No. 18-390

In The
Supreme Court of the United States

SANDRA PLETOS and MITCHELL PLETOS,

Petitioners,

v.

MAKOWER ABBATE GUERRA WEGNER VOLLMER, PLLC, JOHN FINKELMANN, ROGER PAPA, GIOVAN AGAZZI, DANNY LANDA, KATIA AZIZ, and MIKE DESJARDINE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

REPLY BRIEF FOR THE PETITIONERS

Pro Se

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incorrect application of *Rooker-Feldman* can affect thousands of general litigants whose hearings may be improperly denied. It can have a considerable impact, as here, on more than 69 million Americans (4.4 million in the Sixth Circuit) who are the victims of repeated fraud, concealment, and abusive debt collection practices involving contracts entered into as part of ownership in a common interest community.[3] Similarly, millions of other Americans, who have contractual and statutory rights as members of clubs, athletic teams, school affiliations, and the like, will, in some circuits, have their rights to bring *independent claims*, involving collections or distinct acts of fraud, wrongfully chilled, merely because they may have been involved in an earlier state-court action. It has a significant legal impact because strict liability statutes, such as FDCPA and RICO, are essentially being rewritten by the overzealous use of *Rooker-Feldman*, potentially subjecting millions of Americans to unlawful collection practices, fraud, and other patterns of criminal activity.

It is time for this Court to once again clarify 1) whether *Rooker-Feldman* bars a party in a federal action from asserting *independent* claims, including those based upon *contractual* or *statutory rights* (such as those that govern a community association), or *new and distinct claims* that arise in the *years following* a state-court judgment, and 2) whether *Rooker-Feldman*

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[3] *The Community Association fact book, National and State statistical review for 2016*, Community Association Data, caionline.org.

fraudulent deed, 4) violated numerous provisions of the FDCPA, refused to verify debt, attempted collections in excess of the judgment, concealed documents, and 5) were repeatedly told by Attorney Bowlin to stop communicating with her.

When *Rooker-Feldman* is interpreted correctly, these facts alone would foreclose any possibility that the doctrine, or any preclusion principles apply.

II. JUDGES AND ATTORNEYS ARE CONFUSED. A SIXTH CIRCUIT JUDGE EXPRESSES CONCERN.

The Rooker-Feldman *Doctrine: What Does It Mean to Be Inextricably Intertwined*,[4] discusses the doctrine's history, this Court's attempt to rein the doctrine in under *Exxon*, what *Exxon* left unanswered, and how the doctrine has been getting used in the wake of *Exxon*. Its findings are still in place today; *Rooker-Feldman* is misconstrued. Below, Pletoses discuss the Eleventh Circuit's recent decision in *Target Media Partners v. Specialty Mktg. Corp.*, 881 F.3d 1279 (11th Cir. 2018), a case profoundly similar to Pletoses' (WL1870380 (6th Cir. Apr. 19, 2018)). Pletoses' point is clear—the doctrine is misunderstood by attorneys and judges alike, and its application remains overbroad.

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[4] By Allison B. Jones, Duke Law Journal, Vol. 56:643, 2006.

> reviewing the underlying state-court judgment and injuries caused by that judgment." App.13 – 14.

The FDCPA is clear that it applies to post judgment enforcement. 15 U.S.C. § 1692a(5). Despite Judge Guy's concern, the Sixth Circuit wrongfully denied Pletoses motion for a rehearing and rehearing en banc, disregarded Pletoses rights under their homeowner association contract, ignored precedential case law, and convoluted the very purpose of the FDCPA and RICO statutes. This Court should grant Pletoses petition to shed more light on *Rooker-Feldman*, clarify that it does not preempt contractual rights or strict liability statutes, define what specifically qualifies as an *independent* claim, and propose ways on how to determine if one exists.

III. CONFLICTS WITH THE SUPREME COURT PRECEDENT, AND SPLITS WITHIN AND AMONGST THE CIRCUITS EXIST. ANOTHER JUDGE WRITES SEPARATELY.

A comparison of the Eleventh Circuit's decision and Judge Newson's concurrence in *Target*, to the decision here, including Judge Guy's skepticism and the denial of Pletoses' rehearing motions, clearly demonstrates that various interpretations and overbroad applications of *Rooker-Feldman* exist.

The parties in *Target* previously litigated a breach-of-contract suit, as did the Pletoses. Unlike *Target*, the defendants in Pletoses federal action are not

by the Eleventh Circuit, Pletoses federal claims could not have been "identical" to those addressed in the state-court action.

Target further explains that *independent* or *distinct* claims are not barred. *Id.* at 1287. A mere factual relationship, or contextual similarity, which may suggest that the state and federal cases are "intertwined" in some sense, does not trigger *Rooker-Feldman*. "It is not the factual background of a case but the judgment rendered— that is, the legal and factual issues decided in the state court and at issue in federal court that must be under direct attack for *Rooker-Feldman* to bar our reconsideration." *Id.* at 1287. Indeed, the Sixth Circuit could decide the merits of Pletoses independent FDCPA and RICO claims, against entirely different parties, without rendering a judgment on the state breach-of-contract or counterclaim involving LWA.

Judge Newson writes separately in *Target*, persuasively articulating his interpretation of *Exxon*. *Id.* at 1289. He clarifies *Exxon*'s holding that " . . . *Rooker-Feldman* does *not* bar a federal-court suit simply because it relitigates a "matter" previously argued—or even "denies a legal conclusion" previously reached in a state-court action." *Id.* at 293. *Target* at 1290. "If a federal plaintiff presents some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion." *Exxon* at 293. *Target* at 1290. It was possible for the court in *Target* to find fraud in the

V. THERE IS NOTHING "IDENTICAL" BETWEEN CLAIMS ASSERTED IN A 2012 ACTION, AND THOSE THAT OCCURRED IN THE YEARS FOLLOWING.

A. The Parties Are Not The Same.

The individual respondents make a half-hearted attempt to dodge the fact that the parties in this action, and the parties in the state-court action, are not the same, ignoring that the Sixth Circuit already ruled that they were "arguably different." App. 13. Time and again, the respondents' BIO refers to LWA as if it were the respondent in this action, even though there is undisputedly no known relationship between the individual respondents and LWA. Petition 16. BIO 9. See also BIO 3, 6, 7, 8. Quite simply, they are trying to deceive this Court, reinforcing Pletoses RICO claim. The respondents do not cite to any case law barring claims brought *against non-parties* to a state-court action, on *Rooker-Feldman*, or any other grounds. Nor do they provide case law for the proposition that a party, or court, can arbitrarily change the captioned parties in an action by holding that five distinct individuals could possibly be *one and the same* as a Michigan nonprofit corporation.

Pletoses' complaint alleged that the individual "respondents" acted as "debt collectors" as defined by the FDCPA, an allegation completely ignored by the lower courts. 15 U.S.C § 1692a(6) A remand is necessary to answer the unprecedented question, essentially, whether parties collecting debt through fraud and a

quoting *Powell v. Powell*, 80 F.3d 464, 467 (11th Cir. 1996).

The Sixth Circuit agrees that not all of the claims could have been raised during the state court litigation. App. 36. Certainly, claims arising in later years could not have been litigated in the 2012 action. Nor was there, or could there have been, an opportunity to present the full gamut of violations (177 paragraphs) during any post-judgment proceedings. There were no proceedings before the trier of fact (a jury in the state-court). In Michigan, "A question has not been actually litigated until put into issue by the pleadings, submitted to the trier of fact for determination, and thereafter determined." (*VanDeventer v. Michigan National Bank*, 172 Mich App 456, 463 (1988), citing *Cogan v. Cogan*, 149 Mich App 375, 379 (1986).

When the district court dismissed Pletoses state law claims without prejudice, but concurrently dismissed their FDCPA and RICO claims with prejudice, it chilled Pletoses future rights to allege violations under these statutes, should the Pletoses be successful in a state law claim for fraud. This is simply wrong.

VI. DISMISSAL ON THE BASIS OF ALTERNATIVE GROUNDS IS MERITLESS.

Lacking any discussion on the merits, it is difficult to understand specifically what alternative grounds the Sixth Circuit relied upon. App. 13. Issue and claim preclusion require courts to engage in fact intensive determinations as to what was actually decided and at

§ 1692a(6) referring to individuals collecting under false names. Clearly the misrepresentations alleged in RICO must occur prior to these FDCPA violations.

CONCLUSION

For the reasons set forth above, and those in the petition, certiorari should be granted.

Respectfully submitted,

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