No. 20-1118

Supreme Court of the United States

Robert Grundstein Esq.

v

Lamoille Superior Court Docket Entries/Orders dated 1-24-2012 and 1-8-2013 in Lecv 148-8-05 (P.O. Box 570, 154 Main Street, Hyde Park, VT 05655;

Lamoille Superior Court Docket Entry/Order dated 6-15-16 (Appellate No. 2016 VT 242) in Lecv 87-4-10;

Lamoille Superior Clerk of Courts, P.O. Box 570, 154 Main Street, Hyde Park, VT 05655, as Docket Administrator

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On Petition for Writ of Certiorari
to the U.S. Second Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL

QUESTIONS PRESENTED FOR REVIEW

1

RESOLVE CIRCUIT SPLITS WITH RESPECT TO "ROOKER-FELDMAN" FRAUD EXCEPTION

Should the Circuit Splits with respect to the Rooker-Feldman Fraud Exception be reconciled in favor of the exception? Some jurisdictions have a fraud exception to "Rooker" and some don't. Reconciliation would allow federal jurisdiction where fraud is alleged.

2

RESOLVE CIRCUIT SPLITS WITH RESPECT TO "ROOKER-FELDMAN" AND MEANING OF "INEXTRICABLY INTERTWINED"

Should the Circuit Splits between the character of state analysis and the meaning of "Inextricably Intertwined" as a criteria for the application of Rooker-Feldman, be reconciled? Some jurisdictions say Rooker-Feldman only applies if a Federal Question-Constitutional Issue was actually examined in a state court, after which the state provided an opinion and order responsive to the Constitutional matters. Others do not and bar jurisdiction on the minimal basis of a state order which has not contemplated Constitutional issues.

3

RESOLVE CIRCUITS SPLITS WITH RESPECT TO THE "ROOKER-FELDMAN" VOID AB INITIO EXCEPTION

Should the Circuit Splits by which some jurisdictions will not apply "Rooker-Feldman" to deny Federal review for state court judgments which are void ab initio and others which do not make this distinction, be reconciled?

SHOULD "ROOKER-FELDMAN" BAR FEDERAL JURISDICTION WHEN STATE COURTS USE UNCONSTITUTIONAL STATUTES, RULES, PROCEDURES AND CUSTOMS TO DETERMINE OUTCOMES?

Is "Rooker" Being Used for Administrative Convenience at the Expense of Constitutional Principle?

Should Rooker-Feldman bar jurisdiction if a state persistently uses unconstitutional means, procedures, statutes, rules and precedent to violate Due Process and other constitutional rights?

I.E., Is Rooker-Feldman being used for administrative convenience and docket clearing at the expense of more important Constitutional and Federal standards?

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PETITION FOR WRIT OF CERTIORARI

Petitioner seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Federal Circuit.

LIST OF PROCEEDINGS IN LOWER COURTS

1. Complaint filed in Vermont Federal District Court; 3:17 CV 00151;
2. Complaint "Dismissed Without Prejudice" in Vermont Federal District Court: August 29, 2019;
3. Notice of Appeal filed with Second Circuit Court of Appeals: September 18, 2019;
4. Summary Order Dismissing Appeal; Second Circuit Court of Appeals: September 11, 2020.

STATEMENT OF JURISDICTION

The United States Second Circuit Court of Appeals issued its opinion on September 11, 2020. There was no re-hearing. This Court's jurisdiction is based upon 28 U.S.C. 1254(1)

CONSTITUTIONAL PROVISIONS

First Amendment

Fifth Amendment

Sixth Amendment

Fourteenth Amendment

STATEMENT OF THE CASE

Circuit Splits in Application of "Rooker-Feldman" Prove That It Is Not Adequately Understood Exceptions for Fraud, Jurisdictional Defects and Constitutional Questions Need to Be Applied in All Jurisdictions

"Rooker-Feldman", is being used to deny Federal/ Constitutional Question jurisdiction in a way that is not consistent from jurisdiction to jurisdiction and in a way which over-prioritizes the presence of a state court judgment created at the expense of Constitutional and Equitable standards. Just because a Federal Court is being asked to contradict a state judgement should not exclude Federal Jurisdiction.

It is important to distinguish federal review of the internal logic of a State Court judgment, unrelated to Constitutional matters, in contrast to the Constitutional quality of the *Means* by which a judgment is created.

"Rooker-Feldman" should not bar jurisdiction where the state court litigant has not had a chance to litigate state decisions generated by unconstitutional practices and fraud, where a state court acted without jurisdiction, where a state court has not examined Constitutional claims or where state practices statutes and rules violate Due Process under 42 USC 1983, the Fifth, Sixth, Fourteenth Amendments and all other Constitutional protections.[1]

i

Administrative History

Applicant filed 5:17 CV 000151 in Vermont District court for relief under the Federal Declaratory Judgment Act (28 USC 2201), 42 USC 1983, Injunctive relief under "Ex Parte Young" (209 US 123), and under the Vermont

1 Note: ("Rooker-Feldman" op cit., is two cases: ("Rooker v. Fidelity Trust Co."", 263 U.S. 413 (1923) and "District of Columbia Court of Appeals v. Feldman", 460 U.S. 462 (1983).

State precedent of "Evans v Cote" (2009 VT 326), which allows a new action for violations of Due Process, fraud and jurisdictional defect. The Complaint in 5:17 CV 000151 was directed towards four orders of the Vermont state court which were subject to defects of fraud, jurisdiction and denial Due Process under the Fifth, Sixth and Fourteenth Amendments and Due Process

These orders were listed as EX 1-4 in the District Court Complaint. (Appendix; EX 1)[2]

Vermont State Judge Dennis Pearson has a history of doing this. See the Vermont divorce case of Jacqueline Parker ("Parker v. Parker", 2012 VT 20) who had her children removed from her. J. Pearson got angry at her on a day when she was in court for a scheduling hearing without an attorney. Dennis Pearson took her children away without any notice of charges, due process, analysis under the seven criteria for child custody, on a day when her attorney could not make it and without evidence. This was confirmed by the attorney for Jacqueline Parker. The Supreme Court promptly reversed. She got her kids back where they remain.)

Applicant Grundstein had standing to sue. He suffered legally redressable injury caused by the alleged state order

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2 NOTE: (In the original Federal Complaint Vermont State judge, Dennis Pearson, was accused of 1) forging orders, 2) entering evidence into the record without documentary or witness testimony, 3) drafting motions on behalf of opposing counsel without notice to Applicant, 4) Sua Sponte creation of Civ. Rule 60 motions up to SEVEN years after he lost jurisdiction to levy penalties and change character of original orders, 5) withholding cases from a docket so other judges couldn't hear them, 6) denying statutory rights to mediation and alternative dispute resolution, 7) removing title to personal and real property without charges, notice or hearing, 8) awarding over Eighty Thousand Dollars in damages without any charges, notice, hearing, evidence of damages or amounts, 9) adding causes of action to pleadings which weren't drafted by opposing counsel or weren't added by amendment and 10) writing orders on a case seven years after he lost jurisdiction over the case. 11) He also awarded sanctions sua sponte without any Civ. Rule 11 motions, notice or hearing. There is no state or Constitutional standard he did not violate on a serial basis over a period of years.

violations.

His Federal Complaint also alleged defects in the quality of Vermont Rule of Civil Procedure 8, by which a party does not have to articulate damages in the prayer of an original Complaint.

On August 29, 2019, The District court dismissed on the basis of "Rooker-Feldman". See Order; Appendix; EX 2

Applicant Grundstein filed a timely appeal in the Second Circuit District Court (19-2998). A Summary Order was issued on September 11, 2020 and the Mandate was filed on October 2, 2020. Summary Order, Appendix; EX 3.

The Second Circuit opinion refused to acknowledge case law and precedent from other federal jurisdictions by which "Rooker-Feldman" does not deny federal jurisdiction for fraudulent activity, violations of 42 USC 1983, absence of state court jurisdiction, absence of a state opinion responsive to Constitutional claims and when a party does not have the opportunity to litigate Federal/Constitutional issues in the state forum.

ii

Circuit Splits on Fraud Exception, Federal Question Jurisdiction and State Judgments Void Ab Initio

1

Fraud Exception

As it stands, some jurisdictions have a fraud exception to "Rooker-Feldman" and some don't.

2

Federal Question Jurisdiction and Incorrect Use of "Inextricably Intertwined" as Criteria

Some Federal Jurisdictions will not apply "Rooker-Feldman" and allow jurisdiction if a state court has not published an opinion specifically responsive to Constitutional issues raised in the state court, "Gash Associates v Village of Rosemont", 995 F.2d 726, 728 (7th Cir. 1993).

Some Federal jurisdictions do not use the criteria above

and will deny jurisdiction if the Federal Court is merely asked to contradict a state court judgment.

"Rooker-Feldman" should not deny federal review for state court judgements had at the expense of Due Process, by patterns of unconstitutional usage under 42 USC 1983, by fraud or without jurisdiction.

Wrong Application of "Inextricably Intertwined"
"Inextricably Intertwined" is a Conclusion/Not a Criteria
Case is "Inextricably Intertwined" if State Court has Examined Constitutional Matters and Issued Opinion with Analysis and Conclusion Responsive to Those Constitutional Issues.

The term "inextricably intertwined" is being used in some jurisdictions to mean that if a federal court is asked to contradict or undo a state court judgment, "Rooker" would apply and deny federal jurisdiction; (Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 364 F.3d 102, 106 (3d Cir. 2004), **rev'd,** 544 U.S. 280 (2005). The federal action is "inextricably intertwined" with the state judgment. But "inextricably intertwined" should not be used that way. It is a conclusion; not a criteria. The basis to find "inextricably intertwined" is if a state court has been responsive to a Constitutional argument in a court opinion.

"Exxon Mobil", ibid, resolves these matters against Rooker-Feldman's applicability. The "Rooker" doctrine poses no jurisdictional bar "simply because a party attempts to litigate in federal court a matter previously litigated in state court", "Exxon Mobil", ibid, at 293.

3

"Rooker-Feldman" Circuit Splits and Confusion When State Court Judgment Void Ab Initio

The Court in "Rooker" applied the rule only after satisfying itself that the state-court judgment at issue was a proper exercise of the state court's jurisdiction and thus not a nullity

Applicant Grundstein's Federal Complaint alleges that State Court Judge Dennis Pearson acted without subject

matter jurisdiction pertinent to three of the four counts. Judgement entered without subject matter jurisdiction or Due Process is Void ab Initio.

Some jurisdictions recognize a "Void ab Initio" to "Rooker" by which jurisdiction is not removed from Federal Court. Others don't. This Circuit Split should be examined and reconciled.

REASONS TO ALLOW CERTIORARI

Introduction

"Rooker-Feldman" Does Not Apply to Challenges Against the MEANS and Their Constitutional Quality By Which State Judgments Are Issued.

Rooker" is Being Used as an Administrative Convenience and Excluding Jurisdiction at the Expense of Constitutional Standards and First Amendment Right of Access to Courts

"Feldman" Itself Allows Generalized Challenges to State Usages, Statutes and Rules

"District of Columbia Court of Appeals v. Feldman", 458 U.S. 1105, 102 S.Ct. 3481, 73 L.Ed.2d 1365 (1983)

Suppose a state court, on appeal, affirmed a judgment for human slavery and said it was consistent with state statutes? Would Federal Jurisdiction not apply? Suppose a state court entered a judgment without a trial or hearing? Does 42 USC 1983 create federal jurisdiction while "Rooker-Feldman" simultaneously takes it away? "Feldman", op cit., itself said federal courts have jurisdiction to hear generalized constitutional challenges to state bar rules.

See also "Evans v Cordray", 6th Cir., No. 09-3998 (2011) in which the Sixth Circuit concluded that "the source of Evans's injury is Ohio's allegedly unconstitutional present and future enforcement of § 2323.52's remedial provisions in divorce proceedings, not the domestic court's prior interlocutory decisions denying him leave to proceed," and thus Rooker-Feldman did not apply.

"Rooker-Feldman" Should Not Defeat Federal Jurisdiction to Allow Constitutional Failure

The Exceptions to "Rooker-Feldman" articulated in this Writ Application represent a needed distinction between the kind of cases to which "Rooker-Feldman" should apply and to which it shouldn't. "Rooker-Feldman" should apply to those cases decided on the basis of Constitutionally defensible state law where Due Process was applied and where

there was no fraud or Federal and Constitutional issues. It should not apply to Federal Questions, especially when they have not been litigated and examined in a state appellate court.

The purpose of federal jurisdiction is to correct state courts when their Constitutional practice fails. Federal Courts should not be deprived of jurisdiction or use "Rooker" as an administrative tool for docket clearing because "something happened in a state court". Comity is not an excuse for irresponsible state Constitutional practice.

The criteria for Federal Jurisdiction should be the quality of Constitutional practice and review pertinent to an order in a State Court. Jurisdiction should not be curtailed because it would reverse or contradict a Constitutionally indefensible order.

I

Third Party Exception to "Rooker-Feldman" Applies

Petitioner alleges fraud on the part of a state judge. It has been well established that "If there is some other source of injury, caused by a Third Party Action, then there is an assertion of an independent claim.", "McCormick v. Braverman", 451 F.3d at 393, and cited by "Prewitt v. Wood County Common Pleas Court Juvenile Div.", 2014 U.S. Dist. LEXIS 152676. See also "Lawrence v. Welch", 531 F.3d 364, 369 (6th Cir. 2008531 F.3d at 368-69.

"Rooker-Feldman" does not bar jurisdiction for fraud perpetrated by a Third Party.

II

The Circuit Splits on the "Rooker" Fraud Exception Need to Be Reconciled
Long Tradition of Federal Jurisdiction to Correct Fraud in State Court
Second Circuit Needs to Adopt the Fraud Exception and All Other Exceptions to Retain Federal Jurisdiction and Protect Constitutional Rights

Courts in the Ninth and Sixth Circuits (as well as other district courts), have held that "Rooker-Feldman" is inapplicable if the federal plaintiff alleges extrinsic fraud on the court. "Extrinsic fraud is conduct which prevents a party from presenting his claim in court." "Kougasian v. TMSL, Inc.", 359 F.3d 1136, 1140 (9th Cir. 2004) (quoting "Wood v. McEwen", 644 F.2d 797, 801 (9th Cir. 1981)). See also "McCormick v Braverman", 451 F.3d 382 (6th Cir.) 2006, in which it was found "Rooker-Feldman" did not apply to state judgment procured by fraud.

"Twin City Fire Ins. Co. v. Adkins", 400 F.3d 293, 301 (6th Cir. 2005) (citing "In re Sun Valley Foods Co. v. Detroit Marine Terminals, Inc.", 801 F.2d 186 (1986)) found that "[a] federal court may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, "mistake" or other gross procedural error."

The "Rooker" Fraud Exception in several jurisdictions acknowledges the fact that fraud displaces Due Process and should not be the basis to deny Federal Jurisdiction. A litigant is denied Due Process when fraud removes the opportunity to know charges and evidence against him/her and attend hearings pertinent to these items. It should be a matter of national concern when a state judge practices these defects in favor of a party.

It has long been the law that a plaintiff in federal court can seek to set aside a state court judgment obtained through extrinsic fraud. In "Barrow v. Hunton", 99 U.S. (9 Otto) 80, 25 L.Ed. 407 (1878), the Supreme Court distinguished between errors by the state court, which could not be reviewed in federal circuit court, and fraud on the state court, which could be the basis for an independent suit in circuit court.

If the proceedings are tantamount to a bill in equity to set aside a decree for fraud in the obtaining thereof, then they constitute an original and independent proceeding, and according to the doctrine laid down in "Gaines v. Fuentes" (92 U.S. (2 Otto) 10, 23 L.Ed. 524), the case might be within the cognizance of the Federal courts

While the fraud exception to Rooker-Feldman has been fully adopted in the Sixth and Ninth Circuits (and several district courts), the exception has been rejected elsewhere. As recently noted in the Eastern District of Pennsylvania, "the Second, Fifth, Seventh, Eighth, Tenth, and Eleventh Circuits have rejected the exception, as have district courts in the Fourth Circuit.", "Campbell v. Tabas", Civ. A. No. 16-6513, 2017 U.S. Dist. LEXIS 115722, at *7 (E.D. Pa. July 25, 2016).

III

Circuit Splits on the "Rooker" "Void ab Initio Exception Need to Be Reconciled
A State Judgment is Void if Rendered without Jurisdiction or Jurisdictional Due Process
Second Circuit Needs to Recognize This Exception

The Court in "Rooker" applied the rule only after satisfying itself that the state-court judgment at issue was a proper exercise of the state court's jurisdiction and thus not a nullity. Otherwise a Federal Court would have jurisdiction. See "United States v. Shepherd", 23 F.3d 923, 925 (5th Cir. 1994)

". . . a judgment is only void if "the rendering court (1) lacked jurisdiction over the party or his property; (2) lacked jurisdiction over the subject matter of the suit; (3) lacked jurisdiction to enter the particular judgment rendered; or (4) lacked the capacity to act as a court." "Salinas v U.S. Bank National Assoc." No. 13-41012 (5th Cir.), citing "U.S. v Shepherd", "Id". at 925 n.5.

The Third Circuit, decided "In re James", 940 F.2d 46 at 52 (3d Cir. 1991), to say "Rooker–Feldman" does not apply when the underlying state judgment is void ab initio.

The Eleventh Circuit, along with the First, Sixth, and Eighth Circuits, applies "Rooker–Feldman" even when the underlying state judgment is void ab initio. In " Casale v. Tillman", 558 F.3d 1258(11th Cir. 2009), the Eleventh Circuit stated: "Other circuits have recognized an exception

to "Rooker–Feldman" where the state court judgment is void ab initio due to the state court's lack of jurisdiction, but our circuit has never adopted that exception.", Id. at 1261

The Ninth Circuit has recognized, in certain bankruptcy cases, "an exception to Rooker-Feldman . . . when the state proceeding is a legal nullity and void ab initio.", " In re Pavelich", 229 B.R. 777, 783 (9th Cir. B.A.P.1999)

IV

Circuit Splits on General Constitutional Challenges to State Law and Usages as Exceptions to "Rooker-Feldman" Need to Be Reconciled;
No "Rooker-Feldman" or Preclusion If State Refuses to Hear Constitutional Claims
"Casale v. Tillman", 558 F.3d 1258, 1260 (11th Cir. 2009);
"Inextricably Intertwined" Needs to be used As a Conclusion and not as a Criteria
"Gash Associates v Village of Rosemont", 995 F.2d 726, 728 (7th Cir. 1993)

General Constitutional Challenges Exempt from "Rooker-Feldman"

"Crutchfield v Countrywide Homes" 03-6311 (10th Cir.) cited the original "Feldman" case and found constitutional challenges to state statutes and rules are exempt from "Rooker-Feldman:

"There is an exception to the "Rooker-Feldman" doctrine for general constitutional challenges to state laws. As Justice Brennan explained in "District of Columbia Court of Appeals v. Feldman", 460 U.S. 462, constitutional challenges to state statutes or rules are not attacks on state court judgments. "Feldman", 460 U.S. at 486. Consequently, § 1257(a) does not bar lower federal courts from hearing general claims that state laws are unconstitutional, even if the requested relief is inextricably intertwined with a state court judgment.

"Allen et al. v Debello et al." No. 16-2644, (3rd Cir.) stated;

"Rooker-Feldman" does not bar suits that challenge ac-

tions or injuries underlying state court decision ..." and followed "Skinner v. Switzer", 562 U.S. 521, 532 (2011) which held "Rooker-Feldman" did not bar jurisdiction because;

"Skinner does not challenge the adverse [state court] decisions themselves; instead, he targets as unconstitutional the Texas statute they authoritatively construed"); "Great W. Mining & Mineral Co. v. Fox Rothschild LLP", 615 F.3d 159, 167 (3d Cir. 2010) ("To the contrary, when the source of the injury is the defendant's actions (and not the state court judgments), the federal suit is independent, even if it asks the federal court to deny a legal conclusion reached by the state court.").

No "Rooker-Feldman" if State Court Never Examined Constitutional/Fraud/Jurisdictional Issues

There should be no application of "Rooker-Feldman" if there was no opportunity to address Constitutional issues or if they were not examined and subject to an order addressing them in state court.

"Rooker-Feldman" does not apply, however, where a party did not have a reasonable opportunity to raise his federal claim in state proceedings." "Casale", ibid, 558 F.3d at 1260. "Casale" op cit., was also cited in "Velazquez v S. Florida Credit Union", No. 12-15222, (11th Cir.).

Inextricably Intertwined Is Conclusion/Not Criteria

"Inextricably Intertwined" is presently used as a criteria when it is really a conclusion. It should only apply to bar Federal Jurisdiction if federal issues were examined in State Court, on the basis of a Constitutionally sound statute or usage and subject to an opinion which addresses and explains the disposition concerning them. It also calls for the existence of Constitutionally defensible procedures, laws and rules.

An order which assiduously confirms an Unconstitutional state practice should not be barred from jurisdiction in Federal Court if the state has adopted unconstitutional statutes, rules, usages and procedures as contemplated by 42 USC 1983.

"Rooker" only applies to issues which were actually litigated, examined, briefed and subject to a state court order; "Exxon Mobil v. Saudi Basic Industries" 844 US at 284, citing "GASH Associates v. Village of Rosemont, Ill.", 995 F.2d 726, 728 (7th Cir. 1993).

CONCLUSION

"Rooker-Feldman" should not deny Federal Jurisdiction to review state court judgments based on unconstitutional statutes, rules customs and usages. It should not deny Federal Jurisdiction to examine state court judgments based on a pattern and standard of unconstitutional practices;

"Rooker-Feldman" should not deny Federal Jurisdiction for judgments alleged to be issued by court-perpetrated or other fraud. The circuit splits on this need to be resolved in favor of Federal jurisdiction;

"Rooker-Feldman" should not deny Federal Jurisdiction for review of state court judgments when a state did not examine or address Constitutional Issues presented to it. The circuit splits on this need to be resolved in favor of Federal Jurisdiction.

"Rooker-Feldman" should not deny Federal Jurisdiction for scrutiny of state court activity when the state court judgment was void ab initio. Judgments are void ab initio when they are created without jurisdiction or violate Due Process.

THEREFORE, Petitioner Grundstein asks this Court to reverse judgement in the Second Circuit for remand to the Vermont Federal District Court where the case will be conducted on the merits.

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