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Ensuring Just Compensation: Imposing a Reasonable Time Limit on Payment of Money Judgments Under the Fifth Amendment

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Ensuring Just Compensation: Imposing a Reasonable Time Limit on Payment of Money Judgments Under the Fifth Amendment

Paul Mackey*

ABSTRACT

The government's use of eminent domain power to take private property for public use remains a controversial and fast-moving area of law. The Fifth Amendment was ratified as a check on the state's use of eminent domain power by requiring just compensation after a taking. There is great variation among the states regarding the requirements of just compensation in an eminent domain claim. Some states are unwilling to provide any compensation at all, while others ensure full compensation. Property owners whose land has been taken face a dilemma when, after winning a money judgment in state court, they are unable to collect their judgment because their state legislature refuses to appropriate the funds to pay the judgment.

In 2021, the Supreme Court of the United States provided some relief to beleaguered property owners across the nation facing the uncertain promise of just compensation from their own state courts. Property owners can now go directly to federal court and pursue their claims as the Court held the state litigation exhaustion requirement unconstitutional. Despite this development, property owners still face the obstacle of state sovereign immunity, which bars many of their claims, as well as the federal circuit courts' divergent interpretations of what just compensation is.

This Comment explores the historical background of the Fifth Amendment to the federal Constitution and how the Supreme Court has interpreted its language. Louisiana and Florida provide a comparison of how much compensation property owners can get depending on which state their property is located in. This Comment argues that in order to satisfy the Fifth Amendment, the government must provide just compensation to the property owner within a reasonable time. Finally, this Comment examines how just compensation is not merely a constitutional mandate, but good economic policy.

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INTRODUCTION

The Fifth Amendment was ratified in 1791 to ensure that the government provided property owners with just compensation each and every time it took private property for public use.¹ Until 1897, the Takings Clause applied only to the federal government.² Despite incorporation, state constitutions and courts vary in their willingness to give just compensation to owners whose property is taken.³ Until 2021, the U.S. Supreme Court required owners to exhaust their claims in state court before pursuing just compensation.⁴ In *Knick v.*

1. See U.S. CONST. amend. V (“No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”); see also William Michael Treanor, *The Origins and Original Significance of the Just Compensation Clause of the Fifth Amendment*, 94 YALE L.J. 694, 708 (1985).

2. See *Chi., Burlington & Quincy R.R. Co. v. City of Chicago*, 166 U.S. 226, 241 (1897).

3. See *infra* Section I.D.

4. See *Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2167 (2019), *overruling Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985).

Township of Scott,⁵ the Court reversed precedent and provided property owners who suffer a taking the immediate ability to bring a claim in federal court.⁶ While some states provide just compensation to owners, others are reluctant to provide relief.⁷ The Louisiana Constitution requires the legislature to appropriate funds to pay an owner who has a judgment for just compensation, effectively limiting the availability of relief.⁸ Louisiana courts accept that the “legislature may, on the authority of [the Louisiana Constitution], refuse to pay judgments for which the state has been held liable by a court of law.”⁹ Florida, by contrast, goes beyond the federal constitutional requirement of just compensation and provides full compensation to a property owner whose property has been taken.¹⁰ The Florida Constitution requires that full compensation is “paid to each owner or secured by deposit in the registry of the court and available to the owner” before the government takes private property for a public purpose.¹¹

This Comment starts with a look at the history and theory behind the Takings Clause of the Fifth Amendment from ratification and incorporation to the present. Then it compares the experiences of property owners in Louisiana and Florida after their property is taken and they seek relief in state or federal court. It then focuses on why just compensation is not only a constitutional imperative but a good economic policy. In order to provide just compensation, the government needs to ensure timely payment to owners whose property is taken.

I. BACKGROUND

A. *The History of the Fifth Amendment*

In England, the government historically owned all property and the King granted or took land from individual property owners under the Crown’s sovereignty.¹² Property owners in England were

5. *Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019).

6. *See id.*

7. *See infra* Section I.D.

8. *See State v. Sugarland Ventures, Inc.*, 476 So. 2d 970, 975 (La. Ct. App.), *cert. denied*, 478 So. 2d 909 (La. 1985) (“[I]t is clear that a court lacks the power to compel the state to pay a judgment rendered against it.”).

9. *Id.*

10. FLA. CONST. art. X, § 6.

11. *Id.*

12. *See* Treanor, *supra* note 1, at 695; *see also* FRED P. BOSSELMAN ET AL., THE TAKING ISSUE: A STUDY OF THE CONSTITUTIONAL LIMITS OF GOVERNMENTAL AUTHORITY TO REGULATE THE USE OF PRIVATELY-OWNED LAND WITHOUT PAYING COMPENSATION TO THE OWNERS 92 (1973) (“[T]he attempts to define fundamental rights in the early colonial period show little concern over the compensation issue.”).

not pleased with these takings and worked to limit the power of the King.¹³ The English common law theory behind takings with the consent of the owner or the legislature is rooted in early reforms to takings law which are reflected in the Magna Carta.¹⁴ The Magna Carta allowed private property to be taken with the consent of the English legislature, either by “the lawful judgment of [the owner’s] peers or by the law of the land.”¹⁵

American colonial governments took private property for public use without just compensation under their inherent power as the sovereign.¹⁶ An abundance of land in early America reduced the need for any compensation, as an owner who suffered a taking could simply acquire other land at little or no cost.¹⁷ Uncompensated takings by American colonial legislatures were rooted in English common law.¹⁸

However, by the time of the American Revolution, there was a powerful push in legal thought toward requiring just compensation for government takings of private property.¹⁹ Sir William Blackstone argued in his *Commentaries* in 1765 for just compensation by the government, reasoning that the public good could not be achieved through a taking of private property from an individual unless “full indemnification and equivalent for the injury thereby sustained” was provided to the property owner.²⁰

James Madison authored the Takings Clause of the Fifth Amendment to limit the power of the federal government.²¹ Madison saw the Takings Clause as a way to stop the federal government from interfering with individuals’ property rights.²² Madison included the Fifth Amendment’s Takings Clause in the Bill of Rights to uphold the new understanding of property rights within the social contract

13. See BOSSELMAN ET AL., *supra* note 12, at 53 (“It is out of the early attempts of English landowners to resist these levies and assert their property rights against the King that our modern constitutional doctrine was born.”).

14. See MAGNA CARTA cl. 39.

15. *Id.*

16. See *supra* note 12 and accompanying text.

17. See BOSSELMAN ET AL., *supra* note 12, at 85 (“[T]he colonial governments seem to have compensated landowners when developed land was taken for governmental purposes, but if the land was undeveloped the government sometimes thought it so valueless that the issue of compensation was ignored.”).

18. See Treanor, *supra* note 1, at 695.

19. See *id.* at 697.

20. 1 WILLIAM BLACKSTONE, COMMENTARIES *134, *135–36.

21. See U.S. CONST. amend. V (“No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”); see also Treanor, *supra* note 1, at 708.

22. See Treanor, *supra* note 1, at 708 (suggesting that Madison intended the Fifth Amendment to be “a statement of national commitment to the preservation of property rights”).

between the people and their new government.²³ Madison explained a year after ratification of the Fifth Amendment that:

Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own . . . government then which prides itself in maintaining the inviolability of property; which provides that none shall be taken directly even for public use without indemnification to the owner.²⁴

Madison succinctly argued in the Federalist Papers that “government is instituted no less for the protection of the property, than of the persons of individuals.”²⁵

The Fifth Amendment’s Takings Clause is unique among the other liberties protected by the Bill of Rights because it is the only proposed amendment that was not separately endorsed by any state during the ratification process.²⁶ Scholars note a “conspicuous absence of historical data that might enable one to determine why Madison added the just compensation language to the Fifth Amendment.”²⁷ The right to just compensation was largely unknown during the founding, when most understood that the government could take private property for public benefit, with the only compensation being the benefit to the public through government ownership of the taken land.²⁸

Nevertheless, Madison understood the importance of including the right to just compensation when the federal government took private property.²⁹ Madison laid the foundation for the Supreme Court’s understanding of the Fifth Amendment, which has long been recognized for its important role in protecting private property

23. James Madison, *Property*, NAT’L GAZETTE (Mar. 9, 1792), *reprinted in* 14 THE PAPERS OF JAMES MADISON 266 (Robert Rutland et al. eds., 1983).

24. *Id.*

25. THE FEDERALIST NO. 54, at 370 (James Madison) (Clinton Rossiter ed., 1961).

26. See EDWARD DUMBAULD, THE BILL OF RIGHTS AND WHAT IT MEANS TODAY 161–63 (1957); see also BOSSELMAN ET AL., *supra* note 12, at 97–98 (“Many of the states sent proposed amendments to the new national government for the proposed bill of rights, but apparently the need for an eminent domain clause did not come up in these debates.”).

27. See BOSSELMAN ET AL., *supra* note 12, at 99–100.

28. See *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1056 (1992) (“The principle that the State should compensate individuals for property taken for public use was not widely established in America at the time of the Revolution.”).

29. See *Treanor*, *supra* note 1, at 708 (finding that the Fifth Amendment would “apply only to the federal government” under Madison’s original intent).

and individual freedom.³⁰ Today, just compensation under the Fifth Amendment is understood as a “clear and categorical obligation” of the government when it takes private property for public use.³¹

B. Incorporation of the Fifth Amendment to the States

Prior to the passage of the Fourteenth Amendment, the Fifth Amendment was found to be inapplicable to the states.³² In *Barron v. City of Baltimore*,³³ a landowner whose land was taken by the city sought just compensation from the Supreme Court.³⁴ Chief Justice Marshall, writing for the majority, held that the court had no jurisdiction over the case since the taking was not done by the federal government, and no just compensation could be given.³⁵

Prior to the incorporation of many of the rights contained within the first ten amendments to the Constitution, the Bill of Rights worked as a check only on overreach by the federal government, not on takings by state governments.³⁶ State legislatures were free to govern as they saw fit in these areas.³⁷ The “practices of the States prior to incorporation of the Takings and Just Compensation Clauses . . . occasionally included outright physical appropriation of land without compensation.”³⁸

After ratification of the Fourteenth Amendment, the Supreme Court found that the Takings Clause of the Fifth Amendment applies to the states.³⁹ Justice Harlan addressed state laws that take private property without just compensation:

In our opinion, a judgment of a state court, even if it be authorized by statute, whereby private property is taken for the state or under its direction for public use, without compensation made or secured

30. See, e.g., *Armstrong v. United States*, 364 U.S. 40, 48 (1960) (“[The] Fifth Amendment’s guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”); see also *BOSELMAN ET AL.*, *supra* note 12, at 92 (“The ratification of the Fifth Amendment closes one chapter of history and begins another.”).

31. See *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071 (2021).

32. See *Barron v. City of Baltimore*, 32 U.S. 243, 243 (1833) (holding that the Takings Clause is “intended solely as a limitation on the exercise of power by the government of the United States; and is not applicable to the legislation of the states”).

33. *Barron v. City of Baltimore*, 32 U.S. 243 (1833).

34. *Id.* at 243.

35. *Id.* at 251.

36. *Id.*

37. *Id.*

38. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1028 n.15 (1992).

39. See *Chi., Burlington & Quincy R.R. Co. v. City of Chicago*, 166 U.S. 226, 241 (1897).

to the owner, is, upon principle and authority, wanting in the due process of law required by the fourteenth amendment of the constitution of the United States, and the affirmance of such judgment by the highest court of the state is a denial by that state of a right secured to the owner by that instrument.⁴⁰

The Supreme Court has consistently recognized that most of the rights guaranteed in the first eight amendments to the Constitution are incorporated to the states via the Due Process Clause of the Fourteenth Amendment.⁴¹ Through incorporation, the same constitutional limits that apply to the federal government stop the states from converting “private property into public property without compensation.”⁴² Through the Due Process Clause of the Fourteenth Amendment, the Takings Clause of the Fifth Amendment applies equally to the state governments and the federal government.⁴³

C. *Plaintiff's Right to Bring a Suit Under the Fifth Amendment*

A property owner whose property has been taken for public use is entitled to a remedy of just compensation under the Fifth Amendment.⁴⁴ In *Knick v. Township of Scott*,⁴⁵ the Supreme Court held that a state which has executed a taking does not run afoul of the Fifth Amendment as “long as the property owner has some way to obtain compensation after the fact.”⁴⁶ The Supreme Court recognized the “self-executing” nature of the Fifth Amendment and held that a claimant has a right to bring an action in federal court under 42 U.S.C. § 1983⁴⁷ after a government has taken private property for public use.⁴⁸ Self-executing rights under the Constitution are those

40. *Id.*

41. See *Dobbs v. Jackson Women's Health Org.*, 42 S. Ct. 2228, 2246 (2022) (discussing the categories of rights available under the Fourteenth Amendment's Due Process Clause).

42. *Webb's Fabulous Pharms. v. Beckwith*, 449 U.S. 155, 164 (1980).

43. See *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 306 n.1 (2002) (noting that the Takings Clause “applies to the States as well as the Federal Government”).

44. See U.S. CONST. amend. V.

45. *Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019).

46. *Id.* at 2168.

47. 42 U.S.C. § 1983. The statute provides a cause of action for:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law.

Id.

48. See *Knick*, 139 S. Ct. at 2170.

that include within their own language a specific remedy when a right is infringed.⁴⁹

The Supreme Court has held that a remedy is available to a property owner who suffers a taking and that state sovereign immunity does not trump Fifth Amendment rights.⁵⁰ The Eleventh Amendment gives states immunity from suit by citizens of other states, and has been extended by the Supreme Court to also apply to suits by citizens of their home states.⁵¹ However, Eleventh Amendment immunity “does not confer upon the State a concomitant right to disregard the Constitution.”⁵²

In an analysis of the friction between state sovereign immunity and takings claims, it is likely that no part of the Eleventh Amendment “would seem to extend state sovereign immunity to cases in which a state citizen sues his own state to recover ‘just compensation’ for property that the state has taken.”⁵³ In the context of a state eminent domain action where a property owner receives a money judgment but the state delays payment indefinitely, an individual’s Fifth Amendment right is not extinguished until just compensation has been paid.⁵⁴ In 2021, the Supreme Court reaffirmed that “the Takings Clause imposes a clear and categorical obligation to provide the owner with just compensation.”⁵⁵ Despite a clear mandate to provide a remedy of just compensation, results for plaintiffs in state courts and federal circuit courts remain mixed.⁵⁶

49. See THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 101 (4th ed. 1878). Justice Cooley explains that:

A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.

Id.

50. See *First Eng. Evangelical Lutheran Church v. Cnty. of Los Angeles*, 482 U.S. 304, 316 n.9 (1987) (“Though arising in various factual and jurisdictional settings, these cases make clear that it is the Constitution that dictates the remedy for interference with property rights amounting to a taking.”).

51. See U.S. CONST. amend. XI (“The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”); see also *Hans v. Louisiana*, 134 U.S. 1, 15 (1890).

52. *Alden v. Maine*, 527 U.S. 706, 754–55 (1999).

53. Eric Berger, *The Collision of the Takings and State Sovereign Immunity Doctrines*, 63 WASH. & LEE L. REV. 493, 520 (2006).

54. See *First Eng. Evangelical Lutheran Church*, 482 U.S. at 305.

55. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021).

56. See *infra* notes 99, 150 and accompanying text.

D. State Constitutions Have Varied in Their Interpretation of the Fifth Amendment

The U.S. Constitution makes clear that state laws must yield to the supremacy of federal constitutional rights.⁵⁷ The U.S. Supreme Court has emphasized that states cannot limit constitutional rights through their laws, they can only offer individuals greater protection.⁵⁸ Federal constitutional rights are guaranteed and state courts can only expand those rights further and not use state constitutions as a bar to federal rights.⁵⁹ The same reasoning that applies to a taking by the federal government also applies to any claim that a property owner has against a state.⁶⁰ Two states that have notably divergent interpretations of their constitutional obligations to property owners whose land has been taken under the Fifth Amendment are Louisiana and Florida.⁶¹

1. The Louisiana Constitution Blocks Just Compensation with State Sovereign Immunity

Two provisions of the Louisiana Constitution set up a conflict in giving effect to plaintiffs' rights under the Fifth Amendment of the federal Constitution. The Sovereign Immunity Clause of the

57. See U.S. CONST. art. VI, cl. 2 (“This Constitution . . . shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

58. See *Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067, 2094 (2019) (“[T]he Constitution sets a floor for the protection of individual rights. The constitutional floor is sturdy and often high, but it is a floor. Other federal, state, and local government entities generally possess authority to safeguard individual rights above and beyond the rights secured by the U.S. Constitution.”).

59. See Carter F. Smith, *The Small Cell Preemption Campaign: Intergovernmental Taking, State Constitutionalism, and the Loretto Per Se Test*, 36 J.L. & POL. 131, 144 (2021) (“[S]tate courts retain authority to ratchet up constitutional protections as they see fit, even when they are interpreting constitutional provisions with similar, or even identical federal analogues.”).

60. See *Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2171 (2019). The Court held that states cannot use their laws to subvert Constitutional rights:

The availability of any particular compensation remedy . . . cannot infringe or restrict the property owner’s federal constitutional claim—just as the existence of a state action for battery does not bar a Fourth Amendment claim of excessive force. The fact that the State has provided a property owner with a procedure that may subsequently result in just compensation cannot deprive the owner of his Fifth Amendment right to compensation under the Constitution, leaving only the state law right. And that is key because it is the existence of the Fifth Amendment right that allows the owner to proceed directly to federal court under § 1983.

Id.

61. Compare LA. CONST. art. I, § 4, pt. 4 (requiring just compensation after an owner suffers a taking), with FLA. CONST. art. X, § 6 (requiring full compensation).

Louisiana Constitution provides that judgments against the state are to be paid only when the legislature appropriates money for that purpose.⁶² The Takings Clause of the Louisiana Constitution requires just compensation be paid to a property owner whose property is taken.⁶³ The “collision” between the right to just compensation and state sovereign immunity results from these two provisions that both give property owners a right to bring a takings claim while at the same time removing their ability to receive a payment once a judgment is issued.⁶⁴ The result of this collision is that the legislative appropriation process prevents owners from receiving compensation.⁶⁵

Louisiana courts have recognized that it is “obvious” that under the Louisiana Constitution’s sovereign immunity provision the legislature can “refuse to pay judgments for which the state has been held liable by a court of law.”⁶⁶ In *State v. Sugarland Ventures, Inc.*,⁶⁷ the state of Louisiana began expropriation proceedings to take three parcels of land near an airport to extend a runway to comply with Federal Aviation Administration requirements.⁶⁸ After a trial, the state was granted ownership of the land and compensation was to be paid to the former owners.⁶⁹ However, a year later the state abandoned the runway expansion plan and the Louisiana House Committee on Appropriations denied payment of the appropriation judgment.⁷⁰ The owners sought a declaratory judgment under Louisiana law to be paid their expropriation judgment.⁷¹ The Louisiana Court of Appeals found that the state was not obligated to pay the judgment since it had abandoned the expropriation, and provided no relief to the property owners.⁷²

The Louisiana Court of Appeals went on to explain that because Louisiana’s sovereign immunity clause is only a waiver of immunity

62. See LA. CONST. art. XII, § 10 (“No judgment against the state, a state agency, or a political subdivision shall be exigible, payable, or paid except from funds appropriated therefor by the legislature or by the political subdivision against which the judgment is rendered.”).

63. See *id.* art. I, § 4 (“Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit.”).

64. See Berger, *supra* note 53, at 496.

65. See *id.*

66. *State v. Sugarland Ventures, Inc.*, 476 So. 2d 970, 975 (La. Ct. App. 1985).

67. *State v. Sugarland Ventures, Inc.*, 476 So. 2d 970 (La. Ct. App. 1985).

68. *Id.* at 972.

69. *Id.* at 972–73.

70. *Id.* at 973.

71. See *id.*; see also LA. STAT. ANN. § 19:10 (2023) (“Payment by the plaintiff to the owner of the compensation fixed in the final judgment to be due or the deposit thereof in the registry of the court for the benefit of the persons entitled thereto entitles the plaintiff to the property rights described in the judgment of expropriation.”).

72. *Sugarland Ventures*, 476 So. 2d at 974.

from suit and not a waiver of immunity from liability, the court “lacks the power to compel the state to pay a judgment rendered against it.”⁷³ The Louisiana Court of Appeals affirmed the trial court’s denial of the owners’ request that the state be ordered to pay the judgment.⁷⁴ The Louisiana Court of Appeals recognized that in cases where takings had not been abandoned, the court still could not compel the state legislature to pay the judgment, which could have a “potential for abuse by the state.”⁷⁵

In 2022, the Fifth Circuit affirmed Louisiana’s system of waiving immunity from suit in eminent domain proceedings while maintaining its immunity from liability to actually pay judgments to property owners whose land has been taken.⁷⁶ In *Ariyan, Inc. v. Sewerage and Water Board of New Orleans*,⁷⁷ the Fifth Circuit held that there is no federal constitutional right to timely repayment of a money judgment against a state government entity.⁷⁸ In 2013, the Sewerage and Water Board of New Orleans and the U.S. Army Corps of Engineers completed a flood control project that caused property damage and economic loss to 70 landowners.⁷⁹ The landowners sued in state court and received a combined total of \$10.5 million in judgments against the Sewerage and Water Board.⁸⁰ Still waiting for payment in 2021, the owners brought a suit under 42 U.S.C. § 1983 in a federal district court, arguing that their Fifth Amendment right to just compensation had been violated.⁸¹ The district court found the claim was “legally baseless” and granted the Sewerage and Water Board’s motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), finding that the property owner was not entitled to relief.⁸²

On appeal, the Fifth Circuit acknowledged the “plaintiff’s frustration” but declined to find that a taking occurs when government voluntarily delays repayment of a monetary judgment indefinitely.⁸³ The Fifth Circuit relied on *Folsom v. City of New Orleans*,⁸⁴ precedent from 1883 which found that as long as the state maintained liability

73. *Id.* at 975.

74. *See id.*

75. *Id.* at 976.

76. *See Ariyan, Inc. v. Sewerage & Water Bd. of New Orleans*, 29 F.4th 226, 228 (5th Cir. 2022).

77. *Ariyan, Inc. v. Sewerage & Water Bd. of New Orleans*, 29 F.4th 226 (5th Cir.), *cert. denied*, 143 S. Ct. 353 (2022).

78. *See id.* at 228.

79. *See id.*

80. *See id.*

81. *See id.* at 229.

82. FED. R. CIV. P. 12(b)(6); *Ariyan*, 29 F.4th at 229.

83. *See Ariyan*, 29 F.4th at 232.

84. *Louisiana ex rel. Folsom v. Mayor of New Orleans*, 109 U.S. 285 (1883).

to the holder of a money judgment against it, nonpayment in perpetuity was constitutional.⁸⁵ In *Folsom*, the majority found that there was no deprivation of property for owners whose property had been destroyed in a riot because the judgment continued as “an existing liability against the city.”⁸⁶ Justice Field explained that the legislature has the exclusive power of taxation and has the discretion to decide whether to appropriate funds to pay judgments to property owners.⁸⁷ The Fifth Circuit adopted the “existing liability” theory and found that the owners had no claim for timely payment of their judgment, and instead would only receive just compensation when the legislature appropriated the funds to pay their judgment.⁸⁸

In addition, the owners argued that *Knick v. Township of Scott*⁸⁹ provided them with a federal forum for their claim.⁹⁰ The court found that although *Knick* does address the ability of a plaintiff to bring a takings claim, it does not address the issue of “whether a government’s failure to timely pay a court judgment constitutes a taking in the first place.”⁹¹ The Fifth Circuit found that *Knick*’s self-executing language was dicta and did not require the court to uphold the property owners’ constitutional rights, leaving the owners at the mercy of the Louisiana statute for payment of their judgment.⁹²

In another case, the U.S. District Court for the Eastern District of Louisiana rejected another plaintiff’s claim for just compensation after a taking.⁹³ St. Bernard Port, a political subdivision of the state of Louisiana, had taken Violet Dock’s property along the Mississippi River.⁹⁴ St. Bernard Port estimated the just compensation award at \$16 million, which Violet Dock disputed.⁹⁵ After an appeal to the Louisiana Supreme Court, a remand to the Louisiana Fourth Circuit found the proper amount of just compensation to be nearly \$32 million.⁹⁶ Violet Dock sued in federal court for payment of the remaining \$21 million of the state court judgment.⁹⁷ However,

85. *See id.* at 295.

86. *See id.* at 289.

87. *See id.*

88. *Ariyan*, 29 F.4th at 230.

89. *Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019).

90. *See Ariyan*, 29 F.4th at 231.

91. *Id.*

92. *See id.*

93. *See Violet Dock Port Inc., LLC v. Heaphy*, No. CV 19-11586, 2019 WL 6307945, at *1, *2 (E.D. La. Nov. 25, 2019).

94. *See id.* at *1.

95. *See id.*

96. *See id.*

97. *See id.*

the court found that even though the plaintiff had received a money judgment, the “defendant’s delay in paying the remaining amount of the state court’s judgment has not given rise to a Fifth Amendment violation.”⁹⁸ Thus, both federal and state courts in Louisiana are reluctant to provide relief to a property owner whose land has been taken, even when the owner has a judgment in hand.⁹⁹

2. *Florida’s Push to Full Compensation*

Florida’s Takings Clause goes beyond the Fifth Amendment’s guarantee of just compensation to provide full compensation.¹⁰⁰ Florida’s Sovereign Immunity Clause limits the state’s liability from suit.¹⁰¹ Florida pays full compensation to property owners who experience a taking to satisfy the federal constitution’s Fifth Amendment just compensation requirement.¹⁰² Florida courts explain that non-payment of money judgments in a “constitutional takings proceeding similarly ‘run[s] afoul’ of the self-executing, constitutional mandate that requires it.”¹⁰³

In *Florida Department of Agriculture and Consumer Services v. Dolliver*,¹⁰⁴ Florida homeowners won a \$13 million judgment after their citrus trees were taken by the Florida Department of Agriculture.¹⁰⁵ Under Florida law at the time, the owners had to petition the legislature to have money appropriated to pay their judgment.¹⁰⁶ The statute limited compensation only when money had been appropriated:

98. *Id.* (“[T]he property right created by a judgment against a government entity is not a right to payment at a particular time, but merely the recognition of a continuing debt of that government entity.”).

99. *See Ariyan, Inc. v. Sewerage & Water Bd. of New Orleans*, 29 F.4th 226, 231 (5th Cir. 2022); *see also Violet Dock Port*, 2019 WL 6307945, at *2; *Lafaye v. City of New Orleans*, 35 F.4th 940, 941 (5th Cir. 2022) (holding that “the failure to honor a judgment does not constitute a taking—even when that judgment calls for the return of personal property acquired by a government unlawfully”).

100. *See* FLA. CONST. art. X, § 6 (“No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.”).

101. *See id.* art. X, § 13 (“Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.”).

102. *See* Fla. Dep’t of Agric. & Consumer Servs. v. Dolliver, 283 So. 3d 953, 961 (Fla. Dist. Ct. App. 2019) (discussing how final judgments must be paid to align with constitutional requirements of the Takings Clause).

103. *Id.* at 960.

104. Fla. Dep’t of Agric. & Consumer Servs. v. Dolliver, 283 So. 3d 953 (Fla. Dist. Ct. App. 2019).

105. *See id.* at 957.

106. FLA. STAT. § 11.066 (2023).

Neither the state nor any of its agencies shall pay or be required to pay monetary damages under the judgment of any court except pursuant to an appropriation made by law. To enforce a judgment for monetary damages against the state or a state agency, the sole remedy of the judgment creditor, if there has not otherwise been an appropriation made by law to pay the judgment, is to petition the Legislature in accordance with its rules to seek an appropriation to pay the judgment.¹⁰⁷

The Florida legislature passed a bill that included the money to pay the owners, but Governor Rick Scott exercised his line-item veto after resistance by the Commissioner of the Department of Agriculture.¹⁰⁸ The homeowners then filed a writ of mandamus to declare Sections 11.066(3) and (4) of the Florida Constitution unconstitutional, which the trial court granted when it found the statutes unconstitutional as applied.¹⁰⁹ The District Court of Appeal affirmed the finding by the trial court that the Florida legislature could not be permitted under the Florida Constitution to decide whether or not the homeowners would receive any compensation.¹¹⁰ Thus, Florida guarantees full compensation to owners whose property the state has taken.

II. ANALYSIS

The Fifth Amendment's history reinforces its importance among the most fundamental individual rights guaranteed by the U.S. Constitution.¹¹¹ The Supreme Court has breathed new life into the right as state and local governments continue to use their powers of eminent domain to take private property for public use.¹¹² Sovereign immunity is one of the challenges that owners face when they seek just compensation after their property has been taken.¹¹³ Despite some variation across state constitutions, federal courts provide recovery to plaintiffs.¹¹⁴ Just compensation should be the norm because it is constitutional and because it is good economic policy.¹¹⁵

107. *Id.*

108. *See Fla. Dep't of Agric. & Consumer Servs.*, 283 So. 3d at 957 ("Commissioner Adam Putnam had made public statements suggesting that the Department was still challenging the judgments.").

109. *See id.*

110. *See id.* at 964.

111. *See Treanor, supra* note 1, at 708.

112. *See Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2168 (2019).

113. *See Berger, supra* note 53, at 496.

114. *See Knick*, 139 S. Ct. at 2168.

115. *See infra* Section II.D.

A. *The Takings Clause Provides a Right and a Remedy*

The Supreme Court has evolved in its support of property owners whose land is taken for public use.¹¹⁶ In *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*,¹¹⁷ a landowner brought a suit under 42 U.S.C. § 1983 in federal court after a Tennessee zoning board passed zoning laws that he alleged resulted in a taking of his property.¹¹⁸ Tennessee law gives broad power to municipalities in zoning and development regulations.¹¹⁹ Prior to bringing a suit in federal court, the owner challenged the decision of the zoning board and appealed to the zoning commission, but was denied relief.¹²⁰

The Supreme Court held that the owner's suit under 42 U.S.C. § 1983 was not ripe because he had not exhausted all available remedies in state court.¹²¹ The Court found that "because respondent has not yet obtained a final decision regarding the application of the zoning ordinance and subdivision regulations to its property, nor utilized the procedures Tennessee provides for obtaining just compensation, respondent's claim is not ripe."¹²²

Thirty-four years later, the Supreme Court overruled the state litigation requirement of *Williamson County* in *Knick v. Township of Scott*¹²³ after a local government took a property owner's land without providing just compensation.¹²⁴ Part of owner Rose Mary Knick's 90-acre farm was a small backyard graveyard.¹²⁵ In 2012, the Township of Scott passed an ordinance that required all cemeteries to be open to the public during the day.¹²⁶ Knick sought declaratory and injunctive relief in state court, arguing that the new ordinance was a taking of her property which required just compensation be paid to her.¹²⁷

116. See *infra* note 122 and accompanying text.

117. *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), *overruled by* *Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019).

118. See *id.* at 175.

119. See TENN. CODE ANN. § 13-7-101 (2023).

120. See *Williamson Cnty. Reg'l Plan. Comm'n*, 473 U.S. at 182.

121. See *id.* at 186 ("[A] claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue.").

122. *Id.*

123. *Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2163 (2019).

124. See *id.*

125. See *id.* at 2168.

126. See *id.*

127. See *id.*

Knick was denied relief in state court and brought an action in federal court under 42 U.S.C. § 1983.¹²⁸ The district court dismissed the suit and the Third Circuit affirmed on the basis that *Williamson County* required Knick to sue in state court before bringing a claim in federal court.¹²⁹ The Supreme Court rejected *Williamson County* and held that the “Fifth Amendment right to full compensation arises at the time of the taking, regardless of post-taking remedies that may be available to the property owner.”¹³⁰ The Court found that state law cannot function as a substitute for the federal constitutional protection against takings.¹³¹

Through *Knick*, the Court has signaled that plaintiffs may now go directly to federal court to pursue their claims and avoid state courts.¹³² The timely payment of a judgment is the only way that states can avoid running afoul of property owners’ Fifth Amendment rights.¹³³ By providing owners a remedy in federal court, *Knick* upholds the original intent of the Takings Clause to ensure that just compensation is paid whenever the government takes private property for public use.¹³⁴

B. Sovereign Immunity Still Prevents Just Compensation

Notwithstanding the self-executing nature of the Fifth Amendment,¹³⁵ state sovereign immunity under the Eleventh Amendment¹³⁶ continues as a barrier to owners who seek relief in

128. 42 U.S.C. § 1983; *see also Knick*, 139 S. Ct. at 2168.

129. *See Knick*, 139 S. Ct. at 2168.

130. *Id.* at 2170.

131. *See id.* at 2171 (“The fact that the State has provided a property owner with a procedure that may subsequently result in just compensation cannot deprive the owner of his Fifth Amendment right to compensation under the Constitution, leaving only the state law right.”).

132. *Id.*

133. *See* David Dana, *Not Just a Procedural Case: The Substantive Implications of Knick for State Property Law and Federal Takings Doctrine*, 47 *FORDHAM URB. L. REV.* 592, 599 (2020). The timely repayment requirement means:

[A]ny local, state, or federal procedure, process, or deliberation that might result in a delay between the acts allegedly constituting the taking and the actual grant of just compensation. [*Knick*] implicitly strengthens the argument that any delay between the physical or regulatory deprivation of a property right and the payment of compensation is constitutionally problematic.

Id.

134. *See* Treanor, *supra* note 1, at 708.

135. U.S. CONST. amend. V.

136. *Id.* amend. XI (“The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”).

federal court after a taking by a state government.¹³⁷ Contrary to what a broad reading of *Knick* might suggest, “every circuit to address *Knick*’s effect on sovereign immunity has concluded that *Knick* did not abrogate State sovereign immunity in federal court.”¹³⁸ However, a plaintiff whose claim is barred by the Eleventh Amendment in federal court may still seek a remedy in state court.¹³⁹

The Fifth Circuit held that *Knick*¹⁴⁰ did not alter the “bed-rock principles of sovereign immunity law.”¹⁴¹ Similarly, the Tenth Circuit found that “*Knick* did not involve Eleventh Amendment immunity.”¹⁴² The Sixth Circuit, also interpreting *Knick*, found that “municipalities are not entitled to the protection of Eleventh Amendment immunity.”¹⁴³ Although this barrier remains, property owners now have more opportunities to receive just compensation than before the Court expanded their remedies through *Knick*.¹⁴⁴ *Knick* has restored the importance of the right to just compensation to that of other fundamental rights.¹⁴⁵

C. *Florida Provides a Model for States to Ensure Just Compensation*

Florida stands out in the area of Takings Clause jurisprudence while states like Louisiana refuse to provide owners with any compensation. Louisiana courts continue to allow the state legislature

137. Jennifer Danis & Michael Bloom, *Taking from States: Sovereign Immunity’s Preclusive Effect on Private Takings of State Land*, 32 STAN. L. & POL’Y REV. 61, 107 (2021) (“[W]hen the Takings Clause collides with state sovereign immunity, every circuit to address some version of that question—whether the normally self-executing Takings Clause constitutes an abrogation of state sovereign immunity—has answered that question in the negative and dismissed the case.”).

138. *Zito v. N.C. Coastal Res. Comm’n*, 8 F.4th 281, 287 (4th Cir. 2021).

139. *See Hutto v. S.C. Ret. Sys.*, 773 F.3d 536, 552 (4th Cir. 2014) (“[The] Eleventh Amendment bars Fifth Amendment taking claims against States in federal court when the State’s courts remain open to adjudicate such claims.”).

140. *Knick v. Twp. Of Scott*, 139 S. Ct. 2162 (2019).

141. *Bay Point Props., Inc. v. Miss. Transp. Comm’n*, 937 F.3d 454, 456 (5th Cir. 2019).

142. *Williams v. Utah Dep’t of Corr.*, 928 F.3d 1209, 1214 (10th Cir. 2019).

143. *Skatmore, Inc. v. Whitmer*, 40 F.4th 727, 734 (6th Cir. 2022) (citing *Ladd v. Marchbanks*, 971 F.3d 574, 579 (6th Cir. 2020)). The *Ladd* Court found that:

[S]o long as a taking has occurred, a state cannot assert its sovereign immunity as a defense. The fatal flaw in Plaintiffs’ argument is that the Court’s opinion in *Knick* says nothing about sovereign immunity. And as Plaintiffs concede, the defendant in *Knick* was a municipality, so it had no sovereign immunity to assert.

Ladd, 971 F.3d at 579.

144. *See Knick*, 139 S. Ct. at 2168.

145. *See Dana*, *supra* note 133, at 620 (“Fifth Amendment property rights need to be accorded the same stature as other individual rights.”).

to block payment of eminent domain judgments to property owners by refusing to appropriate the necessary funds.¹⁴⁶ Property owners who seek relief in federal court in Louisiana for payment of their money judgment find a similar fate.¹⁴⁷ Louisiana property owners who sought payment of their state-court money judgment in U.S. District Court in the Eastern District of Louisiana found no relief.¹⁴⁸ The court rejected the property owners' federal claim even with "unpaid state-court judgments in hand and no 'certainty at all that they will ever be paid just compensation for their loss of property interests.'"¹⁴⁹

In contrast to Louisiana, Florida courts consistently exercise their powers to enforce the rights of property owners across the state.¹⁵⁰ Justice Hobson explained the sentiment of the Florida Supreme Court toward property owners:

We feel our constitutional provision for full compensation requires that the courts determine the value of the property by taking into account all facts and circumstances which bear a reasonable relationship to the loss occasioned the owner by virtue of the taking of his property under the right of eminent domain.¹⁵¹

With states like Florida leading the way, it is time that other states follow its lead and make sure that legislative appropriations do not stand in the way of recovery by property owners.

D. *Just Compensation is Good Economic Policy*

*Kelo v. City of New London*¹⁵² started a nationwide conversation about the use of eminent domain.¹⁵³ During oral argument before

146. See *State v. Sugarland Ventures, Inc.*, 476 So. 2d 970, 975 (La. Ct. App. 1985).

147. See *Ariyan, Inc. v. Sewerage & Water Bd.*, 543 F. Supp. 3d 373, 380–81 (E.D. La. 2021).

148. See *id.*

149. *Id.* at 376.

150. See *Bogorff v. Fla. Dep't of Agric. & Consumer Servs.*, 191 So. 3d 512, 515 (Fla. Dist. Ct. App. 2016) ("Since the founding of our nation, the law has recognized, required, and enforced just compensation when government takes private property."); see also *Murphy Auto Grp., Inc. v. Fla. Dep't of Transp.*, 310 So. 3d 1066, 1068 (Fla. Dist. Ct. App. 2020) ("[U]nder the Takings Clauses in both the United States Constitution and the Florida Constitution, governmental entities may not take private land for a public purpose without paying just compensation."); *Joseph B. Doerr Tr. v. Cent. Fla. Expressway Auth.*, 177 So. 3d 1209, 1215 n.5 (Fla. 2015) ("[T]he right of private property owners to full compensation in eminent domain proceedings under the Florida Constitution is more expansive than that of the Fifth Amendment to the United States Constitution.").

151. *Jacksonville Expressway Auth. v. Henry G. Du Pree Co.*, 108 So. 2d 289, 291 (Fla. 1958).

152. *Kelo v. City of New London*, 545 U.S. 469 (2005).

153. See Ilya Somin, *The Political and Judicial Reaction to Kelo*, WASH. POST (June 4, 2015, 1:12 PM), <http://tinyurl.com/tn93yeeu> [<https://perma.cc/MM4F-RFV2>].

the U.S. Supreme Court, Justice Anthony Kennedy asked the city's lawyer whether the property owner would receive any profits from the development of the taken land.¹⁵⁴ The city's lawyer responded simply that: "you have to assume in this case that there is going to be just compensation."¹⁵⁵ The city successfully dodged the issue and *Kelo* focused on the public use portion of the Takings Clause, with the majority reaffirming the *Hawaii Housing Authority v. Midkiff*¹⁵⁶ holding that when "exercise of the eminent domain power is rationally related to a conceivable public purpose, a compensated taking is not prohibited by the Public Use Clause."¹⁵⁷

Kelo allowed government to enter the economic arena and play a greater role in working toward prosperity for the public good.¹⁵⁸ *Kelo* empowered state and local governments to use eminent domain powers at the expense of the property rights of individual owners.¹⁵⁹ Justice Ginsburg later noted that, "[i]n view of the nearly infinite variety of ways in which government actions or regulations can affect property interests, the Court has recognized few invariable rules in this area."¹⁶⁰ Since *Kelo* allows the use of eminent domain to further economic development,¹⁶¹ once state and local governments use eminent domain to take private property promote the public good, they should be accountable in the marketplace.

Timely payment of just compensation is a necessary ingredient to ensure successful ventures by government into economic development through eminent domain practices.¹⁶² Just compensation not only benefits private property owners, but also governments and the public because it ensures that government engages in conduct that will be financially viable.¹⁶³ The Supreme Court has acknowledged that even the provision of fair market value to a property owner

154. See Transcript of Oral Argument at 44, *Kelo v. City of New London*, 545 U.S. 469 (2005) (No. 04-108).

155. *Id.* at 45.

156. *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229 (1984).

157. *Id.* at 230.

158. See *Kelo*, 545 U.S. at 489.

159. See *Theft by Another Name: Eminent Domain Ten Years After Kelo v. City of New London: Hearing Before the Subcomm. on the Const. of the S. Comm. on the Judiciary*, 114th Cong. 1 (2015) (statement of Dan Alban, Attorney, Institute for Justice) ("The *Kelo* case demonstrated that a majority of justices sitting on the Supreme Court believed the U.S. Constitution provides very little protection for the private property rights of Americans faced with eminent domain abuse.").

160. *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 31 (2012).

161. See *Kelo*, 545 U.S. at 505.

162. See Dana, *supra* note 133, at 598 (finding that the "broad holding of *Knick* is that the federal constitutional compensation must happen at the same time or immediately after a taking has occurred").

163. See Patricia Munch, *An Economic Analysis of Eminent Domain*, 84 J. POL. ECON. 473, 474 (1976).

“does not necessarily compensate for all values an owner may derive from his property.”¹⁶⁴ The Court readily admits that just compensation of fair market value merely strikes a “balance between the public’s need and the claimant’s loss.”¹⁶⁵

When the government gives property owners just compensation, better economic outcomes result.¹⁶⁶ Just compensation is not only a fundamental constitutional right but an economic imperative to drive economic prosperity and the success of eminent domain ventures by government.¹⁶⁷ The Takings Clause serves as a backstop to help ensure that private property is protected and that economic outcomes are optimal for all parties involved.

CONCLUSION

This Comment demonstrates just how much variation there is among state and federal courts’ approaches to the issue of just compensation after a taking occurs. The Supreme Court has provided one means of relief by allowing property owners who suffer a taking to pursue their claim in federal court.¹⁶⁸ The history of the Takings Clause reveals that its purpose is to provide a right and a remedy to property owners.¹⁶⁹ State and federal circuit courts have different interpretations of how much compensation is just.¹⁷⁰ State constitutions also differ, with some providing full compensation and others allowing legislatures to block appropriation of payments for judgments.¹⁷¹ Florida and Louisiana provide a vivid contrast of just how far apart states are on the definition of just compensation.¹⁷² Considering the enormity of both state and local government powers of eminent domain,¹⁷³ it is more important than ever to ensure

164. *United States v. 564.54 Acres of Land*, 441 U.S. 506, 511 (1979).

165. *United States v. Toronto, Hamilton & Buffalo Navigation Co.*, 338 U.S. 396, 402 (1949); *see also United States v. Fuller*, 409 U.S. 488, 490 (1973) (“The constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness . . . as it does from technical concepts of property law.”).

166. *See United States v. Reynolds*, 397 U.S. 14, 16 (1970) (explaining that the goal of just compensation is to put the property owner in the “same position monetarily as he would have occupied if his property had not been taken”).

167. Dean Lueck, *Economics and Property Law*, in *THE NEW PALGRAVE DICTIONARY OF ECONOMICS* 10883, 10889 (2018) (examining “the link between compensation and investment decisions of landowners”).

168. *See Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2170 (2019).

169. *See supra* Section I.A.

170. *See supra* Section I.D.

171. *See supra* Section I.D.

172. *See supra* Section II.C.

173. *See Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 230 (1984).

that owners are paid just compensation after a taking. Just compensation is not only constitutional¹⁷⁴ but it is good economic policy and both state and federal courts should ensure that owners are paid promptly.

174. *See* U.S. CONST. amend. V.
