NO. 19-6263

IN THE UNITED STATES SUPREME COURT

VELASQUEZ

V.

STATE OF UTAH, *ET AL.*

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR REHEARING

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PETITION FOR REHEARING

Mr. Velasquez submits that in denying *Writ of Certiorari* the same issue of claim preclusion reverses the effect of *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.* 524 U.S. 280 (2005), as was affirmed by the Court of Appeals where Velasquez has cited it sustained *Fraud on the Court* (Fed. R. Civ. P. 60(d)(3)). When evaluated in light of *In re Philadelphia Entm't & Dev.* No. 17-1954 3d.Ct. (2018), it is clear the reasoning in both lower courts is incomplete and *fraudulent* by the basic structure of *Rooker-Feldman* doctrine.

The other result was that rulings were not faithful to compel the petitioner to correct his filing to United States Supreme Court in purview to Utah Supreme Court, and serve new process thereby. This case is not at final termination, but terminated unduly pre-trial.

Pursuant to Sup. Ct. R. 44.2, Rehearing has been granted in the past when a decision reversed the effect of a withstanding opinion, "granting the petitions for writ of certiorari in similar cases raising the same issue... constitutes 'intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented," See *Gonzales-Longoria v. U.S.*, No. 16-6259, Appellant's Petition for Rehearing, at 4. Position evaluates against mootness in Supreme Court, lower courts have discriminated exclusively against Appellant Velasquez and presently reverse the effect of *Exxon Mobil*. Velasquez sustains a withstanding cause of action to define an intervening circumstance.

Additionally, evaluation of *contempt* is due after a Judicial Misconduct Committee does not evaluate the question. Velasquez affirms, it is *perjury* of oath, 28 U.S. § 1621(2), to falsify the order of termination. Velasquez submits that it is *contempt* to deliberate to suppress the substance of his First Amendment obligations to petition, central arguments, and submits affidavit.[1]

In his petition for *Writ of Certiorari,* Velasquez originally evaluated *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983) and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) as affirmative to *Exxon Mobil.* Both rulings are careful not preclude any original jurisdiction, as those rulings protect the general *exclusivity* of an appellate jurisdiction. His position even went so far as to define that *Rooker-Feldman* were inherently supervisory expression of jurisdictional evaluation, to define the Sup. Ct. R. 10(a), that "a United States court of appeals... has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."

The controlling law at termination was expressed to be 28 U.S. § 1915, a failure to state a recognizable claim on which relief can be granted with prejudice of *Rooker-Feldman* doctrine. The court has categorically precluded the question which permits a federal district court original and exclusive jurisdiction by the Civil Rights Act, an evaluation by Fed. R. Civ. P. 52(c), grounds for partial judgment demonstrated pre-

[1] Addenda, Page 026.

trial, any interest to amend pleadings to show jurisdiction (28 U.S. § 1653) at Reconsideration or on petition for *Writ of Mandamus*.

The matter was in fact petitioned of the federal question statute, 28 U.S. §§ 1331, 1343 and held provided to 42 U.S. § 1983 by 42 U.S. § 1981, relief by 28 U.S. § 1988 and the *extraordinary writ,* 28 U.S. § 1651. The jurisdiction is available by 28 U.S. § 1254. Position on rehearing evaluates against mootness by implicit claim preclusion contrary to *Rooker-Feldman*, affirming a *fraud* of transaction, the terminating order, in the lower courts.

The statutory claim obstructed involves Utah Division of Aging and Adult Services/APS as amended by Utah Senate Bill 63 (2008); the petition for *Writ of Certiorari* briefly described this question, involving Utah Code §§ 62A-3-301;[2] 311.1;[3] 311.5;[4] 312;[5] as a statutory sequence which defines an administrative censure held hereby notwithstanding as a forensic-administrative claim, a "Supported" (Ut. Code § 62A-3-301(28)) or "Not Supported" finding, which has a declaratory power effected before review, binding several frivolous expressions of liability, as capable to support action for emergency protective orders, but otherwise entangles the *abuse of a*

[2] https://le.utah.gov/xcode/Title62A/Chapter3/62A-3-S301.html?v=C62A-3-S301_2019051420190514
[3] https://le.utah.gov/xcode/Title62A/Chapter3/62A-3-S311.1.html?v=C62A-3-S311.1_2017050920170509
[4] https://le.utah.gov/xcode/Title62A/Chapter3/62A-3-S311.5.html?v=C62A-3-S311.5_1800010118000101
[5] https://le.utah.gov/xcode/Title62A/Chapter3/62A-3-S312.html?v=C62A-3-S312_2017050920170509

vulnerable adult narrative (Ut. Code § 62A-3-301(2)) without an ethical guarantee to the meaning of its expression.

More generally, to the order of the claim, the Older Americans Act prohibits coerced participation in agency programs by 42 U.S. § 3003(4),[6] which establishes the goals of the act, 42 U.S. § 3027(a)(12)(B),[7] which forbids extension of agency programs into an area presumably involving the more discrete rights of the vulnerable adult, the family, any liberty intrusion thereby. There is a plain *Supremacy* conflict provoked at S.B. 63 (2008) alleged of *conspiracy* by *preterition* to violate an observable secular right as the state of Utah can be demonstrated to possess a clear concept of *strict scrutiny* doctrine in view of precedence made in high-profile questions of law, the Utah OLRGC, and the Utah Legislature cannot be without knowledge of the scope the state's genuine interests.

The "Supported" claim is alleged to lack standing without a *strict scrutiny* purview, and Velasquez evaluates constitutional defamation is intrinsic to any manner of broad civil expression. Were OLRGC and the bill sponsors in legislature aware of *strict scrutiny* doctrine as from beside amend of Sex Offender Registration laws, the case *Devlin v. Smalley* (4.F. Supp.2d. 1315 (1998)(D. Utah))?

Respectively, *Rooker-Feldman* doctrine should find strictly that a state appellate court has taken up the question and successfully answered it. When those

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[6] https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section3003&num=0&edition=prelim

[7] https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section3027&num=0&edition=prelim

courts had not, the question was not *exclusive* to their purview before United States Supreme Court. Expression of *Exxon Mobil* is favorable to hear the pre-trial question against the constitutionality of the Utah statute. The present disposition cited of deliberate *fraud, contempt,* and *perjury* in both lower courts, when case disposition was not comprehensive and rather neglectful.

Velasquez effectively raised this issue that he did not "invite that Court to 'review and reject' the [state court decision]. See *Great Western Mining & Mineral Co., v. Fox Rothschild LLP,* 615 F.3d at 166. The 'review and reject' requirement concerns whether the federal court must conduct 'prohibited appellate review' of state-court decisions. *Id.* at 169. 'Prohibited appellate review' means 'a review of the proceedings already conducted by the 'lower' tribunal to determine whether it reached its result in accordance with law.' *Id.* at . *In re Philadelphia Entm't Partners v. Commonwealth of Pennsylvania Department of Revenue,* No. 17-1954, 3d. Ct. (2018) at Page 16.[8]

The trial court did not conduct a jurisdictional evaluation than proclaimed the District Court of Utah for the Central Division divested based solely on the presence of judgments from the Utah Office of Administrative Hearings. The review compels evaluation of the relevance of the statute before the Office of Administrative Hearings, the claim is that any civil issue in its present standing is unconstitutional, and not that the Office of Administrative Hearings erred in its particular judgment.

[8] Addenda, Page 016.

"[T]he federal court has jurisdiction 'as long as the 'federal plaintiff present[s] some independent claim,' even if that claim denies a legal conclusion reached by the state court. *Id.* (quoting *Exxon Mobil,* 544 U.S. at 293, 125 Ct. at 1527).

In reaching a contrary conclusion, there is affirmed neglected "refinements" *Id.* at Page 20, to the *Rooker-Feldman* doctrine after *Exxon Mobil.* The trial court and the court of appeals in this instance have utterly affected the presumption that Velasquez sought to "undo the effect [of a state court judgment]' even though the [action] would still be valid, but it did not address whether the federal court in making its adjudication needed to review the state court decision for legal error. The focus, we now know, should be the other way around. That is, the crux of *Rooker-Feldman* doctrine inquiry is whether it requires the federal court to look at 'the bona fides of the prior judgment.' *Great Western,* 615 F.3d 615, 169. Thus, *Rooker-Feldman* doctrine does not apply merely because a claim for relief if granted would as a practical matter undermine a valid state court order." *In re Philadelphia Entm't Partners* at 21.[9]

In his petition for *Writ of Certiorari,* Velasquez presented the question was available, and the court should regard it as plausible to a pre-trial demonstration when it evaluates having applied *Rooker-Feldman* doctrine. The particular claim is due *voided,* appellate entanglement *avoided,* at preliminary injunction (Fed. R. Civ. P. 52(c)) following issue of a *Writ of Prohibition,* the partial judgment secured.

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[9] Addenda, Page 021.

He also presented from upon the docket to the Court of Appeals, that a petition for *Writ of Mandamus* was left untreated, as not summoning parties for the State of Utah. As not limiting the expression of any *Rooker-Feldman* application. Supreme Court cannot justifiably apply it in this instance.

These claims are self-authenticating from a review of docket sheets for each court, where the motion was left withstanding that State of Utah was deprived from genuine interest, as in service to the undue prejudice complained of, and the same neglect against Fed. R. App. P. 21. Reasoning was not expressed to timely render moot motions for summons, nor to submit by the appellate rule, and the genuine interest of the *Rooker-Feldman* application not treating the question of claim preclusion presented above.

The case is damaged in the same order to leave the petitioner with the same original questions to the Federal District. The judge has merely dismissed the petitioner from before himself, and the Court of Appeals implicit now has asked Supreme Court to permit violate his right to petition to continue to obstruct the case.

The question is as plausible in the same open manner as any original petition to a District Court or the United States Supreme Court, and Velasquez demonstrated in his petition to the record that he presented it originally in both courts. The *Mandamus* brief is convenient to hold only the statutory evaluation to define CRA jurisdiction by rulings developed therein, and further the pre-trial process through finalization in the District Court.

Otherwise, the courts have become closed to this question in literal misprision of "the bona fides," in order to dismiss a case from before an unwilling judge. This is a fine line interpreting against application of *Rooker-Feldman* doctrine; the state does not claim any *exclusivity,* is yet withstanding before Court of Appeals and was not refuted directly on its orders when it was demonstrated. The same position is presented now before Supreme Court.

A state is not permitted by virtue of the *exclusivity* of its courts the power to transgress observable right; this is the question upon the two lower courts, *fraud* has sustained an allegation of *perjury* and *contempt.* Reversal of effect permits an extraordinary level of discrimination against the individual petitioner.

PERJURY AND CONTEMPT OF COURT

Position asks the Supreme Court evaluate *contempt* of court, of transactions.

A committee in the Tenth Circuit does not evaluate *contempt,* and has not recognized that a *fraud on the court* is an act of prejudicial misconduct.

A Judicial Officer is bound by oath to uphold United States Constitution. (Article VI)

Contempt is not restricted from application against a Judicial Officer.

18 U.S § 401(2) is applicable.

"A court of the United States shall have power to punish by fine, at its discretion, such contempt of its authority and none other, as (2) Misbehavior of any

of its officers in their official transactions;" falsification of the substantive expression of a judicial order as it respected Mr. Velasquez' petition effectively amended his present pleadings and standing sufficiently to have obstructed the administration of justice by a fabrication of the material cause for termination of the case.

Velasquez was burdened with implicit socio-ethical narrative of false guilt of a claim substantively precluded, and failure at process.

Falsification of Velasquez' expressions on termination before the courts is broadly *perjured* judicial oath, 28 U.S. § 1621, and without substantiating measure opined than enforcing it on the procedural rules which constituted a termination with prejudice. *Rooker-Feldman* doctrine has never been used to preclude withstanding claims, only to enforce withstanding jurisdiction.

Velasquez requests to submit a separate motion to sustain more particular citations of *contempt.*

CONCLUSION

Rehearing is due; the court has affirmed an undue prejudice to reverse the effect of *Exxon Mobil,* a rather plenary standard for claim preclusion intrinsic. Whatever the cause, this court has in the past granted rehearing on issues where a plain oversight was demonstrated to reverse the effect of a withstanding opinion, See *Gonzales-Longoria v. U.S.,* No. 16-6259.

The case was that a rights injury, a constitutional transgression, arose from Utah Legislature; this was not deposed, nor refuted, and required such position directly from State of Utah.

The condition of *Rooker-Feldman* prejudice is fabricated when the judge has resolved the question to the Supreme Court on 28 U.S. § 1257 on a superficial grounds. It is a *strict scrutiny* form. Velasquez presented it, and the Court of Appeals ignored it to sustain inaction to a motion for summons.

Any other latent or procedural prejudice should and must be disregarded; Mr. Velasquez has not been permitted due process where the object is due and available. Supreme Court must state whether it shall receive a motion to hold several judges in *contempt of court* at falsification of their transactions.

Two post-trial actions are held as due; (1) Fees; (2) a *contempt of court* question.

There being no other remedy in view for Judicial Misconduct[10] the Supreme Court must grant the petition for rehearing, vacate its prior judgment, and grant *writ of certiorari.* It must subsequently remand to Court of Appeals for due process by Fed. R. App. P. 21, *In re Carlos Velasquez*, served on all parties then, yet untouched, to clarify the pre-trial question. Recusal is due on observation of *fraud on the court.*

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[10] Judicial Misconduct Complaint, Nos. 10-19-90025 through 10-19-90029; complaint dismissed, despite a demonstration of direct alteration of the Velasquez representation of the case, as well despite the inherent Supervisory expression of *Rooker-Feldman*, as within the same kind of convention, the Circuit Executive's Office does not act efficiently to protect the case and petitioner from direct violations of the First Amendment.

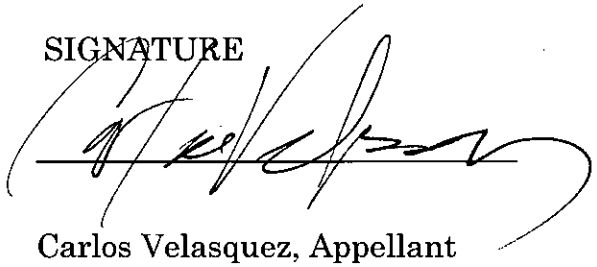
On the grant of *Writ of Certiorari,* remand to Court of Appeals for the Tenth Circuit, Supreme Court must Set Aside the judgment by *fraud on the court,* the judgment in the trial court as well, both orders plausibly voided entirely, and sustain commanded the recusal of the Appellate panel, and the District Court Judge.

A written opinion in this purview could provide that a court not holding a question does not establish its jurisdiction to the particular question, but that would be redundant to *Exxon Mobil* and *Great Western* as we find it presented, in light of *In re Philadelphia Entm't & Dev.*, which issued concurrently to the time these prejudices arose. The *Rooker-Feldman* application is to be demonstrated moot on jurisdictional evaluation for the Civil Rights Act. Velasquez' time and diligence are due every measurable and guaranteed expression of the law.

NOTES

1. A misprision appears on page 087 of the appendix to the petition for *Writ of Certiorari,* it is intended at line 2, 28 U.S. § 1343 and not 2343.

SIGNATURE



Carlos Velasquez, Appellant

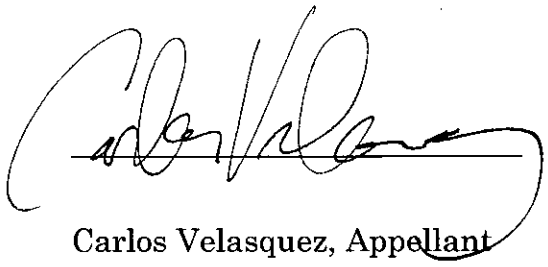
Civil Bureaucratic Federalist

1/2/19

CERTIFICATE OF PARTY

I attest the Petition for Rehearing is submitted in good faith, is limited to intervening circumstances of a substantial and controlling effect, as well by grounds not previously presented of a question for *contempt of court* not addressed by a Committee on Judicial Misconduct.

There is no just interest at delay of this process.



Carlos Velasquez, Appellant

Civil Bureaucratic Federalist

1/2/19

ADDENDA

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-1954

In re: PHILADELPHIA ENTERTAINMENT &
DEVELOPMENT PARTNERS, LP
d/b/a FOXWOODS CASINO PHILADELPHIA,

Debtor

PHILADELPHIA ENTERTAINMENT &
DEVELOPMENT PARTNERS, LP
d/b/a FOXWOODS CASINO PHILADELPHIA

v.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE;
COMMONWEALTH OF PENNSYLVANIA

PERSIL MANGEUR LLC, in its capacity as the trustee of the
Liquidation Trust for the estate of debtor
Philadelphia Entertainment & Development Partners, LP
d/b/a Foxwoods Casino Philadelphia,

Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civ. No. 2-16-cv-01992)
Honorable Joseph F. Leeson, Junior, District Judge

Submitted under Third Circuit L.A.R. 34.1(a)
December 12, 2017

BEFORE: CHAGARES, RESTREPO, and GREENBERG,
Circuit Judges

(Filed: January 11, 2018)

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OPINION

GREENBERG, Circuit Judge.

I. INTRODUCTION

Persil Mangeur LLC, ("Persil"), the Trustee of the Liquidation Trust established in debtor Philadelphia Entertainment and Development Partners, LP's ("PEDP"), Chapter 11 plan, appeals from a District Court order affirming a Bankruptcy Court order dismissing PEDP's adversary complaint against the Commonwealth of Pennsylvania and the Commonwealth of Pennsylvania Department of Revenue (together "Commonwealth"). We trace this case to 2006 when the Pennsylvania Gaming Control Board (the "Board") awarded a slot machine license to PEDP, which paid a $50 million fee to the Commonwealth for the license. The Board, however, eventually revoked the license when PEDP failed to meet certain of its requirements for its maintenance. PEDP unsuccessfully

appealed from the revocation order to the Pennsylvania Commonwealth Court, following which the Supreme Court of Pennsylvania denied PEDP's application to review that decision.

After the Pennsylvania courts upheld the revocation, thereby exhausting PEDP's remedies through state procedures to challenge the revocation, it filed a petition in bankruptcy. During the bankruptcy proceedings, it brought an adversary action against the Commonwealth alleging that the license revocation should be avoided because it was a fraudulent transfer under §§ 544 and 548 of the Bankruptcy Code and under Pennsylvania law. Citing the Rooker-Feldman doctrine, the Bankruptcy Court concluded that it lacked subject matter jurisdiction over the fraudulent transfer claims in light of the proceedings in the state courts which had upheld the revocation order. By that time Persil had been appointed Trustee, and it appealed to the District Court which affirmed the Bankruptcy Court order. Persil then appealed to this Court. We will reverse because the Bankruptcy Court erred when it held that the Rooker-Feldman doctrine barred its review of the fraudulent transfer claims. We are satisfied that in a review of those claims the Bankruptcy Court did not need to review or reject the Commonwealth Court's judgment. We, however, do not reach a conclusion on the question of whether any of PEDP's fraudulent transfer claims are meritorious, so our opinion should not be overread as we only address the Rooker-Feldman issue.

II. BACKGROUND

The Pennsylvania Horse Racing Development and Gaming Act (the "Gaming Act"), provides for slot machine

gaming in Pennsylvania. 4 Pa. Cons. Stat. § 1102 (2010). The Gaming Act authorizes the Board to issue two slot machine licenses for standalone gaming facilities in Philadelphia. Id. § 1304(b). As a condition for being granted a license, an applicant must pay a one-time license fee of $50 million to the Commonwealth. Id. § 1209(a).

In December 2006, the Board awarded a slot machine license to PEDP. App'x 107 ¶ 14. PEDP paid the $50 million fee in October 2007, and the Board issued the license the next year. App'x 108 ¶¶ 19-22. The Board required PEDP to open its facility and commence operations by May 2009, but PEDP did not meet this deadline and has never opened the facility. App'x 109 ¶¶ 23-24. Nevertheless, the Board extended the deadline for opening the facility to May 2011, provided that PEDP satisfy nine conditions that the Board required it to meet at preset dates during the extension period, App'x 109-10 ¶¶ 25-29. These conditions included requirements that PEDP submit financial and architectural documents and development plans to the Board. App'x 110 ¶ 29. PEDP did not satisfy these conditions and unsuccessfully sought another extension to satisfy the requirements for the license. App'x 110-12 ¶¶ 30-41. In December 2010, the Board entered an order revoking PEDP's slot machine license by reason of PEDP's failure to follow Board orders and demonstrate its financial suitability. App'x 113 ¶ 42, 116 ¶ 60.

PEDP appealed from the revocation order to the Commonwealth Court of Pennsylvania. PEDP argued in the Commonwealth Court that the Board applied the wrong test for determining its financial suitability, the financial suitability requirements were unconstitutionally vague, and the Board denied PEDP due process of law for several reasons, one of

which was a contention that forfeiture of the license for which PEDP had paid a $50 million fee was an excessive sanction to impose by reason of its failures to satisfy the Board's requirements. App'x 851-52, 914-15. The Commonwealth Court rejected PEDP's appeal and affirmed the Board's revocation decision as it concluded that the Board had authority under the Gaming Act to revoke the license, the Board used the appropriate test under the Gaming Act in reaching its decision, the requirements to show financial suitability were clear, and the Board afforded PEDP due process because, among other things, the revocation was not an unreasonably harsh sanction for PEDP's failure to satisfy the conditions for the license. Phila. Entm't & Dev. Partners, LP v. Pa. Gaming Control Bd., 34 A.3d 261, 268-80 (Pa. Commw. Ct. 2011). The Supreme Court of Pennsylvania denied PEDP's petition for allowance of appeal from the Commonwealth Court's decision on March 29, 2012. Phila. Entm't & Dev. Partners, LP v. Pa. Gaming Control Bd., 41 A.3d 852 (Pa. 2012).

Two years later, on March 31, 2014, PEDP filed a petition in bankruptcy under Chapter 11 of the Bankruptcy Code, App'x 17, and then, two months after it filed the petition, it filed its adversary complaint against the Commonwealth. App'x 103. This appeal now before us centers on counts Two to Four of the adversary complaint. In Counts Two and Three, PEDP asserted claims to avoid what it claimed was a constructively fraudulent transfer under 11 U.S.C. §§ 548(a)(1)(B) and 544(b) and under Pennsylvania's Uniform Fraudulent Transfer Act ("PUFTA"), 12 Pa. Cons. Stat. §§ 5101 et seq.[1] Specifically, PEDP claimed that the "revocation of the

[1] Sections 548(a)(1)(B) and 544(b) deal with avoidance of fraudulent transfers. Section 548(a)(1)(B) provides that

License was a transfer for which [PEDP] received no value from the Commonwealth. . . ." App'x 123 ¶ 97. Thus, in Count Four, PEDP sought recovery of what it claimed was a fraudulent transfer under 11 U.S.C. §§ 550 and 551. PEDP sought to avoid the transfer and recover payment from the Commonwealth of the full value of the transfer, which PEDP estimated to be $50 million, the amount of the license fee it had paid. App'x 123 ¶¶

> [t]he Trustee may avoid any transfer . . . of an interest of the debtor in property, or any obligation . . . that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily ...
>
> > (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
> >
> > (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation . . . .

11 U.S.C. § 548(a)(1)(B).

Section 544(b) permits a trustee to pursue avoidance claims under state law—here, the PUFTA. 11 U.S.C. § 544(b). The main constructive fraud provisions of the PUFTA, §§ 5104 and 5105, are similar to constructive fraud under § 548(a)(1)(B), except that the PUFTA increases the statutory "look back" period from two years to four years. 12 Pa. Cons. Stat. § 5109.

96-104, 125 ¶ 114.

PEDP also asserted separate claims for turnover of the amount of the license fee that the Commonwealth did not return (Count One), for an unconstitutional taking (Count Five), and on theories that the Commonwealth had been unjustly enriched and PEDP was entitled to a recovery on the basis of promissory estoppel (Counts Six and Seven). We, however, are not concerned with counts One, Five, Six, and Seven on this appeal as their dismissal is not presently challenged.

In July 2014, the Bankruptcy Court confirmed PEDP's liquidation plan, which called for the creation of a liquidation trust supervised by Persil. App'x 17-18. Persil as Trustee succeeded to all claims belonging to PEDP. App'x 3; First Modified Chapter 11 Liquidation Plan 21-22, In re Phila. Entm't & Dev. Partners, LP, No. 14-12482, ECF No. 88 (Bankr. E.D. Pa. May 27, 2014).

On April 8, 2016, the Bankruptcy Court dismissed the adversary complaint. In re Phila. Entm't & Dev. Partners, LP, 549 B.R. 103, 110-11 (Bankr. E.D. Pa. 2016). The Bankruptcy Court found that the Rooker-Feldman doctrine divested it of subject matter jurisdiction to consider a claim for the avoidance of the license revocation. Id. at 111, 139. It stated,

> the Rooker-Feldman Doctrine precludes the Trustee from attempting to challenge the prepetition revocation of the License. The Debtor lost in state court. To the extent the Trustee alleges that some interest in the License inured to the benefit of the estate, the Trustee would be complaining of injuries caused by the Revocation Order that was subsequently confirmed by the Commonwealth

> Opinion. The Revocation Order and the Commonwealth Opinion were entered prepetition. Finally, if this Court was to determine that the Debtor held an interest in the License or some right to be compensated for its value, this Court would necessarily be required to review the merits of the earlier state court decisions. Accordingly . . . this Court is thereby prevented from addressing or otherwise modifying the prepetition revocation of the Debtor's interest in the License.

Id. at 139 (emphasis removed).

The Bankruptcy Court then addressed the Trustee's claim for compensation for the value of the license. The Bankruptcy Court stated that a claim to undo the revocation and to obtain compensation for the revocation are "opposite sides of the same coin"; that is, the right to be compensated for the value of the license is the "functional equivalent" of the right to retain the license, a conclusion that led the Court to hold that the Rooker-Feldman doctrine barred any claim for the value of the license. Id. at 140-41.

The Bankruptcy Court also addressed the fraudulent transfer claim by treating the relevant transfer as the Commonwealth's failure to refund the license fee after the revocation rather than the revocation of the license. Id. at 141-42. The Bankruptcy Court declined to decide whether the Rooker-Feldman doctrine barred this alternative reading of the claim because the Commonwealth Court had not explicitly addressed the question of whether PEDP was entitled to a refund of the license fee upon the license revocation. Id. at 142. But what the Bankruptcy Court did hold was that the refund theory failed to state a claim under §§ 544 or 548 of the Bankruptcy

Code. It concluded that PEDP's payment of the license fee to the Board in October 2007 was not an actionable transfer because PEDP made the payment outside the statutory lookback periods under § 548 and the PUFTA, and the Commonwealth's alleged failure to pay a refund after the revocation was not an actionable omission because nonpayment of property cannot be a transfer of property. Id. at 152-54. The Bankruptcy Court also dismissed the §§ 550 and 551 claims for recovery of the transfer because it believed that the adversary complaint failed to plead any valid avoidance claim under §§ 548 or 544. Id. at 155.[2]

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[2] The Commonwealth raised an Eleventh Amendment defense in its pleadings which the Bankruptcy Court upheld with respect to state law claims that PEDP advanced in its adversary complaint but with which we are not concerned on this appeal. On the other hand the Court did not consider that defense with respect to the fraudulent transfer claims that we do address. The Commonwealth does not advance an Eleventh Amendment issue on this appeal even though the Eleventh Amendment concerns subject matter jurisdiction as the Commonwealth believes that, inasmuch as the Bankruptcy Court did not consider the defense, the issue had not been preserved for presentation to this Court. While parties cannot by consent vest a court with subject matter jurisdiction and the Eleventh Amendment is jurisdictional, see Blanciak v. Allegheny Ludlam Corp., 77 F.3d 690, 693 n.2 (3d Cir. 1996), we will not address an Eleventh Amendment issue on this appeal as the Commonwealth does not raise it and a party may waive an Eleventh Amendment defense. See In re Hechinger Inv. Corp. v. Hechinger Liquidation Tr., 335 F.3d 243, 249 (3d Cir. 1996). We, however, express no opinion on whether the Commonwealth should be deemed to have waived a possible Eleventh Amendment defense on the remand that will

PEDP appealed, but the District Court affirmed. It held that the Bankruptcy Court correctly characterized the fraudulent transfer claims "as a challenge to the legitimacy of the revocation of the Debtor's license," and not, as the Trustee claimed, a "challenge only [to] the Commonwealth's failure to return the value of the license after its revocation." In re Phila. Entm't & Dev. Partners, LP, 569 B.R. 394, 399 (E.D. Pa. 2017). Based on that reasoning, the District Court adopted the Bankruptcy Court's Rooker-Feldman doctrine conclusions. Id. at 399-400.

The District Court also held that the Bankruptcy Court correctly dismissed on the merits any part of the fraudulent transfer claim that application of the Rooker-Feldman doctrine did not bar. Id. at 400-01. It held that the Bankruptcy Court correctly determined that PEDP's only two transfers were the license fee payment in 2007 (the claim to repayment that was time-barred) and the loss of the license which it found occurred in 2012 (which claim the Rooker-Feldman doctrine barred from review). Id. at 401. The District Court agreed with the Bankruptcy Court that there had not been a "transfer" based on the Commonwealth's failure to pay PEDP $50 million after the revocation because nonpayment did not constitute a disposing of or parting with property. Id. The District Court entered its judgment on March 28, 2017. The Trustee timely appealed.

III. STATEMENT OF JURISDICTION AND STANDARD OF REVIEW

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follow the proceedings in this Court.

The Bankruptcy Court had jurisdiction to hear the adversary proceeding under 28 U.S.C. §§ 157(b) and 1334(b). The District Court had jurisdiction to hear the appeal from the Bankruptcy Court's order under 28 U.S.C. § 158(a). We have jurisdiction of the appeal from the District Court's order under 28 U.S.C. §§ 158(d) and 1291. We review the Bankruptcy Court's legal determinations de novo. In re Trans World Airlines, Inc., 145 F.3d 124, 130-31 (3d Cir. 1998).

IV. DISCUSSION

On appeal, the Trustee challenges the Bankruptcy and District Courts' conclusions that the Rooker-Feldman doctrine barred their review of PEDP's fraudulent transfer claims. The Rooker-Feldman doctrine deprives federal district and bankruptcy courts of jurisdiction "over suits that are essentially appeals from state-court judgments. . . ." Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 165 (3d Cir. 2010); see In re Madera, 586 F.3d 228, 232 (3d Cir. 2009). There is some tension between the application of the Rooker-Feldman doctrine and the prosecution of avoidance claims under the Bankruptcy Code as an avoidance of a claim seems to authorize what the Rooker-Feldman doctrine prohibits—appellate review of state court judgments by federal courts other than the Supreme Court. See In re Knapper, 407 F.3d 573, 583 n.22 (3d Cir. 2005) ("In apparent contradiction to Rooker-Feldman theory, bankruptcy courts are empowered to avoid state judgments. . . .") (quoting In re Gruntz, 202 F.3d 1074, 1079 (9th Cir. 2000) (en banc)). But we have noted that the Rooker-Feldman doctrine does not necessarily bar actions that properly are based on the Bankruptcy Code's fraudulent transfer statutes.

See id. (rejecting "suggest[ion] that Rooker-Feldman bars an action that is properly based on § 544(b)(1)"). We must decide, then, whether the federal courts had jurisdiction to review the Trustee's fraudulent transfer claims or whether the Rooker-Feldman doctrine barred them from doing so.

Our initial task is to identify the transfer on which the Trustee predicates its §§ 548 and 544 fraudulent transfer claims. The Bankruptcy Court identified three possible transfers: the payment of the license fee, the loss of the license, and the Commonwealth's failure to refund the license fee. But the Trustee contends that the only operative transfer for which it seeks relief is from the loss of the license. Trustee's Opening Br. 26 (identifying PEDP's "transfer of the slot machine license upon revocation" as "the transfer on which the Fraudulent Transfer Claims are based").

The Trustee's position is consistent with the allegations in the adversary complaint that identify the license revocation as the operative transfer. App'x 123 ¶ 97.[3] In particular, the

[3] Much of the Bankruptcy and District Courts' conclusions regarding the two other "transfers" accordingly have no bearing on this appeal. We appreciate why the Bankruptcy Court had difficulty pinning down with precision the fraudulent transfer theory of which the Trustee complains. While the adversary complaint is relatively clear in asserting that the relevant transfer was the revocation, the Trustee's briefs and oral arguments before the Bankruptcy and District Courts often conflated the claim with other claims in the adversary complaint that sought a refund of the license fee. See, e.g., App'x 1165 (stating at oral argument that "any fair reading of Count One, Two, Three, and Four is that what we are asking for is a return of the license fee

Trustee does not contend that the revocation was illegal under the Gaming Act or violated due process of law. Rather, it contends that the Bankruptcy Code's avoidance rules imposed an independent obligation on the Commonwealth to pay some value when it revoked the license. Trustee's Opening Br. 18 ("[T]he federal courts may accept as a matter of fact and law that the License was revoked and is lost to the Debtor; the question here, however, is whether, under fraudulent transfer law, the Commonwealth must, but failed to, pay reasonably equivalent value for the Debtor's property interests which were transferred by way of such revocation. . . ."). But neither the Bankruptcy Court nor the District Court reviewed the merits of that argument as they concluded that the Rooker-Feldman doctrine barred such review. The Trustee argues that both Courts erred and that the Trustee is entitled to a merits determination of its claim that the license revocation was a fraudulent transfer. Accordingly, we turn to an analysis of that contention.

In Exxon Mobil Corp. v. Saudi Basic Industries Corp. the Supreme Court indicated that the federal courts had been

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that the transfer was the involuntary revocation of the license, but . . . what we're asking to be avoided is the failure of the -- of the Commonwealth to repay the license fee"). And to further complicate the matter, the relief for the fraudulent transfer claims is the value of the license, not a refund of the fee. In theory, the license's value could be measured by an amount differing from the fee. But the Trustee used the $50 million license fee as a proxy for the value of the license. Despite this confusion, we are guided by the allegations in the adversary complaint and will limit our discussion to the transfer as defined in the pleadings.

applying the Rooker-Feldman doctrine too broadly and consequently it clarified that the doctrine is confined to "limited circumstances" where "state-court losers complain[] of injuries caused by state-court judgments rendered before the district court proceedings commenced and invit[e] district court review and rejection of those judgments." 544 U.S. 280, 284, 291, 125 S.Ct. 1517, 1521-22, 1526 (2005). In Great Western, which we decided after the Supreme Court decided Exxon Mobil, we said the doctrine applies when four requirements are met: (1) the federal plaintiff lost in state court, (2) the plaintiff complains of injuries caused by the state-court judgment, (3) that judgment issued before the federal suit was filed, and (4) the plaintiff invites the district court to review and reject the state-court judgment. Great Western, 615 F.3d at 166. Our analysis focuses on the fourth requirement.[4]

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[4] The Trustee does not contend that the third requirement for the Rooker-Feldman doctrine to apply was not met, i.e., that the state-court judgment issued before the federal suit was filed, but the Trustee does make glancing arguments with respect to the first requirement. It argues that PEDP, not the Trustee, was the plaintiff who lost in state court because the Trustee joined this case after the bankruptcy began and it acts on behalf of the estate's creditors. Trustee's Opening Br. 20 ("In contesting the revocation of the License, the Debtor was complaining of the injuries it would sustain as a result of the loss of the License. The Trustee, in contrast, is complaining of the injuries sustained by the Debtor's creditors . . . .") (emphasis in original); Reply Br. 8 ("The Trustee does not stand in the pre-petition Debtor's shoes in pursuing the Fraudulent Transfer Claims."). The District Court rejected this argument, App'x 8. But we need not reach this question because we find that the Trustee's claim does

By asking the Bankruptcy Court to find that the license revocation was an avoidable fraudulent transfer, the Trustee did not invite that Court to "review and reject" the revocation order. See Great Western, 615 F.3d at 166. The "review and reject" requirement concerns whether the federal court must conduct "prohibited appellate review" of state-court decisions. Id. at 169. "Prohibited appellate review" means "a review of the proceedings already conducted by the 'lower' tribunal to determine whether it reached its result in accordance with law." Id. (internal citation and quotation marks omitted).

Such a prohibited review differs from mere "attempts to litigate in federal court a matter previously litigated in state court. . . ." Id. (quoting Exxon Mobil, 544 U.S. at 293, 125 S.Ct. at 1527). When the plaintiff attempts to litigate previously litigated matters, the federal court has jurisdiction "as long as the 'federal plaintiff present[s] some independent claim,' even if that claim denies a legal conclusion reached by the state court." Id. (quoting Exxon Mobil, 544 U.S. at 293, 125 S.Ct. at 1527) (internal quotation marks omitted; alteration in original). In other words, if the federal court's review does not concern "the bona fides of the prior judgment," the federal court "is not conducting appellate review, regardless of whether compliance with the second judgment would make it impossible to comply with the first judgment." Id. (internal citation and quotation marks omitted). In that situation, the Rooker-Feldman doctrine would not apply because the plaintiff is not "complaining of legal injury caused by a state court judgment because of a legal error committed by the state court." Id. (internal citation and quotation marks omitted).

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not come within the fourth requirement for the doctrine to bar this action.

The Trustee's fraudulent transfer claims did not ask the Bankruptcy Court to make an appellate review of the revocation order. The Commonwealth Court considered whether the Board had authority under the Gaming Act to revoke the slot machine license due to PEDP's noncompliance with the Board's orders, and whether the requirements were sufficiently clear and afforded due process to the licensee during the revocation proceedings. The Bankruptcy Court did not need to consider the bona fides of that decision or review the Commonwealth Court proceedings, and the Trustee does not argue that the Bankruptcy Court should make such a review. Rather, the Bankruptcy Court could have started from the premise that the Board and Commonwealth Court reached the correct result under state law. The Court then could have decided whether that revocation, which occurred because of valid state proceedings, could nonetheless be avoided under the Bankruptcy Code. To decide that question, the Bankruptcy Court should have determined if the revocation of the license was a fraudulent transfer, i.e., it should have considered whether PEDP had an interest in the license, transferred it within the lookback period, became insolvent as a result of the transfer, and did not receive reasonably equivalent value in return for the transfer. See In re Fruehauf Trailer Corp., 444 F.3d 203, 210-11 (3d Cir. 2006) (listing elements of constructive fraudulent transfer claim). The Bankruptcy Court could have answered these questions without rejecting or even reviewing the Commonwealth Court's decision. And, if it accepted the Trustee's argument, the Bankruptcy Court would have concluded that the Bankruptcy Code permitted avoidance of the transfer, not that the Commonwealth Court had committed legal error.[5]

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[5] When we say that the Bankruptcy Court would have permitted

We recognize, as did the Bankruptcy Court, that the fraudulent transfer claims and the claims before the Commonwealth Court raised overlapping legal issues. But that circumstance did not mean that the Bankruptcy Court was required to reject or even review the Commonwealth's order for the Bankruptcy Court to decide whether the license revocation was a fraudulent transfer. Consider, for example, the overlapping question of interest in the license. In deciding that the Board had authority to revoke the license, the Commonwealth Court considered whether PEDP had an interest in the license of which PEDP could not be deprived without due process of law. Phila. Entm't & Dev. Partners, 34 A.3d at 276. The Bankruptcy Court held, however, that if it "was to determine that the Debtor held an interest in the License . . . this Court would necessarily be required to review the merits of the earlier state court decisions." In re Phila. Entm't & Dev. Partners, 549 B.R. at 139. The Bankruptcy Court, however, did not explain why if it made that determination it would have been required to review the merits of the Commonwealth Court decision, and we see no reason why it would have had to have done so.

The state and federal courts would address the similar question of property interest, but the Bankruptcy Court would not need to review the Commonwealth Court's decision to reach its conclusion. The Bankruptcy Court instead would apply its independent reading of the law governing whether PEDP had an interest in the license. That inquiry would not have implicated

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avoidance of the transfer we mean only that the Rooker-Feldman doctrine did not bar the Court from finding that there had been a fraudulent transfer. We are not expressing an opinion on the merits of the claim.

the Rooker-Feldman doctrine. As we explained in Great Western, a federal court can address the same issue "and reach[] a conclusion contrary to a judgment by the first court," as long as the federal court does not reconsider the legal conclusion reached by the state court. Great Western, 615 F.3d at 169.

Our above conclusion brings us to the next question, which concerns the relief requested by the Trustee. In the adversary complaint, PEDP prayed for payment by the Commonwealth of the full value of the transfer. App'x 123 ¶ 104, 125 ¶ 114.[6] The Bankruptcy Court held that the Rooker-Feldman doctrine barred review of the fraudulent transfer claim because payment for the value of the license was the functional equivalent to invalidating the state court decision. We again disagree. Because the fraudulent transfer claim in the Bankruptcy Court was independent of the Gaming Act and due process claims previously advanced in the state court, it does not matter for Rooker-Feldman doctrine purposes that the relief that

[6] The Trustee does not contend that the Board should reissue the slot machine license to PEDP. The Trustee's sole argument in terms of remedy is that the Commonwealth must pay for the value of the license. See, e.g., Trustee's Opening Br. 4 ("As a result [of the fraudulent transfer], the Trustee is entitled to recover the value of the Debtor's transferred interests in the License for the benefit of the Debtor's creditors."); id. 12 ("[T]he Trustee challenged the dismissal of the Fraudulent Transfer Claims on the basis that the Bankruptcy Court fundamentally misconstrued the Trustee's claims and improperly conflated the state court revocation proceedings with the Trustee's claim that no value was payed [sic] for the Debtor's property interests which were transferred through revocation of the Debtor's License.").

the Trustee sought, if granted, would frustrate the Commonwealth Court's order. See Great Western, 615 F.3d at 169 (finding the Rooker-Feldman doctrine inapplicable to independent claims "regardless of whether compliance with the second judgment would make it impossible to comply with the first judgment").

In reaching its contrary conclusion, the Bankruptcy Court relied on Maple Lanes, Inc. v. Messer, 186 F.3d 823 (7th Cir. 1999). But we conclude that that case is unpersuasive given the Supreme Court's refinements to the Rooker-Feldman doctrine after the court of appeals decided Maple Lanes. In that case, the plaintiff, Maple Lanes, lost its liquor license after the local sheriff told a newspaper that there had been drug sales in its liquor store. Maple Lanes unsuccessfully challenged the revocation in a state court. Maple Lanes then sued the sheriff in federal court for defamation under 42 U.S.C. § 1983. It alleged that his statement caused the city to revoke its license and it sought as damages the monetary value of the license. The court of appeals dismissed the complaint pursuant to the Rooker-Feldman doctrine as it held that the federal claim was an end-run around the revocation: "In essence, Maple Lanes seeks to undo the effects of the revocation of its liquor license by collecting an amount of damages from [the sheriff] . . . equal to the monetary value of the license." Id. at 825. The court stated that "[i]f a federal court were to award the relief," the "result would effectively reverse the state court judgment upholding the revocation of the liquor license. There is little difference between awarding Maple Lanes the monetary value of the license and the license itself." Id. at 826.

In our view, the result in Maple Lanes does not comport with the Rooker-Feldman doctrine as it now is understood. The

court of appeals decided Maple Lanes several years before the Supreme Court decided Exxon Mobil and a decade before we decided Great Western. It is clear that both Exxon Mobil and Great Western call the reasoning in Maple Lanes into question.[7] In particular, Maple Lanes focused on the effect of the relief i.e., that damages would functionally "undo the effect of the revocation" even though the revocation order would still be valid, but it did not address whether the federal court in making its adjudication needed to review the state court decision for legal error. The focus, we now know, should be the other way around. That is, the crux of a Rooker-Feldman doctrine inquiry is whether it requires the federal court to look at the "bona fides of the prior judgment," not whether "compliance with the second judgment would make it impossible to comply with the first judgment." Great Western, 615 F.3d at 169. Thus, contrary to Maple Lanes' reasoning, the Rooker-Feldman doctrine does not apply merely because the claim for relief if granted would as a practical matter undermine a valid state court order. Accordingly, we respectfully disagree with the holding in Maple Lanes and so, too, with the Bankruptcy Court's reliance upon it.

The same reasoning undoes the Bankruptcy Court's last conclusion. To support its argument that payment for the value of the license was the functional equivalent of returning the license, the Bankruptcy Court discussed apparently contradictory legal positions in the state and federal proceedings. The Bankruptcy Court noted that the Board and Commonwealth Court accepted PEDP's argument that it would not recoup any money after the revocation; but the Trustee now

[7] We are not suggesting that Great Western if decided before Maple Lanes would have been binding on the Maple Lanes court.

claims a right to payment for the license because of the revocation. In re Phila. Entm't & Dev. Partners, 549 B.R. at 141. The Commonwealth keys in on this point as well, arguing that "it was clear to all involved in those proceedings that revocation of PEDP's license would not entitle PEDP to return of any portion of its $50 million license fee. . . ." Commonwealth's Br. 19. But even if the Trustee has taken inconsistent positions before the different tribunals, "attempts merely to relitigate an issue determined in a state case are properly analyzed under issue or claim preclusion principles rather than Rooker-Feldman." In re Miller, 666 F.3d 1255, 1261 (10th Cir. 2012).

In sum, the Trustee is not "complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment." Exxon Mobil, 544 U.S. at 291, 125 S.Ct. at 1526. The Bankruptcy Court applied the Rooker-Feldman doctrine too broadly in finding that the fraudulent transfer claims require the federal courts to void the state court order. Accordingly, we conclude that the Bankruptcy Court erred in holding that the Rooker-Feldman doctrine barred it from considering the Trustee's fraudulent transfer claims, and we will reverse its grant of dismissal as to Counts Two, Three, and Four of the adversary complaint.[8]

Usually, the final step in a Rooker-Feldman doctrine

[8] Because we find that the Rooker-Feldman doctrine does not bar review of the Trustee's claims, we will not reach the Trustee's alternative argument that the doctrine never can apply when the Bankruptcy Court is enforcing substantive provisions of the Bankruptcy Code. Trustee's Opening Br. 21-25.

analysis is to "apply state law to determine the preclusive effect of the prior state-court judgments." Great Western, 615 F.3d at 173. Although the Commonwealth raised issue preclusion issues before the Bankruptcy Court, that Court did not address the argument and neither party has raised those issues on this appeal. And although the parties have briefed the merits of the fraudulent transfer claims, the Commonwealth focused, as had the Bankruptcy and District Courts, on whether a fraudulent transfer claim arises from the payment of the license fee or the refund, not the revocation of the license itself as urged by the Trustee—a result likely attributable to the unclear nature of the Trustee's claims, as we explained above. It is not surprising, therefore, that we do not have adequate briefing on the preclusion issues. Accordingly, we will remand this matter to the District Court to address inter alia (1) whether claim or issue preclusion bars judicial review of the Trustee's claim that the license revocation was a constructively fraudulent transfer under § 548(a)(1)(B) or § 544(b) and the PUFTA; and if not (2) whether the Trustee has stated a claim that the license revocation constitutes a fraudulent transfer under § 548(a)(1)(B) or § 544(b) and the PUFTA; and (3) whether the Eleventh Amendment bars judicial review of the Trustee's claim that the license revocation was a constructively fraudulent transfer under § 548(a)(1)(B) or § 544(b) and the PUFTA.

V. CONCLUSION

For the foregoing reasons, we will reverse the District Court's affirmance of the Bankruptcy Court's dismissal of the Trustee's fraudulent transfer claims in Counts Two, Three, and Four of the adversary complaint, which the Bankruptcy Court

predicated on its belief that the federal courts lacked subject matter jurisdiction over the claims. We will remand the case for further proceedings to the District Court which, at its option, may decide the remaining issues that come before it on the remand or may, in turn, remand the matter to the Bankruptcy Court for further proceedings.

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APPELLANT'S AFFIDAVIT TO VIOLATIONS OF THE FIRST AMENDMENT

BEFORE UNITED STATES SUPREME COURT ON CASE NO. 19-6263

We present for this court, on rehearing, the simple question of whether the decision in the Court of Appeals, that affirmed from a District Court in the State of Utah, addressed a question challenging the constitutionality of a Utah law, the question being claim preclusion and jurisdictional evaluation in terms of *Rooker-Feldman* doctrine when *Exxon Mobil Corp. v. Saudi Arabia Basic Indus.* (524 U.S. 280, 2005)) is affirmed and not reversed in light of *In re Philadelphia Entm't & Dev. Partners v. Department of Commerce, Pennsylvania Commonwealth* (No. 17-1954 3d. Ct. (2018)) the ruling intended to shed light on the same argument developed when we petitioned this court for *Writ of Certiorari* to protect our rights in this pre-trial instance.

We cite it is *contempt* to falsify a ruling, that a *Rooker-Feldman* application is not found to sustain the exclusivity of a state court to United States Supreme Court (28 U.S. § 1257) when that court has not addressed the same question. That a jurisdictional evaluation for Civil Rights

Act standing is due on demonstration of the statute's unconstitutionality, by Fed. R. Civ. P. 52(c), Partial Judgment.

When we petition a United States court we expect that we will not be treated with falsehood or ambiguity, that a clerk will not obstruct from us his or her professional capacities, that a judge will not falsify a cause at termination in the same order of obstruction, that an appeals court will actually read a brief and generally *correct* the errors which we cite, and will not protect a judge committing tort from liability, nor permit the proceeding in bad faith. The Supreme Court should not be relief for *fraud on the court* by *contempt* against the petitioner.

The 'Review and Reject' narrative of *In re Philadelphia Entm't. & Dev. Partners*, identifies an instance where a petitioner seeks substantive overturn of a position directly held by substantiating a jurisdictional cause not directly interested in a particular court's decision. Literally avoiding direct exercise of the appellate jurisdiction.

Our position is comparable; we have demonstrated for both lower courts the Utah DAAS/APS statute is unconstitutional. The claim is due voided after issue of a *Writ of Prohibition* (at the preliminary injunction), the extraordinary writ, to prohibit State agency from damaging and unconstitutional issue. The trial case evaluates a punitive and exemplary fine against the state, and is of immense pragmatic value to us. We do not seek direct controversy by re-trial, nor was judicial discretion exercised to substantiate the position by State of Utah. The procedural bar is literally unrecognizable as constructive to any action by Civil Rights Act.

We cite *Fraud on the Court* before *contempt* because the trial court judge never evaluated that the State of Utah must reply, and never considered that the appropriate jurisdiction was due to the Civil Rights Act. We also cite it because our original District Court petition was aimed at

the Partial Judgment position pre-trial. The presentation of those Utah Appellate Court rulings demonstrated a paucity of judicial review, the constitutional challenge is not substantively expressed to the *exclusivity* of the Utah Appellate Courts because they never respected the petitioner enough to hear his petitions.

This question is yet unanswered and was due before Court of Appeals, who further refused the right of petition substantively, construed the order of the petition as *Abuse of Discretion*, while the *fraud* claim was made particular, and made process irrespective of what was printed and cited on the page in its service to Fed. R. App. P. 4, the motion evaluated from before termination in the trial court, simultaneously avoided any evaluation of the *mandamus* brief, and sustained the implicit decision not to evaluate a summons. We were therefore never granted any basic pre-trial due process, and find *Contempt* to be comprehensively characteristic of the present disposition, with questions of *obstruction, conspiracy,* and *perjury* withstanding.

Both courts avoided summon respondents served. Both courts avoided grant that claim preclusion narrative was intrinsic to the procedural bar. Neither error was explicit, rational before petitions, nor beyond remedy in a sustained pre-trial context. Both courts literally amended the order of the petitions as expressed without demonstrable cause. And no order respected the constitutional question as precluded, than expressed the merits bias of claim preclusion implicit.

Court of Appeals used a disfavored overlength motion and ignored a request to submit by a *mandamus* brief. The general question is evidenced from both relevant briefings, and the *mandamus* petition is observable from the Court of Appeals docket. Supreme Court must permit the plausibility of a question held and not positively deposed, than coverted. We do not find a greater evidence of *fraud* and *contempt* than subsequent orders which did not even define our question, the statutes at center, nor any other standard review which might have limited our case.

Indeed, every ruling supplied permits a case in this form where it does not have the grounds in purview to regard the District Court as authentically divested. We are therefore, merely pleading for the right to petition, because clerks have accepted our documents and judges have not read them, but discarded our process and fabricated the court's interests.

The Supreme Court has erred to sustain it, would err to fail censure, and would express the privilege to petition taken at liberty notwithstanding to leave this question refuting a particular *Rooker-Feldman* application extant from its record. If it is compelling to dismiss, why has the State of Utah not argued such merit to the *Rooker-Feldman* bar itself?

The narrative of conscience has been left defensive; in the 2 ½ years I have petitioned this question, no single judge has treated my expressions fairly. It has been life and time consuming. Every sixty days I am prepared to go to work to finalize an Opening Brief, and every sixty days I am rebuked without true statement of the cause. It inflicts punishment implicit. It burdens me and offends my mother. It burdens other relationships, and devastates immediate plans. The courts have divested us of over 200 hours of time and realistically devalue the merit of the suit by expressions irrespective, and not sufficient to preclude further petitioning.

The psychological narrative is literally damaged; both of the courts we have petitioned appear to have made an aggressive joke at the expense of this person's hard work, political problems at center, while covering tortious errors by other immediate Judicial Officers. The petitioner's confidence is the target of such attacks, and her conscientiousness is the victim.

It leads one to consider whether or not the OAA has either prejudice to humor malfeasance, and whether our *Public Standing,* as only defensible from Article VI, resistance to confederation notwithstanding, and sustaining oath of capital federal agency, utterly concretizing

Judicial and Congressional discretion, has not been submitted implicit to defamation. *Public Standing* is found nowhere else interpretable or enforceable to the generality expressed of *Federalism.*

We ask the Supreme Court to take *seriously* the narrative of *fraud on the court* beside *contempt*, to consider that if Set Aside, those rulings may become void on issue in this party's favor. We withhold treatment of *Obstruction of Justice* because it is supplementary to further discovery, and so due an original application to venue.

We also ask the Supreme Court to evaluate issue of fees in our favor against judges promoting frivolous appeal; they waste our time and potentially destroy our question just as they destroy expression of our withstanding right, the original question which might have already resolved to have found respectfully observed the First Amendment, the right to petition as not requiring any particular interpretation.

Any other prejudice is notwithstanding, Fed. R. Civ. P. 60(d)(3) should be found observed in this instance where we do not ask the Supreme Court to resolve the constitutional question, because we object to falsification of the standing of our question when we can perceive that the two lower courts have amended our expressed right to petition at every single critical step.

We have no choice but to evaluate the impeachment of each judge implicated, and Supreme Court must not overlook our queries, this pleading, while we may sustain that a plausible question is withstanding. Associate Justice Ginsburg emphasized in *Exxon Mobil* the Supreme Court has never applied a *Rooker-Feldman* bar, and we found this to be true because it is generally recognizably applied between a trial court and court of appeals after precluding

certain parts of a claim. *Not* because Supreme Court is more apt to destroy implicit a petitioner's right to petition. The procedural bar in this instance must not become sustained.

It is a most general dignitary tort to refuse grant of *Writ of Certiorari* to compel the Court of Appeals evaluate a pre-trial question. The application against us misprises our petition, states that we seek to reject issue by an Administrative court when we have rather used its expression to aid define weaknesses in the law. An academic paper available[1] describes it as "Rambo-lawyering," in this instance, *Fraud de jure,* and we are at a loss of time, wealth, and conscience, what little excess we retain heretofrom.

We prefer we are not made gamble our conscience when we petition our court system for a remedy we find in view, and we prefer that if our petitions are somehow inadequate, that it is stated precisely so that we may amend, or seek professional counsel. We also prefer that clerks do not misprise rules and obstruct available process, negative advisement to amend our petition, than greet us adequately with the capacity of the court.

If the lower courts failed to recognize a question intrinsic to jurisdictional evaluation, as not to entangle precedence between the separate priorities of the withstanding state and federal courts, then grant of *Writ of Certiorari* is due.

If respondents did not define how it was prior litigated, then the *Rooker-Feldman* application is obviously incomplete, and the grant due.

We are in the position, otherwise, of petitioning either Supreme Court from before Utah Supreme Court, or the District Court again, because we cannot recognize our petitions in the

[1] Hague, David R. "Fraud on the Court and Abusive Discovery." Nevada Law Journal Vol. 16, 707, 708. https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1674&context=nlj

dispositive orders. We are literally in the same place we were before, only it is a year later, and there are several crimes plausibly committed against us. We also face refusal of IFP standing to petition this question again, and we may also face a charge of *contempt* to proceed so. It is excessive prejudice, and Supreme Court must not fail to resolve it while the conditions of claim preclusion in terms of statutory appellate jurisdiction intrinsic to the *Rooker-Feldman* bar are not met, yet are served and docketed for responses at justiciable order.

The lower courts have attacked our most basic narrative of realism in terms of confidence to petition, and stunt our budding traditionalism.

We are aware rehearing is rarely granted, and yet we are also aware the law is the adjudicator than any kind of oversight, outright procedural prejudice, or any favor of form to demographic bias when the court's honor is not demonstrated withstanding. Our question is at least plausible and the case is yet pre-trial, the Supreme Court should elect to vacate its decline of *Writ of Certiorari* and grant that our efforts are substantive and in fact not yet tried, than have wasted our every effort and permitted judges to contemn and obstruct our very presence.

We ask the court to set aside those prior orders, and recuse those judges, and award us fees in due order for the frivolous appeal, and so remand this case back to the Tenth Circuit Court of Appeals to resolve the question where it is always originally due resolved on any prejudice for the District Court's jurisdiction by the Civil Rights Act.

I attest that I recognize my right to petition has been abridged unduly by Judicial Agency, to coerce fraudulent expression of the *Rooker-Feldman* doctrine while my petitions presented rather extensive clarifications of the prejudice that the Utah Division of Aging and Adult Services/APS agency has a statute which extends administrative questions into issues of

domesticity without sensitivity and without care that the Older Americans Act prohibits coerced involvement, in the interest that there is an observable right potentially and/or plainly violated when statutory relief abridges right to sustain application.

I attest this affidavit represents victimization[2] of an action of *fraud* by the rule, *contempt* of court, which falsified the standard of application of precedence, the *Rooker-Feldman* bar in this case instance, in two courts, when judges appeared to void action at summons, keeping the petitioner out, and proceeded to falsify claim preclusion implicit and *obstructed* the case question, and so cannot produce any particular or authentic final judgment because we are left to petition the same cause again in identical order, while there is case material untreated in the Court of Appeals which is held to clarify the constitutional question in the same due order and without limitations of the stated procedural bar.

When Court of Appeals proceeded by the Appellate Rule 4, and did not evaluate by Rule 21, made no mention of that process, it proceeded without my expressed consent when I had submitted a Request to Submit for Decision respective to *In re Carlos Velasquez* than read the Motion for Reconsideration.

I recognize that clarification of jurisdiction was due, and provided that at Reconsideration beside an extensive restatement of the case and citations to the original brief, to mitigate the confusion the judge expressed, which I disbelieve due to the manner of expression of *Rooker-Feldman* doctrine, that it obstructed the court's view of the APA and diverted attention to a notwithstanding prejudice. The striking of a single paragraph, any mention of the APA beyond a procedural reference point, should have clarified the brief while Utah's separate APA remains

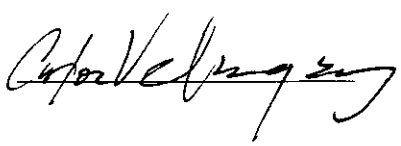
[2] *Id.* At 741. A four part test including elements (1) Offending party and his duty, (2) The Conduct, (3) the Victim, (4) the relief.

useful for discerning negative statutory bias in vested power terms. The question remains due to Court of Appeals, that amend of jurisdiction in view of partial judgment, the statute is thereupon demonstrated to be unconstitutional.

A judge should not remove too much the disposition against the petition, it does not sustain impartiality and innocence. We have isolated the exact and specific question, and find that both lower courts' positions have not read the briefings and motions specified, have not permitted respondents reply, have not entertained jurisdiction of claim preclusion, and so therefore falsify *Rooker-Feldman* doctrine application by sheer categorical objectification. Their process is obstructive both to appeal, and to complaint of Judicial Misconduct. Their process attacks every relevant First Amendment position protected in a court room.

I ask the court not hesitate rule in favor of the independent petitioner, the *pro se,* the IFP petitioner, and grant before United States Courts the honor of this express precedence.

SINCERELY,



Carlos Velasquez

Civil Bureaucratic Federalist

Dated: 1/2/19