AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 11: The Contemporary Era – Property: Takings

**Knick v. Township of Scott, Pennsylvania**, \_\_\_ U.S. \_\_\_ (2019)

*Rose Mary Knick owned property on which was located a small cemetery. In 2012, the Township of Scott passed an ordinance requiring that all cemeteries be open to the public in daylight hours. After being notified that she had to keep her property open to the public, Knick filed a lawsuit asking for an injunction against the Township, claiming that the ordinance requiring her to allow private persons on her land was a taking in violation of the Fifth Amendment as incorporated by the due process clause of the Fourteenth Amendment. She did not, however, file an inverse condemnation lawsuit, which, if successful, would have required the Township to pay just compensation for the alleged taking. The local district court refused to grant relief on the ground that past precedent, most notably* William County Planning Comm’n v. Hamilton Bank of Johnson City *(1985) required landowners to seek compensation in state court before claiming an unconstitutional taking. That decision was affirmed by the Court of Appeals for the Third Circuit. Knick appealed to the Supreme Court of the United States.*

 *The Supreme Court by a 5-4 vote reversed the Third Circuit. Chief Justice Roberts’s majority opinion declared a taking occurred the instant the state took land, that litigants did not have to first seek compensation in a state court. Justice Elena Kagan’s dissent claimed that takings did not occur until the state through the state court system refused to pay compensation. What reasons does Roberts give for thinking that an unconstitutional taking occurs with the taking? What reasons does Kagan give for claiming that an unconstitutional taking occurs with the official refusal to pay compensation? Who has the better of the argument? All parties agreed that the lawsuit would have been moot the instant the Township of Scott paid compensation. What, then, are the practical stakes in the dispute between the majority and minority opinions?*

Chief Justice [ROBERTS](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0258116001&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I06fa8dbd941811e9b22cbaf3cb96eb08) delivered the opinion of the Court.

The Takings Clause of the Fifth Amendment states that “private property [shall not] be taken for public use, without just compensation.” In *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City* (1985), we held that a property owner whose property has been taken by a local government has not suffered a violation of his Fifth Amendment rights—and thus cannot bring a federal takings claim in federal court—until a state court has denied his claim for just compensation under state law.

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We now conclude that the state-litigation requirement imposes an unjustifiable burden on takings plaintiffs, conflicts with the rest of our takings jurisprudence, and must be overruled. A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it. That does not mean that the government must provide compensation in advance of a taking or risk having its action invalidated: So long as the property owner has some way to obtain compensation after the fact, governments need not fear that courts will enjoin their activities. But it does mean that the property owner has suffered a violation of his Fifth Amendment rights when the government takes his property without just compensation, and therefore may bring his claim in federal court under [§ 1983](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=42USCAS1983&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) at that time.

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The state-litigation requirement relegates the Takings Clause “to the status of a poor relation” among the provisions of the Bill of Rights.  Plaintiffs asserting any other constitutional claim are guaranteed a federal forum . . . , but the state-litigation requirement “hand[s] authority over federal takings claims to state courts.”

. . . [A] property owner has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it. The Clause provides: “[N]or shall private property be taken for public use, without just compensation.” It does not say: “Nor shall private property be taken for public use, without an available procedure that will result in compensation.” . . . 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. . . . [N]o matter what sort of procedures the government puts in place to remedy a taking, a property owner has a Fifth Amendment entitlement to compensation as soon as the government takes his property without paying for it. Whether the government does nothing, forcing the owner to bring a takings suit under the Tucker Act, or whether it provides the owner with a statutory compensation remedy by initiating direct condemnation proceedings, the owner's claim for compensation “rest[s] upon the Fifth Amendment.”

. . . .

A later payment of compensation may remedy the constitutional violation that occurred at the time of the taking, but that does not mean the violation never took place. The violation is the only reason compensation was owed in the first place. A bank robber might give the loot back, but he still robbed the bank. The availability of a subsequent compensation remedy for a taking without compensation no more means there never was a constitutional violation in the first place than the availability of a damages action renders negligent conduct compliant with the duty of care.

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The Court in [*Williamson County*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985133040&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) relied on statements in our prior opinions that the Clause “does not provide or require that compensation shall be actually paid in advance of the occupancy of the land to be taken. But the owner is entitled to reasonable, certain and adequate provision for obtaining compensation” after a taking. . . .

The history of takings litigation provides valuable context. . . . Until the 1870s, the typical recourse of a property owner who had suffered an uncompensated taking was to bring a common law trespass action against the responsible corporation or government official. The official would then raise the defense that his trespass was lawful because authorized by statute or ordinance, and the plaintiff would respond that the law was unconstitutional because it provided for a taking without just compensation. If the plaintiff prevailed, he nonetheless had no way at common law to obtain money damages for a permanent taking—that is, just compensation for the total value of his property. He could obtain only retrospective damages, as well as an injunction ejecting the government from his property going forward.

As Chancellor Kent explained when granting a property owner equitable relief, the Takings Clause and its analogs in state constitution required that “a fair compensation must, in all cases, be *previously* made to the individuals affected.”  If a government took property without payment, a court would set aside the taking because it violated the Constitution and order the property restored to its owner. The Framers meant to prohibit the Federal Government from *taking* property without paying for it. Allowing the government to *keep*the property pending subsequent compensation to the owner, in proceedings that hardly existed in 1787, was not what they envisioned.

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Today, because the federal and nearly all state governments provide just compensation remedies to property owners who have suffered a taking, equitable relief is generally unavailable. As long as an adequate provision for obtaining just compensation exists, there is no basis to enjoin the government's action effecting a taking. But that is because, as the Court explained in [*First English*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1987071659&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), such a procedure is a remedy for a taking that violated the Constitution, not because the availability of the procedure somehow prevented the violation from occurring in the first place.

. . . .

We conclude that a government violates the Takings Clause when it takes property without compensation, and that a property owner may bring a Fifth Amendment claim under [§ 1983](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=42USCAS1983&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) at that time. That does not as a practical matter mean that government action or regulation may not proceed in the absence of contemporaneous compensation. Given the availability of post-taking compensation, barring the government from acting will ordinarily not be appropriate. But because the violation is complete at the time of the taking, pursuit of a remedy in federal court need not await any subsequent state action. Takings claims against local governments should be handled the same as other claims under the Bill of Rights

The next question is whether we should overrule [*Williamson County*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985133040&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), or whether *stare decisis*counsels in favor of adhering to the decision, despite its error. The doctrine of *stare decisis* reflects a judgment “that ‘in most matters it is more important that the applicable rule of law be settled than that it be settled right.’ ” The doctrine “is at its weakest when we interpret the **Constitution**,” as we did in [*Williamson County*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985133040&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), because only this Court or a constitutional amendment can alter our holdings.

We have identified several factors to consider in deciding whether to overrule a past decision, including “the quality of [its] reasoning, the workability of the rule it established, its consistency with other related decisions, ... and reliance on the decision.” *Janus*v. *State*,*County*,*and Municipal Employees* (2018). All of these factors counsel in favor of overruling [*Williamson County*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985133040&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)).

[*Williamson County*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985133040&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))was not just wrong. Its reasoning was exceptionally ill founded and conflicted with much of our takings jurisprudence. . . . The decision has come in for repeated criticism over the years from Justices of this Court and many respected commentators. Because of its shaky foundations, the state-litigation requirement has been a rule in search of a justification for over 30 years. . . .

The state-litigation requirement has also proved to be unworkable in practice.  [*Williamson County*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985133040&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))envisioned that takings plaintiffs would ripen their federal claims in state court and then, if necessary, bring a federal suit under [§ 1983](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=42USCAS1983&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)). But, as we held in [*San Remo*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2006822572&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) *Hotel, L.P. v. City and County of San Francisco* (2005), the state court's resolution of the plaintiff's inverse condemnation claim has preclusive effect in any subsequent federal suit. The upshot is that many takings plaintiffs never have the opportunity to litigate in a federal forum that [§ 1983](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=42USCAS1983&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) by its terms seems to provide. . . .

The dissent argues that our constitutional holding in [*Williamson County*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985133040&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) should enjoy the “enhanced” form of *stare decisis* we usually reserve for statutory decisions, because Congress could have eliminated the [*San Remo*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2006822572&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) preclusion trap by amending the full faith and credit statute.  But takings plaintiffs, unlike plaintiffs bringing any other constitutional claim, would still have been forced to pursue relief under state law before they could bring suit in federal court. Congress could not have lifted that unjustified exhaustion requirement because, under [*Williamson County*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985133040&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), a property owner had no federal claim until a state court denied him compensation.

Finally, there are no reliance interests on the state-litigation requirement. . . . Our holding that uncompensated takings violate the Fifth Amendment will not expose governments to new liability; it will simply allow into federal court takings claims that otherwise would have been brought as inverse condemnation suits in state court.

Governments need not fear that our holding will lead federal courts to invalidate their regulations as unconstitutional. As long as just compensation remedies are available—as they have been for nearly 150 years—injunctive relief will be foreclosed. . . .

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Justice [THOMAS](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0216654601&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I06fa8dbd941811e9b22cbaf3cb96eb08), concurring.

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. . . . The Fifth Amendment does not merely provide a damages remedy to a property owner willing to “shoulder the burden of securing compensation” after the government takes property without paying for it.  Instead, it makes just compensation a “prerequisite” to the government's authority to “tak[e] property for public use.” A “purported exercise of the eminent-domain power” is therefore “invalid” unless the government “pays just compensation before or at the time of its taking.”  Of course, as the Court correctly explains, the United States' concerns about injunctions may be misplaced.  Injunctive relief is not available when an adequate remedy exists at law. . . .

Justice [KAGAN](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0301239401&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I06fa8dbd941811e9b22cbaf3cb96eb08), with whom Justice [GINSBURG](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0224420501&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I06fa8dbd941811e9b22cbaf3cb96eb08), Justice [BREYER](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0254766801&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I06fa8dbd941811e9b22cbaf3cb96eb08), and Justice [SOTOMAYOR](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0145172701&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I06fa8dbd941811e9b22cbaf3cb96eb08) join, dissenting.

. . . . [*Williamson County*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985133040&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))was rooted in an understanding of the Fifth Amendment's Takings Clause stretching back to the late 1800s. On that view, a government could take property so long as it provided a reliable mechanism to pay just compensation, even if the payment came after the fact. No longer. The majority today holds, in conflict with precedent after precedent, that a government violates the Constitution whenever it takes property without advance compensation—no matter how good its commitment to pay. That conclusion has no basis in the Takings Clause. . . .

Begin with the basics—the meaning of the Takings Clause. The right that Clause confers is not to be free from government takings of property for public purposes. Instead, the right is to be free from those takings when the government fails to provide “just compensation.” In other words, the government *can*take private property for public purposes, so long as it fairly pays the property owner. . . . In that way, the Takings Clause is unique among the Bill of Rights' guarantees. It is, for example, unlike the Fourth Amendment's protection against excessive force—which the majority mistakenly proposes as an analogy. Suppose a law enforcement officer uses excessive force and the victim recovers damages for his injuries. Did a constitutional violation occur? Of course. The Constitution prohibits what the officer did; the payment of damages merely remedied the constitutional wrong. But the Takings Clause is different because it does not prohibit takings; to the contrary, it permits them provided the government gives just compensation. So when the government “takes and pays,” it is not violating the Constitution at all. . . .

Similarly well-settled—until the majority's opinion today—was the answer to a follow-on question: At what point has the government denied a property owner just compensation, so as to complete a Fifth Amendment violation? For over a hundred years, this Court held that advance or contemporaneous payment was not required, so long as the government had established reliable procedures for an owner to later obtain just compensation (including interest for any time elapsed). . . .

. . . . [*Williamson County*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985133040&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) built on a long line of decisions addressing the elements of a Takings Clause violation. The Court there said only two things remotely new. First, the Court found that the State's inverse condemnation procedure qualified as a “reasonable, certain and adequate” procedure. . . . Second, the Court held that a [§ 1983](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=42USCAS1983&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) suit could not be brought until a property owner had unsuccessfully invoked the State's procedure for obtaining payment. But that was a direct function of the Court's prior holdings. Everyone agrees that a [§ 1983](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=42USCAS1983&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) suit cannot be brought before a constitutional violation has occurred. And according to the Court's repeated decisions, a Takings Clause violation does not occur until an owner has used the government's procedures and failed to obtain just compensation. . . .

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The [majority makes] the repeated assertion . . . that [*Williamson County*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985133040&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) treats takings claims worse than other claims founded in the Bill of Rights. That is not so. The distinctive aspects of litigating a takings claim merely reflect the distinctive aspects of the constitutional right. Once again, a Fourth Amendment claim arises at the moment a police officer uses excessive force, because the Constitution prohibits that thing and that thing only. . . . [That is not] true of Takings Clause violations. That kind of infringement, as explained, is complete only after *two* things occur: (1) the government takes property, and (2) it fails to pay just compensation. . . .

. . . As constitutional text often is, the Takings Clause is spare. It says that a government taking property must pay just compensation—but does not say through exactly what mechanism or at exactly what time. That was left to be worked out, consistent with the Clause's (minimal) text and purpose. And from 1890 until today, this Court worked it out [*Williamson County*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985133040&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))'s way, rather than the majority's. Under our caselaw, a government could use reliable post-taking compensatory mechanisms (with payment calculated from the taking) without violating the Takings Clause.

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. . . . The majority's overruling of [*Williamson County*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985133040&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))will have two damaging consequences. It will inevitably turn even well-meaning government officials into lawbreakers. And it will subvert important principles of judicial federalism.

To begin with, today's decision means that government regulators will often have no way to avoid violating the Constitution. There are a “nearly infinite variety of ways” for regulations to “affect property interests.” And under modern takings law, there is “no magic formula” to determine “whether a given government interference with property is a taking.” For that reason, a government actor usually cannot know in advance whether implementing a regulatory program will effect a taking, much less of whose property. . . . Now, when a government undertakes land-use regulation (and what government doesn't?), the responsible employees will almost inescapably become constitutional malefactors. That is not a fair position in which to place persons carrying out their governmental duties.

Still more important, the majority's ruling channels to federal courts a (potentially massive) set of cases that more properly belongs, at least in the first instance, in state courts—where [*Williamson County*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985133040&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))put them. The regulation of land use, this Court has stated, is “perhaps the quintessential state activity.”  And a claim that a land-use regulation violates the Takings Clause usually turns on state-law issues. In that respect, takings claims have little in common with other constitutional challenges. The question in takings cases is not merely whether a given state action meets federal constitutional standards. Before those standards can come into play, a court must typically decide whether, under state law, the plaintiff has a property interest in the thing regulated. Often those questions—how does pre-existing state law define the property right?; what interests does that law grant?; and conversely what interests does it deny?—are nuanced and complicated. And not a one of them is familiar to federal courts.

. . . .

State courts are—or at any rate, are supposed to be—the “ultimate expositors of state law.”  The corollary is that federal courts should refrain whenever possible from deciding novel or difficult state-law questions. . . . Today's decision sends a flood of complex state-law issues to federal courts. It makes federal courts a principal player in local and state land-use disputes. It betrays judicial federalism.

Everything said above aside, *Williamson County* should stay on the books because of *stare decisis*. Adherence to precedent is “a foundation stone of the rule of law.”  “[I]t promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *Stare decisis*, of course, is “not an inexorable command.” But it is not enough that five Justices believe a precedent wrong. Reversing course demands a “special justification—over and above the belief that the precedent was wrongly decided.” . . .

 In its only real stab at a special justification, the majority focuses on what it calls the “[*San Remo*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2006822572&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))preclusion trap.”  As the majority notes, this Court held in a post-*Williamson County* decision interpreting the full faith and credit statute,  that a state court's resolution of an inverse condemnation proceeding has preclusive effect in a later federal suit. *San Remo Hotel, L. P. v. City and County of San Francisco* (2005). . . . But in highlighting the preclusion concern, the majority only adds to the case for respecting *stare decisis*—because that issue can always be addressed by Congress. . . . Here, Congress can reverse the [*San Remo*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2006822572&pubNum=0000780&originatingDoc=I06fa8dbd941811e9b22cbaf3cb96eb08&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))preclusion rule any time it wants, and thus give property owners an opportunity—*after* a state-court proceeding—to litigate in federal court. . . .

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Just last month, when the Court overturned another longstanding precedent, Justice BREYER penned a dissent. See *Franchise Tax Bd. of Cal.* v. *Hyatt* (2019). He wrote of the dangers of reversing legal course “only because five Members of a later Court” decide that an earlier ruling was incorrect. He concluded: “Today's decision can only cause one to wonder which cases the Court will overrule next.” Well, that didn't take long. Now one may wonder yet again.