

The Impact of *Knick* on Regulatory Takings and Those Pesky *Lucas* Exceptions

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David Callies, [Regulatory Takings After Knick, Total Takings, the Nuisance Exception, and Background Principles Exceptions: Public Trust Doctrine, Custom, and Statutes](#) (2020).

In his recently published book, *Regulatory Takings After Knick, Total Takings, the Nuisance Exception, and Background Principles Exceptions: Public Trust Doctrine, Custom, and Statutes*, David Callies supplies an instructive overview of the Supreme Court's framework for analyzing regulatory takings challenges. In so doing, he turns his attention to one of the most significant land use decisions in decades, [Knick v. Township of Scott, Pennsylvania](#).

Nearly 100 years after its *Pennsylvania Coal v. Mahon* decision, the Court in *Knick* overruled a portion of the ripeness test for takings claims it established in [Williamson Co. v. Hamilton Bank](#) in 1985. The *Knick* decision eliminated the ripeness hurdle, pursuant to which, a landowner had to litigate an inverse condemnation claim in state court and have the court deny just compensation before suing in federal court. *Knick* left in place the finality requirement from *Williamson Co.*, which requires a litigant to obtain a final decision from the relevant government entity before bringing a takings claim.

Landowners and property rights advocates hailed *Knick* as eliminating the "Catch-22" that litigants experienced under the *Williamson Co.* test, which required property owners to sue in state court first and then face claim preclusion or res judicata when they attempted to bring a subsequent federal challenge under the Fifth Amendment.

In Chapter 1 of his book, Professor Callies provides a detailed view into the problems encountered under the *Williamson Co.* ripeness test. He illustrates how *Knick* both eliminated the state action requirement and lowered the jurisdictional barrier to federal court by establishing the discretionary nature of the remaining ripeness doctrine. The result of the *Knick* decision is that ripeness no longer acts as a jurisdictional barrier to federal court.

Professor Callies also explores the 2017 Hawai'i Supreme Court decision, [Leone v. County of Maui](#), to illustrate the importance of providing federal court access for regulatory takings claims. He explains that in *Leone*, the state high court "ignore[d] federal case law on regulatory takings." In so doing, he reveals the impact and power of the *Knick* decision. After *Knick*, litigants similar to those in *Leone* can first bring their regulatory takings claims to federal court, thus avoiding the barriers to federal court that litigants encounter after first suing in state court.

In the remaining Chapters, Professor Callies steps through the various exceptions that could preclude a total takings claim under the 1992 decision in [Lucas v. South Carolina Coastal Council](#). *Lucas* created a categorical rule for regulatory takings and established that just compensation is due whenever a government action denies a property owner "all economically beneficial use" of land.

The Court also provided an exception to the *Lucas* rule, writing that if the government action prevents a nuisance or is grounded in the state's background principles of property law, the government action is not a taking. The Court explained that because property owners do not have a right to use their property for such purposes, they have no property interest to be taken.

The background principles of law exception has included the public trust doctrine, custom and customary rights, and in some cases, statutes and constitutions. In Chapters 2 – 5, Professor Callies offers a detailed discussion of the

background principles and nuisance exceptions, illustrating how courts across the country have applied these concepts.

This small but mighty book offers a concise history and understanding of takings jurisprudence as it stood before and after the *Knick* decision. It brings clarity to a convoluted chronicle of takings litigation and presents specific situations where litigants have asserted a total taking claim and the defense has relied on the various exceptions to *Lucas*.

This rich and comprehensive information should aid lawyers, courts, scholars, and law students in anticipating and analyzing future factual situations that raise takings challenges. By reducing the “Catch-22” ripeness requirements, the *Knick* Court has given landowners greater opportunities to bring federal court challenges to government actions interfering with property rights. By carefully parsing the cases asserting the exception defenses to a *Lucas* categorical taking, Professor Callies has helped prepare us to address such takings claims, now coming first to federal courts.

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