

Fundamental Changes In U.S. Law Are Continuing

By

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If your client's property is (or may be) taken by a state agency under eminent domain laws, you might want to take few minutes to read the below.

In July 2019, we wrote that “[b]oth foreign and United States lawyers need to understand that the relationship between the federal courts and federal regulatory agencies in the U.S. is undergoing a major revision, shifting deference away from the agencies and strengthening the federal courts’ review of agencies’ actions.”

That change now affects State agency condemnation proceedings. In *Knick v. Township of Scott*, Slip Op. 17-647, 588 U.S. ____ (2019), the Supreme Court in a 5:4 decision held that a private party whose property is taken without receiving compensation when it is taken **can sue in Federal Court to vindicate its 5th Amendment right to just compensation and need not pursue state court remedies.**

In our July 2019 article we noted that the Court’s cobbling of so-called *Auer* deference (to an agency’ interpretation of its own regulations) and apparent willingness to reconsider *Chevron* deference (to an agency’s interpretation of the statutes it administers) will affect virtually every federal agency: the Patent and Trademark Office, the Food and Drug Administration, the Environmental Protection Agency, the IRS, the Department of Veterans Affairs, etc.”

In *Knick*, the solicitor general and the dissent asserted that bypassing state court condemnation compensation proceedings and providing immediate access to federal courts would potentially wreck enforcement of a wide range of governmental programs. The majority opinion, written by the Chief Justice, rejected that argument noting that because compensation was available at law under the Fifth Amendment, equitable injunctive relief against programs would not be issued. If requiring a state government to pay immediate compensation would adversely affect some agency programs, that was simply a byproduct of protecting a citizen’s right to compensation upon the taking of his

or her property. The right to bring a proceeding in state court to in the future obtain compensation for property taken was not the right the Constitution envisioned.¹

If your client is in need of help dealing with an overreaching governmental agency or you would like copy of our July 2019 article on limiting federal court deference to governmental agencies and the potential for reconsideration of the non-delegation doctrine, please contact Norman W. Bernstein at nwbernstein@nwblc.com

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¹ The dissent was particularly incensed by the Court's holding that the proceeding would be brought under 42 U.S. §1983, which provides that any person who under color of law deprives a citizen of any "rights, privileges or immunities secured by the Constitution ... shall be liable to the party injured in an action at law." The dissent asserted that the Court's ruling would thus turn ordinary agency employees (who took property without providing just compensation) into law breakers. That fear was likely not ameliorated by the concurrence of Justice Thomas. He wrote "[w]hen the government repudiates [its] duty to pay just compensation its actions 'are not only unconstitutional' but may be 'tortious as well' [citation omitted]. I do not understand the Court's opinion to foreclose the application of ordinary remedial principles to takings claims and related common-law tort claims, such as trespass."