

The Township Solicitor



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U.S. Supreme Court Ruling Makes It Easier to Pursue Property Rights Claims Against Municipalities

In *Knick v. Township of Scott*, 139 S.Ct. 2162, 2019 WL 2552486 (June 21, 2019), the U.S. Supreme Court reversed long-standing precedent and held that property owners alleging that municipalities have improperly taken property from them without just compensation may now proceed in federal court without first exhausting their claims in state court.

This dispute arose when a township enacted an ordinance that required cemeteries to be open to the public during daylight hours. The property owner, Rose Knick, had a small cemetery plot on her property (*there was some dispute as to whether that is the case*) and received a violation notice from the township. She filed a claim in Pennsylvania state court alleging that because the town-

ship ordinance required her to open access to her land, the township had taken her property without just compensation. In response, the township declined to pursue the enforcement action against her. The state court dismissed her claim on the basis that she was no longer aggrieved.

Knick then filed a claim in federal court and alleged that her constitutional rights under the Fifth Amendment had been violated because the township took her property without paying just compensation. The township, relying on a U.S. Supreme Court decision in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), argued that Knick must exhaust her claims in state court before proceeding to assert a federal claim.

Chief Justice John Roberts, writing for the majority in a 5-4 decision, found that the “state-litigation requirement imposes an unjustifiable burden on takings plaintiffs, conflicts with the rest of our takings jurisprudence, and must be overruled.” However, he also wrote, “Governments need not fear that our holding will lead federal courts to invalidate their regulations as unconstitutional. As long as just compensation remedies are available — as they have been for nearly 150 years — injunctive relief will be foreclosed.”

Justice Elena Kagan wrote a dissent in which she stated her belief that the Supreme Court’s decision “smashes a hundred-plus years of legal rulings to smithereens” and that its “consequence is to channel a mass of quintessentially local cases involving complex state-law issues into federal courts.” She also contended that the decision “will inevitably turn even well-meaning government officials into lawbreakers.” ➤

This decision will make it possible for property owners to pursue federal takings claims against municipalities by providing a direct avenue to federal court if they choose to go that route.

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This decision will make it possible for property owners to pursue federal takings claims against municipalities by providing a direct avenue to federal court if they choose to go that route. Therefore, townships are cautioned to make sure that they have appropriately considered whether their decisions will have an impact on property rights and, if so, if they have provided for a process whereby just compensation may be provided for those affected property owners. 🏠

Act 58 Protects Regional DUI Checkpoints at Risk Because of Pa. Supreme Court Ruling

Municipal police departments in Pennsylvania may collaborate with other agencies in running regional police task forces, including DUI checkpoints, thanks to legislation signed into law July 2. Act 58 of 2019 provides clarity and helps to protect regional law enforcement agreements in the wake of a recent state Supreme Court decision that threatened these joint efforts.

In *Commonwealth v. Hlubin*, ___ A.3d ___, 2019 WL 2324272 (Pa. May 31, 2019), the Pennsylvania Supreme Court had overruled a Superior Court decision and held that a municipal police task force, which included officers operating outside of their primary jurisdictions, had to comply with the Intergovernmental Cooperation Act (ICA). As a



result, the court suppressed evidence taken during a DUI stop conducted by the task force.

The participating municipalities in this case did not have an agreement consistent with the ICA that authorized DUI checkpoints. Although the commonwealth had argued that the Municipal Police Jurisdiction Act, rather than the ICA, should govern, the Supreme Court held that when municipalities cooperate in providing police services, they must have an agreement that complies with the ICA. The only exceptions are six conditions set forth in Section 8953(a) of the Municipal Police Jurisdiction Act, none of which applied here.

Act 58 of 2019, which Section 5 of the law expressly states “was intended to reverse” the *Hlubin* decision, provides that the powers, authorities, duties, obligations, and jurisdiction addressed in 42 Pa.C.S. 8951-8954 are not subject to the ICA. 🏠

Non-Resident Testimony OK in Natural Gas Conditional Use Hearing, Supreme Court Rules

In *EQT Production Co. v. Borough of Jefferson Hills*, ___ A.3d ___, 2019 WL 2313377 (Pa. May 31, 2019), the Pennsylvania Supreme Court ruled that municipalities reviewing a conditional use application for the construction and operation of a well site may consider the testimony of residents of another municipality where a similar facility was constructed and operated by the same company.

At the hearing on the conditional use application, four of the eight individuals who testified in opposition to the application were non-residents. Each recounted their personal experience living near similar facilities and the effect on their health, quality of life, and property. The borough council ultimately gave those individuals’ testimony “significant weight” and denied the application. On appeal, the



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