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My Wall Street Journal Op Ed on Important Property Rights Case that Will be Argued before the Supreme Court Tomorrow

Knick v. Township of Scott addresses the issue of whether property owners with Takings Clause claims are entitled to access to federal court on the same terms as constitutional rights cases.

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October 2, 2018

The *Wall Street Journal* just posted [my op ed](#) on *Knick v. Township of Scott*, an important property rights case that will be argued before the Supreme Court tomorrow. Here is an excerpt:

Rose Mary Knick lives on a 90-acre plot of farmland in Pennsylvania that her family has owned since 1970. But according to the local government, the property isn't entirely hers. In 2012 it enacted an ordinance requiring owners of "cemeteries" to allow unrestricted public access to their land and submit to inspections. In April 2013, a township code-enforcement officer searched Ms. Knick's land without her consent, concluded that some stones there were actually grave markers and deemed part of the area a "cemetery" subject to the law. If Ms. Knick refuses access to inspectors or anyone else, she could be fined up to \$600 a day.

On Wednesday the Supreme Court hears oral arguments in *Knick v. Township of Scott*. The justices have an opportunity to ensure that people whose property rights have been violated by state and local governments can get their day in federal court the same as victims of violations of other constitutional rights.

In most situations, giving outsiders a blanket right to trespass on private land counts as a taking under the Fifth Amendment, and the government must pay the owner "just compensation." Yet a misguided Supreme Court decision prevents federal courts from even considering Ms. Knick's case. Although she is before the high court, no federal judge has considered her case on the merits.

I discussed the issues at stake in the *Knick* case in greater detail [here](#), and in [an amicus brief](#) I coauthored on behalf of the Cato Institute, the National Federation of Independent Business, the Southeastern Legal Foundation, the Beacon Center of Tennessee, the Reason Foundation (which publishes *Reason* magazine and this website), and myself (serving as both an amicus and

coauthor of the brief, as is allowed under Supreme Court rules). I should perhaps note that my involvement in the amicus brief is pro bono.

Because Brett Kavanaugh's confirmation is still in limbo, the Court will hear this case (and others on the calendar this week) with only eight justices. The retirement of Justice Kennedy probably hurts our side of it, because Kennedy was one of four justices who joined a 2005 concurring opinion urging the Court to reconsider *Williamson County v. Hamilton Bank*, the dubious 1985 precedent that stands in Rose Mary Knick's way. Nonetheless, I am guardedly optimistic that the justices will reverse or at least limit *Williamson County* in *Knick*.

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