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Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Urges High Court to Permit Takings Clause Claimants to File Lawsuits in Federal Court

(*Knick v. Town of Scott*)

“Only one category of individuals claiming a violation of their constitutional rights is required to assert their claims in *state* rather than federal court: those asserting a takings claim for just compensation under the Fifth Amendment against the government. Such claimants rarely win in state court. The Supreme Court ought to end this discriminatory practice.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to overrule a 1985 precedent that prevents individuals claiming a violation of their Fifth Amendment property rights from bringing their claims in federal court. In a brief filed in *Knick v. Township of Scott*, WLF argues that the federal courts have traditionally been open to anyone asserting a violation of their constitutional rights and that there is no valid reason to deny that same privilege to property-rights claimants. WLF’s brief was joined by the Allied Educational Foundation.

The plaintiff, Rose Mary Knick, owns 90 acres of land in Scott Township, Pennsylvania, where she and members of her family have lived since 1970. The land has never been designated as a cemetery. However, Scott Township officials recently determined that several stones on the property are the remains of 18th-century gravesites, and it has ordered Knick to provide an easement across her property to permit daily public access to the stones. Knick responded by filing suit in federal court, asserting that the easement demand violated the Fifth Amendment prohibition against the taking of private property without providing just compensation. But the lower federal courts dismissed her claim, citing *Williamson County*, the 1985 Supreme Court decision that requires property owners to assert such just-compensation demands in a state court.

WLF’s brief argues that the *Williamson County* decision was based on a misinterpretation of the Fifth Amendment. *Williamson County* concluded that the Fifth Amendment does not require state and local governments to provide “just compensation” at the same time that they take private property, and thus that no Fifth Amendment violation occurs so long as the state government allows the property owner to respond to the taking by filing a lawsuit for just compensation in state court. WLF contends that the Fifth Amendment does, in fact, require that just compensation be paid contemporaneously with the taking, and thus that the uncompensated taking of private property immediately gives rise to a constitutional violation that can be asserted in federal court. WLF’s brief also argues that requiring property owners to file their claims in state courts has made it extremely difficult for them to vindicate their rights.

Celebrating its 41st year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.