



January 18, 2019

Chief Justice John Roberts
and Associate Justices
Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543

Re: *Knick v. Township of Scott*, No. 17-647

Dear Chief Justice and Associate Justices:

Petitioner (Ms. Knick) files this letter to reply to argumentative portions of Respondent Township’s response to Ms. Knick’s notice of supplemental authority. *See* Township Response Letter at 2-3. The Township argues that Ms. Knick is shifting her position and that she would “flood federal courts.” *Id.* Not so. Ms. Knick still contends that (1) “[t]he usual rule” is that the “act of taking” property without condemning it “gives rise to the [Fifth Amendment] claim for compensation,” *United States v. Dow*, 357 U.S. 17, 22 (1958), but (2) there is an exception under *Cherokee Nation v. Southern Kansas Ry. Co.*, 135 U.S. 641 (1890), and progeny, if the government otherwise acknowledges and secures the right to compensation at the time of the taking. Contrary to the Township’s suggestions, a local government is *not* required to pursue either option to avoid violating the Constitution (and thus has no duty to make pre-action takings determinations). It may ignore both options; if so, its actions are simply “without just compensation,” and a property owner may *claim* a Takings Clause violation in federal or state court—assuming (in regulatory takings cases) that the action is otherwise ripe under the strict “final decision” ripeness doctrine. If a suit is filed, the government may assert there is no “taking,” and this issue will decide whether a constitutional violation exists. This regime will not “flood federal courts,” Township Response Letter at 3, more than *Williamson County’s* confusing and unworkable doctrine has done already. *Lumbard v. City of Ann Arbor*, – F.3d –, 2019 WL 150856, at *5 (6th Cir. Jan. 10, 2019) (Kethledge, J., concurring). Indeed, it is the same regime that all parties agree works in the Court of Federal Claims in Tucker Act takings cases.

Respectfully submitted,

J. DAVID BREEMER
Counsel of Record for Petitioner
CHRISTINA M. MARTIN
MERIEM L. HUBBARD
BRIAN T. HODGES