

# *Knick v. Township of Scott*

A Federal Courts case with an  
inverse-condemnation fact pattern

## *Knick v. Township of Scott*

### **Question Presented**

Whether the Supreme Court should reconsider the portion of *Williamson County Regional Planning Commission v. Hamilton Bank* that requires property owners to exhaust state court remedies to ripen **federal takings claims**.

*What is a “federal takings claim”?*

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## *The judicial power of the United States*

**U.S. Const. Art. III, § 1**

“The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as **the Congress may** from time to time ordain and establish.”

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## *The arising-under jurisdiction*

- U.S. Const. Art. III, § 1** “The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.”
- U.S. Const. Art. III, § 2** “The judicial power shall extend to all cases, in law and equity, **arising under** this Constitution [and] the laws of the United States.”

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## *Article III's “federal ingredient” test*

***Osborn v. Bank of the  
United States  
(U.S. 1824)***

“[W]hen a **question** to which the judicial power of the Union is extended by the constitution **forms an ingredient** of the original cause, it is in the power of Congress to give the [inferior federal] courts jurisdiction of that cause ....”

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## *Article III's “federal ingredient” test*

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*Is there a federal ingredient in every claim alleging a “taking” within the meaning of the federal Constitution?*

**YES**

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*Does Congress have the power to confer jurisdiction on the inferior federal courts to hear every claim alleging a “taking” within the meaning of the federal Constitution?*

**YES**



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Reframing the Question Presented:

*Has Congress exercised its constitutional power to confer original jurisdiction on the inferior federal courts over claims against municipalities alleging “takings” within the meaning of the federal Constitution?*

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## *The federal-question statute*

**28 U.S.C. § 1331**

“The district courts shall have original jurisdiction of all civil actions **arising under** the Constitution, laws, or treaties of the United States.”

**U.S. Const. Art. III, § 2**

“The judicial power shall extend to all cases, in law and equity, **arising under** this Constitution [and] the laws of the United States.”

***Merrill Lynch, Pierce,  
Fenner & Smith, Inc.  
v. Manning  
(U.S. 2016)***

“In the statutory context, ... **we opted to give those same words a narrower scope** in light of § 1331’s history, the demands of reason and coherence, and the dictates of sound judicial policy.”

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## *Two routes to § 1331 arising-under jurisdiction*

(A) Federal law creates the cause of action.

(B) State law creates the cause of action, but a federal question is ....

***Gunn v. Minton***  
**(U.S. 2013)**

- (1) necessarily raised,
- (2) actually disputed,
- (3) substantial, and
- (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress

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*Is there a federal law that creates a cause of action based on a “taking” by a municipality?*

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*Does the Constitution itself create a cause of action based on a “taking” by a municipality?*

**U.S. Const. Amend. XIV  
Section 1**

“[N]or shall any state deprive any person of life, liberty, or property, **without due process of law.**”

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***Chicago, B. & Q. Ry. Co.  
v. City of Chicago*  
(U.S. 1897)**

“[T]he due process of law enjoined by the [14th] **requires compensation to be** made or **adequately secured** to the owner of private property taken ....”

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***Cherokee Nation v. S.  
Kan. Ry. Co.* (U.S. 1890)**

“[T]he owner is entitled to **reasonable, certain, and adequate provision** for obtaining compensation ....”

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*What is the individual “right” that the Fourteenth Amendment secures to a person whose property is taken for public use by a municipality?*

The right to recover just compensation for the taking through a reasonable, certain, and adequate procedure.



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*Does a taking of property “deprive a person” of a right to recover just compensation through a reasonable, certain, and adequate procedure?*

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*Does a taking of property “deprive a person” of a right to recover just compensation through a reasonable, certain, and adequate procedure?*

**NO**

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*Is there a federal law that creates a cause of action based on a “taking” by a municipality?*

**42 U.S.C. § 1983**

“Every person who, under color of [state law], subjects, or causes to be subjected, any [person] to the **deprivation of any rights, privileges, or immunities secured by the Constitution** ... shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

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*Section 1983 supplies a cause of action if a municipality takes private property for public use **without a reasonable, certain, and adequate way to recover just compensation.***

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*Does Section 1983 create a cause of action based on a “taking” by a municipality?*

**YES**, if the landowner lacks a reasonable, certain, and adequate provision to obtain compensation.

**NO**, if such provision has been made.

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*Can a state inverse-condemnation remedy be “reasonable, certain, and adequate”?*

**YES**

***Hays v. Port of Seattle***  
**(U.S. 1920)**

“There was adequate provision for compensation in [a general state statute] which entitle[d] any person having a claim against the state to begin an action thereon in a designated court ... whereupon ... the action is to proceed in all respect as other actions ... and, in case of a final judgment against the state, ... the same shall be paid out of the state treasury.”

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*Is there a federal law that creates a cause of action based on a “taking” by a municipality if a state has an inverse-condemnation remedy?*

**NO**

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*Does any state law create a cause of action based solely on a “taking” by a municipality?*

Pa. Eminent Domain Code

**YES**

**26 Pa. C.S. § 502(c)(1)**

“An owner of a property interest who asserts that [it] has been condemned without the filing of a declaration of taking may file a petition ....”



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*Does Section 1331 confer federal-question jurisdiction over an inverse-condemnation claim that is pleaded under state law?*

A federal question is:

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- (2) actually disputed
- (3) substantial
- (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress

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*What is the federal-state balance  
that Congress has struck?*

**28 U.S.C. § 1343(a)(3)**

“The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person ... [t]o redress the **deprivation**, under color of [state law], **of any right, privilege, or immunity secured by the Constitution** of the United States ....”

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*Has Congress exercised its constitutional power to confer original jurisdiction on the inferior federal courts over claims against municipalities alleging “takings” within the meaning of the federal Constitution?*

**NO**

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## *How might Congress abrogate the rule of decision in Williamson County?*

- Strike a different federal-state balance that permits a federal court to entertain a state-law inverse-condemnation claim **founded upon** the federal Constitution, whether or not it alleges a **deprivation** of a right.

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## *How might Congress abrogate the rule of decision in Williamson County?*

- Strike a different federal-state balance that permits a federal court to entertain a state-law inverse-condemnation claim founded upon the federal Constitution, whether or not it alleges a deprivation of a right.
- Amend the full-faith-and-credit statute to permit a federal court to **re-adjudicate** a state court's determination whether a "taking" occurred

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- Amend the full-faith-and-credit statute to permit a federal court to re-adjudicate a state court's determination whether a "taking" occurred
- Use the Section 5 power to establish a **new federal cause of action** premised on inverse condemnation by a state or local government.



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