UPDATE: Rick Frank has published some insighful analysis here of the decision discussed below, including discussion of the impacts of the changing Supreme Court composition on the development of doctrine in the so-called "judicial takings" area.

The U.S. Supreme Court just issued its decision in *Stop the Beach Renourishment v. Florida Department of Environmental Protection* (#08-1151), an important case on constitutional takings. I have only skimmed the opinion, but it appears that the Court has opened the door, through a four-Justice opinion authored by Justice Scalia, to future claims of "judicial takings." These claims , formerly unrecognized by federal courts, are based on allegations that court decisions that unsettle property owners' expectations may constitute "takings" requiring "just compensation" for the property owners under the Fifth Amendment to the Constitution. All eight of the participating Justices agreed that there was no compensable taking in this case, and the other four Justices wrote that the Court needn't have reached the issue of whether a "judicial taking" might be a valid claim, on these facts.

Basically, the decision involves a state law that allows the State of Florida to add sand to beaches through "beach renourishment" projects. The state retains title to new dry beach land that results from the project, even if that land was below the "mean high water" line immediately before the fill was added, and thus owned by the adjacent property owners, before the renourishment. The Florida Supreme Court held that this was lawful, and a property owner group sued in federal court, seeking a determination that the decision amounted to an unlawful judicial taking by depriving them of property while unsettling their existing legal expectations.

The Scalia opinion isn't precedential, since it was the opinion of only four justices. But it nonetheless may turn out to be influential; libertarian commentators have been arguing that the takings doctrine should be applied to judicial decisionmaking, but up until now, it hadn't been (and I believe wisely so, though that's a matter for another post). Even though the property owners lost here, the principle appears to have gained currency. If widely accepted, the "judicial takings" doctrine could dramatically expand the takings doctrine's application. Advocates for expanded rights of private property owners against the government are likely to be very pleased by the decision, as this initial blog post from the Pacific Legal Foundation's Timothy Sandefur indicates.

Finally, the issue of who owns the beach up to what point, especially in the context of government intervention to change the beach's contours, will be of increased

importance as sea levels rise due to climate change. Courts, legislatures, and local governments will have to grapple with this question in a variety of contexts.