

20-6546
IN THE SUPREME COURT OF THE UNITED STATES

JOHN C. NIMMER,

Case No. 20-

Petitioner,

Vs.

HON. MICHAEL G. HEAVICAN,
Chief Justice
of the Nebraska Supreme Court
in his official capacity;

PETITION FOR
WRIT OF CERTIORARI

HON. STEPHANIE F. STACY, Justice
of the Nebraska Supreme Court
in her official capacity;

(From the United States Court
of Appeals for the Eighth
Circuit)

HON. LINDSEY MILLER-LERMAN,
Justice of the Nebraska Supreme Court
in her official capacity;

Submitted by,

HON. WILLIAM B. CASSEL, Justice
of the Nebraska Supreme Court
in his official capacity;

John C. Nimmer
1429 S. Grandview Ave. #8
Papillion, NE 68046
402-345-8040

HON. JONATHAN J. PAPIK, Justice
of the Nebraska Supreme Court
in his official capacity;

Pro Se

HON. JEFFREY J. FUNK, Justice
of the Nebraska Supreme Court
in his official capacity;

HON. JOHN R. FREUDENBERG, Justice
of the Nebraska Supreme Court
in his official capacity;

MARK A. WEBER, Counsel for Discipline

QUESTION PRESENTED

The questions presented arise out of separation of powers. Under 42 USC 1983 Petitioner sued in US District Court (Dist. Nebr.) the justices of the Nebraska Supreme Court and its Counsel for Discipline for taking his license to practice law (property) without due process of law. The Due Process and Privileges and Immunities clauses of the Fourteenth Amendment to the US Constitution, and Article V Sec. 4 (states required to have a Republican Form of Government), mandate separation of powers in the taking of private property. The gravamen of Petitioner's US District Court case was the total lack of separation in the Nebraska attorney disciplinary discipline process between the judicial functions of the Nebraska Supreme Court in determining (then sanctioning) if attorneys have violated legal ethical rules also legislated by them, where the executive functions of investigating and prosecution are conducted by their Counsel for Discipline—who is directly employed and supervised by them. Petitioner's facial claim was brought in US District Court after the Nebraska Supreme Court revoked his license, but before all state proceedings including a motion for rehearing were concluded. The questions presented are:

1. Does Rooker-Feldman* doctrine bar Petitioner's 42 USC 1983 US

District Court claim where Petitioner pled a facial as opposed to an as applied challenge?

*Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

2. If Rooker-Feldman is inapplicable because Petitioner pled a facial as opposed to as applied challenge, did Petitioner have standing to bring his 42 USC 1983 US District Court claim?
3. If Petitioner inadvertently pled in the US District Court a 42 USC 1983 as applied challenge, were the state court proceedings “concluded” to bar Petitioner’s claim under Rooker-Feldman?

There is no meaningful opportunity for attorneys to defend themselves from allegations of misconduct where a state’s highest court legislates attorney conduct, where its Counsel for Discipline both investigates and prosecutes misconduct, and where the court also adjudicates and punishes misconduct. Without the ability to mount a meaningful defense, the attorney disciplinary process may be weaponized by opposing counsel or those wishing to deter an attorney from advocating causes of his client or of his own.

Lawyers who represent unpopular clients and/or advocate for racial justice, religious freedom, LGBTQ rights, free speech, and other causes may then be improperly sidelined through the abuse of an attorney disciplinary process devoid of meaningful due process. Upon information and belief this happened to the Petitioner. Lawyers who mount a defense in a Nebraska disciplinary proceeding, instead of accepting the Counsel for Discipline’s recommended sanctions, are severely punished. Defendant lawyers are never exonerated by the Nebraska Supreme Court—which for a fair system would be statistically improbable.

RELATED PROCEEDINGS

State Ex. Rel. Counsel for Discipline v. Nimmer, S17-111, 300 Neb. 906 (2018)

Nimmer v. Heavican, et. al, 4:18-cv-3123 (Dist. Neb)

Nimmer v. Heavican, et. al, 19-2426 (8th Cir.)

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<u>Federacion de Maestros de Puerto Rico v. Junta de Relaciones</u> , 410 F.3d 17, 24 (1st Cir. 2005)	9
<u>Mosby v. Ligon</u> , 418 F.3d 927 (8th Cir. 2005)	7, 8
<u>Nimmer v. Heavican, et. al</u> , 4:18-cv-3123 (Dist. Neb)	3, 6
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CITATIONS OF AND HYPERLINKS TO ORDERS AND OPINIONS

September 4, 2020 Complaint, Nimmer v. Heavican, et. al, 4:18-cv-3123 (Dist. Neb). See <https://ecf.ned.uscourts.gov/doc1/11314062860>

June 6, 2019 Memorandum and Order, Nimmer v. Heavican, et. al, 4:18-cv-3123 (Dist. Neb). See <https://ecf.ned.uscourts.gov/doc1/11314253775>

Nimmer v. Heavican, et. al, 19-2426 (8th Cir.):

- A. May 1, 2020 Opinion and Judgment. See https://ecf.ca8.uscourts.gov/n/beam/servlet/TransportRoom?servlet=ShowDoc&caseId=94365&dkType=dkPublic&dls_id=00813979895&caseId=94365
- B. June 10, 2020 Order Denying En Banc and Panel Rehearing. See <https://ecf.ca8.uscourts.gov/n/beam/servlet/TransportRoom>
- C. June 17, 2020 Mandate. See <https://ecf.ca8.uscourts.gov/n/beam/servlet/TransportRoom>

BASIS OF JURISDICTION

Petitioner seeks review of the 8th Circuit May 1, 2020 Opinion and Judgment affirming the Dist. of Nebr.'s June 6, 2019 Dismissal of Petitioner's September 4, 2018 Complaint. The 8th Circuit denied Petitioner's alternative request for rehearing en banc or before the panel on June 10, 2020. Their mandate issued on June 17, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following provisions of the US Constitution requires of the States separation of powers in the taking of private property:

1. US Constitution Amendment XIV Sec. 1: "No State shall deprive any person of life, liberty, or property, without due process of law.

2. U.S. Constitution Amendment XIV Sec. 1: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; “ As a United States privilege and immunity US Constitution Article IV Sec. 4: The United States shall guarantee to every State in this Union a Republican Form of Government.

STATEMENT OF THE CASE

Respondents took Petitioner’s Nebraska license to practice law under an attorney disciplinary system devoid of separation of powers (as required by the Due Process Clause of the Fourteenth Amendment to the US Constitution; the Privileges and Immunities clause of the Fourteenth Amendment; and Article V Sec. 4 of the US Constitution {states required to have a Republican Form of Government}). After their August 31, 2018 opinion, Petitioner sued Respondents under 28 USC 1331 (federal question jurisdiction) and 42 USC 1983 in the US District Court on September 4, 2018. The District Court dismissed Petitioner’s claim on June 6, 2019. The Eighth Circuit affirmed without opinion on May 1, 2020, and denied both panel and en banc rehearing on June 10, 2020. The 8th circuit mandate issued on June 17, 2020.

REASONS FOR GRANTING THE WRIT

The 8th Circuit has decided two important questions of federal law in ways that conflict with decisions of this Court.

Standing for Petitioner's Facial Claim

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983):

Feldman was admitted to practice law in Virginia and Maryland but was not a graduate of an ABA approved law school. For that reason the District of Columbia Bar denied him admission to practice. The denial was affirmed by the D.C. Court of Appeals. Under 42 USC 1983 Feldman sued in US District Court alleging the federal unconstitutionality of the DC Bar admission rules. This Court ultimately dismissed any of Feldman's as applied claims under Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) as an impermissible collateral attack in federal district court (versus by cert. to this Court) on a final state court judgment, but on remand allowed the case to continue on his facial claims. A victory would then have granted Feldman the D.C. attorney license he was denied. As such this Court presumed Feldman to have standing on his facial claims.

Mosby v. Ligon, 418 F.3d 927 (8th Cir. 2005): At least part of Attorney Mosby's federal challenge to her being publicly reprimanded for violating Arkansas attorney disciplinary rules was dependent on conduct particular to her (as applied), not a mere facial challenge. Dismissal under Rooker-Feldman was therefore appropriate. Assuming Mosby had properly pled a facial challenge, the 8th circuit found standing was lacking because Mosby's public reprimand as an attorney was done and over with—and it was speculative at best if she would ever face attorney disciplinary action again.

Petitioner's facial claim is like Feldman. His license revocation is forever (similar to Feldman's denial to practice law in D.C.), and a favorable federal decision would in both cases grant a license (admission for Feldman, reinstatement for Appellant). If this Court found standing for a facial claim where Feldman if successful would have gotten a DC license to practice law which he never had before, certainly standing exists for the Petitioner where if successful he will get back a license he had for 25 years. Assuming arguendo Mosby opined correctly on standing for facial claims, Petitioner's claim is unlike Mosby's where her harm was a singular public reprimand. Misapplying Mosby's holding to facial claims with enduring harms like those in Feldman and the Petitioner's conflicts with this Court's standing determination in Feldman.

Rooker-Feldman For As Applied Claims

Assuming without conceding Petitioner's US District Court claim was an as applied one, the lower courts misapplied Rooker-Feldman.

The Rooker-Feldman doctrine applies only to cases where the state proceedings have ended. Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005). The Nebraska Supreme Court issued its opinion on August 31, 2018. Petitioner filed his 42 USC 1983 claim against the Respondents in US District Court on September 4, 2018—and therein pled his then intent to move in state court for a rehearing in that original (not appellate) state proceeding. Petitioner in fact moved for rehearing on

October 12, 2018—which was summarily denied on October 24, 2018. At the time of Petitioner’s September 4, 2018 US District Court Complaint the state court proceedings were not ended.

Notwithstanding Rooker-Feldman was invoked against the Petitioner, and circuit opinions contradictory to Exxon Mobile Corp. relied upon in doing so. See Dornheim v. Sholes, 430 F.3d 919 (8th Cir. 2005) relying upon Federacion de Maestros de Puerto Rico v. Junta de Relaciones, 410 F.3d 17, 24 (1st Cir. 2005).

RULE 33 COMPLIANCE

The undersigned certifies that to the best of his knowledge the foregoing Petition does not exceed the word or page limitations of Rule 33.

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on the date below he filed and served the foregoing Petition for Writ of Certiorari via US first class mail, postage prepaid, as follows:

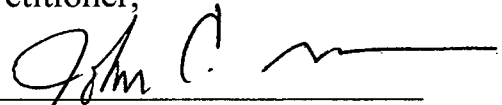
Clerk of the US Supreme Court
Washington, DC 20543
(Original only as per Court’s
April 15, 2020 Covid Order)

NE Attorney General
2115 State Capitol
Lincoln, NE 68509
Attn: James Smith
(1 copy)

Dated this 14th day of August, 2020.

Respectfully Submitted,

JOHN C. NIMMER,
Petitioner,

X 

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