Knick v. Township of Scott: The End of a Legal Catch-22 and What This Means for Future Fifth Amendment Takings Cases

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TABLE OF CONTENTS

INTRODUCTION

The Fifth Amendment of the U.S. Constitution provides that "private property [shall not] be taken for public use, without just compensation."[1] This Amendment makes clear that the Constitution protects property rights and allows property owners a legal and economic recourse if their properties are unjustly taken by the government.[2] Before 2019, two landmark cases prevented plaintiffs from alleging Fifth Amendment taking claims in federal court.[3]

In 1985, in Williamson County v. Hamilton Bank,[4] the Supreme Court held a takings claim was not ripe for federal court until the plaintiff had exhausted their local judicial remedies.[5] In 2005, in San Remo Hotel v. City & County of San Francisco,[6] the Supreme Court further ruled that the Full Faith and Credit Clause precludes federal courts from ruling on the same issues that the state court has decided.[7] These two cases serve as the lock and key that effectively bar a takings plaintiff from bringing their case in federal court.[8]

On June 21, 2019, in *Knick v. Township of Scott*,[9] the Supreme Court overruled *Williamson County* and concluded a constitutional violation occurs at the time of the taking, even if just compensation is available.[10] Following this holding, a plaintiff alleging a violation of the Takings Clause under the Fifth Amendment may avoid the lengthy process of pursuing judicial remedies in state courts and can instead bring their claim in federal court the moment the taking occurs.[11]

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1 U.S. CONST. amend. V.

2 *See id.*

3 *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank*, 473 U.S. 172, 192 (1985); *San Remo Hotel, L.P. v. City & Cnty. Of San Francisco*, 545 U.S. 323, 342 (2005).

4 *Williamson Cnty.*, 473 U.S. 172 (requiring takings plaintiffs to have exhausted state judicial remedies before she could bring her case to federal court).

5 *Id.*

6 *San Remo Hotel*, 545 U.S. at 323.

7 *Id.*

8 *See* discussion *infra* Part I.B.

9 Knick v. Township of Scott, 139 S. Ct. 2162, 2179 (2019).

10 *Id.* at 2170.

11 *Id.*

Indeed, *Knick* was cause for celebration for many land use attorneys[12] and scholars because it gave takings plaintiffs a choice of forum, thus no longer limited by the state court system and on equal footing with other constitutional rights plaintiffs.[13]

At the time of Knick's passage, an important question remained: "What will be the impact of *Knick* going forward?" This article (1) explores answers to this question by examining wetland takings cases at the time of *Knick*'s passage; (2) examines trends in takings jurisprudence in the three years since *Knick*'s passage; and (3) reconciles any differences between the 2019 predictive analysis and current outcomes.

Although this article is a study of takings cases on the national level, it should be of particular interest to California because of the state's unique land use problems. With nearly 40 million people, California is the largest state by population and faces tremendous growth pressures not present in other states.[14] Despite a recent slowdown in growth rate due to the expensive cost of living, the population of California still exhibits a consistently upward trajectory, and increases in excess of 50 percent between each ten year census is not uncommon.[15] Additionally, the state has small rural counties with very low growth rates, enormous cities with rapid growth rates, and new satellite cities designed to

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[12] *Land Use*, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/ land_use (last visited Jan. 8, 2019, 4:57PM) [https://perma.cc/W3K7-HFL5] (land use refers to the process in which "federal, state, and local governments regulate growth and development through statutory law . . . Three typical situations bringing such private entities into the court system are: suits brought by one neighbor against another; suits brought by a public official against a neighboring landowner on behalf of the public; and suits involving individuals who share ownership of a particular parcel of land").

[13] *See, e.g.*, *Supreme Court Affirms that Property Rights Are Among Americans' Most Important Constitutional Rights*, PACIFIC LEGAL FOUNDATION (last visited Nov. 22, 2019), https://pacificlegal.org/case/knick-v-scott-township-pennsylvania/ [https://perma.cc/Y23T-4336] ("[T]he Court to overturn this precedent so property rights are on equal footing with other rights such as due process and free speech."); *See Knick v. Township of Scott*, 139 S. Ct. at 2170 ("Fidelity to the Takings Clause and our cases construing it requires overruling *Williamson County* and restoring takings claims to the full-fledged constitutional status the Framers envisioned when they included the Clause among the other protections in the Bill of Rights."); Davis G. Savage, *Supreme Court Bolsters Rights for Developers and Property Owners in California and Elsewhere*, L.A. TIMES (June 21, 2019, 8:34 AM), latimes.com/politics/la-na-pol-supreme-court-property-rights-taking-20190621-story.html [https://perma.cc/Z5RC-FGXN] ("Led by Chief Justice John G. Roberts Jr., the high court said property rights stand on the same footing as other rights protected by the Constitution."); Nick Sibilla, *Supreme Court Ends "Catch-22" That Blocked Property Owners From Suing the Government*, FORBES (June 22, 2019, 10:30 AM), https://www.forbes.com/sites/nicksibilla/2019/06/22/supreme-court-ends-catch-22-that-blocked-property-owners-from-suing-the-government/#55a220c73687 [http://perma.cc/KY5P-H5HG] ("It's fitting that a dispute over an alleged cemetery would resurrect a long-buried constitutional right.").

[14] CALIFORNIA POPULATION, WORLD POPULATION REVIEW (June 5, 2019), http://worldpopulationreview.com/states/ [https://perma.cc/5WYM-6LSU].

[15] *Id.*; *see also* Julia Barajas & Sarah Parvini, *California Population Growth Slowest Since 1990 as Residents Leave, Immigration Decelerates*, L.A. TIMES (Dec. 21, 2019, 8:30 AM), https://www.latimes.com/california/story/2019-12-21/california-population-continues-to-decline-with-state-emigration-a-major-factor [https://perma.cc/432F-HQP8].

accommodate these growth pressures.[16] California faces an ongoing struggle between accommodating its population growth and business expansion while not compromising its natural resources.[17] Therefore, wetland takings cases are a very busy area of the land use group practice in California.[18]

Part I of this article explores the pre-*Knick* world, explains why *Knick* is a landmark case, and contains empirical research on the correlation between state supreme court justices' political ideologies and their judicial votes in wetland takings cases. The research employs the Bonica Common-space Campaign Finance Scores (CFscore)[19] to assess the justices' ideologies and their resultant biases.[20] Next, a comparison between the political ideologies of federal judges and state judges shows federal judges are less swayed by the political climate than state judges.[21] Part II runs a similar analysis to confirm the 2019 findings, analyzes any differences in the 2019 predictions and the current findings, then explores current trends in takings cases in state and federal courts since *Knick*'s passage. Part III aims to predict the post-*Knick* world by reconciling the differences found between our previous predictions and our current findings by looking into substantive applications of takings law.[22]

I. THE PRE-*KNICK* WORLD

A. The Politicization of Takings Cases

The broad consensus that people needed to protect the environment gave rise to a burgeoning environmental movement in the early 1970s.[23] However, environmental protection came at a cost to economic development through environmental regulations and restrictions.[24] For example, the National Environmental Policy Act (NEPA) was signed into law on January 1, 1970 to foster and promote conditions under which man and nature can exist in harmony.[25]

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[16] Ann Carlson & Daniel Pollak, *Takings on the Ground: How the Supreme Court's Takings Jurisprudence Affects Local Land Use Decisions*, 35 U.C. DAVIS L. REV. 103, 110 (2001).

[17] *Id*. at 109-12.

[18] *Id*.

[19] Adam Bonica, *A Common-Space Measure of State Supreme Court Ideology*, 31 J.L., ECON., & ORG. 472, 472-73 (2015).; *see infra* Part I.E.1.

[20] *Id*. (The Bonica CFscore measures the ideologies of judicial candidates based on their campaign contributions. For judges in the electoral system, the CFscore looks at the contributors to the judges' campaigns; and for judges that are in the appointment system, the CFscore looks at the ideology of their appointing officials and political contributions made by them.).

[21] *See infra* Part I.E-G.

[22] *See infra* Part III.A-B.

[23] Lawrence Baum, *Linking Issues to Ideology in the Supreme Court*, 2013 J.L. & CTS. 95 (2013), https://www.journals.uchicago.edu/doi/full/10.1086/668414.

[24] *Id*.

[25] 42 U.S.C. § 4331(a) (1970).

The act requires federal agencies to include a detailed statement on the environmental impact of major federal actions that may affect the quality of the human environment, and alternatives to the proposed action.[26] States adopted their own "little NEPAs" to impose similar procedural safeguards against environmental damage resulting from agency action. These processes can be time-consuming and expensive, resulting in many delays to proposed projects.[27]

The property rights movement sprang up due to the additional costs that NEPA and other regulations and restrictions placed on business communities and landowners.[28] The conflict between the environmental movement and the property rights movement led to an increase in regulatory takings cases brought to the U.S. Supreme Court, environmental policy changes, and broad legal and policy issues.[29] After 1977, there was an apparent increase in regulatory takings cases.[30] Claims against environmental policies have only followed an upward trajectory since.[31]

B. Takings Jurisprudence Pre-Knick v. Township of Scott

Before *Knick*, a takings plaintiff wanting to bring their Fifth Amendment claim

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[26] *What Is the National Environmental Policy Act?*, U.S. ENV'T PROT. AGENCY, (last updated Nov. 16, 2021), https://www.epa.gov/nepa/what-national-environmental-policy-act; *see also* 12 Witkin, Summary 11th Real Prop. § 870 (2022) (citing 42 U.S.C. § 4322) ("NEPA requires federal agencies to prepare environmental impact statements on 'proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.' ").

[27] *See, e.g.*, McCarran Intern. Airport v. Sisolak, 122 Nev. 645 (2006) (county ordinance limiting building heights on properties adjacent to airport); Dept. of Soc. Servs. V. City of New Orleans, 676 So.2d 149 (1996) (denial of conditional use permit for existing building occupying almost 13,000 square feet); Davis v. Cal. Coastal Zone Conservation Comm'n, 57 Cal.App.3d 700 (1976) (denial of application to build a residence on private property that lied within the coastal zone); Baycrest Manor, Inc. v. Comm'r. of Env't. Conservation Dept., 58 A.D.2d 601 (1977) (denial of application for residential development upon certain wetlands); Avvo Cmty. Devs., Inc. v. S. Coast Reg'l Com., 17 Cal.3d 785 (denial of an application to develop a subdivision, part of which lied within the jurisdiction of the California Coastal Zone Commission).

[28] *See, e.g.*, *McCarran Intern. Airport*, 122 Nev. 645; *Dept. of Soc. Servs.*, 676 So.2d 149; *Davis*, 57 Cal.App.3d 700; *Baycrest Manor*, 58 A.D.2d 601; *Avvo Cmty. Devs.*, 17 Cal.3d 785.

[29] *See, e.g.*, Sam Kalen, *The Devolution of NEPA: How the APA Transformed the Nation's Environmental Policy*, 33 WM. & MARY ENVTL. L. & POL'Y REV. 483 (2009); Helen Leanne Serassio, *Legislative and Executive Efforts to Modernize NEPA and Create Efficiencies in Environmental Review*, 45 TEX. ENVTL. L.J. 317, 319-33 (2015); Donald C. Guy & James E. Holloway, *The Climax of Takings Jurisprudence in the Rehnquist Court Era: Looking Back from* Kelo, Chevron U.S.A *and* San Remo Hotel *at Standards of Review for Social and Economic Regulation*, 16 PENN ST. ENVTL. L. REV. 115 (2007); San *Remo Hotel, L.P. v. City & Cnty. of San Francisco.*, 545 U.S. 323 (2005) (challenging city ordinance as facial and as-applied takings in violation of Fifth Amendment); *First Eng. Evangelical Lutheran Church of Glendale v. Los Angeles Cnty.*, 482 U.S. 304 (1987) (challenging ordinance as regulatory taking of landowner's property); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) (challenging conditional grant of permission to rebuild house on transfer to public of easement across beachfront property).

[30] Baum, *supra* note 23, at 102.

[31] *Id*.

in federal court would have no way of doing so due to two major cases. In tandem, *Williamson County* and *San Remo Hotel* nearly blocked all possible paths to federal court.[32]

In *Williamson County*, a property developer brought a Fifth Amendment takings claim to a district court under Section 1983.[33] The developer asserted that after the local government's application of various zoning regulations, its rejection of the developer's proposal for a new subdivision constituted a taking.[34] The U.S. Supreme Court granted certiorari and held a takings claim against a state or local government was not ripe until the property owner had (1) secured a final decision from the state or local regulatory agency and (2) exhausted all possible compensatory remedies through all available state procedures.[35] The second holding could only be satisfied if a takings plaintiff had used all available state procedures to secure just compensation and was denied, culminating in their case being heard by the state supreme court.[36]

In *San Remo Hotel*, the plaintiffs complied with the requirements of *Williamson County*, and brought suit in state court under the Takings Clause of the state constitution, reserving their Fifth Amendment claim for federal court.[37] After losing in state court, the plaintiffs filed suit in federal court, only to discover that the Full Faith and Credit Clause[38]—which requires the federal courts to give preclusive effect to the state court's decision—barred the federal court from determining the claim.[39]

Merged, *Williamson County* and *San Remo* resulted in a "Catch-22": an adverse state court decision ripening a takings claims for federal court *simultaneously barred the claim* from being heard in a federal court.[40]

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[32] William A. Fletcher, Kelo, Lingle *and* San Remo Hotel*: Takings Law Now Belongs to the States*, 46 SANTA CLARA L. REV. 767, 778 (2006) ("*San Remo Hotel* represents a complete delegation of land-use regulatory takings challenges to state judicial bodies."); Stewart E. Sterk, *The Demise of Federal Takings Litigation*, 48 WM. & MARY L. REV. 251, 300 (2006) ("The Court's opinion in *San Remo* does effectively bar federal takings claims from federal court. Although the Court's opinion, by its terms, determined only that federal takings claims are not exempt from the mandate of the full faith and credit statute, the opinion must be read against a background of state preclusion doctrine.").

[33] *See generally* Harvard Law Review Ass'n, *Section 1983*, 104 HARV. L. REV. 339 (1990) (section 1983 was created to allow people to sue the government for civil rights violations); *see also Williamson Cnty. Reg'l Plan Comm'n v. Hamilton Bank*, 473 U.S. 172, 182 (1985).

[34] *Williamson Cnty.*, 473 U.S. at 175.

[35] *Id.* at 186, 194.

[36] *Id.*

[37] *San Remo Hotel, L.P. v. City & Cnty. of San Francisco*, 545 U.S. 323, 325-26 (2005).

[38] *Id.* at 330; 28 U.S.C. § 1738.

[39] *San Remo*, 545 U.S. at 337.

[40] *Knick v. Township of Scott*, 139 S. Ct. 2162, 2167 ("The takings plaintiff thus finds himself in a Catch-22: He cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court. The federal claim dies aborning.").

C. Knick v. Township of Scott

In 2019, the Supreme Court revisited the *Williamson County* and *San Remo* decisions.[41] In *Knick*, Pennsylvania passed an ordinance requiring "all cemeteries . . . be kept open and accessible to the general public during daylight hours."[42] Petitioner Knick had a private family graveyard on her property, which she did not make accessible to the general public.[43] The Township notified Knick of her violation and demanded the graveyard be made publicly accessible.[44] Knick then filed a takings claim against the Township in state court seeking declaratory and injunctive relief.[45]

Following Knick's action, the Township decided to stay enforcement of the ordinance and withdrew its notice of violation to Knick.[46] Without an ongoing enforcement of the ordinance, Knick could not prove the prerequisite "irreparable harm" element for injunctive relief, and thus the trial court dismissed Knick's takings claim under the state constitution.[47] Knick then filed her Fifth Amendment takings claim in federal district court under 42 U.S.C Section 1983.[48] The District Court, pointing to *Williamson County*, dismissed Knick's claim for her failure to exhaust the state's judicial remedies.[49] The Third Circuit Court of Appeals affirmed, and the Supreme Court granted certiorari.[50]

In the 5–4 opinion, the Court overturned *Williamson County*, ruling that a Fifth Amendment taking is ripe the moment the alleged taking happens, regardless of the plaintiff's available judicial remedies for just compensation.[51] The decision eliminated the "Catch-22" created by *San Remo* and *Williamson County*, allowing a takings plaintiff to file a claim directly in federal court without having to first exhaust state remedies.[52]

Knick has been considered a landmark case because it put Fifth Amendment plaintiffs on equal footing with other constitutional rights plaintiffs.[53] Using

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41 *Id*.

42 *Id*. at 2168.

43 *Id*.

44 *Id*.

45 *Id*.

46 *Id*.

47 *Id*.

48 *Id*.

49 *Id*. at 2169.

50 *Id*.

51 *Id*. at 2179.

52 *Knick*, 139 S. Ct. at 2169 (C.J., Roberts) ("Plaintiff asserting any other constitutional claim are guaranteed a federal forum under Section 1983, but the state-litigation requirement 'hand[s] authority over federal takings claims to state courts.' Fidelity to the Takings Clause and our cases construing it requires overruling Williamson County and restoring takings claims to the full-fledged constitutional status of the Framers envisioned when they included the Clause among the other protections in the Bill of Rights.").

53 PACIFIC LEGAL FOUNDATION, *supra* note 13 ("[Knick] asked the Supreme Court to overturn

Bonica's CFscores and state supreme court wetland takings cases, Parts I.D-F of this article, completed in 2019, predicted the possible effects of *Knick*.[54]

D. 2019 Post-Knick Predictions

In this section, we examined the correlation between the ideology of state supreme court justices and their votes in wetland takings cases. Wetlands are broadly defined as "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances do support, a prevalence of vegetation."[55] The Federal Manual for Identifying and Delineating Jurisdictional Wetlands further provides that "a wetland does not need to look wet, or even damp, for it to be defined as a wetland."[56]

Business entities and individuals, when attempting to erect a new building or structure, will often need to encroach onto undeveloped open spaces, which are often considered wetlands.[57] In doing so, these businesses must apply for permits from the local governments.[58] Unsurprisingly, this results in a high frequency of wetland takings claims and thus a subsequent generous sample size for building a statistical model.

First, we analyzed the correlation between the state supreme court judges' political ideologies and their votes in wetland takings cases using the Bonica CFscore.[59] As shown below, there was a strong correlation between the judges' CFscores and their stances.[60] This empirical finding regarding the politics of wetland takings cases probably generalizes to all Fifth Amendment takings cases because all takings cases involve a government's attempt to seize private property for a public project.[61] Wetland takings cases show local governments' struggle

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this precedent so property rights are on equal footing with other rights such as due process and free speech."); Davis G. Savage, *Supreme Court Bolsters Rights for Developers and Property Owners in California and Elsewhere*, L.A. TIMES (8:34 A.M., June 21, 2019) latimes.com/politics/la-na-pol-supreme-court-property-rights-taking-20190621-story.html [https://perma.cc/LB3S-VTS8] ("Led by Chief Justice John G. Roberts Jr., the high court said property rights stand on the same footing as other rights protected by the Constitution.").

[54] *See infra* Parts I.D-G for post-*Knick* predictions.

[55] 33 C.F.R. § 328.3(c)(16).

[56] James E. Burling, *Property Rights, Endangered Species, Wetlands, and Other Critters — Is It Against Nature to Pay for a Taking?*, 27 LAND & WATER L. REV. 309, 317 (1992) (citing U.S. FISH & WILDFIRE SERV. ET AL., FEDERAL MANUAL FOR IDENTIFYING & DELINEATING JURISDICTIONAL WETLANDS § 2.9(1)(B) at 7).

[57] *See supra* notes 15–18 and accompanying text.

[58] *See supra* notes 15–18 and accompanying text.

[59] *See* BONICA, *supra* note 19, at 473; *see infra* Part I.

[60] *See infra* Part I.

[61] *See, e.g.*, *Knick v. Township of Scott*, 139 S. Ct. 2162, 2162 (2019) (local government ordinance requiring all cemeteries be kept publicly accessible); *Hearts Bluff Game Ranch v. State*, 381 S.W.3d 468 (2012) (state denial of federal mitigation banking permit to use site as a water-supply reservoir).

both to preserve natural resources and promote economic growth, are litigated frequently, and typically involve local state agencies rejecting a property owner's request for a development permit.[62]

For the purposes of this article, "liberal" refers to the political view that favors government regulations and services such as free universal healthcare, environmental regulations, unemployment insurance, and so on; while "conservative" refers to the political ideology that favors minimal governmental intervention, a robust free market, and a literal interpretation of the Constitution.[63] The CFscore analysis shows that conservative judges' wetland takings holdings favor property owners, while the more liberal judges' holdings favor government agencies.[64]

Second, we compared the Bonica CFscores of state supreme court justices and their corresponding circuit court judges to determine any ideological differences between the two court systems.[65] The comparison showed federal circuit court judges were generally less liberal than state supreme court justices in liberal states and less conservative than state supreme court justices in conservative states.[66] A takings plaintiff's ability to choose a forum means that they should, in theory, opt for the more conservative court: state court in a conservative state and federal court in a liberal state. In 2019, based on these findings, we predicted an uptick in wetland takings cases in federal courts in liberal states and thus a trend towards more protection for landowners and developers.

E. Wetland Takings Cases May Be Political

1. Statistical Analysis Using Bonica's CFscore

To quantify the conservatism of state supreme court justices, we used Bonica's CFscore.[67] The Campaign Financial Score (CFscore) measures the ideology of state supreme court justices using their campaign finance record.[68] The scores

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[62] *See, e.g.*, *Graham v. Estuary Props., Inc.*, 399 So. 2d 1374 (Fla. 1981) (Florida Land and Water Adjudicatory Commission denies approval for construction of 26,500 dwelling units within wetland area); *cf. Ford v. Destin Pipeline Co.*, 809 So. 2d 573 (Miss. 2000) (under eminent domain, pipeline company has corporate authority to seek condemnation of owner's land for development of natural gas pipeline).

[63] "Conservative" and "liberal" are used throughout this article for brevity and readability.

[64] *See infra* Part I.E.1.

[65] *See infra* Part I.F.1.

[66] *See infra* Part I.F.1.

[67] BONICA, *supra* note 19, at 473 ("The common-space CFscores are well-suited for measuring the ideology of judicial candidates. Since judicial candidates raise money from the same general pool of contributors, their ideal points are estimated in the same manner as candidates for any other office. In addition, as it is not necessary to win office to raise campaign funds, the method seamlessly recovers ideal points for judicial challengers, including unsuccessful candidates that never go on to serve on the bench.").

[68] *Id.*

range from approximately -2 (most liberal) to 2 (most conservative).[69] For example, Chief Justice Tani Gorre Cantil-Sakauye of the California Supreme Court has a CFscore of -0.62, Chief Justice Nathan L. Hecht of the Texas Supreme Court has a CFscore of 0.97, and Chief Justice Nathan Benjamin Coats of the Colorado Supreme Court has a CFscore of 0.29.[70]

To investigate judicial ideological bias in wetland takings cases, we searched case law on Westlaw and Lexis using the words "wetlands" and "takings," and any of the words "unconstitutional," "eminent," and/or "regulatory." For each qualified case, we documented the justices' votes, coding a vote for the government agency as 0 and a vote for the property owner as 1. Justices who sit on multiple cases have a corresponding number of records in the dataset. We used the same method for supreme courts in all 50 states.

After removing cases where CFscore or vote results were not available, there were 406 records in the dataset, each representing one justice's vote on one case.[71] The corresponding CFscore for that justice was also attached as an attribute.[72]

To determine if a correlation between CFscores and judicial votes in wetland takings cases existed, we performed a two-sample t-test.[73] Here, the two-sample t-test verifies whether or not CFscores of the justices that voted for government differ from the justices that voted for the property owners. A significant difference in the average of these two groups would permit the conclusion that justices with divergent political ideologies tend to vote dissimilarly in wetland takings cases.[74]

Among the 406 records, 279 represent votes in favor of government agencies and 127 represent votes in favor of property owners. Figure 1 shows more detailed information on the CFscore distribution among the two groups.[75]

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[69] *See generally id.*

[70] Spreadsheet, Adam Bonica, State Supreme Court Ideal Point Estimates (last visited Oct. 31, 2022), https://web.stanford.edu/~bonica/data.html.

[71] Jenny Dao, CORRELATION BETWEEN CFSCORE AND JUDICIAL VOTES IN WETLAND TAKINGS CASES (Nov. 3, 2019) (unpublished manuscript) (on file with the UC Davis Law Review).

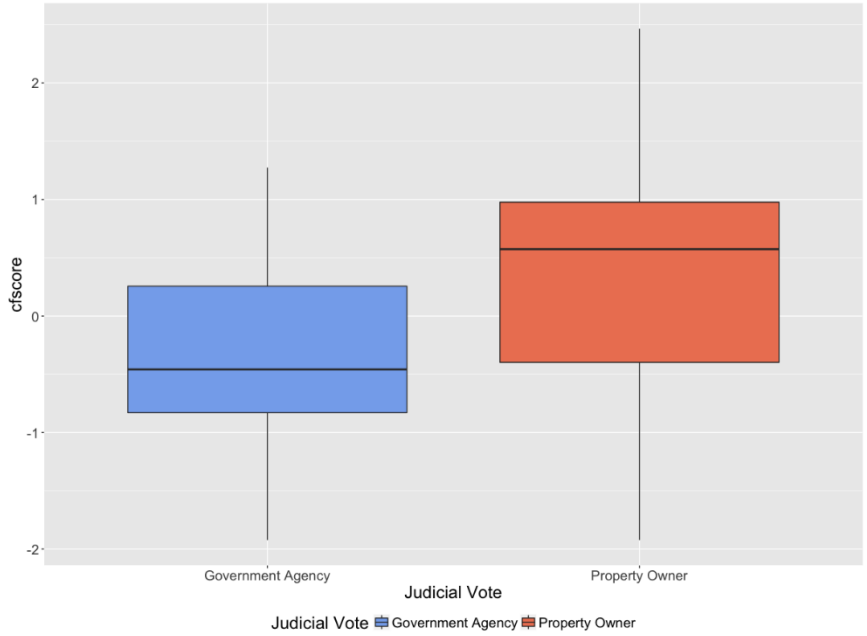
[72] *Id.*

[73] Manfei Xu, et al., *The Differences and Similarities Between Two-Sample T-Test and Paired T-Test*, SHANGHAI ARCH PSYCHIATRY, Jun 25, 2017, at 186 https://www.ncbi.nlm.nih.gov /pmc/articles/PMC5579465/ ("Two-sample *t*-test is used when the data of two samples are statistically independent… To use the two-sample *t*-test, we need to assume that the data from both samples are normally distributed and they have the same variances. For paired *t*-test, we only require that the difference of each pair is normally distributed.").

[74] Note that we did not compute a correlation coefficient. This is because one variable in the test is numerical (CFscore) and the other is categorical (judicial votes). It is common practice to calculate correlation coefficients only when both variables are numerical. *See generally Linear Relationships — Correlation*, UFHEALTH, https://bolt.mph.ufl.edu/6050-6052/unit-1/case-q-q/linear-relationships/ [https://perma.cc/6BDR-ZKYK].

[75] *See infra* Figure 1. 2019 State Supreme Court Judicial Votes Box Plot.

Figure 1. 2019 State Supreme Court Judicial Votes Box Plot



Box plot graphs show data spread.[76] The blue box chart shows the CFscore distribution for pro-government agency votes, while the red box chart shows the corresponding distribution for pro-property owner votes. The horizontal lines within the two boxes mark the CFscore median in each group. The median CFscore of justices that vote for government agencies are lower than that of justices that vote for property owners. Therefore, pro-government justices are generally more liberal than pro-property-owner justices. However, as shown by the graph, the CFscore for both groups are widely spread out. The bottom and top of each "candle stick" chart show the minimum and maximum of the two groups' CFscores: pro-government justices have CFscores as high as 1.3 and as low as -1.9, and pro-property owners as high as 2.5 and as low as -1.9. This means that liberal justices were voting for property owners, and conservative justices were

[76] Kristen Potter, *Methods for Presenting Statistical Information: The Box Plot*, HANS HAGEN, ANDREAS KERREN, AND PETER DANNENMANN (EDS.), VISUALIZATION OF LARGE AND UNSTRUCTURED DATA SETS, GI-EDITION LECTURE NOTES IN INFORMATICS (LNI), VOL. S-4, Jan 1, 2006, at 98, https://people.montefiore.uliege.be/ kvansteen/MATH00082/ac20122013/Class2Oct/Supplementary%20info_AppendixA_Methods%20for%20presenting%20statistical%20information.pdf ("The box plot has become the standard technique for presenting the 5-number summary which consists of the minimum and maximum range values, the upper and lower quartiles, and the median. This collection of values is a quick way to summarize the distribution of a dataset.").

voting for governmental agencies.[77]

The two-sample t-test output is shown below:[78]

Welch two-sample *t*-test	
Mean CFscore of judges who voted for the government agency	**Mean CFscore of judges who voted for the property owner**
-0.3067703	0.3452881

Pro-government justices had a CFscore average of -0.31, and pro-property owner justices 0.35. This resulted in a p-value of 4.942e-14, which, because it is much smaller than the 0.001 threshold, provides that the difference in the means was statistically significant.[79] Therefore, pro-government justices were more liberal than pro-property owner justices. This 2019 data established a significant correlation between the political ideology of state supreme court justices and their votes in wetland takings cases.

F. Federal Judges Were More Likely than State Judges to Stray from their Political Ideologies When Writing Wetland Takings Opinions

1. Comparing Circuit Court and State Supreme Court CFscores

To observe how federal judges and state judges are affected by their ideological preferences, we compared the median CFscore of state supreme court judges with the median CFscore of the corresponding circuit court judges.[80] We used the median CFscore instead of the average (or the minimum and maximum) CFscore because the median helps eliminate outliers,[81] while the average takes these

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[77] Dao, *supra* note 71.

[78] *Id*. (Data: CFscore by Judicial Vote; t = -8.0519, df = 221.87, p-value = 4.942e-14; 95 percent confidence interval: [-0.8116501; -0.4924668]).

[79] *Id*.; *see* Brian Beers, *P-Values: What It Is, How To Calculate It, and Why It Matters*, INVESTOPEDIA, *https://www.investopedia.com/terms/p/p-value.asp* (last visited Nov. 16, 2022). [https://perma.cc/PNE5-2QDT] Statistical significance rules out random coincidence and indicates that data is the result of a specific cause. P-value is the determinant of statistical significance in the two-sample t-test and represents the probability of observing test results by random chance. P-values below 0.01 are generally considered statistically significant and values below 0.005 are considered highly statistically significant.).

[80] BONICA, *supra* note 19, at 493.

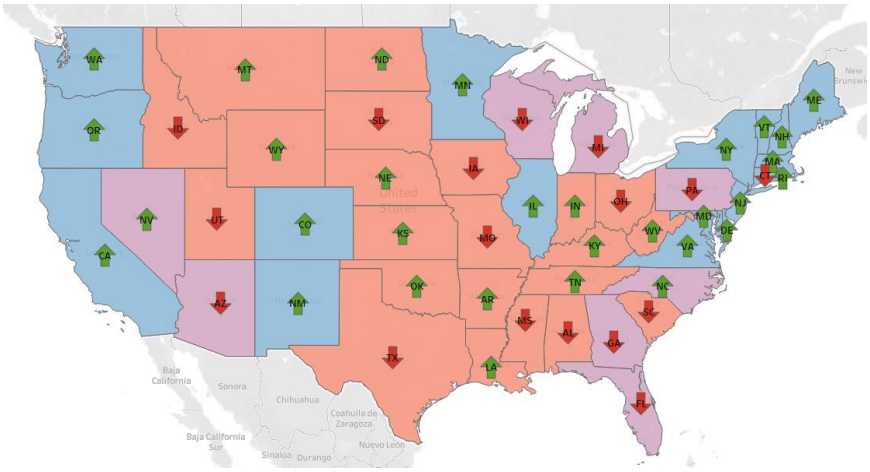
[81] Judges that are consistently ideologically liberal or conservative in their opinions. *See, e.g.* M.O.Moen, K.J.Griffin, A.H.Kalantar, *Simple Regression And Outlier Detection Using The Median Method*, ANALYTICA CHIMICA ACTA VOLUME 277, ISSUE 2, May 28, 1993, at 478, https://doi.org/10.1016/0003-2670(93)80459-X.

outliers into account, potentially skewing the analysis. If the circuit court judge's median CFscore was higher in value than the state supreme court judge's, then the circuit court judge was more conservative than the state supreme court judge, and if lower, was more liberal.

To compare the circuit court and state supreme court median CFscores, we matched the circuit courts with the states they sit in. Second, we used the Bonica's dataset and extracted median CFscores.[82] The map below represents this comparison: the upward green arrows indicate where the Circuit Court judges have higher median CFscores than state supreme court justices.[83] The downward red arrows indicate where the Circuit Court judges have lower median CFscore than state supreme court justices.[84]

Blue states are liberal states, red are conservative, and purple are swing states. This colorization is based on the states' outcomes in the most recent presidential election.[85]

Figure 2. 2020 Election Results and Circuit Court CFscores



As indicated above, circuit court judges uniformly had higher CFscores than state supreme court judges sitting in liberal (blue) states. Conversely, the comparisons in conservative (red) states yielded mixed results: half of the circuit court judges sitting in conservative states had a higher median CFscore than their state supreme courts.[86]

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[82] *See infra* Part I.E.1; *see also* Spreadsheet, Adam Bonica, State Supreme Court Ideal Point Estimates (last visited Oct. 31, 2022), https://web.stanford.edu/~bonica/data.html.

[83] *See infra* Figure 2. 2020 Election Results and Circuit Court CFscores.

[84] *See infra* Figure 2. 2020 Election Results and Circuit Court CFscores.

[85] *2020 Presidential Results*, CNN POLITICS (last visited Oct. 31, 2022), https://www.pbs.org/newshour/elections-2020/electoral-calculator.

[86] Spreadsheet, Adam Bonica, *State Supreme Court Ideal Point Estimates* (last visited Oct. 31,

Circuit court judges in blue states uniformly had higher CFscores than state supreme court judges. Conversely, the comparisons in red states yielded mixed results: half of the circuit court judges sitting in conservative states had higher median CFscores than state supreme court judges.[87]

Circuit court judges sitting in liberal states being uniformly more conservative than those states' supreme court justices was significant in predicting the impact of *Knick*. This finding could be interpreted to mean that circuit court judges are generally more favorable to property owners than state supreme court judges in liberal states.

After *Knick* and according to the above findings, we predicted takings cases would flood into federal courts, especially in liberal states. A takings plaintiff that wants to bring a Fifth Amendment claim against a local government will choose a court system that would be more favorable to them. As indicated above, conservative courts seem more favorable to property owners, and federal courts in liberal states are generally more conservative than state supreme courts.[88] This finding led to the prediction that post-*Knick* takings claimants would more likely opt for federal court in a liberal state, and state court in a conservative state.

2. Explanations for the Differences Between Federal Judges' and State Judges' Ideologies

The most intuitive explanation for the ideological difference between federal judges and state judges is that federal judges are appointed by the President of the United States, who may not have been the candidate selected by the majority of the state's population.[89] California, for example, consistently votes Democratically in presidential elections.[90] The 2020 electoral survey shows that the state voted for the Democratic party candidate, Joe Biden, instead of Donald Trump.[91] A circuit court judge sitting in California, as shown in the map, is likely to be more conservative than a California state judge.[92] This could be explained by some of the federal judges having been appointed by President Trump, who elected judges that aligned with his political values.[93] On the other hand, a state judge in California is democratically elected by the state population.[94] This is one explanation for the differences in the federal judges' and state judges' ideologies.

2022), https://web.stanford.edu/~bonica/data.html.

87 *Id.*

88 *See supra* Part I.F.1–2.

89 Richard A. Posner, *Judicial Behavior and Performance an Economic Approach*, 32 FLA. ST. U. L. REV. 1259, 1262–73 (2005).

90 *2020 Presidential Results*, CNN POLITICS, *supra* note 86.

91 *Id.*

92 *See supra* Part I.F.1–2.

93 *2020 Election Results*, POLITICO, *supra* note 86.

94 *Id.*

Many scholarly works analyze political influence in judicial votes and provide alternative explanations for observed disparities. For example, in a study by Stuart S. Nagel, 38% of *appointed* judges voted contrary to their political stances, while only 15% of *elected* judges did the same.[95]

In another study, Richard A. Posner concluded that the federal judicial career "has been carefully designed to insulate the judges from the normal incentives and constraints that determine the behavior of rational actors."[96] Because their decisions influence the direction of the law and because district-level judges are subject to appellate review, federal judges generally take less liberty with precedent and therefore are less influenced by their own ideological leanings or the current political climate.[97] According to Posner, elected state judges are sensitive to the current political climate for three main reasons.[98]

First, the prospect of reelection subjects state judges to "a form of performance review" which will naturally subject them to constraints not felt by life-appointed federal judges.[99] Second, elected judges are more susceptible to public opinion and thus may make decisions based on popular views; they also tend to favor litigants who are residents of their state when the opposing party is a nonresident.[100] Third, judges campaigning for reelection are vulnerable to their campaign finance needs, and often the lawyers litigating in their courts are donors to the judges' campaigns.[101] When reelection is on a judge's mind, they may steer their rulings to their own political benefit.[102] Therefore, an elected judiciary is more likely to display systematic bias.[103]

Conversely, district court judges are appointed for life.[104] Very few judges leave the position and are unlikely to enter into the practice of law or a career as a teacher or lecturer.[105] Because of their life-appointments, federal judges are much more insulated from external influences.[106] For these reasons, elected judges are more predictable in their decision-making than appointed judges, who are not subject to the pressure from reelection and are less likely to be swayed by the political climate.[107]

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95 Stuart S. Nagel, *Political Party Affiliation and Judges' Decisions*, 55 AM. POL. SCI. REV. 843, 848 (2014).

96 Posner, *supra* note 90 at 1269.

97 *Id*. at 1269-74.

98 *Id*.at 1266.

99 *Id*. at 1267.

100 *Id*.

101 *Id*.

102 *Id*.

103 *Id*.

104 *Id*. at 1269.

105 *Id*.

106 *Id*.

107 Posner, *supra* note 89, at 1267 ("[E]lected judges are less independent; the independent judge

According to Stuart S. Nagel, appointed Democratic judges tend to display atypical Democratic values, and appointed Republican judges tend to display atypical Republican values—more so than elected judges.[108] In takings cases, this means that a liberal federal judge might rule for property owners more often than a liberal state judge and a conservative federal judge for a governmental agency more often than a conservative state judge.[109] As discussed below, while takings plaintiffs in liberal states are much more likely to bring their claims in federal court after *Knick*, they may not get a favorable decision just because judges are more conservative.[110] At least in theory, this means takings claimants in liberal states will have greater access to more fairness-oriented and less ideology-oriented judges.

G. The Politics of Takings Cases Is Also Manifest Through the Line Up of Amicus Briefs

The empirical analysis reveals that takings cases may be political. Amicus activity is another powerful indicator of the political and legal momentum of takings cases.[111] The typical defendants in takings cases are governmental agencies defending their actions.[112] Often alongside governments are liberal environmental interest groups.[113] Meanwhile, property owner plaintiffs receive their support from conservative groups and business and ideological groups, including conservative "public interest" law firms like the Pacific Legal Foundation, which formed in direct response to the success of the liberal environmental groups.[114]

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is likely to have a more complex decision calculus since he cannot just put his finger to the political wind.").

[108] *See* Nagel, *supra* note 95, at 849.

[109] *See id.*

[110] *See infra* Part III.B.2.

[111] The political division in land use jurisprudence is manifest through the amicus trend in the cases. According to a study by Lawrence Baum, conservative public interest groups began to submit amicus briefs on the merits of takings cases in the Supreme Court in 1978. Lawrence Baum, *Linking Issues to Ideology in the Supreme Court: The Takings Clause*, 1 J.L. & CTS. 89 (March 2013).

[112] *Id.* (The proportions of takings cases with amicus briefs and the average numbers of amicus briefs per case generally lagged behind the overall rates in the Court until the mid-1970s, after which they grew even more rapidly than did amicus briefs in general. By the decade from 1986 through 1995, the mean number of briefs per takings case was more than double the average across all takings cases).

[113] For example, the Natural Resources Defense Council, a well-known organization that fights for environmental protection, submitted an amicus brief in support of the governmental agency defendant in the *Nollan* case. Brief of Nat. Res. Def. Council, et al. as Amicus Curiae in Support of Appellee at 2, Nollan v. Cal. Coastal Comm'n, 483 U.S. 825 (1987) (No. 86-133), 1987 WL 864765. The Sierra Club, Coast Alliance, and a group of other local nonprofit environmental groups also joined in the amicus queue for the governmental agency defendant.

[114] For example, the National Association of Home Builders, the California Building Industry Association, and the Legal Foundation of America joined in the amicus queue for the property owner plaintiff in the *Nollan* case. Brief of the Nat'l Ass'n of Home Builders and Cal. Bldg. Indus. Ass'n as

The lineup of amicus briefs in *Knick* showed that the plaintiff received most of her support from conservative, pro-limited-government groups like the Cato Institute, the American Farm Bureau Federation, the National Association of Home Builders, and the Justice and Freedom Fund.[115] These groups are mostly comprised of developers and property owners looking to protect their property rights and streamline developments.[116] Moreover, the Pacific Legal Foundation, a conservative legal foundation, was Knick's counsel.[117] Meanwhile, the Township received its support from local governments and liberal groups that are pro-environmental regulation, including many liberal states, the National Governors Association, and the American Planning Association.[118] The American Planning Association is comprised of local government agencies and states looking to protect their power to regulate.[119]

The amicus briefs in other landmark takings cases point to the same conclusion. In *Nollan v. California Coastal Commission*,[120] the conservative Reagan administration submitted an amicus brief asking the court to rule in favor of the takings claimant. The Pacific Legal Foundation sponsored the case.[121] Also, in *Kelo v. City of New London,*[122] the takings plaintiff was sponsored by the Institute

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Amici Curiae in Support of Appellants, Nollan, 483 U.S. 825 (1987) (No. 86-133), 1986 WL 720591. *See also* Baum, *supra* note 111, at 101, 109 ("Kelo received amicus support from a long list of conservative political groups though not from the business community. These participants provided a clear cue that *Kelo* was part of the general conservative drive for a more expansive interpretation of the takings clause. Both conservative and liberal justices seemed to focus on the long-term goals and interests of groups in the takings field rather than on the specific interests of the litigants in *Kelo*.").

115 *See* Brief of the Cato Inst., et al. as Amici Curiae Supporting Petitioner, *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019) (No. 17-647), 2018 WL 2754024; Brief Amicus Curiae for the Am. Farm Bureau Fed'n, et al. in Support of Petitioner, *Knick*, 139 S. Ct. 2162, 2018 WL 2716791; Brief Amicus Curiae of the Nat'l Ass'n of Home Builders in Support of Petitioner, *Knick*, 139 S. Ct. 2162, 2018 WL 2933176; Brief of Justice and Freedom Fund as Amicus Curiae in Support of Petitioner, *Knick*, 139 S. Ct. 2162, 2018 WL 2754023.

116 *See* Brief of the Cato Inst., et al. as Amici Curiae Supporting Petitioner, *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019) (No. 17-647), 2018 WL 2754024; Brief Amicus Curiae for the Am. Farm Bureau Fed'n, et al. in Support of Petitioner, *Knick*, 139 S. Ct. 2162, 2018 WL 2716791; Brief Amicus Curiae of the Nat'l Ass'n of Home Builders in Support of Petitioner, *Knick*, 139 S. Ct. 2162, 2018 WL 2933176; Brief of Justice and Freedom Fund as Amicus Curiae in Support of Petitioner, *Knick*, 139 S. Ct. 2162, 2018 WL 2754023.

117 *Knick*, 139 S. Ct. at 2164.

118 *See* Brief of the States of Cal., Del., Ind., Iowa, La., Me., Md., Minn., N.J., N.M., N.Y., Or. R.I., Ut., Vt., Wash., the Commonwealth of Mass., and the D.C. as Amicus Curiae in Support of Respondents, *Knick*, 139 S. Ct. 2162, 2018 WL 3805972; Brief of Nat'l Governors Ass'n, et al. in Support of Respondents, *Knick*, 139 S. Ct. 2162, 2018 WL 3769957; Brief of the Am. Plan. Ass'n as Amicus Curiae Supporting Neither Party, *Knick*, 139 S. Ct. 2162, 2018 WL 2684379 (urging the Court to follow precedent and not overturn *Williamson County*).

119 *See* Brief of the Am. Plan. Ass'n, *supra* note 118, at 1.

120 483 U.S. 825 (1987).

121 *See id*. at 826; *see also* Robert K. Best, Nollan *Drawing a line in the sand for private property rights*, PDF of Article in SWORD&SCALES, PACIFIC LEGAL FOUNDATION, https://pacificlegal.org/wp-content/uploads/2017/09/Bob-Best-SwordScales.pdf.

122 545 U.S. 469 (2005).

for Justice, a conservative public interest law firm.[123] The amicus briefs lineups in *San Remo* and *Williamson County* also display this trend.[124]

Both the empirical analysis and the general observation indicate that liberal justices favor government agencies and conservative justices favor property owners.[125]

1. Focusing on California as a Battleground for Takings Claims

It is important to give California special attention here because the state is notorious among developers for very liberal environmental protections and harsh developmental restrictions.[126] Justice Berger on the *San Remo* decision stated that "[t]he idea of handing over complete control of constitutional protection to the tender mercies of courts that can thumb their judicial noses at the [United States Supreme Court] as easily as California has made [his] blood run cold."[127] As many takings scholars have observed, developers in California have a much harder time protecting their property investments than developers in any other state.[128] According to William Fischel, "the California Supreme Court in the 1960s and early 1970s actively reduced the development rights of landowners" to the point where "the California court stopped development at every turn."[129] The state has also adopted many statutes that invoked Fifth Amendment takings claims and reached the United States Supreme Court.[130] California takings plaintiffs may fare

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123 *See* Baum, *supra* note 111, at 109.

124 For the amicus briefs supporting the government in *San Remo*, see Brief of the States of New Jersey, et al. as Amici Curiae in Support of the Respondents, *San Remo Hotel, L.P. v. City & Cnty. of San Francisco*, 545 U.S. 323 (2005) (No. 04-340), 2005 WL 508086; Brief of the Nat'l Ass'n of Counties, et al. as Amici Curiae Supporting Respondents, *San Remo Hotel*, 545 U.S. 323, 2005 WL 520500. For amicus briefs supporting the property owner in *San Remo*, see Brief of Amicus Curiae National Ass'n of Home Builders in Support of the Petitioners, *San Remo Hotel*, 545 U.S. 323, 2005 WL 154145; Brief of Amicus Curiae of Pacific Legal Found., et al. in Support of the Petitioners, *San Remo Hotel*, 545 U.S. 323, 2005 WL 176428.

For amicus briefs in support of the developers in *Williamson County*, see Brief of Amicus Curiae Pacific Legal Foundation in Support of Respondent, *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) (No. 84-4), 1984 WL 565774; Brief of Cal. Bldg. Indus. Ass'n as Amicus Curiae in Support of Respondent, *Williamson Cty*., 473 U.S. 172, 1984 WL 565770. For amicus briefs in support of the government, see Brief of the City of N.Y. as Amicus Curiae in Support of Petitioners, *Williamson Cty*., 473 U.S. 172, 1984 WL 565773; Amici Curiae Brief of State of Cal. ex rel. John K. Van de Kamp, Attorney General, et al. in Support of Reversal, *Williamson Cty*., 473 U.S. 172, 1984 WL 565769.

125 *See supra* Part I.D.1–2.

126 *See* Noah DeWitt, *A Twisted Fate: How California's Premier Environmental Law Has Worsened the State's Housing Crisis, and How to Fix It*, 49 Pepp. L. Rev. 413, 433 (2022).

127 Michael M. Berger, *What's Federalism Got to Do With Regulatory Takings?*, 8 BRIGHAM-KANNER PROP. RTS. CONF. J. 9 (2019).

128 *See, e.g.*, *id.* at 10 fn. 6 (citing William Fischel, *Regulatory Takings: Law, Economics, & Politics*, HARVARD U. PRESS 218, 227 (1995).

129 *Id.*

130 *See, e.g.*, *San Remo*, 545 U.S. 323; *First Eng. Evangelical Lutheran Church of Glendale v.*

better after *Knick* because takings plaintiffs can file in federal court to avoid more liberal and politically-influenced state judges.

II. THE POST-*KNICK* WORLD

Since *Knick*'s passage it has been cited 536 times; therefore, new data exists to evaluate the above predictions made at the time of *Knick*'s passage.[131] The following section will use the same CFscore analysis to validate the previous findings on judicial bias in state courts versus federal courts, examine the efficacy of empirical analyses for drawing conclusions about political ideology, and evaluate our predictions on the impact of judicial ideology on post-*Knick* takings filings.

A. New CFscore Analysis Reveals Nearly Identical Bias

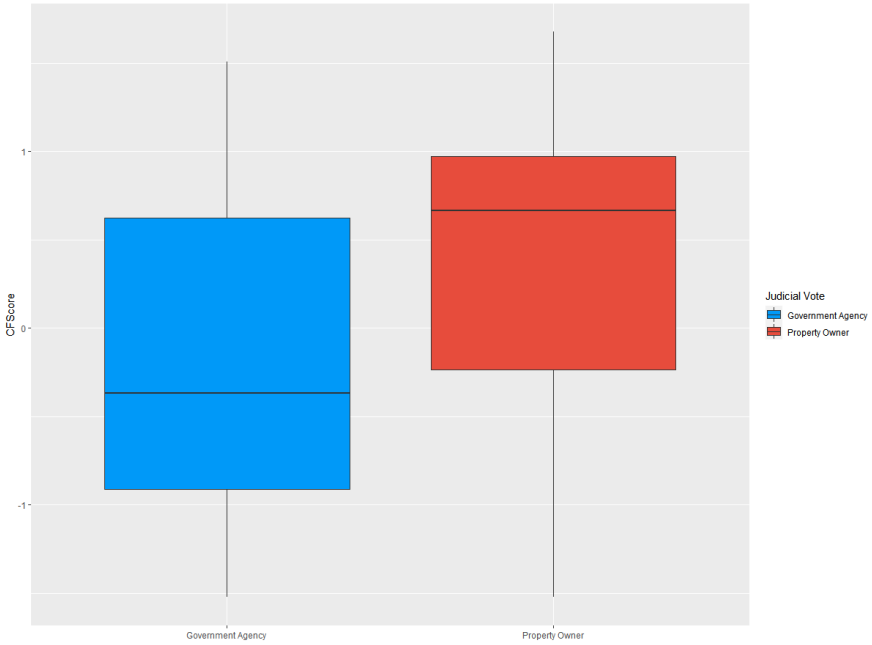
Due to the much smaller window of time from which the new CFscore analysis was drawn, the scope of the search needed to be expanded to include not only wetland takings cases, but all takings cases, using the search terms "takings," "unconstitutional," "eminent," and "regulatory." The sample size of the new analysis was 287 records, again each representing one justice's vote on one case. We again performed a two-sample t-test to verify whether the CFscores of the justices voting one way or another differed, with a significant difference in the average of the two groups, suggesting that divergent political ideology leads to dissimilar voting.

Among the 330 state supreme court records, 227 represent votes in favor of government agencies and 103 represent votes in favor of property owners. The box plot below shows more detailed information on the CFscore distribution among the two groups.

Los Angeles Cnty., 482 U.S. 304 (1987); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

[131] According to Westlaw, as of October 20, 2022.

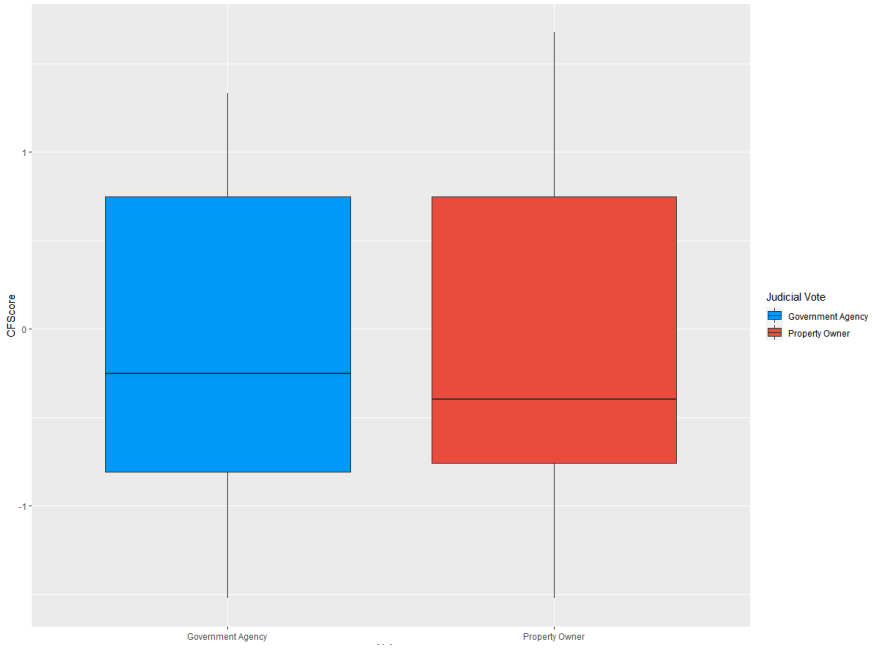
Figure 3. 2022 State Supreme Court Judicial Votes Box Plot



This box plot shows that state supreme court justices who voted in favor of government agencies had an average CFscore of -0.17 and justices who voted in favor of property owners had an average CFscore of 0.42. Because the p-value of the two-sample t-test is smaller than 0.001, we can thus conclude that the difference between the pro-property owners and pro-government judges is statistically significant. We can conclude from this finding that there is a pattern in the judges' votes, with liberal judges frequently voting in favor of government agencies and conservative judges in favor of property owners.

Among the 205 federal court records, 148 represent votes in favor of government agencies and 57 represent votes in favor of property owners. The box plot below shows more detailed information on the CFscore distribution among the two groups.

Figure 4. 2022 Federal Court Judicial Votes Box Plot



This box plot shows that federal judges who voted in favor of government agencies had an average CFscore of -0.08 and judges who voted in favor of property owners had an average CFscore of -0.02. The graph shows that the two candles are similarly spread out, which means judges ruling favor of property owners have CFscores spanning across the spectrum, and the same goes for judges ruling in favor of government agencies. There is no clear separation of political ideologies in the judges' rulings in federal takings cases. Furthermore, the p-value of this test is greater than 0.1, indicating no statistically significant differences in the CFscores of the pro-government and pro-property owner judges. Political ideology had much less bearing on federal judges' decisions in takings cases.

These results affirm the findings and predictions of the 2019 Bonica CFscore analysis and suggest that takings claimants from conservative states will continue to bring their claims to their state courts, while takings claimants from liberal states will now seek to bypass their state court systems in hope of better results in the federal courts. We will further analyze whether a flood of takings claims to federal courts has occurred and has resulted in any advantages for takings plaintiffs.

B. The Empirical Analyses, While Persuasive, Have Notable Shortcomings

While the findings of our empirical analyses point towards the conclusion that (1) takings cases may be political and (2) after *Knick* the political nature of takings cases may push plaintiffs to choose the most ideologically favorable forum, our empirical analysis is limited by two important factors.

First, our empirical findings were somewhat incomplete because the Bonica CFscore data was published in 2016. Most notably, we were unable to factor in the fixed effect of each court because we did not have the updated median CFscore of each state supreme court. Further, because we had incomplete CFscore data, in many of the coded cases only one or two of the sitting judges had a recorded CFscore. In tandem, this made accounting for the fixed effect of the courts impossible. Our findings are thus persuasive yet limited in their ability to fully predict the impact of judicial ideology. As it is highly likely that the quality of cases and the applicable law vary in each court, these factors also likely influence our findings. Therefore, while important, judicial ideology is just one consideration for making predictions about this complex area of law.

Second, it is also important to give the influential Priest-Klein bias attention. The Priest-Klein bias provides that litigated cases tend to have fact patterns that are arguably favorable towards the plaintiffs; specifically, there is a tendency towards 50 percent plaintiff victories.[132] This is partly due to most cases settling before trial.[133] Therefore, cases that end up in court are not a random subset of all cases.[134] Since settlement costs are usually lower than litigation costs, it can be inferred that cases that are litigated—as opposed to settled—must make economic sense to plaintiffs assumed to be rational economic actors. Simply put, a takings claimant willing to fight all the way to the state supreme court, especially in a liberal state, believes they have a fair chance of winning.

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[132] George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 U. CHI. J. LEGAL STUD. 1, 4 (1984) ("Our model, however, demonstrates that, where the gains or losses from litigation are equal to the parties, the individual maximizing decisions of the parties will create a strong bias toward a rate of success for plaintiffs at trial or appellants at appeal of 50 percent regardless of the substantive standard of law. Thus, plaintiff victories will tend toward 50 percent whether the legal standard is negligence or strict liability, whether judges or juries are hostile or sympathetic."); *see also* Yoon-Ho Alex Lee & Daniel Klerman, *The Priest-Klein Hypotheses: Proofs and Generality*, 48 INT'L REV. L. & ECON. 59 (2016) (provides mathematical proofs of Priest and Klein's claims, finding them to be "well-founded and true"); Robert J. Aumann, *Agreeing to Disagree*, 4 ANNALS STAT. 1236, 1236-39 (1976).

[133] Peter H. Scheck, *The Role of the Judge in Settling Complex Cases: The Agent Orange Example*, 53 U. CHI. L. REV. 337, 337 (1986) (observing that most cases settle before trial or before verdict is reached if case has made it to trial).

[134] Priest & Klein, *supra* note 132, at 2 ("It is well known, however, that only a very small fraction of disputes comes to trial and an even smaller fraction is appealed. In a study of insurance company claims files, H. Laurence Ross reports that, of his sample, only 4.2 percent of claims ultimately reached trial and 0.2 percent of claims were appealed. In a more comprehensive survey of police automobile accident reports, Alfred Conard *et al*., found that 0.7 percent of accident victims press their claims to trial and only 0.09 percent of victims appeal trial verdicts.").

Based on the Priest-Klein bias, cases that go to trial court must presumably start with a decent chance of the plaintiff winning, cases that get appealed have a higher chance of the plaintiff winning, and cases that reach the state supreme court have an even higher chance. Due to the prohibitive costs of litigating claims all the way to a state supreme court and based on the Priest-Klein hypothesis, a takings case that reaches a state supreme court must provide reasonable people with room for disagreement and at least a 50% chance of winning for takings plaintiffs.[135]

Based on the foregoing, although we did observe plaintiff win rates corresponding with our predictions, those win rates are merely persuasive and cannot provide any conclusive evidence about plaintiff advantage in any particular forum.[136]

C. Further Evaluating the Impact of Ideology on Post-Knick Takings Claims

When *Knick* was passed, we predicted a flood of takings cases in the federal courts as a logical result of plaintiffs seeking the friendliest forum. Reviewing data from PACER verified this result, though the impact of judicial ideology seems to have little bearing.[137]

We focused our initial PACER search on cases heard in the Ninth Circuit states and their corresponding district courts in the three years before and since *Knick*'s passage.[138] We used the search terms "takings clause" and "unconstitutional," and only selected claims with a section 1983 cause of action.[139] Between June 1, 2016 and June 1, 2019, nineteen complaints were filed in Ninth Circuit district courts alleging a facial takings claim.[140] Between June 30, 2019 and October 3, 2022, fifty-seven complaints alleging takings claims were filed.[141] Thus, the number of claims filed in Ninth Circuit federal courts alleging an unconstitutional taking has *tripled* since *Knick*'s passage.

Meanwhile in Ninth Circuit states' state courts, the number of cases has remained static. In the same time window as above, state courts heard eleven cases

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135 *See generally id.*

136 Takings claimants were found to have a winning rate of 48.3% in state courts and 41.7% in the according federal courts in conservative states; and takings claimants have a winning rate of 30% in state courts and 26.5% in the according federal courts in liberal states.

137 BLOOMBERG LAW, *Court Dockets*, https://www.bloomberglaw.com/product/blaw/search/results/c0632609393462259f3e876f4441b9d9 (last visited Oct. 27, 2022).

138 *Id.*

139 *Id.* (choose "edit search"; then enter keywords "takings clause" and "unconstitutional"; then open dropdown menu for "Federal Court Dockets"; then open dropdown menu for "Supreme, Appellate & District Court Dockets"; then open dropdown menu for "U.S. District Courts"; then choose "District of Alaska", "District of Arizona", "Districts of California", "District of Hawaii", "District of Idaho", "District of Montana", "District of Nevada", "District of Oregon", and "Districts of Washington"; then open dropdown menu for "Filing Type by Docket Key"; then choose "complaint/petition"; then open "Date" dropdown menu and choose "Date Range").

140 *Id.* (follow steps in fn. 140, then select June 1, 2016 and June 1, 2019 in the date range).

141 *Id.* (follow steps in fn. 140, then select June 30, 2019 and Oct. 3, 2022 in the date range).

before *Knick*'s passage and nine since.[142] The observed flood of takings cases into federal courts in these states was large, therefore, we felt it necessary to zoom out to the national level to further clarify the significance of these findings.

We performed a regression analysis to determine whether judicial ideology bears any significance on post-*Knick* takings filings. In the analysis, the dependent variable was the difference in the increase of case volume in federal courts relative to the corresponding increase in the state courts in all 50 states.[143] The predictor variable was the difference between the median CFscore of each state's supreme court and the median CFscore of each state's corresponding federal district courts.[144] The goal was to understand whether, on a national level, in states where an ideological gap exists between the state and federal courts, there is a jump (or decline) in takings cases consistent with our predictions about the forums plaintiffs would give preference following *Knick*.[145]

The regression analysis revealed no statistical significance.[146] Unexpectedly, as the difference in median CFscore increased between a state's supreme court and corresponding federal courts, the difference in federal filings relative to state filings decreased.[147] This was somewhat surprising because, on a national level, the total number of takings claims filed in federal courts more than doubled since *Knick*'s passage, from 79 in the three years preceding *Knick* to 188 in the three years since. Meanwhile, the total number of takings cases heard in state courts remained relatively consistent, with 83 in the years prior to *Knick* and 93 in the years since.

Predictably, most takings filings were in California, New York, and Texas, the three most populous states.[148] These states alone accounted for more than 50% of the large jump in national filings.[149] The ten states with the largest gap in judicial ideology are, in descending order, Vermont, New Mexico, South Dakota, New Hampshire, Arkansas, Ohio, Utah, Nebraska, and Connecticut. Only thirty-two *total* takings claims were filed or heard in all courts in these states since June 1, 2016.

Therefore, the impact of the observed jump in filings has mostly been felt in

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[142] *Id.* (choose "edit search"; then enter keywords "takings clause" and "unconstitutional"; then open dropdown menu for "State Court Dockets and Case Information"; then choose "Alaska", "Arizona", "California", "Hawaii", "Idaho", "Montana", "Nevada", "Oregon", and "Washington"; then open "Date" dropdown menu and choose "Date Range"; then select June 1, 2016 and June 1, 2019 in the date range; then select June 30, 2019 and Oct. 3, 2022 in the date range).

[143] Using the same procedure as described in fn. 139-44, but for all fifty states.

[144] To calculate the difference in median CFscores, we used the median CFscore of the state supreme courts and the median CFscore of the currently sitting federal judges at the time the Bonica data was published in 2016.

[145] *See* Appendix I.

[146] Significance F value/P-value: 0.12516.

[147] Coefficient: -2.5986.

[148] 40, 31, and 10, respectively.

[149] 55 of the difference of 109 cases filed in federal court.

the largest states. In the following section, we will attempt to explain why. We will look further into substantive law for other explanations that may support or challenge the predictions and conclusions made as a result of our analyses.

III. RECONCILING *KNICK* AND THE SUBSTANTIVE LAW

Considering the above analyses, a substantive analysis of the application of the relevant law with a focus on the quality of the claims themselves is necessary. Subsection III.A. will compare case law in the California Supreme Court and the Ninth Circuit and consider other factors that may have impacted and/or will further impact future takings jurisprudence in the federal courts.

A. Takings Cases Brought in State Courts vs. Federal Courts in Liberal States

After *Knick*, the role of federal courts has changed when reviewing property rights claims. This role change, as well as the changes in volume and type of cases reviewed, have likely required federal courts to adapt. Here, we will look to several California cases to assess how federal and state courts in a liberal state might differ in their application of the law, and how variance in the quality of cases in such state and federal courts may impact both the role of the federal courts and the choice of venue for takings claimants post-*Knick*.

1. Application of the Law

To understand how state and federal courts may differ in their application of the relevant law, we look to decisions of the California Supreme Court and various district courts. The following cases illustrate that state and federal courts in California use virtually the same method of analysis and framework both pre- and post-*Knick* when reviewing the validity of plaintiffs' takings claims. To ensure comparable cases and fact patterns, we will focus on takings claims where the question of whether a land-use "exaction" has occurred is the central issue.[150]

In *California Building Industry Association v. City of San Jose*, the California Supreme Court reviewed whether the defendant city's inclusionary housing ordinance imposed an exaction on plaintiff developer's property and was thus an unconstitutional taking under the California and Federal Constitutions.[151] This case was brought by plaintiffs after the government had conditioned their grant of a building permit upon the property owner's agreement to offer fifteen percent of

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[150] Exaction, BLACK'S LAW DICTIONARY (11th ed. 2019) ("A requirement imposed by a local government that a developer dedicate real property for a public facility or pay a fee to mitigate the impacts of the project, as a condition of receiving a discretionary land-use approval.").

[151] 61 Cal. 4th 435, 441-45 (2015).

their units at an affordable housing price.[152]

Due to the nature of the claim, the Court began its analysis by applying *Nollan* and *Dolan* "to explain and describe the nature and extent of the special scrutiny that is called for under the takings clause."[153] The Court then looked to *Koontz* to determine whether *Nollan*/*Dolan* special scrutiny should be used, as the scrutiny "not only applies when the government conditions approval . . . on a dedication . . . of the property for public use but also when it conditions approval . . . upon the owner's payment of money."[154]

The Court held the ordinance was not a taking because there was no exaction since the developer did not have to give up a property interest.[155] Because the ordinance merely required the developer to sell fifteen percent of its units at an affordable price and did not require a dedication of the portion of the property or require any payments to the public, the Court held that this was simply a condition that restricted how the developer may use their property.[156]

In *Better Housing for Long Beach v. Newsom*, the District Court of the Central District of California reviewed a similar takings claim based on a theory of exaction.[157] Plaintiffs alleged that a California statute "requiring landlords to pay or waive one month's rent prior to terminating certain residential tenancies" violated the takings clauses of the United States and California Constitutions.[158]

Prior to beginning a *Nollan*/*Dolan* analysis, the district court first looked to *Penn Central*, *Tahoe-Sierra*, and *Lingle* to determine that "rent control provisions and other restrictions on landlord-tenant relationships are not regulatory takings."[159] Following this determination, the court jumped right into *Nollan*/*Dolan* and *Koontz*. The primary difference in the analysis method was

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[152] *Id.* at 457.

[153] *See id.* ("Under *Nollan* and *Dolan*, the government may impose such a condition only when the government demonstrates that there is an 'essential nexus' and 'rough proportionality' between the required dedication and the projected impact of the proposed land use."); *Nollan*, 483 U.S. at 837 (if the condition substituted for the prohibition fails to advance the justification for the prohibition, the "essential nexus" is eliminated, thus failing the test); *Dolan v. City of Tigard*, 512 U.S. 374, 391-92 (1994) (indicating the "rough proportionality" test is applied in determining whether the degree of exactions required bears the required relationship to the projected impact on the proposed development, based on an individualized determination that required dedication is related both in nature and extent to the proposed development).

[154] *Cal. Bldg.*, 61 Cal. 4th at 459 (explaining that *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013) held that *Nollan*/*Dolan* analysis applies to monetary exactions).

[155] *Id.* at 468-69.

[156] *Id.*

[157] 452 F. Supp. 3d 921 (C.D. Cal. 2020).

[158] *Id.* at 921.

[159] *Id.* at 928-29 (first discussing *Penn Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) ("the courts consider three *Penn Central* factors: '[1] the regulation's economic impact on the claimant, [2] the extent to which the regulation interferes with distinct investment-backed expectations, and [3] the character of the government action' "); and then discussing *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 539 ("a regulatory taking must be 'functionally equivalent' to a possessory taking")).

merely temporal, as since *CBIA v. San Jose*, two cases in the Ninth Circuit provided further clarification.[160]

In the only takings cases relying on exaction claims since *Knick*'s passage in a California state court, these two Ninth Circuit cases were not applied to further clarify *Koontz*.[161] Upon further analysis, the reason behind this is merely fact-specific, as the two cases only apply in challenges to relocation assistance ordinances. Although not determinative, based on these cases it seems that state and federal courts are likely to apply the law in the same way, not giving takings plaintiffs a particular advantage in either venue. But, without more examples of state and federal courts hearing cases with similar facts and issues, we cannot make conclusive statements about plaintiff advantage in either forum.

2. Quality of Claims

As addressed in our previous discussion of the Priest-Klein bias, the quality of claims is also a vital factor in evaluating the likelihood of success in one venue or another. Cases appealed all the way to a liberal state's supreme court are likely strong, with a much higher likelihood of success—which one can assume by the plaintiff's choice to appeal rather than settle out of court. Especially considering the typical lack of success for takings plaintiffs in liberal states, we hoped to verify this supposition and further clarify our empirical data by substantively examining two illustrative California cases.

In *Property Reserve, Inc. v. Superior Court*, the California Supreme Court reviewed two lower court decisions concerning a state's petition for orders to enter private property and conduct environmental and geological studies of the properties' suitability for construction of a water tunnel.[162] The San Joaquin County Superior Court granted the petitions in part and denied them in part; on appeal, the court of appeals denied all the petitions.[163] Yet, the plaintiff landowners persisted and appealed to the California Supreme Court.[164]

Property Reserve had a complex factual background: the state hoped to enter over 150 private properties, and thus filed over 150 separate petitions to do so, then filed a separate petition to coordinate all of the preceding petitions, which became the "Master Amended Petition" for environmental and geological "activities" on thirty-five of the properties.[165] The master petition was granted,

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[160] *See Vill. Communities, LLC v. Cnty. of San Diego*, No. 20-CV-01896-AJB-DEB, 2022 WL 2392458 (S.D. Cal. July 1, 2022); *see also Douglass Properties II, LLC v. City of Olympia*, 16 Wash. App. 2d 158 (2021).

[161] *See Vill. Communities*, 2022 WL 2392458; *see also Douglass Property II*, 16 Wash. App. 2d 158.

[162] 1 Cal. 5th 151 (2016).

[163] *Id.* at 168-69.

[164] *Id.*

[165] *Id.* at 169.

and the court then bifurcated the hearing for the petition into two separate hearings for each of the proposed groups of activities.[166] Each of the hearings detailed the variety of activities, the goals, the time frame, the costs, the compensation, and more.[167] Before the geological petition was granted, the Court granted the environmental petition, and the landowners filed two petitions for writs of mandate, prohibition, and other appropriate relief in the court of appeal.[168] As is clear from our summary, this case was incredibly complicated, resulting in a 61-page opinion outlining all the claims, the procedural history, and the proposed activities to name a few.[169]

In *West Linn Corporate Park, LLC v. City of West Linn*, the Oregon Supreme Court was divided on the takings issue.[170] Under *Williamson*, the Ninth Circuit certified the case to the Oregon Supreme Court.[171] The dissenting justices disagreed with the majority on deciding the takings issue under the Fifth Amendment, essentially raising the issue resolved by *Knick*.[172] In this case, not only was the takings claim complicated, but the pre-*Knick* environment led to a complex procedural posture. Because the takings claim was interwoven with state law claims, and due to the holding in *Williamson*, the Court also had to address the constitutional issue, resulting in an expansive 65-page opinion.[173]

Meanwhile, cases brought in district courts after *Knick* demonstrate much weaker claims, and simpler and more efficient application of the law. In *Ballinger v. City of Oakland*, the district court adroitly dismissed all of the plaintiff landowner's claims.[174]

Plaintiffs first contended that the city's ordinance was a physical taking of property because it served no cognizable public purpose.[175] Before even deciding whether there was a valid public use, the court concluded that there was no taking.[176] Next, plaintiffs claimed the ordinance was an unconstitutional exaction.[177] However, the court did not even need to engage in a "fact-intensive analysis" because the legislation in question was "generally applicable."[178]

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166 *Id.*

167 *Id.* at 169-73.

168 *Id.* at 173-74.

169 *See generally id.*

170 *W. Linn Corp. Park, LLC v. City of W. Linn*, 240 P.3d 29 (2010) (where the majority opinion was joined by four justices and the opinion concurring in part and dissenting in part was joined by two justices).

171 *Id.* at 53 (Kistler, J., concurring in part and dissenting in part).

172 *See generally id.* at 53-56.

173 *Id.*

174 *Ballinger v. City of Oakland*, 398 F. Supp. 3d 560 (N.D. Cal. 2019).

175 *Id.* at 568.

176 *Id.* at 569.

177 *Id.*

178 *Id.* at 572.

Plaintiff's final taking claim was a "classic taking," because they were being "forced to transfer money to their tenants."[179] In dismissing the claim, the court held, "it is difficult to envision how exactly the City of Oakland would pay just compensation for an ordinance requiring the payment of money between two private parties."[180] Plaintiffs appealed to the Ninth Circuit, which affirmed the district court's judgment in a concise slip opinion.[181]

This disparity in case quality is one possible explanation for the success rates for takings plaintiffs being lower in blue state federal courts than in their corresponding state courts, exactly as predicted by the Priest-Klein hypothesis.

B. An Additional Preventative Mechanism Against Unfair Advantages for Takings Claimants in Blue State Federal Courts

As discussed above, further analysis reveals that *Knick* may not offer much solace for takings claimants, although this assumption is not certain. Below, we will consider another barrier to advantages for federal takings claimants.

1. Abstention

A hurdle likely to impact takings claimants is the issue of abstention. Because takings cases often involve a combination of state and federal law, federal courts may be left to make decisions on state law claims. If a federal court determines they cannot make a definitive ruling on the state law at issue, under the *Pullman* doctrine the federal court may decline to hear the issue and remand the case back to state court. Additionally, district court decisions being heard by a circuit court could be subject to abstention under *Burford* if the circuit court determines that a federal court determination would undermine a complex state administrative scheme.

In *Gearing v. City of Half Moon Bay*, we can see an example of how abstention can impact a takings claim.[182] In *Gearing*, the plaintiff brought a section 1983 suit in the Northern District of California alleging a regulatory taking under the Fifth and Fourteenth Amendments.[183] Defendant City then filed an eminent domain action with the same parties in state court and a Motion to Abstain in the district court under the *Pullman* abstention doctrine.[184] The court stated the *Pullman* abstention is appropriate where:

> (1) The complaint touches on a sensitive area of social policy upon which

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179 *Id.*

180 *Id.* at 574.

181 *See Ballinger v. City of Oakland*, 24 F.4th 1287 (9th Cir. 2022).

182 *Gearing v. City of Half Moon Bay*, No. 21-CV-01802-EMC, 2021 WL 4148663 (N.D. Cal. Sept. 13, 2021).

183 *Id.* at 2.

184 *Id.* at 1.

> the federal courts ought not to enter unless no alternative to its adjudication is open.
>
> (2) Such constitutional adjudication plainly can be avoided if a definitive ruling on the state issue would terminate the controversy.
>
> (3) The possibly determinative issue of state law is doubtful.[185]

The court then discussed how *Pullman* and *Knick* interact, stating that "nothing in *Knick* . . . purports to overrule or even mention[] *Pullman* or any other abstention doctrine. *Knick* and *Pullman* operate in different spheres."[186] Because *Pullman* does not concern ripeness or timing but rather the "principles of comity and federalism," *Knick* did not abrogate the abstention doctrines.[187] Further, *Pullman* does not require the exhaustive litigation requirement as in *Williamson County*, nor does it conflict with due process or the purposive impact of *Knick* by leveling it with all other constitutional rights.[188]

The court then proceeded into its analysis and determined that all of the *Pullman* factors were met, granting the City's motion and staying the case until state court proceedings had concluded.[189] While plaintiff's takings claim was merely stayed, the state court's decision will impact the claim, as "[p]ermitting a California court to determine the local issues may potentially narrow the issues presented in the federal constitutional litigation in this Court."[190] Besides the possible substantive burdens to the plaintiff as a result of the court's holding, they will also face "delay[s] and increased litigation expenses," further separating them from the benefits of *Knick*.[191]

Since *Knick*'s passage, no federal courts have spoken clearly on *Burford* abstention in the context of takings claims.

CONCLUSION

Knick puts Fifth Amendment takings plaintiffs on equal footing with other Constitutional rights plaintiffs.[192] As the *Knick* dissent becomes true and takings claims flood into federal courts, takings plaintiffs seem to be voting with their feet, yet questions remain as to why they are doing so.

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185 *Id.* at 3.
186 *Id.* at 4.
187 *Id.*
188 *Id.* at 5.
189 *Id.* at 5-11.
190 *Id.* at 10.
191 *Id.* at 9.
192 *See supra* Part I.C.

APPENDIX I: POST-KNICK REGRESSION ANALYSIS

SUMMARY OUTPUT

Regression Statistics	
Multiple R	**0.219762695**
R Square	0.048295642
Adjusted R Square	0.028468468
Standard Error	6.348877731
Observations	50

ANOVA

	df	*SS*	*MS*	*F*	*Significance F*
Regression	1	98.18407476	98.18407476	2.435830842	**0.125160734**
Residual	48	1934.795925	40.30824844		
Total	49	2032.98			

	Coefficients	*Standard Error*	*t Stat*	*P-value*	*Lower 95%*	*Upper 95%*	*Lower 95.0%*	*Upper 95.0%*
Intercept	3.503203937	1.326149967	2.641634825	0.011103971	0.836800718	6.169607155	0.836800718	6.169607155
Difference in Median CFscore	-2.598694406	1.665066752	-1.56071485	**0.125160734**	-5.946535492	0.74914668	-5.946535492	0.74914668

Multiple R is the correlation coefficient, which tells us how strong a linear relationship is. 1 means a perfect relationship. 0 means no relationship. R Square is the coefficient of determination, which tells us how many points fall onto the regression line. This number means 4.8% do so. The p-value tells us whether the analysis has significance. Because the p-value is greater than 0.05, there is no statistical significance here.

The dependent variable was the difference in post-*Knick* state filings and pre-*Knick* state filings subtracted from the difference in post-*Knick* federal filings and pre-*Knick* federal findings. The predictor variable was the difference in median CFscore between the state supreme courts and their corresponding federal district courts. Inputs can be seen in the table below.

	State Supreme Courts	Federal District Courts	Difference in Median CFscore	Difference in Fed Filings Relative to State Filings
AK	-0.70459	0.0125	0.71709	0
AL	0.78767	0.576	0.21167	0
AR	-0.48305	0.961	1.44405	-3
AZ	0.23627	-0.304	0.54027	5
CA	-0.14796	-0.699	0.55104	35
CO	-0.27175	-0.532	0.26025	1
CT	0.00513	-0.971	0.97613	2
DE	-0.55309	-0.606	0.05291	3
FL	0.72059	0.0204	0.70019	2
GA	-0.0321	-0.054	0.0219	0
HI	-0.3644	-0.45	0.0856	-1
IA	1.0317	0.555	0.4767	5
ID	1.0408	0.214	0.8268	1
IL	-0.08096	-0.752	0.67104	3
IN	0.48811	1.008	0.51989	4
KS	-0.24194	-0.202	0.03994	0
KY	0.30118	0.81	0.50882	2
LA	0.2287	-0.155	0.3837	2
MA	-0.8218	-0.79	0.0318	2
MD	-0.54031	-0.621	0.08069	3
ME	-0.99503	-0.937	0.05803	1
MI	-0.75259	-0.351	0.40159	0
MN	-0.27347	-0.617	0.34353	5
MO	-0.40964	-0.654	0.24436	-1
MS	1.0425	1.022	0.0205	0
MT	-1.12709	-0.757	0.37009	-1
NC	0.15775	0.427	0.26925	-3
ND	1.2006	1.5	0.2994	0
NE	-0.20506	1.061	1.26606	-2
NH	-1.02057	0.721	1.74157	-4
NJ	0.29471	0.247	0.04771	7
NM	-1.09225	0.922	2.01425	-3
NV	-0.20768	-0.531	0.32332	2
NY	-0.40976	-0.73	0.32024	26
OH	0.87618	-0.561	1.43718	-4
OK	0.25918	0.656	0.39682	2
OR	-1.03256	-0.91	0.12256	2
PA	-0.39686	0.173	0.56986	5
RI	-0.39199	-0.84	0.44801	-2
SC	0.68426	0.227	0.45726	0
SD	1.12547	-0.79	1.91547	-2
TN	-0.3344	0.055	0.3894	3
TX	0.9118	0.777	0.1348	3
UT	0.80135	-0.563	1.36435	0
VA	0.30175	-0.521	0.82275	2
VT	-1.40173	0.618	2.01973	0
WA	-1.26975	-0.667	0.60275	-2
WI	0.66745	-0.237	0.90445	0
WV	-0.40351	-0.437	0.03349	-1
WY	0.91784	0.05	0.86784	0