶

The idea of applying jurisdiction principles to the exhaustion requirement was noted again in *Horne v. Department of Agriculture*.¹³⁷ Although the main issue there revolved around the Tucker Act, the Supreme Court stated "a Fifth Amendment claim is premature until it is clear that the Government has both taken property *and* denied just compensation. Although we often refer to this consideration as 'prudential ripeness,' we have recognized that it is not, strictly speaking, jurisdictional."¹³⁸ Therefore, as of the time *Knick* was brought in front of the Supreme Court on appeal, the Court appeared to interpret *Williamson County*'s exhaustion requirement as a prudential ripeness factor but had yet to make a clear, overarching declaration stating such.¹³⁹

135. *Id.* at 727-29.

136. *Id.* at 729.

137. *Horne v. Dep't of Agric.*, 569 U.S. 513, 133 S. Ct. 2053, 186 L. Ed. 2d 69 (2013).

138. *Id.* at 525-26. Additionally, a federal district court was met with a removal situation in 2014 which narrowed the application of the exhaustion requirement for 42 U.S.C. § 1983 takings claims when defendants motioned for removal. Athanasiou v. Town of Westhampton, 30 F. Supp. 3d 84 (D. Mass. 2014). In *Athanasiou v. Town of Westhampton*, plaintiffs filed their action in state court first, in Massachusetts Superior Court, as required under *Williamson County*, and combined a federal 42 U.S.C. § 1983 takings claim with state claims. *Id.* at 86-87. Defendants then successfully motioned to remove the case to federal court. *Id.* After the case was removed to the United States District Court for the District of Massachusetts, defendants filed to dismiss the case entirely, arguing plaintiffs had failed to meet *Williamson County* exhaustion requirements. *Id.* at 87. Plaintiffs vehemently opposed dismissal, insisting that they attempted to meet exhaustion requirements, but defendants had interfered by filing a removal motion and were the direct cause of the failure to exhaust state law requirements. *Id.* The district court agreed and held defendant's removal of the 42 U.S.C. § 1983 claim to federal court acted as a waiver of the state law exhaustion requirement. *Id.* at 88-89. The district court reasoned that if it had held otherwise, defendants would be able to manipulate litigation and plaintiffs would be subjected to undue hardship. *Id.*

139. *Williamson Cty*, 473 U.S. at 727-29.

IV. INSTANT CASE: *Knick v. Township of Scott*A. *Majority Opinion*

The ruling handed down by the United States Supreme Court ultimately addressed whether consequences of *Williamson County* necessitated overruling precedent or if principals of *stare decisis* compelled adherence to *Williamson County* precedent.¹⁴⁰ To make a determination on that issue, the Court initially considered the Fifth Amendment and clarified whether a plaintiff whose property was taken by governmental action was required to pursue recourse through state procedures before the property owner had standing to bring a federal claim.¹⁴¹

1. Merits of the *Williamson County* Holding

The Supreme Court first considered the merits of *Williamson County*, specifically when a federal claim was vested, when an exhaustion requirement was formed, and when compensation needed to be paid.¹⁴² The Court held that a property owner's federal claim for a taking was vested at the moment the taking occurred and could be immediately filed in federal court.¹⁴³ It initially looked to the language of the Takings Clause and distinguished that the clause merely said "without just compensation," and did not include the phrase "without an available procedure that will result in compensation."¹⁴⁴ The Court interpreted the clause's statutory language to mean a property owner was deprived of a constitutional right when they were without payment.¹⁴⁵ Therefore, a federal claim, such as a 42 U.S.C. § 1983 claim, was permitted to be filed in federal court when the government took property without the property owner receiving payment, regardless of any state law procedures the might have been available for recourse.¹⁴⁶

Next, the Court referenced the Tucker Act, a federal statute which granted the right to file a claim for compensation from takings committed by the United States government.¹⁴⁷ The Court explained case law that interpreted the Act defined "the act of taking" as "the event which gives

140. *Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162, 2169, 2177, 204 L. Ed. 2d 558 (2019).

141. *Id.* at 2168.

142. *Id.* at 2169-77.

143. *Id.* at 2170.

144. *Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162, 2170, 204 L. Ed. 2d 558 (2019).

145. *Id.* at 2170, 204 L. Ed. 2d 558.

146. *Id.*

147. *Id.*

rise to the claim for compensation.”¹⁴⁸ From this, the Court deduced that when the United States government committed a taking, the property owner’s claim for compensation that followed undoubtedly fell under the Tucker Act federal statute, and thus, the claim for compensation automatically was deemed based on the Constitution and within the federal court’s jurisdiction.¹⁴⁹

The Court continued its analysis and referenced *Jacobs*, which held that when compensation is paid to the property owner at a later time after the taking had occurred, the amount of compensation must equal the same amount as if the property owner had been paid at the time of taking, including interest.¹⁵⁰ It stated that *Jacobs*’ holding indicated the right to compensation under the Fifth Amendment was ripe at the moment the act of taking was committed, regardless of any remedial measures the property owner had after the taking occurred.¹⁵¹ The Court’s opinion in *Knick* declared the *Jacobs* holding was analogous and the same principles applied to state and local government takings.¹⁵² The Fifth Amendment was the tool that actually granted the constitutional right to just compensation for a taking, but statute 42 U.S.C. § 1983 was a vehicle that provided a property owner with a procedure to invoke that right.¹⁵³ As compared to *Jacobs*, since the right to compensation under the Fifth Amendment was ripe at the moment of a taking, if the property owner had not received compensation as of the time of taking, then the property owner was deprived of the constitutional right to compensation at that time.¹⁵⁴ This meant a 42 U.S.C. § 1983 deprivation of rights claim was simultaneously ripe at the time the taking occurred and was unencumbered by state procedures for obtaining compensation.¹⁵⁵ Specifically, the Court held that a state law inverse condemnation action or state law otherwise providing a method for recourse, did not impact the property owner’s right to federal constitutional claims.¹⁵⁶ The Court found that *Williamson County*’s view of the Takings Clause was in direct contravention to *Jacobs*.¹⁵⁷ *Williamson County* had concluded that the existence of a state law which granted just compensation disqualified a property owner’s constitutional right to a federal claim and

148. *Id.*

149. *Id.*

150. *Id.* at 2170-72.

151. *Id.*

152. *Id.* at 2171.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

delayed that right until the owner had exhausted use of the state procedures.¹⁵⁸

To further support its ruling, the Supreme Court cited *First English* which had referred to the Takings Clause as having a “self-executing character,” meaning as soon as the taking occurred, the property owner was vested with a constitutional claim for just compensation.¹⁵⁹ Thus, on the question of when a claim vested, the Court concluded property owners were entitled to file a federal claim for deprivation of the right to compensation at the point the taking occurred.¹⁶⁰

Next, in considering when the exhaustion requirement was formed, the Supreme Court determined that *Williamson County* imposed the exhaustion requirement when it ordered property owners to exhaust state procedures for compensation as a pre-requisite to filing in federal court.¹⁶¹ The *Williamson County* Court relied on interpretation of the Takings Clause for its ruling, and formed such interpretation based on *Ruckelshaus v. Monsanto Co.* (“Monsanto”),¹⁶² which led the Supreme Court to review *Monsanto*.¹⁶³ The Court was not fond of *Williamson County*’s analogy and stated the *Monsanto* case was not a takings claim for just compensation, rather, it involved a takings claim which sought injunction of a federal statute.¹⁶⁴ The *Monsanto* Court stated that procedures for compensation were available for plaintiff and held that equitable relief, such as an injunction, did not apply to a takings claim when the property owner could bring an action for just compensation.¹⁶⁵ The *Knick* Court agreed with *Monsanto* on that point, finding precedent stated the availability of monetary relief prevented equitable relief.¹⁶⁶

The *Monsanto* Court further stated that if procedures led to just compensation, then no taking had occurred and the property owner did not have a takings claim against the government.¹⁶⁷ The *Knick* Court disagreed with the *Monsanto* Court’s contention that compensation negated the existence of a takings claim and explained that compensation did not negate

158. *Id.*

159. *Id.*

160. *Id.* at 2172-73.

161. *Id.* at 2173.

162. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 104 S. Ct. 2862, 81 L. Ed. 2d 815 (1984).

163. *Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2173-74 (2019).

164. *Id.* at 2173.

165. *Id.*

166. *Id.*

167. *Id.*

the claim, but instead remedied the takings claim once it had been paid to the property owner.¹⁶⁸

The *Williamson County* Court also referenced *Monsanto* in an attempt to make a comparison in which it alleged that only once a property owner whose property had been ‘taken’ by the United States government had employed the Tucker Act procedures, had a federal takings claim fully matured.¹⁶⁹ The Court did not agree and clarified that an action for just compensation under the Tucker Act was in fact a Fifth Amendment takings claim, not a separate pre-requisite; and thus, once a property owner was denied compensation under the Tucker Act, there was nowhere else to turn.¹⁷⁰ Additionally, the it emphasized that only Congress had the power to implement exhaustion requirements, not states.¹⁷¹

The *Knick* Court accredited a portion of the hapless ruling made in *Williamson County* to the circumstances surrounding the decision and explained that it was possible the Court failed to reasonably analyze the logic underlying the state litigation requirement or the potential impacts.¹⁷² It suggested that *Williamson County* should have been decided solely on the grounds that the property owner brought suit before a final decision had been made regarding a taking by government regulations and the Court should not have continued to consider the effect of state procedures or any other basis.¹⁷³

The Supreme Court’s third consideration on the merits of *Williamson County* addressed whether compensation must be paid prior to the act of taking.¹⁷⁴ Respondent in the instant case argued that takings which are initially uncompensated, but which allow compensation at a later point, are not in violation of the Fifth Amendment at the point taking occurs.¹⁷⁵ However, the Court contended the cases Respondent cited in support of its argument included claims for injunctive relief and deemed those cases inapplicable, on the grounds that an equitable remedy as such could not be used because an action for monetary compensation was

168. *Id.*

169. *Id.* at 2174.

170. *Id.*

171. *Id.* at 2173. *See also* *Parratt v. Taylor*, 451 U.S. 527 (1981), overruled by *Daniels v. Williams*, 474 U.S. 327 (1986). The *Williamson County* Court also relied on *Parratt v. Taylor* (“*Parratt*”), which the Supreme Court found unpersuasive. *Knick*, 139 S. Ct. at 2174. The Court believed *Parratt* had nothing to do with takings claims, since it dealt with a prisoner barred from bringing a due process claim under § 1938 where there was a sufficient post-deprivation state procedure and emphasized that even *Williamson County* recognized the *Parratt* analogy was far-fetched. *Id.* at 2174.

172. *Id.*

173. *Id.*

174. *Id.* at 2174-75.

175. *Id.*

available.¹⁷⁶ It also noted that the fact that a property owner was prohibited from injunctive relief at the time of taking did not also mean that the Takings Clause had not been violated at that time.¹⁷⁷

The *Knick* Court then dove into the history of the Takings Clause and found the Framers of the Constitution intended to prevent the federal government from taking private property without providing payment for said property.¹⁷⁸ It stressed that the Framers did not intend for the government to permissibly take possession of property while the owner awaited future compensation.¹⁷⁹ The Court concluded *Williamson County* had made its ruling incorrectly.¹⁸⁰ When the government, whether federal or local, had taken property and failed to compensate the property owner, the government violated the Takings Clause and the property owner was entitled to bring a claim under 42 U.S.C. § 1983 as of the time of taking.¹⁸¹ Since the Court determined the Takings Clause and the Fifth Amendment were concurrently violated at the time property was taken, a property owner was permitted to file a federal claim in pursuit of a remedy without waiting for judgment in a state action.¹⁸² The Supreme Court held the *Williamson County* Court erred in holding otherwise.¹⁸³

2. Adhering to or Departing from *Stare Decisis*

The Supreme Court in *Knick* explained that the *stare decisis* doctrine generally meant the Court should rule in favor of precedent, and was premised on the theory that it was usually more pertinent to settle the applicable rule of law than to ensure it was settled correctly.¹⁸⁴ The Court noted the doctrine was given the least deference when applied to holdings that interpreted a portion of the Constitution because those holdings could only be altered by a Supreme Court decision or a constitutional amendment.¹⁸⁵ This was the case with the *Williamson County* decision, as it had interpreted the Fifth Amendment.¹⁸⁶ The majority opinion identified four factors it evaluated for assessing whether overruling a decision was appropriate: the quality of the decision's reasoning, the workability of the

176. *Id.*

177. *Id.*

178. *Id.* at 2175-77.

179. *Id.* at 2176.

180. *Id.* at 2177.

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

established rule, if it was consistent with related decisions, and the level of reliance on the decision.¹⁸⁷ It concluded all four factors weighed in favor of overruling *Williamson County* and against *stare decisis*.¹⁸⁸

For the first factor, the Court held the reasoning behind *Williamson County* was extremely baseless and had conflicted with prior rulings on takings claims.¹⁸⁹ It also declared *Williamson County* Court's significant conclusion, which stated a property owner had a federal action for a takings claim only once they had been denied compensation in a state law action, had come from superfluous language in the *Monsanto* decision.¹⁹⁰ The Court further stated the *Williamson County* decision disregarded *Jacobs* and a multitude of other cases that held a right to compensation under the Fifth Amendment was vested in a property owner at the time the taking occurred.¹⁹¹

Regarding the second factor, the *Williamson County* decision was found especially unworkable after *San Remo*,¹⁹² where the decision had a preclusive effect and prevented property owners from bringing a federal action for compensation after rejection in state court.¹⁹³ The consequence of *San Remo* was significant considering the potential multitude of property owners that would be prevented from litigating a federal takings claim provided for by 42 U.S.C. § 1983.¹⁹⁴ The majority opinion then addressed the dissent's contention that an "enhanced" form of *stare decisis* should have been applied to *Williamson County* and then Congress could have amended the Full Faith and Credit Clause to remove the preclusion trap issue seen in *San Remo*.¹⁹⁵ The majority opinion rebutted this by pointing out that even if Congress had made such an amendment, property owners with takings claims still would have been erroneously required to file a state action for compensation before filing any federal action under *Williamson County*.¹⁹⁶

Under the third factor, the Court explicitly noted that the decision of *Williamson County* had not been very consistent upon finding the justification for *Williamson County*'s ruling had varied over the previous

187. *Id.* at 2178.

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *San Remo Hotel, L.P. v. City & Cty. of San Francisco, Cal.*, 545 U.S. 323 (2005).

193. *Knick*, 139 S. Ct. 2162 at 2178-79.

194. *Id.* at 2179.

195. *Id.*

196. *Id.*

thirty (30) years and continued to evolve, for example some courts had recast the requirement as prudential.¹⁹⁷

Lastly, in addressing the fourth factor, the Supreme Court found no reliance interests since the weight of *stare decisis* was reduced when dealing with rulings that had no relevance to issues of lawful behavior.¹⁹⁸ The Court stated the government would not be subjected to new liability as a result of overruling *Williamson County*, rather the new rule merely gave property owners the option of filing federal claims for takings they would have otherwise had to file in state court as inverse condemnation actions.¹⁹⁹

After the *Knick* majority opinion fully analyzed both questions posed on appeal, the Court overruled *Williamson County* and the state litigation exhaustion requirement imposed within it.²⁰⁰ The Court stipulated that a property owner was permitted to file a federal takings action under 42 U.S.C. § 1983 at the time the taking occurred and deprived the owner of compensation, without first having to pursue remedies through the state courts.²⁰¹

B. Concurring Opinion

The concurring opinion, written by Justice Thomas, focused on a theory he referred to as the “sue me approach” put forth by the United States as *amicus curiae*.²⁰² He pointed to the United States’ argument that the government’s implicit promise to compensate a property owner for taking property would be sufficient if the owner was able to sue the government and win.²⁰³ Contrary to such argument, Justice Thomas noted the Fifth Amendment did not provide recourse only to property owners who were willing to go through the hassle of suing the government to obtain compensation.²⁰⁴ Rather, he stated the “sue me approach” could not be supported because the Fifth Amendment had a prerequisite which commanded just compensation be given to a property owner in order for the government to have authority to take property.²⁰⁵ Justice Thomas further alleged that a government’s refusal to compensate a property owner could be found tortious in addition to being unconstitutional.²⁰⁶ He also

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.* at 2179-80 (Thomas, J., concurring).

203. *Id.*

204. *Id.* at 2180.

205. *Id.*

206. *Id.*

agreed with the majority opinion that the injunction concerns argued by the United States were misplaced and moot.²⁰⁷ On the other hand, Justice Thomas believed that when the court determined a particular plaintiff was entitled to relief, that did not mean the challenged regulatory scheme as a whole would be enjoined or invalidated, but was actually evaluated on a case by case basis; thus implying completely overruling *Williamson County* may not have been necessary.²⁰⁸

C. Dissenting Opinion

1. Overruling *Williamson County*

The dissent, written by Justice Kagan, took the stance that *Williamson County* was decided correctly, supported by precedent, and should not have been overruled.²⁰⁹ She interpreted the *Williamson County* decision as having ruled that a government was allowed to take property from an owner as long as there was a sufficient procedure to provide just compensation to the property owner, even if the actual payment transaction was not conducted until after the government had already committed the taking.²¹⁰ Justice Kagan stated the majority's decision disregarded *Williamson County* and many other prior decisions, based on the belief that it implied that any instance in which a government had taken property and had not compensated the owner in advance was a violation of the Constitution, regardless of whether the government had proven prior to the taking that it was able and dedicated to paying the owner after.²¹¹

In support of her dissenting opinion, Justice Kagan first referenced the words and meaning of the Taking Clause.²¹² Her interpretation was that the Takings Clause conferred the right to be free from the government taking property only when the government failed to pay the property owner just compensation.²¹³ Therefore, the dissent disagreed with the majority's implication that the Takings Clause gave property owners the right to be free from *all* property takings by the government.²¹⁴ Justice Kagan argued the Takings Clause was different than other clauses in the Bill of Rights based on the premise that sovereignty included the inherent power to take

207. *Id.*

208. *Id.*

209. *Id.* at 2189 (Kagan, J., dissenting).

210. *Id.* at 2180-81.

211. *Id.* at 2181.

212. *Id.*

213. *Id.*

214. *Id.*

private property for public use.²¹⁵ She claimed that unlike other guarantees contained in the Bill of Rights, the Takings Clause did not make it unlawful for the government to take property, but rather allowed such takings as long as the government justly compensated the property owner.²¹⁶

The dissent further disagreed with the majority opinion on the elements required for a violation of the Takings Clause.²¹⁷ Justice Kagan alleged there were two elements that must have been present before a violation had occurred: there must have been a taking of property by the government and the government must have refused to pay the owner just compensation.²¹⁸ The dissenting opinion believed that until the government had withheld and denied payment, there was no constitutional violation.²¹⁹

Additionally, Justice Kagan claimed that the majority opinion dismantled the Court's prior ruling regarding the threshold boundary that determined when the government's action of withholding compensation resulted in a constitutional violation.²²⁰ In support of her argument, Justice Kagan relied on the case *Cherokee Nation*, also cited within the majority opinion.²²¹ However, she emphasized the court in that decision held payment in advance of the taking was not a required stipulation in the Takings Clause, but rather, delayed payment was acceptable, conditioned on the government providing a tenable, definite and sufficient method for the owner to be given compensation.²²² Justice Kagan argued that such ideas had been reiterated and followed for decades, yet were not followed in the majority opinion.²²³

In examining *Williamson County*, the dissenting opinion argued the Court there followed the precedent set up by *Cherokee Nation*.²²⁴ Justice Kagan noted the state in that case, Tennessee, had implemented an inverse condemnation action which allowed the builder to sue for compensation

215. *Id.*

216. *Id.*

217. *Id.* The majority subsequently acknowledged the dissent's argument in the instant case, in which the dissent put forth a defense that supported the original rationale behind *Williamson County* and claimed no violation of the Fifth Amendment existed, until a property owner was denied compensation. Majority stated that the dissent went beyond the respondent's argument in the instant case and argued there was no support for the dissent's view in any of the repeated Supreme Court holdings, which ruled just compensation was a constitutional right given to property owners that vested at the moment the taking occurred. *Id.* at 2174-75. (majority opinion).

218. *Id.*

219. *Id.*

220. *Id.* at 2181-82.

221. *Id.* at 2182.

222. *Id.*

223. *Id.*

224. *Id.*

after a taking, but the builders chose to file action in federal court through the Takings Clause instead.²²⁵ She claimed the *Williamson County* Court found the Fifth Amendment only prohibited takings without just compensation, and that the Amendment only required the availability of a tenable, definite and sufficient procedure through which an owner can seek compensation.²²⁶ Justice Kagan further alleged that Court held that the inverse condemnation procedure was sufficient and the government did not actually deny compensation to the property owner until the state procedure was used and had not resulted in compensation.²²⁷ Therefore, she concluded the government had not violated the Takings Clause at the point the builder filed the federal action.²²⁸ The dissenting opinion argued the *Williamson County* decision had not resulted in any new rulings that could not be found in prior decisions, other than the Court ruling that the state implemented inverse condemnation procedure qualified as tenable and sufficient, and that the particular statute, 42 U.S.C. § 1983, required a property owner to unsuccessfully attempt the inverse condemnation procedure.²²⁹

Justice Kagan insisted that contrary to majority opinion's belief, repeated decisions held rejection of compensation was a second required element for a violation of the Takings Clause to arise.²³⁰ Overall, the dissent disagreed with the majority opinion's decision to not follow *Williamson County's* holding and stated in the process of ruling as such, it also disregarded and destroyed over a hundred years of precedent.²³¹

2. *Stare Decisis*

The dissenting opinion also strongly believed *stare decisis* should have been followed.²³² Justice Kagan listed four factors, different factors than those listed by the majority opinion, that she believed the majority opinion had used in overruling *Williamson County*, which included: comparing takings claims with other constitutional claims, interpreting the words of the Takings Clause, asserting a belief to not read precedent too broadly, and construing theories from prior decisions involving the Tucker Act.²³³

225. *Id.* at 2182-83.

226. *Id.*

227. *Id.* at 2183.

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.* at 2190.

233. *Id.* at 2183-84.

First, the dissent argued that the majority's declaration that the Bill of Rights treated takings claims worse than the other claims it contained was without merit.²³⁴ Justice Kagan stated the Takings Clause distinguished two elements required for a claim in a similar manner to other Bill of Rights claims, meaning the clause was equivalent and did not treat takings plaintiffs any worse.²³⁵ Second, the dissenting opinion pointed to the text of the Takings Clause and argued that although it did not explicitly contain verbiage that specifically allowed subsequent payment when certain procedures existed, it also did not explicitly state advanced or immediate payment was required as the majority opinion suggested.²³⁶ Third, the dissent claimed that the courts in prior decisions did not intentionally focus on the type of relief sought, but rather the courts merely intended to convey that injunctions could not be granted because there were other procedures in place which provided monetary compensation and a plaintiff was required to seek compensatory damages first.²³⁷

Fourth, Justice Kagan disagreed with the majority opinion's ruling that takings claims were claims for Fifth Amendment violations, and argued such a ruling was based on the incorrect finding that advanced or contemporaneous payment was required.²³⁸ The dissent contended that since advanced payment was not required and takings claims could not be brought until payment was denied, takings claims in fact were not the same as claims for Fifth Amendment violations.²³⁹ Justice Kagan adamantly believed the majority opinion overruled years of precedent in the instant case, and alleged that when overruling such a substantial amount of precedent, the Court should have considered that its theory may not have been accurate.²⁴⁰

The dissenting opinion also declared that majority's decision will result in two other damaging consequences: it will turn innocent government officials into violators and it will undermine underlying principles of judicial federalism.²⁴¹ Justice Kagan alleged that innocent officials would be violators since there was no longer a formula to predict when government actions would effect a taking and resulted in an inability to have advanced knowledge of a certain proposed program's chance of

234. *Id.* at 2184.

235. *Id.*

236. *Id.*

237. *Id.* at 2184-85.

238. *Id.* at 2186.

239. *Id.*

240. *Id.* at 2186-87.

241. *Id.* at 2187.

amounting to a taking.²⁴² The dissent reasoned judicial federalism was undermined because the decision acted as a door into federal courts by giving federal courts jurisdiction over takings claims which Justice Kagan thought should be decided in state court.²⁴³

Lastly, the dissenting opinion argued the preclusion trap issue considered by the majority opinion could have alternatively been corrected by Congress.²⁴⁴ As another alternative option, Justice Kagan argued that at any point, Congress could have implemented legislation that would allow a plaintiff to bring an action in federal court after an unsuccessful attempt in state court, and effectively reverse the preclusion trap problem.²⁴⁵ Justice Kagan alleged that previous Justices had stated the Court should not overrule precedent even in instances of serious error.²⁴⁶ Ultimately, the dissent's argument was based on an opinion that *stare decisis* should have been strictly followed in the majority's decision and *Williamson County* should not have been overruled.²⁴⁷

V. ANALYSIS OF *Knick v. Township of Scott*

In *Knick v. Township of Scott*, the Supreme Court took up an issue that had been addressed by a multitude of courts through varying and inconsistent methods and was in dire need of clarification. The outcome of the case hinged on the Court's interpretation of the Takings Clause and whether the just compensation provision was a general command or a required element of takings claim. The majority opinion was correct in holding property owners with takings claims were not obligated to first pursue state remedies, though arriving at the correct conclusion was happenstance because the Court should have taken a formalistic approach in its analysis by classifying the exhaustion requirement as constitutional ripeness or prudential ripeness.

A. *Two Classifications Under the Ripeness Doctrine: Constitutional and Prudential*

Classifying ripeness and distinguishing between the categories of constitutional and prudential is important for selecting the type of analysis a court should apply and the resulting impact of a holding. *Williamson*

242. *Id.*

243. *Id.*

244. *Id.* at 2189.

245. *Id.* at 2189-90.

246. *Id.* at 2189.

247. *Id.* at 2190.

County was an intricate case that had not explicitly categorized the type of state-litigation requirement it imposed. As a result, there was a resounding difficulty throughout courts which attempted to interpret the opinion thereafter. Williamson County articulated two rules allegedly linked to the Takings Clause: first, the finality prong requires a definitive conclusion stating a taking occurred; and second, the just compensation prong requires denial of compensation through state procedures. However, it was not clear whether these two rules were derived from the language of the Fifth Amendment or based on policy considerations related to takings claims.

If *Williamson County* surmised that the statutory language of the Fifth Amendment included the compensation exhaustion requirement, then the requirement would have been classified under constitutional ripeness. The ensuing impact would have meant litigants did not have a vested constitutional right to a federal takings claim until they pursued state procedures unsuccessfully. One significance of classifying it as constitutional is that courts would not have authority to make exceptions to the state-law requirement.

On the other hand, if justification for *Williamson County*'s requirement was based on policy considerations, it would have been classified as a prudential ripeness prong. The significant difference in classifying the state-law requirement as prudential ripeness would have meant the requirement was non-jurisdictional, and therefore, courts would have been able to make exceptions and waive the exhaustion requirement.

As explained *supra*, in the *Patsy* case decided three years prior to *Williamson County*, the Supreme Court had looked to the statutory language and congressional intent underlying 42 U.S.C. § 1983. The Court determined the language of the statute did not explicitly command exhaustion of state procedures and found Congress had intended to protect citizens' federal rights to constitutional claims and to ensure fairness throughout courts. Therefore, the Supreme Court had specifically declared that 42 U.S.C. § 1983 did not allow courts to impose exhaustion requirements. Yet, this was exactly what the *Williamson County* Court had done, completely disregarding its ruling from only three years prior.

Post-*Williamson County*, the Supreme Court in *Lucas v. South Carolina* had classified the exhaustion requirement as a prudential ripeness factor. However, the Court there had not explained its rationale or justification for labeling as prudential ripeness. Then in *Suitum*, the Court had done the same thing and referred to the *Williamson County* requirements as "prudential hurdles" but gave little indication as to why it had chosen that description. A few years later, the Court's opinion in *San Remo* then lacked any reference to whether the *Williamson County* exhaustion requirement was a constitutional or prudential ripeness factor. Interestingly, Justice Rehnquist's concurring opinion in *San Remo* had

pointed out the lack of discussion on ripeness by the majority and noted his concern that the ripeness doctrine as applied to *Williamson County* had created issues. After *San Remo*, the Court in *Stop the Beach* made the distinction that the *Williamson County* requirement was non-jurisdictional, which indicated prudential ripeness. Lastly, in *Horne*, the Court reiterated its belief that the exhaustion requirement was prudential and non-jurisdictional.

Overall, by the time *Knick* arrived before the Supreme Court thirty-four (34) years after *Williamson County* was handed down, the exhaustion requirement that was presumably derived from language in the Fifth Amendment had mysteriously evolved into a prudential ripeness prong. This begged the question: which classification was proper and how should *Williamson County* be handled going forward?

B. Unclassified Exhaustion Requirement and the Resulting Convoluting Opinion

In *Knick*, the majority opinion's failure to classify or interpret *Williamson County*'s exhaustion requirement led to a convoluted and contradictory discussion. The Court posed the issue in two parts: one part looked at what was required for a claim based on a violation of the Takings Clause, and the other part assessed whether to overrule *Williamson County* or follow the principals of *stare decisis*.

The first part alluded to the exhaustion requirement of *Williamson County*, and led the Court to analyze the underlying basis of the requirement. It was at this point that the Court should have begun its discussion with ripeness classification in order to determine the appropriate analysis. Instead, the majority opinion jumped right into its arguments, and did so in an unmethodical and arbitrary manner. The only statement regarding ripeness that the majority opinion made was deep within its discussion and said "We eventually abandoned the view that the requirement is an element of a takings claim and recast it as a 'prudential' ripeness rule... No party defends that approach here." That statement indicates first, that the Court had initially regarded *Williamson County*'s exhaustion requirement as a constitutional ripeness prong; and second, that the Court may not have been convinced it was prudential, but the Court did not elaborate any further. Consequently, the majority opinion lacked direction and improperly addressed a combination of principles from both constitutional ripeness and prudential ripeness.

Prudential ripeness factors emerge from the majority opinion's ultimate conclusions that "the state-litigation requirement imposes an unjustifiable burden on takings plaintiffs, conflicts with the rest of our takings jurisprudence, and must be overruled;" and "[f]idelity to the

Takings Clause and our cases construing it requires overruling *Williamson County* and restoring takings claims to the full-fledged constitutional status the Framers envisioned when they included the Clause.” Each of these statements are focused on policy considerations such as fairness, justice, efficiency, and loyalty.

On the other hand, the majority opinion also supported its decision with references to the Fifth Amendment, the Takings Clause, and 42 U.S.C. § 1983. The Court examined the three statutes and determined whether statutory language and/or legislative intent underlying each statute required exhaustion of state remedies. Applying these principles is directly in-line with constitutional ripeness predicated on commands of the Fifth Amendment.

Looking at the majority opinion in its entirety, it conflates the doctrines of constitutional ripeness and prudential ripeness by using constitutional factors to support a prudential-based holding, but a rule cannot be both. The *Knick* majority opinion conducted an improper analysis which could have led to an inappropriate, invalid, and potentially unconstitutional ruling, though luckily it did not in the instant case.

Furthermore, the impact of *Knick* could be problematic for future courts attempting to understand and interpret its holding, in search of justification and direction on how to apply its rule going forward; especially considering it overturned such a long-standing rule.

C. Proper Classification of the Exhaustion Requirement as a Constitutional Command

For a more proper and legally sound conclusion, the majority opinion should have focused its analysis on formalistic principles within the ripeness doctrine. More specifically, it should have classified the exhaustion requirement under constitutional ripeness and used the respective principles, as indicated by four factors arising from case precedent. First, the fact that the Court acknowledged the requirement had been “recast” as prudential shows the Court originally perceived it as constitutional ripeness. Second, the structure of the Court’s analysis in *Williamson County* is rooted in constitutional command principles. Third, *San Remo* precedent cited within *Knick* implied principals of constitutional ripeness. If the proper classification of ripeness had been applied, that being constitutional ripeness, the analysis that followed would have shown that *Williamson County*’s requirement inhibited plaintiff’s constitutional rights and necessitated overruling.

In majority’s discussion, it implied the exhaustion requirement was constitutionally commanded ripeness originally, and that court opinions have caused the requirement to evolve into prudential ripeness. While that

may have been true, the majority opinion did not support such conjecture with reasons that warranted reclassification of the requirement. Moreover, the cases that have referred to *Williamson County*'s exhaustion requirement as prudential have failed to justify their doing so and have been foundationless conjectures. Therefore, there was no basis for the ripeness classification to evolve.

Next, the details of the Court's discussion in *Williamson County* were centered around its interpretations of the Fifth Amendment. It addressed whether the statutory language of the Takings Clause required just compensation and at what point the clause mandated compensation be given. It then tied the commands from the Takings Clause to the deprivation of rights under 42 U.S.C. § 1983 and concluded that a takings plaintiff was not deprived of a right within the meaning of the statutes until they had been deprived of compensation. These factors are situated within the principles of constitutional command ripeness, and thus, lead to the conclusion that the exhaustion requirement as imposed by *Williamson County* was a constitutional ripeness requirement.

Lastly, *San Remo* indicated exhaustion was a constitutional ripeness requirement through its preclusion trap problem. When the Court found that *Williamson County*'s exhaustion requirement prevented the *San Remo* plaintiff from pursuing a subsequent federal claim on the grounds of issue preclusion and plaintiff asked for an exception to be made, the Court held that the Full Faith and Credit Clause did not permit exceptions in such a situation. Since prudential ripeness allowed exceptions and constitutional ripeness did not, the Court inadvertently asserted that the requirement was a constitutional commanded ripeness prong.²⁴⁸

Consideration of each of these facts indicates *Williamson County*'s exhaustion requirement is more properly interpreted to fall under the classification of constitutional command ripeness rather than prudential ripeness. As such, the correct analysis for the Court to determine whether exhaustion of state procedures was actually required would have been based on only the Fifth Amendment, the Takings Clause, and 42 U.S.C. § 1983. More specifically, the *Patsy* Court for instance, referenced a two-part test that looked first at the statutory language and then at congressional intent and legislative history underlying the statute. Application of that test to the facts of the instant case would have led to the conclusion that *Williamson*

248. Then, the Court in *Chicago* created a conflict when it indicated on one hand that the requirement was jurisdictional despite the cases before it that stated the exhaustion requirement was non-jurisdictional, but on the other hand that it was allowed to waive the requirements. Holding the requirement as jurisdictional would mean the requirement was constitutional command ripeness yet allowing waiver would mean exceptions were allowed and that it was prudential ripeness.

County's exhaustion requirement was not permitted and was unconstitutional because it deprived property owners of their constitutional right to bring a federal claim and to pursue their constitutionally granted right to just compensation for a taking. From this conclusion, the Court then should have answered the *stare decisis* question in part two. In light of the constitutional rights jeopardized here, the Court should have found the potential deprivation of constitutional rights outweighed any entitlement to *stare decisis* that *Williamson County's* exhaustion requirement might have had, whether "enhanced" or not. Therefore, it was proper to overrule the *Williamson County* exhaustion requirement.

VI. CONCLUSION

The Supreme Court imposed a rule in *Williamson County* that required property owners with Fifth Amendment takings claims to first exhaust state procedures for compensation unsuccessfully, before they were permitted to file a claim for compensation in federal court. The question of whether to overrule *Williamson County's* exhaustion requirement was frequently avoided until the Supreme Court decision in *Knick v. Township of Scott*. Ultimately, the *Knick* majority opinion properly concluded that *Williamson County's* requirement prevented full exercise of the constitutional right to compensation granted to property owners by the Fifth Amendment and had resulted in a grave error that necessitated prompt correction.

However, the Court's opinion not only failed to apply the proper test and instead applied an informal method of factors, but it also improperly used a combination of constitutional and prudential ripeness principles when it should have only applied constitutional ripeness principles. *Williamson County's* exhaustion requirement was formed without authority, against legal precedent, and resulted in unconstitutional effects. Upholding *Williamson County* would have been unjust and the only guaranteed option to promptly correct those problems within the Supreme Court's authority was to overrule *Williamson County's* exhaustion requirement entirely.

