

The U.S. Supreme Court's 2018-19 Term is shaping up as a most consequential one when it comes to the intersection of environmental regulation and constitutionally-protected property rights. Today the Court agreed to hear and decide an important "regulatory takings" case: [Knick v. Township of Scott, Pennsylvania, No. 17-647](#). (Recently, Legal Planet colleague [Holly Doremus wrote](#) about another important environmental case the justices have agreed to resolve, one involving the federal government's ability to designate "critical habitat" for species listed under the Endangered Species Act in the face of objections from affected private property owners; that case, *Weyerhaeuser v. U.S. Fish and Wildlife Service*, will now be argued before the Court in October.)



The front facade of the Supreme Court of the United States.

The newly-granted *Knick* case raises a controversial procedural issue of takings law: whether the Supreme Court should reconsider its "ripeness" doctrine, first articulated by the justices in their 1985 decision, [Williamson County Regional Planning Commission v. Hamilton Bank of Johnson County](#). In that case, the Court announced that federal courts should not resolve regulatory takings claims that are not "ripe" for adjudication. Specifically, the justices declared that a property owner's takings claim is not ripe unless: 1) the government defendant has reached a final administrative decision regarding the application of the challenged regulation to the property at issue; and 2) the property owner has first sought compensation from the government defendant via available state administrative and judicial remedies.

Over the intervening 33 years, the Supreme Court's ripeness rule has bedeviled regulatory takings plaintiffs, proven to be a formidable procedural defense for government takings defendants and produced considerable confusion among lower federal (and state) courts. Perhaps most importantly, several Supreme Court justices—including current justices Clarence Thomas and Anthony Kennedy—have expressed misgivings about the Court's ripeness rule in regulatory takings jurisprudence, and urged that the Court revisit the whole question.

The *Knick* case involves the owner of a 90-acre parcel in rural Pennsylvania who claims a town ordinance requiring access across her property to a private cemetery triggers a compensable taking of her property. A federal district court dismissed her federal takings lawsuit on ripeness grounds, finding that Ms. Knick had failed to first

pursue her constitutional claim in state court. The U.S. Court of Appeals for the Third Circuit affirmed, and it is from that ruling that Ms. Knick and her attorneys at the Pacific Legal Foundation have successfully sought review.

It seems likely that the Supreme Court justices view the humble facts of the *Knick* case as the appropriate vehicle to reconsider the ripeness rule the Court first announced in *Williamson County* in 1985. Property rights advocates generally—and the Pacific Legal Foundation in particular—have long sought the justices’ reexamination of the Court’s ripeness doctrine. Given that doctrine’s evolution as a bedrock principle of regulatory takings law, *Knick* is shaping up as perhaps the most important regulatory takings case that has come before the Supreme Court in the past decade.

The parties will file written arguments in the case over the next several months (along with an expected flood of friend-of-the-court briefs); the justices will hear oral arguments in *Knick* next fall; and the Court will issue what is likely to be its most consequential decision sometime in 2019.