

Is Finality Still A Requirement For A RLUIPA Action To Be Ripe?

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Ripeness is an important defense to RLUIPA claims. A plaintiff must receive a final decision from the local authority as to how the zoning law applies to its proposal. If not, plaintiff's RLUIPA claim could be dismissed as unripe. Requiring a party to go through the full local procedures offers practical benefits to local governments, crystalizing the issues and presenting an opportunity to resolve matters prior to litigation. An initial denial by busy working-level zoning officials may create problems that can be solved by a zoning board of appeals' more detailed and thoughtful review. The final decision requirement insures that review occurs before the courts become involved. Recently, however, plaintiffs have argued that finality is no longer necessary for a RLUIPA claim to be ripe.

Most of the RLUIPA ripeness cases rely on the Supreme Court's decision in *Williamson County Regional Planning Com'n v. Hamilton Bank*, 473 U.S. 172 (1985). *Williamson County* set out a two-prong test. Under the first prong, a claim was not ripe until the applicant "obtained a final decision regarding the application of the zoning ordinance and subdivision regulations to its property." The plaintiff in *Williamson County* never received a "conclusive determination" of its proposal (even though the Commission initially denied approval) because the plaintiff did not seek variances, including from the Board of Zoning Appeals. Based on the finality requirement of *Williamson County*, a number of Courts of Appeal held RLUIPA claims were not ripe without an application or zoning board review, and dismissed the claims.

Last June, however, the Supreme Court, in *Knick v. Township of Scott Pennsylvania*, 139 S. Ct. 2162 (2019), overruled *Williamson County*. As a result, some RLUIPA plaintiffs have contended that the finality requirement no longer applies. The caselaw does not appear to support this argument.

First, the Supreme Court in *Knick* specifically pointed out that the plaintiff "does not question the validity of this finality requirement, which is not at issue here." Therefore, *Knick* did not overrule (or even address) the first prong. Second, the finality requirement did not originate with *Williamson County*, which pointed out, "[a]s the Court has made clear in several recent decisions, a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." Even in the absence of *Williamson County*, the pre-existing law that a final decision is a prerequisite to ripeness remains in effect. Defendants may be well advised to be ready to defeat plaintiff's attempts to rely on *Knick*, and not

allow courts to be misled as to the decision's impact on ripeness.

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