In 2019, the Supreme Court will get its latest bite at the Takings Clause apple when it hears the case of *Knick v. Township of Scott*. The metaphor from the preceding sentence—commonly used to symbolize a person or entity getting a second chance at something—is appropriate in a variety of ways for purposes of the *Knick* case. On the surface, the Court is hearing the case for a second time on re-argument this Spring and allowing the metaphor to stand. Digging deeper however, the substantive issue at hand in *Knick* also calls upon the aforementioned metaphor; more on that in a moment.

The facts in *Knick* are fairly straightforward: Plaintiff, Rose Mary Knick, is a resident of the Township of Scott, which passed an ordinance declaring that “all cemeteries within the Township . . . be kept open and accessible to the general public during daylight hours . . .,” that no property owner may unreasonably restrict access to such cemeteries, and that government officials may enter the property at any time to determine if a cemetery is on the property. An official did just that on Knick’s property, entering without a warrant, finding what the official believed to be a cemetery, and subsequently declaring Knick to be in violation of the ordinance. In her lawsuit, she prominently argued that the ordinance amounts to a taking of her property, thus requiring “just compensation” under the Fifth Amendment to the United States Constitution. However, to Knick’s chagrin, her suit was tossed out of Federal Court at the District level for failing to satisfy what is known as the “Williamson County Doctrine.” The Doctrine is a result of the Supreme Court’s decision in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*. In that case, the Court essentially held that “if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation.” At first blush, this decision seems to still allow Ms. Knick to obtain relief by simply heading to State Court, and seek a remedy. What is implicit in the doctrine and the preceding quotation, however, is that if a plaintiff does indeed go to State Court and is denied just compensation, then that plaintiff may head to Federal Court to determine if a violation of the Just Compensation Clause has occurred. Yet herein lies the functional issue: once a plaintiff like Knick has sought a remedy at the State Court level and lost, that plaintiff is precluded under Res Judicata from then filing a claim in Federal Court. Thus, the plaintiff cannot have the proverbial second bite of the apple, a phrase by which the rationale for preclusion is oft described.

At present, Knick argues that this practice and remedial regime denies her access to Federal Courts, in turn preventing her and other plaintiffs from seeking Federal relief from potential violations of their Federal Constitutional rights. Essentially, the Knick argument is that the Williamson County Doctrine and its progeny close the Federal courthouse doors for takings clause claims against state and local governments. Therefore, the Supreme Court should accept these arguments and overrule the Williamson County Doctrine to allow potential litigants to choose their forum in a manner consistent with all other Constitutional litigants.
because as scholars have noted, no other Constitutional rights are treated this way, rendering certain Takings Clause litigants to second class status.\[15\]

[1] University of Kentucky College of Law (J.D. Expected Spring 2020); B.A. Northern Kentucky University (2017).


[3] id

[4] id

[5] id


[14] Id


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