

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-647

ROSE MARY KNICK, PETITIONER

v.

TOWNSHIP OF SCOTT, PENNSYLVANIA, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae supporting vacatur and remand and that the United States be allowed ten minutes of argument time. Petitioner has agreed to cede ten minutes of argument time to the United States and therefore consents to this motion.

1. This Court granted certiorari to decide whether to reconsider a portion of its decision in Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172 (1985) (Williamson County). In that case, a landowner brought a suit under 42 U.S.C. 1983 alleging that local zoning laws amounted to a Fifth Amendment taking of its property. 473 U.S. at 176-182. The Court concluded that the suit was "not yet ripe" because the owner had not pursued available state-court procedures for obtaining compensation. Id. at 194.

2. This case arises from an ordinance enacted by respondent the Township of Scott, Pennsylvania. The ordinance provides that any owner whose property contains a cemetery must allow public access to the cemetery. Pet. App. A2. Petitioner owns land containing a cemetery, and she filed a Section 1983 suit alleging that the ordinance effects a Fifth Amendment taking. Id. at B4. The district court dismissed her Fifth Amendment claim based on Williamson County. Id. at B1-B18.

The court of appeals affirmed. Pet. App. A1-A33. It held that, under Williamson County, a property owner bringing a federal suit to recover for a taking by a local government must first "seek and be denied just compensation using the state's procedures, provided those procedures are adequate." Id. at A20-A21. The court explained that Pennsylvania law allows a landowner to bring an inverse-condemnation action to obtain

compensation for a taking, and it concluded that petitioner had neither availed herself of that procedure nor shown that it is inadequate. Id. at A21.

3. This Court granted certiorari to decide whether to reconsider the Williamson County rule. The United States has filed a brief as amicus curiae supporting vacatur and remand. The brief argues that Williamson County correctly recognized that the Fifth Amendment does not "require that just compensation be paid in advance of, or contemporaneously with, [a] taking." 473 U.S. at 194. Instead, the Court has long held that what is required for a lawful taking of property for public use "is that a 'reasonable, certain and adequate provision for obtaining compensation' exist at the time of the taking." Ibid. (citation omitted). But that well-settled constitutional rule should not prevent owners whose property is taken by local governments from enforcing their Fifth Amendment rights in a federal forum. As the United States explains in its brief, the Court should make clear -- either by clarifying the Williamson County rule or by reconsidering and rejecting it -- that those owners may seek just compensation in federal court.

4. Although the Williamson County rule does not apply to suits seeking to recover for asserted takings by the federal government, the United States has a substantial interest in the sound development of the underlying constitutional principles.

The United States has often participated in oral argument as amicus curiae in cases involving the proper interpretation of the Takings Clause. See, e.g., Murr v. Wisconsin, 137 S. Ct. 1933 (2017); Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595 (2013); Stop the Beach Renourishment, Inc. v. Florida Dep't of Env'tl. Prot., 560 U.S. 702 (2010). We therefore believe that oral presentation of the views of the United States would be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

JULY 2018