My New Article on the Supreme Court's Recent Decision in Knick v. Township of Scott—an Important Takings Case

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My new Cato *Supreme Court Review* article on the Supreme Court's recent decision in *Knick v. Township of Scott*– an important property rights case that overruled a longstanding precedent is now available for free on SSRN. Here is the abstract:

The Supreme Court's decision in *Knick v. Township of Scott* put a long-overdue end to a badly misguided precedent that had barred most takings cases from federal court. The big issue at stake in *Knick* was whether the Court should overrule *Williamson County Regional Planning Commission v. Hamilton Bank* (1985). Under *Williamson County*, a property owner who contends that the government has taken his property and therefore owes "just compensation" under the Takings Clause of the Fifth Amendment could not file a case in federal court until he or she first secured a "final decision" from the relevant state agency and "exhausted" all possible remedies in state court. The validity of this second "exhaustion" requirement was at issue in *Knick*. Even after both *Williamson County* requirements were met, it was *still* usually impossible to bring a federal claim because procedural rules preclude federal courts from reviewing final decisions in cases that were initially brought in state court.

Part I of this article briefly describes the background of the *Knick* case and the *Williamson County* decision that the Court ended up reversing. In Part II, I explain why the Court was right to conclude that *Williamson County* created an indefensible double standard under which takings claims against state governments were effectively barred from federal court in situations where other types of constitutional claims would not be. Part III explains why overruling *Williamson County* is justified under the Supreme Court's admittedly imprecise doctrine on overruling precedent. Justice Elena Kagan's dissenting opinion is wrong to argue that overruling *Williamson County* also entails overruling numerous earlier precedents. Finally, Part IV assesses the potential real-world impact of the *Knick* decision. In many cases, it will make little difference whether a takings claim gets litigated in state court or federal court. In some situations, however, the right to bring a claim in federal court is a vital tool to avoid potential bias in state courts and procedural hoops that subject property owners to a prolonged ordeal before they have an opportunity to vindicate their rights. Claims that *Knick* will lead to a flood of new takings litigation are overblown. But to the extent that substantial new litigation does result, that is likely to be a feature, not a bug.

Star Trek fans will be happy to know that this may be the first-ever law journal to discuss the subject of changing depictions of Klingon foreheads—in the course of analyzing the notorious (and ultimately unsuccessful) "Klingon forehead" argument put forward by the federal government in their amicus brief in the case (see pp. 158-59 of my article). Sadly, I was not able to include actual pictures of the evolution of Klingon foreheads in the article. But they can be seen here. Prominent takings expert Robert Thomas deserves credit for the analogy between the government's argument and Star Trek's "retconning" of Klingon foreheads.

I will be speaking about the *Knick* decision and my article at the Cato Institute's annual Constitution Day conference, on Tuesday, September 17. I will be on a panel that runs from 2:15 to 3:30 PM. The event is free and open to the public.