Evolution of Takings Doctrine: Remedies and Ripeness

Remedies

- If a court held a regulation unconstitutional, the owner’s traditional remedy was declaratory relief.
- At that point, the municipality could either:
  - Withdraw the invalid regulation, or
  - Exercise eminent domain and pay compensation.
**Williamson County (1985)**

- Owner was denied subdivision approval
- Owner did not seek variance, but instead sued in federal court claiming a “taking.” Court held:
  - Owner’s claim was not “ripe,” b/c Owner never sought a variance (so “taking” hadn’t finally occurred), and
  - Owner can’t recover damages in federal court for a taking, without first seeking compensation through state processes/procedures

**First English (1987)**

- 1977: flood destroyed Lutherglen camp
- 1979: County ordinance enacted preventing reconstruction on Lutherglen, whose owner sued in state court for damages for a taking (as required by *Williamson County*), alleging that ordinance “denied ... all use of Lutherglen”)
- State courts rejected damages claim, concluding owner could obtain only declaratory relief [can’t force state to exercise power of eminent domain, p. 328]
First English

- On appeal, Court reversed in 6-3 decision, holding that if the regulation would effect a taking, then affected owner is entitled to damages for “temporary” taking even if the municipality chooses to rescind the regulation.
- How would you measure those damages?

- I.e., if owner of Lutherglen had established a taking in 1983, then County either would have had to:
  - (1) Withdraw ordinance (allowing owner to rebuild), or
  - (2) Pay permanent damages = FMV of Lutherglen at time of ordinance [assume this was $1MM]
- Even if County withdraws ordinance, it still must pay damages for “temporary” taking from 1979 to 1983
  - These damages would be measured by either: (1) the rental value of the land, or (2) the return that could have been earned on comparable reinvestment of $1MM
• Pre-*First English*: owner can’t force legislature to exercise power of eminent domain; remedy for unconstitutional regulation is declaratory relief
  – Thus, owner can’t recover damages until ordinance is declared unconstitutional, and then only prospectively if ordinance isn’t withdrawn [*Agins*] [p. 329]
• *First English*: even if ordinance is withdrawn, there was still a “temporary taking” for the period that the unconstitutional ordinance was enforced vs. owner
• City adopted ordinance (HCO) imposing moratorium on conversion of residential hotels to tourist hotels
• Because of a reporting error, San Remo Hotel needed CUP to operate as a tourist hotel; city imposed $567K “in lieu” fee for permit (for affordable housing efforts)
• Owner sued challenging condition as unconstitutional exaction; federal court held action unripe under *Williamson County*

• Hotel owner then sued in state court, bringing state law takings claim but “reserving” its federal takings claim
• State courts held there was no taking under CA law
• Hotel owner then sued in federal court raising federal takings challenge
  – Held: takings action was barred by issue preclusion; CA and US law on takings were essentially the same
**Knick v. Township of Scott**

- Knick has a cemetery on her property; town ordinance requires cemeteries to be open to public
- Knick sued in federal court challenging ordinance as a *Loretto*-style taking of her property (interference w/her ability to exclude)
- District court dismissed under *Williamson County* (Knick brought no state court takings action)

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- In 5-4 decision, *Knick* Court reversed *Williamson County’s* state litigation requirement
  - Violation of constitution occurs when ordinance that constitutes a taking takes effect, not when a claim for damages is denied [p. 5]
- As a result, Knick can now assert her takings claim in federal court
- Would the ordinance effect a taking?
• *Williamson County* and *San Remo* effectively force takings litigation into state court. Is that a good thing, or a bad thing?

• Do *Williamson County* and *San Remo* create an unfair burden for developers pleading federal constitutional claims?