No. 21-7050

ORIGINAL

FILED
JAN 25 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Guy Cozzi --- PETITIONER

vs.

Workers' Compensation Board, et al. --- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

Pro-Se and IFP Petitioner-Appellant:

Guy Cozzi
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https://**direct.me/nemmar**

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QUESTIONS PRESENTED

1. At oral argument, did the **three Justices at the US Court of Appeals** for the Second Circuit say that this case has ***"profound legal and Constitutional issues that the US Supreme Court has to decide"***? Answer: Yes. (in archive audio of oral argument)

2. If the roots of the tree are *poisonous*, then the tree branches and fruit are also *poisonous*. Therefore, is it true that if **Section 25** of the **Judiciary Act of 1789** violates the Constitution, then **28 U.S. Code § 1257** and **Rooker-Feldman** also violate the Constitution? Answer: Yes. (see point #3)

3. Does **Section 25** of the Judiciary Act of 1789 violate **Article I Section 8 Clause 18** - the *Necessary and Proper* clause of the Constitution? Answer: Yes. (see point #3)
    a. How? SCOTUS is overwhelmed with over 7,000 appeals per year. It **limits, obstructs and prevents** SCOTUS and the Judicial branch from fulfilling its **enumerated power** of appellate judicial review of state court rulings.

4. The Constitution empowered Congress to create "inferior" courts. Is it true the Framers did *not* empower Congress to violate the Constitution, **nor alter its checks and balances**, when enacting legislation for the Judicial branch? Answer: Yes. (see #3)

5. Is it a violation of the Constitution for SCOTUS and the Judicial branch to create their own **doctrine** (i.e. Rooker-Feldman) that limits, obstructs or prevents them from fulfilling their own **enumerated powers**? Answer: Yes. (see point #5)

6. Is it a violation of the Constitution for **any** branch of government to limit its ***own*** enumerated powers without a constitutional **amendment**? Answer: Yes. (point #5)

7. In Federalist No. 82, did Alexander Hamilton write the following? Answer: Yes. (see point #11)
    a. **"But could an appeal be made to lie from the State courts to the subordinate federal judicatories?** This is another of the questions which have been raised, and of greater difficulty than the former. **The following considerations countenance the affirmative."**

8. Did Brutus point out in Federalist No. 78 that the Constitution did **not** provide an effective mechanism for controlling **judicial caprice**? Answer: Yes. (see point #11)

9. Is *Marbury v. Madison (1803)* correct? Answer: Yes. (see point #12, #22)
    a. "If he has a right, and that right has been violated, do the laws of his country afford him a remedy? **The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws,**

whenever he receives an injury. One of the first duties of government is to afford that protection."

10. Are there historic examples of the judicial branch correcting injustices in the court system to *level the playing field* for **Pro-Se and IFP litigants**? Answer: Yes. (#14, #25)
    a. What are they? **Right to Counsel, Miranda Rights,** and **In Forma Pauperis.**

11. **Would Dred Scott, Homer Plessy, and Fred Korematsu be <u>blocked</u> today by Rooker-Feldman** from federal **district** court review and justice if those were rulings from the highest state courts prior to starting a federal court case? Answer: Yes. (#15)

12. Review by SCOTUS by means of a writ of certiorari is not a matter of *right*, but of judicial *discretion*. Isn't it true that SCOTUS is *overwhelmed* with appeals and **<u>cannot</u>** hear many cases that deserve federal judicial review? Answer: Yes. (see point #15)

13. Federal **district** courts are **<u>denied</u>** judicial discretion and review due to Rooker-Feldman. Is that similar to giving **plenary power** to state courts against **Pro-Se and IFP litigants** who do not know the judicial system rules and procedures? Answer: Yes. (see point #11, #16, #22)

14. Does it <u>violate</u> the Constitution when government agencies use "**fruit of the poisonous tree**" ? Answer: Yes. (see point #19, #21)

15. If you give the government a ***sword*** and a ***shield*** to use against litigants, then is it ***required*** by the Constitution to give that same sword and shield to those litigants so they can **<u>defend themselves in court</u>**? Answer: Yes. (see point #14, #16, #19)

16. Is the **State court process *vitiated*** when the state court ignores or fails to correct <u>violations</u> of the Constitution? Does Rooker-Feldman then prevent judicial review when the highest state appellate courts do ***not*** adhere to the Constitution? Does that <u>violate</u> **Equal Protection and Due Process**? Answer: Yes. (see point #3-21)

17. Since the *Rooker v. Fidelity Trust* ruling in 1923, countless people have been denied justice. **Is the Constitution the *key* that *unlocks the door* that has been *hidden and locked* for 100 years?** Answer: Yes.
    a. The US Constitution "levels the playing field" for everyone - but **only** if all three branches of government **adhere to it**. Therein lies the problem. When one or more branches of our government stray from the **<u>intent</u>** of the Framers, then the ***playing field is no longer level.***

18. Is the US Constitution (and its amendments) the greatest document ever created to promote **liberty and prosperity**? Answer: Yes.

List of Parties

[X] All parties **do not** appear in the caption of the case on the cover page. All parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. New York State Workers' Compensation Board - Respondent
2. American Stock Exchange - Employer-Respondent
3. Pacific Indemnity Company - Carrier-Respondent
4. The Chubb Corp. and Chubb Insurance Cos. - Carrier-Respondent
    - The following list constitutes the names of the parent companies; subsidiaries and affiliates of Pacific Indemnity Company:
        1. ACE Limited is the parent company of The Chubb Corporation.
        2. Federal Insurance Company
        3. Chubb National Insurance Company
        4. Vigilant Insurance Company
        5. Chubb Insurance Company of Australia Limited
        6. Great Northern Insurance Company
        7. Chubb Insurance Company of Canada
        8. Pacific Indemnity Company
        9. Chubb Insurance Company of Europe SE
        10. Texas Pacific Indemnity Company
        11. Chubb Atlantic Indemnity LTD.
        12. Chubb Lloyd's Insurance Company of Texas
        13. Chubb Insurance Company (Thailand) Limited
        14. Executive Risk Indemnity Inc.
        15. Chubb Argentina de Seguros, S.A.
        16. Executive Risk Specialty Insurance Company
        17. Chubb do Brasil Companhia de Seguros
        18. Chubb Custom Insurance Company
        19. Chubb de Chile Compania de Seguros Generales, S.A.
        20. Chubb Indemnity Insurance Company
        21. Chubb de Colombia Compania de Seguros, S.A.
        22. Chubb Insurance (China) Company Limited
        23. Chubb de Mexico, Compania Afianzadora, S.A. de C.V.
        24. Chubb Insurance Company of New Jersey
        25. Chubb de Mexico, Compania de Seguros, S.A. de C.V.

Related Cases

1. US Court of Appeals for the Second Circuit case #21-812. **Summary Order** issued on November 3, 2021. [Appendix A 2022]
2. US Court of Appeals for the Second Circuit case #21-812. **Oral Argument** hearing date of October 26, 2021. [Appendix B 2022]
3. US District Court for Southern District of NY case #1:21-cv-00442-LLS. **Order of Dismissal** issued on March 5, 2021. [Appendix C 2022]
4. US District Court for Southern District of NY case #1:21-cv-00442-LLS. Civil Order Judgment Dismissal on March 5, 2021. [Appendix D 2022]

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2. APPENDIX B 2022 - US Court of Appeals for the Second Circuit case #21-812. **Oral Argument hearing date** of October 26, 2021.
3. APPENDIX C 2022 - US District Court for Southern District of NY case #1:21-cv-00442-LLS. **Order of Dismissal** issued on March 5, 2021.
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5. APPENDIX E 2022 - Plaintiff-Appellant **Principal Brief** filed at the US Court of Appeals For Second Circuit on June 10, 2021.
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7. APPENDIX G 2022 - Comparing Federal & State Courts - US Courts website page.
8. APPENDIX H 2022 - Rules Enabling Act of 1934 - 28 U.S. Code § 2071

The following is a list of appendices that I filed with the US District Court for Southern District of NY **case #1:21-cv-00442-LLS** and the US Court of Appeals for the Second Circuit **case #21-812**. These appendix documents can be found in those court case files.

1. **APPENDIX #1 - My Writ of Certiorari for the Supreme Court of the United States (SCOTUS) - docket No. 19-6822 submitted on 11-29-2019.**
2. APPENDIX #2 - No. 19-6822 SCOTUS denied petition letter. 01-27-2020.

3. APPENDIX A - No. 526254. New York Supreme Court Appellate Division Third Judicial Dept. 05-16-2019.
4. APPENDIX B - No. G110 9023. Workers' Compensation Board. 01-19-2018.
5. APPENDIX C - No. 2019-584. New York Court of Appeals. 09-10-2019.
6. APPENDIX D - No. 2017-783. New York Court of Appeals. 10-19-2017.
7. APPENDIX E - No. 523341. New York Supreme Court Appellate Division Third Judicial Dept.. 06-15-2017.
8. APPENDIX F - No. 523341. New York Supreme Court Appellate Division Third Judicial Dept.. 03-30-2017.
9. APPENDIX G 1-5
    i. No. G110 9023. Workers' Compensation Board. 05-12-2016.
    ii. No. G110 9023. Workers' Compensation Board. 02-05-2016.
    iii. No. G110 9023. Workers' Compensation Board. 09-29-2015.
    iv. No. G110 9023. Workers' Compensation Board. 03-10-2015.
    v. No. G110 9023. Workers' Compensation Board. 12-16-2014.

10. **APPENDIX H** - My legal brief (without Appendix) for NY Supreme Court Appellate Division Third Judicial Dept. - docket No. 526254 submitted on 08-29-2018.
11. **APPENDIX I** - My legal brief (without the Appendix) for New York Court of Appeals - docket No. 2019-584 submitted on 06-07-2019.

12. APPENDIX J 1-4
    i. Workers' Compensation Board form: RB-89 (09-16).
    ii. Workers' Compensation Board form: WTC-12 (11-13).
    iii. Workers' Compensation Board form: C-3 (1-11).
    iv. Workers' Compensation Board form: WTCvol-3 (03-17).
13. APPENDIX K - Relevant pages of the NY WCB Centennial Booklet.
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15. APPENDIX M - 2017-2018 emails about RB-89 rehearing and WTCvol-3 form.

16. **APPENDIX N** - Remedy to fix the Rooker-Feldman doctrine.

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6. SCOTUS guidebook for Writs of Certiorari - pg 42
7. SCOTUS Rule 14.1(g)(i) for Writs of Certiorari - pg 62
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3. Rules Enabling Act of 1934 - 28 U.S. Code § 2071-2077 - pg 23
4. 5 U.S. Code § 706. Scope of Review - (see appendix briefs)
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6. 28 U.S. Code § 1257 - pg 16-17, 19-21, 44, 58
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4. New York Workers' Compensation Law (WCL)
    a. WCL Article 8-A - pg 26, 29, 45-46, 48-51, 71-72
    b. WCL § 123 - pg 29, 45, 50, 60, 71

Other Authorities

1. One Supreme Court and the Writ of Certiorari - Author: J. Warren Madden - Hastings Law Journal - Volume 15 - Issue 2 - Article 4 (1963) - pg 17-18

2. The Supervisory Power of the Supreme Court - Author: **Amy Coney Barrett** - Notre Dame Law School - 106 Colum. L. Rev. 324 (2006) - pg 23

3. Ignorance of the Law Is No Excuse, But It Is Reality - Author: Paul Rosenzweig - The Heritage Foundation (2013) - pg 66

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

Opinions Below

[X] For cases from **federal courts:**

The opinion of the United States Court of Appeals appears at **Appendix A 2022** ___ to the petition and is

~~[ ] reported at _____; or,~~

~~[ ] has been designated for publication but is not yet reported; or,~~

[X] is unpublished.

The opinion of the United States district court appears at **Appendix C 2022** __ to the petition and is

[ ] reported at _____ ; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

~~[ ] For cases from state courts:~~

~~The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is~~

~~[ ] reported at _____; or,~~

~~[ ] has been designated for publication but is not yet reported; or,~~

~~[ ] is unpublished.~~

~~The opinion of the _____ court appears at Appendix _____ to the petition and is~~

~~[ ] reported at _____; or,~~

~~[ ] has been designated for publication but is not yet reported; or,~~

~~[ ] is unpublished.~~

Jurisdiction

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was __ **November 3, 2021** _____ .

[X] No petition for rehearing was timely filed in my case.

~~[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____ , and a copy of the order denying rehearing appears at Appendix _____ .~~

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ .

The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

~~[ ] For cases from state courts:~~

~~The date on which the highest state court decided my case was _____ . A copy of that decision appears at Appendix _____ .~~

~~[ ] A timely petition for rehearing was thereafter denied on the following date: _____ , and a copy of the order denying rehearing appears at Appendix _____ .~~

~~[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____ .~~

The jurisdiction of this Court is invoked under 28 U. S. C. §1257(a).

Constitutional & Statutory Provisions Involved

See the *Table of Authorities* section above for this list.

Statement of the Case

- Note: I am representing myself without an attorney. I am not a lawyer and I have never taken any law classes or legal training. As a result, I apologize if this document does not perfectly conform to the requirements of the court. I also apologize if my emotions and health problems cause me to write anything that a judge would consider inappropriate for a court document.

The ***Questions Presented*** section above gives a detailed summary of the legal and Constitutional issues for this case. So to avoid repetition, I will keep this section short.

This brief is my appeal of the November 3, 2021 Summary Order by the US Court of Appeals for the Second Circuit (USCA2) [Appendix A 2022], and the March 5, 2021 Order of Dismissal by the US District Court for the Southern District of NY (USDC) [Appendix C 2022]. I object to the court's conclusions in those rulings because the Rooker-Feldman doctrine is unconstitutional. Moreover, the Rooker-Feldman doctrine is inapplicable to this case based on the facts stated in my State and Federal court appeal briefs.

On January 20, 2022 I filed a *Motion to Recall the Summary Order and Mandate* for the USCA2 ruling. In that motion, I respectfully asked the USCA2 to approve my motions, if possible. If it's not possible to recall the Summary Order, then I requested that the Mandate be recalled, if that court allows that. I also included the explanation of why I did not file that motion much sooner. I am mentioning this here only because the USCA2 will issue a ruling on that motion *after* I submit this Writ of Certiorari to SCOTUS. I apologize for not filing that USCA2 motion a few months ago.

- SCOTUS Rule 14.1(g)(i) and (ii): The following federal questions sought to be reviewed were raised in the lower courts, district courts and appellate courts. They were raised in my legal briefs submitted to those courts and at oral argument at the US Court of Appeals. **The US Court of Appeals judges at oral argument said these legal issues need to be decided by SCOTUS.** The New York state courts passed on (ignored) the Constitutional violation issues I raised in my prior briefs.

- SCOTUS Rule 29.4(b): At oral argument at the US Court of Appeals for the Second Circuit, I called into question the constitutionality of an Act of Congress. I explained that both **Section 25** of the **Judiciary Act of 1789** and **28 U.S. Code § 1257** violate the US Constitution.

- I filed my original complaint in the federal district courts of both NY and CT on January 15, 2021. I did not know which court was the correct venue/jurisdiction. In my brief filed with that complaint, I mistakenly thought that *jurisdiction* was the same thing as the *venue*. I apologize if this caused any confusion for the courts.

- Some of the Appendix documents I reference in this brief were submitted to the federal district courts of NY/CT on January 15, 2021. [Appendix #1, #2, and A-M] The page numbers cited for the Appendices refer to the **footer** page numbers and **not** the PACER header page numbers.

- **List of Acronyms & Abbreviations:** Some abbreviations used in this brief can be found in my Appendix #1 on pages 21-22 of my district court filing.

- If necessary, the Covid-19 coronavirus pandemic should extend the statute of limitations by at least a year in the interest of justice. Due to the pandemic, I waited a year hoping a local law library would open so I could do research for this case. Unfortunately, the Covid-19 pandemic has still not ended, so I was only able to do internet searches to research and write the briefs.

- Strikethrough and bold font styles enclosed in brackets are added to show comparisons of important court precedent cases versus my case.
    - Example: ~~original text cited~~ **[comparison text inserted]**

REASONS FOR GRANTING THE PETITION

Section 1 - Article III and Judiciary Act of 1789

I am not a lawyer and I have never taken any law classes or training. I had never heard of the Rooker-Feldman doctrine until I read it in the 2021 US District Court ruling(s) to dismiss. I did internet searches to learn about that doctrine. This written brief is my own analysis and conclusions.

1 - Judicial Vesting Clause

- US Constitution: Article III Section 1 - The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.
- https://www.heritage.org/constitution/#!/articles/3/essays/102/judicial-vesting-clause
- Article I Section 8 Clause 9 - Inferior Courts
- https://www.heritage.org/constitution/#!/articles/1/essays/47/inferior-courts

The Judiciary Act of 1789 was adopted on September 24, 1789, in the *first* session of the *First* United States Congress and it established the federal judiciary. It's important to remember that at that time SCOTUS and the "inferior federal courts" were **not yet setup**. So there was no court to appeal to after the highest State court rulings. That's one reason why the Constitution and Judiciary Act did not state that you can appeal to federal **district** courts after a state court ruling - because they **did not exist** yet.

2 - Appellate Jurisdiction Clause

- Article III Section 2 Clause 2 - In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.
- https://www.heritage.org/constitution/#!/articles/3/essays/117/appellate-jurisdiction-clause

Article III Section 2 Clause 2 says SCOTUS "**shall**" have appellate Jurisdiction. Was it the intent of the Framers of the Constitution that SCOTUS would have **obligatory**, not *discretionary*, appellate jurisdiction of **State** court rulings?

- ***Shall* is an imperative command**, usually indicating that certain actions are **mandatory**, and not permissive. This contrasts with the word "may," which is generally used to indicate a permissive provision, ordinarily implying some degree of discretion. *Legal definition of Shall*: https://www.law.cornell.edu/wex/shall

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3 - Poisonous Roots of the Tree

If the **roots of the tree** are **poisonous**, then the **tree branches and fruit** are also **poisonous.**	If **Section 25** of the **Judiciary Act of 1789** **violates** the Constitution, then **28 U.S. Code § 1257** and **Rooker-Feldman** also **violate** the Constitution.

Here are the steps of the process:

1. The **seeds** of the tree were ***created*** by the US Constitution in 1787.
2. Those **seeds** were ***planted*** by **Section 25** of the Judiciary Act of 1789.
3. At that time in 1789, those tree **roots** were **constitutional** and adhered to the **intent** of the Framers.
4. But over the next 200 years, that tree grew *very* rapidly and SCOTUS became overwhelmed with **over 7,000 appeals per year**. SCOTUS can only grant and hear arguments in **1%** of those appeal cases each year.
5. As a result, those tree **roots** became ***poisonous*** and now violate the Constitution. Not allowing **99%** of appeals from State court rulings to be heard by SCOTUS violates Due Process, Equal Protection and the intent of the Framers. How?
6. **SCOTUS cannot fulfill its enumerated power of appellate judicial review of state court rulings** due to the 1% appeal statistic. SCOTUS is overwhelmed with appeals and it's not humanly possible to handle that load. The nine Justices do the best they can, but we can't expect them to be nine Superheroes!

7. Therefore, **Section 25** of the Judiciary Act of 1789 violates **Article I Section 8 Clause 18** - the *Necessary and Proper* clause of the Constitution. Why? **It limits, obstructs and prevents** SCOTUS and the Judicial branch from fulfilling its enumerated power of appellate judicial review of state court rulings.
8. In addition, if **Section 25** violates the Constitution, then **28 U.S. Code § 1257** and the **Rooker-Feldman doctrine** also violate the Constitution.
9. So in one shot you eliminate all *three* of them - **the poisonous root, its branch and fruit**. You don't have to eliminate the tree - the US Constitution. You just need to remove the poisonous parts. The rest of the tree you can leave alone. Why?
10. The US Constitution (and its amendments) is the greatest document ever created to promote **liberty and prosperity**.

I found the following scholarly article while doing online research for this appeal brief. It was written in 1963 by a senior judge of the U.S. Court of Claims and professor of law. He explains how Congress **changed** the appellate jurisdiction of SCOTUS in State court decision cases from ***obligatory*** to *discretionary*. In my opinion, that change made by Congress contradicts the intent of the Framers. How? It alters the **checks and balances** of the Judicial branch for *Federal* judicial review of State court rulings.

One Supreme Court and the Writ of Certiorari - Author: J. Warren Madden -Hastings Law Journal - Volume 15 - Issue 2 - Article 4 (1963) [1]

- https://repository.uchastings.edu/hastings_law_journal/vol15/iss2/4/
- "The Act of March 3, 1891, ... Then the Act introduced an important innovation into federal procedure. It provided that in the cases as to which the circuit court decisions were to be "final," the Supreme Court, by a **writ of certiorari** or otherwise, could require a case to come to it for review and decision. ... The 1891 Act left a substantial number of types of cases which the **Supreme Court had no power to review, no matter how important the legal question involved** may have been. But the useful device of the **certiorari, giving discretionary appellate jurisdiction without imposing obligatory jurisdiction**, was to be the wave of the future." *(cited from page 155)*
- **"The Act of September 6, 1916 substantially reduced the obligatory appellate jurisdiction of the Supreme Court in the State court decision**

[1] I found this article in January 2022 while doing online research for this appeal brief. The author provides details that confirm some of the arguments I raised in my current and prior appeal briefs.

cases. It provided that in cases not involving the validity of a treaty or statute of the United States, but only involving a claim under federal law, appellate review would be by **certiorari**, that is, **discretionary**, no matter whether the State court decision was against, or in favor of, the asserted claim. In the present era, when so many federal rights are asserted in State court litigation, particularly criminal litigation, and so large a proportion of such claims have no legal merit, it would be **an unbearable burden on the Supreme Court to require it to take and fully hear and decide all those cases in which the asserted claim has been denied by the State courts.**" *(cited from page 156)*

- "The Act of February 13, 1925, ... The direct part which the Supreme Court took in drafting and advocating this legislation was, it seems, **unprecedented**. It is worth mentioning because it shows that the **Chief Justice and the members of the Court were fearful that the Court would be so overwhelmed by the steadily increasing volume** of its business that the delay in the disposition of its cases, which was already considerable, would become **intolerable. The principal evil was the considerable volume of obligatory appellate review which was still left upon the Supreme Court,** in spite of the provisions of the Acts of 1891 and 1916 for discretionary review in specified types of cases." *(cited page 156-7)*

The US Constitution empowered Congress to create the "inferior federal courts". But the Framers did ***not*** empower Congress to violate the Constitution, nor alter its checks and balances, when enacting legislation for the Judicial branch.

Alexander Hamilton in Federalist No. 82:

- **"But could an appeal be made to lie from the State courts to the subordinate federal judicatories?** This is another of the questions which have been raised, and of greater difficulty than the former. **The following considerations countenance the affirmative."**

Nesses v. Shepard, 68 F.3d 1003, 1005 (7th Cir. 1995)

- ... "**Otherwise there would be no federal remedy for a violation of federal rights** whenever the violator so far succeeded in corrupting the state judicial process as to obtain a favorable judgment" ...

The Heritage Guide to the Constitution - heritage.org

- www.heritage.org/constitution/#!/articles/1/essays/59/necessary-and-proper-clause
- The delegates to the Constitutional Convention declared, by resolution, that Congress should possess power to legislate "in all Cases for the general Interests of the Union, and **also in those Cases to which the States are separately incompetent**, or in which the Harmony of the United States may be interrupted by the Exercise of individual Legislation." ... By including the Necessary and Proper Clause at the conclusion of Article I, Section 8, the Framers set the criteria for laws that, even if they are not within the terms of other grants, **serve to make other federal powers effective**.
- ... Eighteenth-century agency law understood that grants of power to agents generally carried implied powers in their wake: the enumerated, or *principal*, granted powers were presumptively accompanied by implied, or *incidental*, powers that were needed to effectuate the principal powers. As William Blackstone wrote, "[a] subject's grant shall be construed to include many things, besides what are expressed, if necessary for the operation of the grant."
- ... It authorizes what is "**necessary to render effectual the particular powers that are granted**." Congress thus can make laws about something otherwise outside the enumerated powers, insofar as those laws are "necessary and proper" to **effectuate federal policy for something within an enumerated power**.
- Accordingly, every law enacted under the Necessary and Proper Clause must meet four requirements: (1) it must be incidental to a principal power; (2) it must be "for carrying into Execution" a principal power; (3) it must be "necessary" for that purpose; and (4) it must be "proper" for that purpose.
- In addition to being incidental to a principal power, any law enacted under the Necessary and Proper Clause must be "**for carrying into Execution**" some other federal power. ... "laws . . . for carrying into Execution" the powers reposed in another branch - **can only mean laws to help effectuate the discretion of that other branch, not laws to control or limit that discretion. It gives Congress no power to instruct or impede another branch in the performance of that branch's constitutional role**.

McCulloch v. Maryland, 17 U.S. 316 (1819)

- https://www.law.cornell.edu/supremecourt/text/17/316
- **"It was impossible for the framers of the constitution to specify, prospectively, all these means**, both because it would have involved an immense variety of details, and because **it would have been impossible for them to foresee the infinite variety of circumstances**, in such an unexampled state of political society as ours, for ever changing and for ever improving. **How unwise**

would it have been, to legislate immutably for exigencies which had not then occurred, and which must have been foreseen but dimly and imperfectly! ... It is the duty of the court to construe the constitutional powers of the national government liberally, and to mould them so as to effectuate its great objects."

- "Since, then, the constitutional government of this republican empire cannot be practically enforced, so as to secure the permanent glory, safety and felicity of this great country, but by a fair and liberal interpretation of its powers; since those powers could not all be expressed in the constitution, but many of them must be taken by implication; **since the sovereign powers of the union are supreme, and, wherever they come in direct conflict and repugnancy with those of the state governments, the latter must give way**; ..."

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5 - Did SCOTUS Violate the Constitution?

Question: Is it a violation of the Constitution for SCOTUS and the Judicial branch to create their own **doctrine** (i.e. Rooker-Feldman) that limits, obstructs or prevents them from fulfilling their own **enumerated powers**?

The Legislative branch consists of politicians *elected* by the **people**. The *Necessary and Proper* clause of the Constitution only allows those **legislators** to pass laws that are "necessary and proper". The Constitution requires that judges for Federal courts are nominated by the President and confirmed by the US Senate. So the Federal Judicial branch consists of judges *confirmed* by the **legislators**. Therefore, should those **judges** be held to the **same standard as the legislators who confirmed them,** and only be allowed to create **doctrines** that are "necessary and proper"?

For example, the Rooker-Feldman doctrine was created by SCOTUS (see point #7, #8). But the question to ask is: **Did SCOTUS *itself* violate the Constitution when it created the Rooker-Feldman doctrine?** As noted in point #3, **Congress** violated the Necessary and Proper clause with Section 25 of the Judiciary Act of 1789 as it's applied *today* (but not back in 1789 when it was passed). As already noted, if Section 25 violates the Constitution, then 28 U.S. Code § 1257 and the Rooker-Feldman doctrine also violate the Constitution. **Therefore, SCOTUS itself violated the Necessary and Proper clause**

when it created the Rooker-Feldman doctrine. How? SCOTUS created a **doctrine** that limits, obstructs and prevents SCOTUS *itself* from fulfilling its own **enumerated powers**. It brings to mind the famous quote by Justice Robert H. Jackson in *Brown v. Allen, 344 U.S. 443 (1953):*

"We are not final because we are infallible, but we are infallible only because we are final."

It's clear that Congress cannot enact laws that limit the enumerated powers of the Judicial or Executive branches of government. But better questions to ask are:

1. Is it a violation of the Constitution for **any** of the three branches of government to limit their ***own*** enumerated powers without a constitutional **amendment?**
2. Does the Necessary and Proper clause also apply to the **Executive and Judicial** branches of government, and not only to the Legislative branch?

Answer: Yes. Why? Because limiting their own enumerated powers would **violate their *oath*** to uphold the Constitution. Any limits or obstructions to enumerated powers will automatically **create an imbalance to the checks and balances in the Constitution.** That violates the intent of the Framers, even if it doesn't violate the ***exact* wording** of the Constitution. For example, even though the wording of Article I Section 8 Clause 18 *only* mentions that *Necessary and Proper* **limits the Congress**, the intent of the Framers is clear. They wanted checks and balances in all three branches of government.

Limiting the enumerated powers of your **own** branch of government is like opening a *pandora's box* or letting the *genie out of the bottle*. Once that box/bottle is opened, there's no way to undo what you let out. It's a slippery slope because then there is no limit to the limits that might increase over time. For example, at first a branch of government might limit their own *a, b, c,* enumerated powers. Then later they might increase the limits to include their own *d, e, f,* powers. Then later they could add more limits of *g, h, i,* powers. Do you see what's happening? **Over time their enumerated powers are dwindling due to their *own* imposed limits**. That's the problem.

Moreover, when you limit, reduce, or obstruct your own branch's enumerated powers, then those powers don't just *disappear*. They have to go somewhere. Where do they go? **Those**

enumerated powers then transfer to the other two branches of government. That *clearly* violates the intent of the Framers because it dismantles the enumerated powers and checks and balances setup by the Constitution.

(see point #11 below - The Federalist Papers)

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6 - Judicial Conference of 1922 & Rules Enabling Act of 1934

Congress has allowed SCOTUS and the Judicial branch to have broad rule-making power for the courts. The following items show that for **100 years** the Judicial branch has revised rules to try and adapt to the rapidly increasing number of court cases.

Judicial Conference of the United States of 1922 - 28 U.S. Code § 331

- Governance & the Judicial Conference - US Courts website: https://www.uscourts.gov/about-federal-courts/governance-judicial-conference
- How the Rulemaking Process Works - US Courts website: https://www.uscourts.gov/rules-policies/about-rulemaking-process/how-rulemaking-process-works
- Laws & Procedures Governing the Work of Rules Committees - US Courts website: https://www.uscourts.gov/rules-policies/about-rulemaking-process/laws-and-procedures-governing-work-rules-committees

- https://en.wikipedia.org/wiki/Judicial_Conference_of_the_United_States
- "The Judicial Conference of the United States, formerly known as the Conference of Senior Circuit Judges, was created by the United States Congress in 1922 with the principal objective of framing policy guidelines for administration of judicial courts in the United States." ... "**Responding to a backlog of cases in the federal courts,** in 1922 Congress enacted a new form of court administration that advanced the institutionalization of an independent judiciary." ... "By the time Taft became Chief Justice, **the increased caseload** resulting from World War I and the enforcement of Prohibition had contributed to **broad support for reform of the federal judiciary**."

Rules Enabling Act of 1934 - 28 U.S. Code § 2071-2077

- [Appendix H 2022] "Former Attorney General Cummings recently said: "Legislative bodies have neither the time to inquire objectively into the details of judicial procedure nor the opportunity to determine the necessity for amendment or change. Frequently such legislation has been enacted for the purpose of meeting particular

problems or supposed difficulties, but the results have usually been confusing or otherwise unsatisfactory. Comprehensive action has been lacking for the obvious reason that the professional nature of the task would leave the legislature little time for matters of substance and statesmanship. It often happened that an admitted need for change, even in limited areas, could not be secured." - The New Criminal Rules - Another Triumph of the Democratic Process. American Bar Association Journal, May 1945."

I found the following scholarly article while doing online research for this appeal brief. It was written in 2006 by **Justice Amy Coney Barrett** when she was a professor of law. This relates well to my points in *Section 4 - Remedy For Rooker-Feldman.*

The Supervisory Power of the Supreme Court - Author: **Amy Coney Barrett** - Notre Dame Law School - 106 Colum. L. Rev. 324 (2006) [2]

- https://works.bepress.com/amy_barrett/
- *(cited from page 331) "Castro v. United States* is another, more recent example of a case in which the Supreme Court invoked its supervisory power to prescribe inferior court procedure. ... Predictably, the ~~prisoner~~ [**Pro-Se and IFP litigant**] later filed what he thought was his first ~~motion under § 2255~~ [**district court appeal**], and the district court dismissed the claim for the ~~prisoner's~~ [**appellant's**] failure to comply with applicable restrictions on ~~"second or successive" claims~~ [**appeals due to Rooker-Feldman**]. The Eleventh Circuit affirmed the district court's judgment, but the Supreme Court reversed. Section ~~2255~~ [**25 of the Judiciary Act and 28 U.S. Code § 1257**] did not itself require district courts to warn litigants about ~~recharacterization~~ [**Rooker-Feldman**] and its consequences; nor did the district court's failure to warn violate any constitutional provision. Invoking its supervisory authority, however, the Supreme Court held that a district court must notify a pro se litigant about ~~recharacterization~~ [**Rooker-Feldman**] and its consequences before actually recasting a ~~prisoner's motion~~ [**Pro-Se or IFP litigant's appeal**] as one for ~~habeas~~ [**untimely**] relief." [*Castro v. United States, 540 U.S. 375 (2003)*]

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[2] I found this article in January 2022 while doing online research for this appeal brief. The author provides details that confirm some of the arguments I raised in my current and prior appeal briefs.

7 - Rooker v. Fidelity Trust Co.

Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923)

- "If the **constitutional questions** stated in the bill actually arose in the cause, it was the province and **duty of the state courts to decide** them, and their decision, whether right or wrong, was an exercise of jurisdiction. **If the decision was wrong,** that **did not make the judgment void,** but merely left it **open to reversal or modification** in an **appropriate and timely appellate proceeding.**"

In Rooker the focus is to prevent closed state court cases from being relitigated in federal district courts. The purpose is to prevent litigants from getting a ***second bite of the apple***. But what SCOTUS did **not** address in the *Rooker v. Fidelity Trust* ruling is what happens if the following occurs:

- When a litigant is prevented from getting the ***first*** *bite of the apple* because their constitutional rights were **violated** by the state court?
- When the *"duty of the state courts to decide"* the *"constitutional questions"* is **ignored** by those state courts or is **incorrect**?
- When the *"appropriate and timely appellate proceeding"* **does not** *"open to reversal or modification" "if the decision was wrong,"* and as a result, it *"did not make the judgment void"*?
- When the state appellate courts do **not** adhere to the Constitution?

What happens then? There is no recourse. No way to get justice. No reversal of rulings that violate the Constitution.

What about the Bill of Rights? If the powers delegated to state courts result in rulings that infringe on the rights of the people? What happens then?

- Amendment IX - The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

- Amendment X - The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

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8 - Court of Appeals v. Feldman

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

- "United States district courts have no jurisdiction over challenges to state court decisions in particular cases arising out of judicial proceedings ... But United States district courts do have subject matter jurisdiction over ... state courts in **nonjudicial** proceedings, which do not require review of a final state court judgment in a particular case."
- "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and **changes existing conditions by making a new rule to be applied thereafter** to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act **legislative**, not judicial, in kind. . . ."

In Feldman, the focus is the subject matter jurisdiction of federal district courts. Nonjudicial (administrative or legislative) rulings are allowed, but judicial (court) rulings are not. I lost the NY Workers' Compensation Board (WCB) administrative agency decisions, so that part of my complaint is **nonjudicial**.

Does Rooker-Feldman apply if my complaint is <u>both</u> administrative *and* legislative? My case is both administrative and legislative. How? During the WCB hearings and appeals I submitted my briefs with my legal arguments. In those written briefs, and also with my NY Supreme Court, NY Court of Appeals, and SCOTUS briefs, I raised **new interpretations of existing laws** and constitutional violation issues. For example, the Appendix documents contain sections where I raise new interpretations of existing laws and constitutional issues. [Appendix #1, Appendix H, Appendix I]

Does any of that nullify Rooker-Feldman and give this case allowed subject matter jurisdiction of federal district courts because it's both administrative and legislative?

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9 - Pullman Abstention Doctrine

Pullman Abstention doctrine www.law.cornell.edu/wex/abstention

- A federal court's decision not to exercise jurisdiction over a case. **The usual goal of abstention is the avoidance of needless conflict with a state court.**
- Abstention is a doctrine under which federal courts may choose not to hear a case, even if all the formal jurisdiction requirements are met. There are several established instances in which federal courts will generally abstain. First, federal courts will abstain rather than issue an injunction against a state court, in either a civil or criminal matter. *Klein v Burke Constr. Co, 260 US 266 (1922); Younger v. Harris, 401 U.S. 37 (1971).* **Second, a federal court can abstain if the case presents unresolved questions of both the state law and the federal constitution. In that case, the federal court generally would want to avoid the constitutional issue if possible, but also does not want to get the state law question wrong. Therefore, in a practice called "Pullman abstention," the federal court may abstain until the state law question can be resolved in state court.** *Railroad Comm'n of Texas v. Pullman Co., 312 US 496 (1941).*

The Pullman Abstention doctrine clearly applies due to core aspects of this case:

1. State laws that are **extraordinarily rare** (i.e. once in more than a *century* type of laws enacted because of 9-11) which must first be adjudicated by state courts before federal courts intervene. Article 8-A related WCB laws/rules are **extremely unique** New York State Workers' Compensation laws. Those laws were **specifically and *only* enacted** for workers and volunteers who did any rescue, recovery or cleanup of the ***World Trade Center Site*** **during the year after 9-11 from September 11, 2001 - September 11, 2002.**
    a. (See Appendix #1 pg 20 - *Constitutional and Statutory Provisions Involved).*

The underlying Article 8-A case has **many** unresolved questions of both state law and the federal Constitution. This is clear from my 2019 SCOTUS Writ of Certiorari and those Appendices. A federal court could get the state law question wrong because NY State Article 8-A law is ***extraordinarily*** **rare and unique.** Therefore, the federal court needed to abstain until the state law questions were adjudicated. The problem is that the state administrative agency and state courts ***both ignored*** the state law *and* the federal Constitution violation issues in the case. Even though I raised all those issues in my briefs, **they just ignored them in their rulings**. [Appendix #1, Appendix H, Appendix I]

Railroad Comm'n of Texas v. Pullman Co., 312 US 496 (1941)

- https://supreme.justia.com/cases/federal/us/312/496/
- Primary Holding: If a state court can easily resolve a certain issue based on state law, a federal court should not intercede to resolve the case.
- Opinions: ... A state court could address this issue, and the decision that it reaches might obviate the need for a federal court to decide the case based on issues that could cause conflicts between the state and federal judicial systems. **The federal action should not proceed, therefore, until a state court has reviewed the case on its merits.**
- "... **In this situation, a federal court of equity is asked to decide an issue by making a tentative answer which may be displaced tomorrow by a state adjudication.** *Glenn v. Field Packing Co., 290 U. S. 177; Lee v. Bickell, 292 U. S. 415.* **The reign of law is hardly promoted if an unnecessary ruling of a federal court is thus supplanted by a controlling decision of a state court. The resources of equity are equal to a adjustment that will avoid the waste of a tentative decision, as well as the friction of a premature constitutional adjudication. ... "Few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies,** ... This use of equitable powers is a contribution of the courts in furthering the harmonious relation between state and federal authority without the need of rigorous congressional restriction of those powers. ... In the absence of any showing that these obvious methods for securing a definitive ruling in the state courts cannot be pursued **with full protection of the constitutional claim, the district court should exercise its wise discretion by staying its hands.** *Compare Thompson v. Magnolia Co., 309 U. S. 478.*"

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10 - Pullman Abstention v. Rooker-Feldman

The Pullman Abstention doctrine conflicts with the Rooker-Feldman doctrine. You cannot have *both* because they **conflict** with cases such as this one. If you compare the two, the conflict is due to the fundamental aspects of this case. (see point #9 above.)

1. The Pullman Abstention doctrine: The goal of abstention is federal court **avoidance** of needless conflict with a **state** court.
2. The Rooker-Feldman doctrine: Federal district courts do not have jurisdiction to hear challenges to the ***highest*** **state** court decisions. But it allows jurisdiction for pending cases prior to a ***final*** **state** court ruling.

Parker v. Lyons, 757 F.3d 701, 705 (7th Cir. 2014)

- https://www.leagle.com/decision/infco20140707102
- "Since *Saudi Basic Industries*, all federal circuits that have addressed the issue have concluded that *Rooker-Feldman* does not apply if, as here, a state-court appeal is pending when the federal suit is filed." (citing cases).
- "As the Ninth Circuit explained, *Saudi Basic Industries* clarified that "[p]roceedings end for *Rooker-Feldman* purposes when the state courts *finally resolve* the issue that the federal court plaintiff seeks to relitigate in a federal forum." *Mothershed, 410 F.3d at 604 n. 1* (emphasis added). It added that if the state-court appeal is pending at the time the federal action is filed, the necessary final resolution in the state system is not present. We agree with this reasoning and conclude that *Rooker-Feldman* does not bar the claims of federal-court plaintiffs who, like Parker, file a federal suit when a state-court appeal is pending."

Curtis v. Citibank, N.A., 226 F.3d 133, 138 (2d Cir. 2000)

- https://casetext.com/case/curtis-v-citibank
- "As part of its general power to administer its docket, a district court may stay or dismiss a suit that is **duplicative** of another federal court suit."

The courts use precedent that says they don't want *duplicative* cases because that wastes judicial resources. **Yet they apply doctrines that can contradict each other and achieve the *diametrically opposite* effect. The doctrines actually encourage *more* cases to be filed in state and federal courts, instead of *less* cases!** Litigants with good attorneys will file more cases in federal district courts while they have cases pending in state court - just to *cover their assets* for both doctrines. So the questions to ask are ...

1. Do courts want litigants to **not waste** court time and resources by **not** filing duplicative state and federal cases in the hopes that those courts will apply the **Pullman Abstention** doctrine?
2. Or do courts want litigants to take up court time and resources by filing duplicative state and federal cases in the hopes that later courts will apply the **Rooker-Feldman** doctrine?

Both doctrines contradict each other for complex cases such as this. There must be countless Pro-Se and IFP litigants (and attorneys) who get very confused about this issue. To those litigants it can seem like a *shell game.* Pro-Se and IFP litigants do not know judicial system rules and have no money to pay for legal counsel. To add insult to injury, **they cannot defend themselves against doctrines that conflict!**

Two different doctrines with conflicting meanings and intended results wastes resources of money and time for both the judicial system and litigants. It creates inefficiency and wasted resources due to litigants (with good attorneys) filing **more** cases just to find out which doctrine will apply. In addition, countless Pro-Se and IFP litigants file cases only to find out later they are blocked by Rooker-Feldman.

Just like WCL § 123 and Article 8-A, ... the Pullman Abstention and Rooker-Feldman are like oil and water - **they don't mix.** [Appendix #1 pg 30]

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11 - The Federalist Papers

The Framers warned against abandoning the checks and balances because it would create plenary power to govern the American people. The judicial branch has an obligation to not abandon the **judicial check of its *own* branch of government**. The intent of checks and balances is at the foundation of our republic and is fundamental to the Constitution. Primary Documents in American History - https://guides.loc.gov/federalist-papers/full-text

Federalist No. 82 - The Judiciary Continued. Author: Alexander Hamilton.
The last paragraph of Federalist 82 is *extremely* significant when compared to Rooker-Feldman. It proves that the Framers feared the possibility of the US Supreme Court being overwhelmed with State court appeals. They considered the need to "contract" (reduce) the appellate jurisdiction of SCOTUS and enable the "subordinate federal judicatories" to handle State court appeals. Why? In case SCOTUS became overwhelmed with too many appeals. It *seems* the Framers left this problem to the discretion of the legislature, but it's not clearly specified in the Constitution. They did not write that you *cannot* appeal from State court to the "inferior federal courts" that Congress would create later. So by *not* negating that avenue of appeal, they left it *open* as a possibility.

- https://guides.loc.gov/federalist-papers/text-81-85#s-lg-box-wrapper-25493489
- [emphasis added] "**But could an appeal be made to lie from the State courts to the subordinate federal judicatories?** This is another of the questions which have been raised, and of greater difficulty than the former. **The following considerations countenance the AFFIRMATIVE.** The plan of the convention, in the first place, authorizes the national legislature "to constitute tribunals inferior

to the Supreme Court. It declares, in the next place, that "the JUDICIAL POWER of the United States SHALL BE VESTED in one Supreme Court, and in such inferior courts as Congress shall ordain and establish"; and it then proceeds to enumerate the cases to which this judicial power shall extend. It afterwards divides the jurisdiction of the Supreme Court into original and appellate, **but gives no definition of that of the subordinate courts.** The only outlines described for them, are that they shall be "inferior to the Supreme Court," and that they shall not exceed the specified limits of the federal judiciary. **Whether their authority shall be original or appellate, or both, is not declared.** All this **seems** to be left to the discretion of the legislature. And this being the case, **I perceive at present NO IMPEDIMENT to the establishment of an APPEAL from the State courts to the SUBORDINATE NATIONAL tribunals; and MANY ADVANTAGES attending the power of doing it may be imagined. It would diminish the motives to the multiplication of federal courts, and would admit of arrangements calculated to CONTRACT the APPELLATE jurisdiction of the Supreme Court. The State tribunals may then be left with a more entire charge of federal causes; and APPEALS, in most cases in which they may be deemed proper, INSTEAD of being carried to the Supreme Court, may be made to lie from the State courts to DISTRICT COURTS of the Union."** - PUBLIUS

Federalist No. 81 - The Judiciary Continued, and the Distribution of the Judicial Authority.

Author: Alexander Hamilton.

- https://guides.loc.gov/federalist-papers/text-81-85#s-lg-box-wrapper-25493488
- [emphasis added] **"The power of constituting inferior courts is evidently calculated to OBVIATE THE NECESSITY of having recourse to the Supreme Court in every case of federal cognizance**. It is intended to enable the national government to institute or AUTHORIZE, in each State or district of the United States, a tribunal competent to the determination of matters of national jurisdiction within its limits."
- "But why, it is asked, might not the same purpose have been accomplished by the instrumentality of the State courts? ... But ought not a more direct and explicit provision to have been made in favor of the State courts? **There are, in my opinion, SUBSTANTIAL REASONS AGAINST such a provision: the most discerning cannot foresee how far the prevalency of a local spirit may be found to disqualify the local tribunals for the jurisdiction of national causes; whilst every man may discover, that courts constituted like those of some of the States would be IMPROPER CHANNELS of the judicial authority of the Union**. State judges, holding their offices during pleasure, or from year to year, will be too little independent to be relied upon for an inflexible execution of the national laws. **And if there was a necessity for confiding the**

original cognizance of causes arising under those laws to them there would be a correspondent necessity for leaving the DOOR OF APPEAL AS WIDE AS POSSIBLE. In proportion to the grounds of confidence in, or distrust of, the subordinate tribunals, ought to be the facility or difficulty of appeals." ...

Federalist No. 80 - The Powers of the Judiciary. Author: Alexander Hamilton.

- https://guides.loc.gov/federalist-papers/text-71-80#s-lg-box-wrapper-25493472
- [emphasis added] "It seems scarcely to admit of controversy, that the judiciary authority of the Union ought to extend to these several descriptions of cases: ... and, lastly, **to all those in which the State tribunals cannot be supposed to be IMPARTIAL and UNBIASED.**"
- "The first point depends upon this obvious consideration, that there ought always to be a constitutional method of giving efficacy to constitutional provisions. What, for instance, would avail restrictions on the authority of the State legislatures, without some constitutional mode of enforcing the observance of them? **The States, by the plan of the convention, are prohibited from doing a variety of things, some of which are incompatible with the interests of the Union, and others with the principles of good government.** The imposition of duties on imported articles, and the emission of paper money, are specimens of each kind. No man of sense will believe, that such prohibitions would be scrupulously regarded, **without some effectual power in the government to restrain or correct the infractions of them.** This power must either be a direct negative on the State laws, **or an authority in the FEDERAL COURTS TO OVERRULE such as might be in manifest contravention of the articles of Union.** There is no third course that I can imagine. **The latter appears to have been thought by the convention preferable to the former**, and, I presume, will be most agreeable to the States."
- "As to the second point, it is impossible, by any argument or comment, to make it clearer than it is in itself. If there are such things as political axioms, the propriety of the judicial power of a government being coextensive with its legislative, may be ranked among the number. **The mere necessity of uniformity in the interpretation of the national laws, decides the question. Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra [3] in government, from which nothing but CONTRADICTION and CONFUSION can proceed.**"
- "Still less need be said in regard to the third point. Controversies between the nation and its members or citizens, **can only be properly referred to the**

[3] Hydra = a many-headed serpent or monster in Greek mythology that was slain by Hercules and each head of which when cut off was replaced by two others. When not capitalized = a multifarious evil not to be overcome by a single effort. www.merriam-webster.com/dictionary/Hydra

NATIONAL tribunals. Any other plan would be contrary to reason, to precedent, and to decorum."

- "... But there are many other sources, besides interfering claims of boundary, from which bickerings and animosities may spring up among the members of the Union. To some of these we have been witnesses in the course of our past experience. **It will readily be conjectured that I allude to the fraudulent laws which have been passed in too many of the States.** And though the proposed Constitution establishes particular guards against the repetition of those instances which have heretofore made their appearance, **yet it is warrantable to apprehend that the spirit which produced them will assume new shapes, that could not be foreseen nor specifically provided against. Whatever practices may have a tendency to disturb the harmony between the States, are PROPER OBJECTS OF FEDERAL superintendence and control."**
- **"The reasonableness of the agency of the NATIONAL COURTS in cases in which the STATE tribunals CANNOT be supposed to be IMPARTIAL, speaks for itself. No man ought certainly to be a judge in his own cause, or in any cause in respect to which he has the LEAST INTEREST or BIAS.** This principle has no inconsiderable weight in designating the federal courts as the proper tribunals for the determination of controversies between different States and their citizens. **AND IT OUGHT TO HAVE THE SAME OPERATION IN REGARD TO SOME CASES** between citizens of the same state. Claims to land under grants of different States, founded upon adverse pretensions of boundary, are of this description. The courts of neither of the granting States could be expected to be unbiased. The laws may have even prejudged the question, and tied the courts down to decisions in favor of the grants of the State to which they belonged. And even where this had not been done, **it would be natural that the judges, as men, should feel a strong predilection to the claims of their own government."**

Federalist No. 78 - The Judiciary Department. Author: Alexander Hamilton.

The Federalist Papers prove the clear intent of the Framers of the Constitution was to ensure checks and balances on power. An example is an analysis of Federalist 78 for controls on judicial conduct and judicial review. The Judicial branch is the check and balance for the Legislative and Executive branches. But consider the following comparison in terms of **Federal** courts as checks and balances for **State** courts.

- https://en.wikipedia.org/wiki/Federalist_No._78
- Fundamental debate that Hamilton and his Anti-Federalist rival "Brutus" addressed was over the degree of independence to be granted to federal [**or state**] judges, and the level of accountability to be imposed upon them.

- The primary point of contention between Hamilton and Brutus was in the concern that judges would substitute their will for the plain text of the Constitution ... Hamilton conceded that no federal [**or state**] judge had the legal authority to impose his or her will on the people in defiance of the Constitution:
    - *"There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act* [**or state court ruling**], *therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers* [**as state court judges**], *may do not only what their powers do not authorize, but what they forbid. ... To avoid an arbitrary discretion in the* [**state**] *courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them."*
- **Brutus pointed out that the Constitution did not provide an effective mechanism for controlling judicial caprice:**
    - *"There is no power above them, to control any of their* [**state court**] *decisions* [**due to the 1% appeal statistic of SCOTUS and the Rooker-Feldman doctrine**]. *There is no authority that can remove them, and they cannot be controlled by the laws of the legislature. In short, they are independent of the people, of the legislature, and of every power under heaven. Men placed in this situation will generally soon feel themselves independent of heaven itself."*
- Federalist No. 78 views Supreme Court Justices as an embodiment of the Constitution, a last group to protect the foundation laws set up in the Constitution. This coincides with the view above that the judicial branch is the branch of judgment:
    - *"The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body."*
- According to Federalist No. 78, the federal courts have a duty to interpret and apply the Constitution, and to disregard any statute [**or state court ruling**] that is inconsistent with the Constitution:
    - *"If* [**in a state court ruling**] *there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents,* [**or to the intention of state court judges that ignore violations of the Constitution**]."
- Federalist No. 78 argues that the power of judicial review should be used by the judicial branch to protect the liberties guaranteed to the people by the Constitution and to provide a check on the power of the legislature [**or state court rulings**]:

- *"Where the will of the legislature* [**or state court judges**], *declared in its statutes* [**or state court rulings**], *stands in opposition to that of the people, declared in the Constitution, the* [**state court**] *judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental. . . Whenever a particular statute* [**or state court ruling**] *contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former."*

- Federalist No. 78 therefore indicates that the **federal** judiciary has the power to determine whether statutes [**or state court rulings**] are constitutional, and to find them invalid if in conflict with the Constitution. This principle of judicial review was affirmed by the Supreme Court in the case of *Marbury v. Madison (1803).*

Federalist No. 51 - The Structure of the Government Must Furnish the Proper Checks and Balances - Author: Alexander Hamilton or James Madison.

- https://guides.loc.gov/federalist-papers/text-51-60#s-lg-box-wrapper-25493427
- [emphasis added] "Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? **If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.** In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the **necessity of auxiliary precautions.**"

(see point #3, #5, #16, #24 about "checks and balances")

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12 - Marbury v. Madison

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)

- www.law.cornell.edu/supremecourt/text/5/137
- "If he has a right, and that right has been violated, do the laws of his country afford him a remedy? **The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws**, whenever he receives an injury. One of the first duties of government is to afford that protection."
- "It is the **essential criterion of appellate jurisdiction**, that it revises and **corrects** the proceedings in a cause already instituted, and does not create that case."
- "In the third volume of his Commentaries, page 23, Blackstone states two cases in which a remedy is afforded by mere operation of law. 'In all other cases,' he says, 'it is a general and indisputable rule, that where there is a legal right, **there is also a legal remedy** by suit or action at law whenever that right is invaded.' "
- "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish **no remedy for the violation of a vested legal right**."
- "The question, whether an act, **repugnant to the constitution**, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest."
- "Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature **repugnant to the constitution is void**."
- "So, if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty."
- "The judicial power of the United States is extended to all cases arising under the constitution. Could it be the intention of those who gave this power, to say that, in using it, the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises?"

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13 - Judicial Discretion and Review

Judicial Discretion is critical to any case involving Pro-Se and IFP litigants.

- www.law.cornell.edu/wex/judicial_discretion
- "Judicial discretion refers to a judge's power to make a decision based on his or her individualized evaluation, guided by the principles of law. **Judicial discretion gives courts immense power** which is exercised when [the] legislature allows for it. ... Judicial discretion is granted to the courts out of recognition of each case's individuality, and as such, **decisions should be based on the case's particular circumstances** rather than a rigid application of law. Decisions made under this power have to be sound and not arbitrary, **meaning that such decisions have to be made based on what is right and equitable under the circumstances.**"

Some state court rulings need federal district court judicial discretion and review. If state court rulings violate the Constitution, then it is a **gross injustice to not** allow judicial review by federal district courts.

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14 - Pro-Se and IFP Rights

Rooker-Feldman basically requires Pro-Se and IFP litigants to do the following if they want to have *any* chance of obtaining justice:

1. Learn complex aspects of the law and judicial system *very* quickly to litigate their case at trial and hope their case is not dismissed on a technicality.
2. Learn complex aspects of how to appeal administrative and court decisions to **both state and federal courts**. They have to do that quickly and not miss deadlines so Rooker-Feldman does not block their federal court options.

Why not just fix the doctrine itself and eliminate the problems for everyone? What is a remedy for all the Rooker-Feldman problems? Has the remedy been *hiding in plain sight* for many decades? (See *Section 4 - Remedy For Rooker-Feldman).*

Here are three historic examples of the judicial branch correcting injustices in the court system to *level the playing field* for Pro-Se and IFP litigants:

1. Right to Counsel 2. Miranda Rights 3. In Forma Pauperis

Right to Counsel - The right to counsel refers to the right of a criminal defendant to have a lawyer assist in his defense, even if he **cannot afford to pay for an attorney**. The Sixth Amendment gives defendants the right to counsel in federal prosecutions. However, the right to counsel was not applied to state prosecutions for felony offenses until 1963 in *Gideon v. Wainwright, 372 U.S. 335.* www.law.cornell.edu/wex/right_to_counsel

Miranda Rights - The requirement to give Miranda warnings came from the Supreme Court decision, *Miranda v. Arizona, 384 US 436 (1966).* In Miranda, the Court held that a defendant cannot be questioned by police in the context of a custodial interrogation until the defendant is made aware of the right to remain silent, the right to consult with an attorney and have the attorney present during questioning, and the right to have an attorney appointed if **indigent.** www.law.cornell.edu/wex/miranda_warning

Anyone arrested and accused of a crime must be told their Miranda rights. This is an upfront warning the government is *required* to tell people so their constitutional rights are protected. As a result, the government is given a **sword** to gather evidence from comments made by the accused, but the accused is given a **shield** to remain silent and protect their constitutional rights.

In Forma Pauperis - The courts allow a waiver of the filing fees for IFP litigants. Why? Because the government knows that lack of money should not block anyone from getting access to justice in both state and federal courts.

The judicial branch made the necessary changes to correct injustices that were not addressed when the Framers wrote the Constitution. The changes made: Right to Counsel, Miranda Rights, and In Forma Pauperis, are clearly compatible with the intent of the Framers. The judicial branch should correct injustices in the court system created by the Rooker-Feldman doctrine so they can *level the playing field* for Pro-Se and IFP litigants.

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15 - Dred Scott, Plessy & Korematsu v. Rooker-Feldman

The judicial system has a serious dilemma: What if the Rooker-Feldman doctrine existed since 1850? If so, then federal **district** courts would be **blocked by Rooker-Feldman from overturning the following historic cases** if they were rulings issued by the highest state courts prior to starting a federal case.

1. ***Dred Scott v. Sandford*** - the 1857 U.S. Supreme Court ruling that upheld slavery even in the free states.
2. ***Plessy v. Ferguson*** - the 1896 U.S. Supreme Court ruling which condoned segregation as "separate but equal."
3. ***Korematsu v. United States*** - the 1944 U.S. Supreme Court ruling that upheld the detention of more than 110,000 Japanese-Americans.

What if Dred Scott, Homer Plessy, and Fred Korematsu were the appellants instead of me? The Rooker-Feldman doctrine would tell those men...

1. *"Sorry Dred Scott, game over for you. Sandford won in state court. The judicial branch has to uphold Rooker-Feldman."*
2. *"Sorry Homer Plessy, you're too late. Ferguson won in state court. The judicial branch must adhere to Rooker-Feldman."*
3. *"Sorry Fred Korematsu, you're out of luck. You lost in state court. The judicial branch enforces Rooker-Feldman."*

My case is obviously not as important as those cases, but the point I am making is crystal-clear. The injustice and violations of the Constitution is what I want to emphasize with those analogies. I respectfully ask this Court the following questions:

1. **Why wouldn't Dred Scott, Plessy and Korematsu be blocked today by Rooker-Feldman** from getting federal **district** court review and justice if those were rulings issued by the highest state courts prior to starting a federal court case?
2. How is my analogy, and many other court cases of injustice, **not** possible today in our judicial system due to Rooker-Feldman?

3. Review by SCOTUS by means of a writ of certiorari is not a matter of *right*, but of judicial *discretion*. Therefore, due to an overwhelmed judicial system, isn't it true that SCOTUS chooses to **not** hear many cases that deserve federal judicial review?

For example, look at the Writ of Certiorari denied by SCOTUS recently on February 22, 2021. That case would definitely have an *extremely significant*, long-term impact for our entire nation. **We're talking about a case that dealt with one of the most crucial and fundamental rights of our form of government as a constitutional republic - the right to vote and the integrity of elections!! And that Writ of Certiorari was *DENIED*.**

Petitions for Writs of Certiorari to the United States Supreme Court
Nos. 20-542 and 20-574. Decided February 22, 2021
Republican Party of Pennsylvania v. Veronica Degraffenreid, Secretary of Pennsylvania, et al.
Jake Corman, et al. v. Pennsylvania Democratic Party, et al.

US Supreme Court Justice Thomas dissenting from the denial of certiorari (with Justice Alito and Justice Gorsuch joining in the dissent):

- "The Constitution gives to each state legislature authority to determine the "Manner" of federal elections. ... These cases provide us with an ideal opportunity to address just what authority nonlegislative officials have to set election rules, and to do so well before the next election cycle. **The refusal to do so is inexplicable."**
  ... "Petitioners promptly moved for emergency relief, filing an application for a stay on September 28. **That application easily met our criteria for granting relief.** *See Hollingsworth v. Perry, 558 U. S. 183, 190 (2010) (per curiam).* ... Despite petitioners' strong showing that they were entitled to relief, **we divided 4-4 and thus failed to act.** *Scarnati v. Boockvar, ante, p. ___.*"
  ... "Four days later, petitioners filed the first of these petitions and moved to expedite consideration so the Court could decide the merits before election day. But by that time, election day was just over a week away. **So we denied the motion to expedite even though the question was of "national importance" and there was a "strong likelihood that the state Supreme Court decision violates the federal Constitution."** *Republican Party of Pa. v. Boockvar, ante, at 3 (statement of ALITO, J.)."*
  ... "Now that the petitions are before us under the normal briefing schedule, I see no reason to avoid them. Indeed, the day after we denied petitioner's motion to expedite in No. 20–542, **the case became even more worthy of review."**
  ... "The Eighth Circuit split from the Pennsylvania Supreme Court, granting a preliminary injunction against an attempt by the Minnesota Secretary of State to

extend the legislature's deadline to receive ballots by seven days. *Carson v. Simon, 978 F. 3d 1051, 1059–1060, 1062 (2020).* **This divide on an issue of undisputed importance would justify certiorari in almost any case. That these cases concern federal elections only further heightens the need for review."**

... **"Elections are "of the most fundamental significance under our constitutional structure."** *See Illinois Bd. of Elections v. Socialist Workers Party, 440 U. S. 173, 184 (1979).* Through them, we exercise self-government. But elections enable self-governance only when they include processes that "giv[e] citizens (including the losing candidates and their supporters) confidence in the fairness of the election." *See Democratic National Committee v. Wisconsin State Legislature, ante, at 3* (KAVANAUGH, J., concurring in denial of application to vacate stay); accord, *Purcell v. Gonzalez, 549 U. S. 1, 4 (2006) (per curiam)* (**"Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy**")."

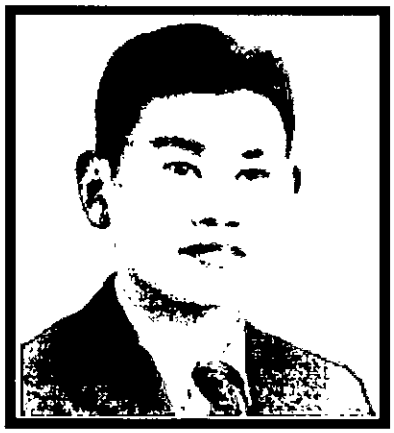
... "That is not a prescription for confidence. Changing the rules in the middle of the game is bad enough. Such rule changes by officials who may lack authority to do so is even worse. When those changes alter election results, they can severely damage the electoral system on which our self-governance so heavily depends. **If state officials have the authority they have claimed, we need to make it clear. If not, we need to put an end to this practice now before the consequences become catastrophic."**

... "Here, we have the opportunity to do so almost two years before the next federal election cycle. **Our refusal to do so by** [not] **hearing these cases is befuddling. There is a clear split on an issue of such great importance that both sides previously asked us to grant certiorari. And there is no dispute that the claim is sufficiently meritorious to warrant review.** By voting to grant emergency relief in October, four Justices made clear that they think petitioners are likely to prevail. Despite pressing for review in October, respondents now ask us not to grant certiorari because they think the cases are moot. That argument fails."

... **"One wonders what this Court waits for.** We failed to settle this dispute before the election, and thus provide clear rules. Now we again fail to provide clear rules for future elections. **The decision to leave election law hidden beneath a shroud of doubt is baffling.** By doing nothing, we invite further confusion and erosion of voter confidence. **Our fellow citizens deserve better and expect more of us.** I respectfully dissent."

Chief Justice Roger B. Taney	Dred Scott

Homer Adolph Plessy	Judge John Howard Ferguson



Fred Korematsu

16 - Plenary Power is a Sword and Shield

The United States Constitution sets up our government as a constitutional republic with clear **checks and balances** across all three branches of government. If federal **district** courts are denied judicial discretion and review due to Rooker-Feldman, then that is similar to giving **plenary power** to state courts against Pro-Se and IFP litigants who do not know the judicial system rules and procedures. **Plenary power is both the *sword* and the *shield*.** Pro-Se and IFP litigants who are not lawyers and have no money to pay for legal counsel, have no way to protect their rights and defend themselves if constitutional violations are **not** corrected by the state courts.

The Framers of the Constitution would *never* want plenary power for state courts. When the Constitution was signed in 1787 and then the Judiciary Act of 1789, the Framers did not envision the judicial branch getting **overwhelmed** with so many court cases as it does today. **Back in 1789 did SCOTUS get over 7,000 petitions to appeal every year, as they do today?** No. The Framers could not have contemplated the SCOTUS statistics of today.

The US Supreme Court guidebook for Writs of Certiorari states:

- "It is important to note that review in this Court by means of a writ of certiorari is **not a matter of right, but of judicial discretion. The primary concern of the Supreme Court is not to correct errors in lower court decisions,** but to decide cases presenting issues of importance beyond the particular facts and parties involved. **The Court grants and hears argument in only about 1% of the cases** that are led each Term. The vast majority of petitions are simply **denied** by the Court without comment or explanation. **The denial of a petition for a writ of certiorari signifies only that the Court has chosen not to accept the case for review and does not express the Court's view of the merits of the case.**"

What did the SCOTUS guidebook say *prior to* the Rooker-Feldman doctrine? For example, at the time of the Judiciary Act of 1789? What was the intent of the Framers back then for SCOTUS to be checks and balances for state courts? Appellate review was *obligatory*?

The 1% appeal statistic of SCOTUS today is **definitely <u>not</u> the checks and balances** that the Framers intended for judicial review of state court rulings. Why? The SCOTUS guidebook gives the answer:

1. Your appeal is "***<u>not</u> a matter of right**, but of judicial discretion".*
2. *"The primary concern is **<u>not</u> to correct errors in lower court decisions".***
3. With over 7,000 appeals each year, SCOTUS *"grants and hears arguments in only about 1% of the cases".* **There is a 99% chance that your appeal request will be <u>DENIED</u>.**
4. *"The denial signifies only that the Court has chosen not to accept the case for review and does **<u>not</u>** express the Court's view of the **<u>merits</u>** of the case".*

Appealing to SCOTUS today is like trying to win the lottery - the odds are practically *zero* of that Court hearing your case on appeal. So technically *yes*, you can appeal to SCOTUS. But unfortunately we don't live on planet *Fantasy Land* where the *Wizard of Oz* can give the Supreme Court a magic wand and crystal ball to decide 7,000 appeals per year. We live on planet *Earth* in something called ***reality***. Our Supreme Court Justices are very honorable, hard-working people - but they don't have *Dorothy's Ruby Slippers* and magical powers. Our Justices can't click their heels while repeating *"There's no place like the Constitutional Convention of 1787, There's no place like the Constitutional Convention of 1787, ..."* and be magically transported back in time to ask the Framers for their advice.

I say this with all due respect for SCOTUS. It's obvious the nine Justices do not have the time nor the judicial resources to hear thousands of cases each year. It's not humanly possible. They do their best but we can't expect the nine Justices to be nine Superheroes!

If you combine the limits created by Rooker-Feldman with the *miniscule* chances of getting a writ of certiorari heard by SCOTUS, then your only hope is that the Legislative branch

will solve the problem. The US Congress is not a viable strategy for fixing these judicial system problems. Why? It's been a problem for over 100 years and it's still not fixed.

For Pro-Se and IFP litigants who do not know the judicial system rules and procedures, the Rooker-Feldman doctrine basically gives plenary power to state courts. **State courts can literally *ignore* constitutional violations** in cases with Pro-Se and IFP litigants who are uneducated on the legal system process. That denies those litigants Due Process and Equal Protection.

When courts make mistakes, it can have *devastating* consequences on innocent people. State courts with plenary power have the potential of treating litigants with *contempt.* Pro-Se and IFP litigants could be treated like *pawns in a game of chess* that are easily expendable. Based upon the following Reuters news investigation, it might not be a rare occurrence.

The Teflon Robe - Holding Judges Accountable

- Reuters Investigation www.reuters.com/investigates/section/usa-judges/

1. Part 1 - Objections Overruled
2. Part 2 - Emboldened By Impunity
3. Part 3 - Exploiting The Bench
4. Part 4 - How Reuters tracked judicial misconduct

Qui male agit odit lucem. *He who behaves badly hates the light.*

Justice Clarence Thomas accurately described the role of the judicial branch:

Perez v. Mortg. Bankers Ass'n, 135 S. Ct. 1199 (2015)

- **US Supreme Court Justice Thomas, concurring in the decision:**
    - https://supreme.justia.com/cases/federal/us/575/13-1041/
    - "But we have not consistently exercised the judicial check with respect to administrative agencies. Even though regulated parties have repeatedly challenged agency interpretations as inconsistent with existing regulations, we have just as repeatedly declined to exercise independent judgment as to those claims. Instead, we have deferred to the executive agency that both promulgated the regulations and enforced them. Although an agency's interpretation of a regulation might be the best interpretation, it also might

not. **When courts refuse even to decide what the best interpretation is under the law, they abandon the judicial check. That abandonment permits precisely the accumulation of governmental powers that the Framers warned against.** See The Federalist No. 47, at 302 (J. Madison).

- The Judicial Branch is separate from the political branches for a reason: It has the obligation to apply the law to cases and controversies that come before it, **and concerns about the popular esteem of individual judges - or even the Judiciary as a whole - have no place in that analysis. Our system of Government could not long survive absent adherence to the written Constitution that formed it."**

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17 - NY State Statute is Unconstitutional

The Rooker-Feldman doctrine does **not** apply when a litigant is challenging the validity of a statute applied in state court. **The seven year limit of WCL § 123 violates the Constitution for Separation of Powers, Due Process and Equal Protection when it's applied to Article 8-A claims**. [Appendix #1 pg 25-30, Appendix H pg 17-21, Appendix I pg 6-7] That is just one of many examples. My Appendices #1, H and I, explain in detail *many* ways of how statutes applied in the state court rulings violate the Constitution for Separation of Powers, Due Process and Equal Protection.

Skinner v. Switzer, 562 U.S. 521 (2011)

- https://supreme.justia.com/cases/federal/us/562/521/
- "A state-court decision is not reviewable by lower federal courts, **but a statute or rule governing the decision may be challenged in a federal action**. See, e.g., Feldman, 460 U. S., at 487. Because Skinner's federal case - which challenges not the adverse state-court decisions but the Texas statute they authoritatively construed - falls within the latter category, there was no lack of subject-matter jurisdiction over his federal suit. Pp. 8–10."

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18 - Constitutional Violations Were Ignored

Does Rooker-Feldman only apply to constitutional issues raised ***after*** the state court rulings? What about violations of the Constitution raised *during* the State agency and court hearings and appeals? What happens if those violations are **not** corrected during or after the state court rulings? Does that make the Rooker-Feldman doctrine inapplicable?

For example, **I raised constitutional violation issues in my filing briefs throughout this *entire* case history** - including all the way back to the beginning of the underlying Article 8-A case for the WCB Law Judge (WCLJ) administrative decisions and administrative Board decisions. They ignored violations of the Constitution in their rulings that I raised. I then presumed the NY Supreme Court and NY Court of Appeals would correct the violations of the Constitution in the WCB rulings. But those violations and rulings were **not** corrected by those courts. So why should I be penalized for that? Why should I now be denied justice due to Rooker-Feldman? **I identified violations of the Constitution in the WCB rulings and I raised those issues in all my lower court and appeal briefs.** [Appendix #1, Appendix H, Appendix I] This case is not an appeal from litigants who are "losers in state courts" looking to get a ***second*** *bite of the apple.* I never got the ***first*** *bite of the apple.*

My Appendices #1, H and I, all explain how the NY WCB agency and state court rulings violate the Constitution for Separation of Powers, Due Process, and Equal Protection.

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19 - Fruit of the Poisonous Tree

Is the Rooker-Feldman doctrine applicable in cases where the government used ***"Fruit of the Poisonous Tree"*** to win their state court rulings? And what if the *fruit of the poisonous tree* violations were raised during the State agency and court hearings and appeals? What happens if those violations were **not** corrected during or after the state court rulings? Does that make the Rooker-Feldman doctrine inapplicable?

(See Appendix H pg 32-35): The legal doctrine of *"fruit of the poisonous tree"* should apply to WCB decisions that deny rehearing requests when those denials are based on prior court decisions where the claimant raised **violations of the Constitution and/or the intent of the Legislature**. If the WCB is allowed to use prior decisions to deny RB-89 rehearing requests, then claimants **must be allowed to use that same evidence from prior decisions to <u>defend themselves</u>** in appeals courts. Denying claimants that right is equivalent to giving the government both a ***sword*** and a ***shield*** to use against injured workers. This is especially egregious if claimants have raised constitutional issues in prior hearings and appeals.

> **If the roots of the tree** *[2014-2016 WCB decisions]* ...
> **are poisonous** *[violate the Constitution]* ...
> **then the tree branches and fruit** *[WCB RB-89 denial decision which was based on all those prior WCB decisions]* ...
> **are also poisonous** *[violate the Constitution].*

You cannot have "intelligent and meaningful judicial review" when the WCB uses <u>unconstitutional</u> restrictions to deny valid Article 8-A claims, and then they use those *same* <u>unconstitutional</u> decisions to deny RB-89 rehearing requests. To uphold the January 19, 2018 WCB RB-89 denial decision, you would need to ignore all the **violations of the Constitution by the WCB in their rulings which are the <u>basis and foundation</u> for their RB-89 denial decision.**

Government agencies cannot be allowed to use *fruit of the poisonous tree.* If you give the government a *sword* and a *shield* to use against litigants, then it is ***required*** by the US Constitution to give that same sword and shield to those litigants so they can **<u>defend themselves in court</u>.**

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20 - Article 78 & Never "Truly Closed"

The NY Workers' Compensation Board (WCB) and their Office of General Counsel (OGC) refuse to process and give any judicial review for my Article 8-A **WTCvol-3** form for my ***Volunteer Recovery*** work. [Appendix J 4] That is a separate claim from my Article 8-A WTC-12 and C-3 forms for my ***Employee Cleanup*** work. [Appendix J 2 & J 3]

An Article 78 proceeding is still an option in New York State for this case due to the WCB and OGC refusing to process my volunteer claim. As a result, there is not yet a final resolution in state court prior to me filing the case in federal district court. Based on this fact alone, Rooker-Feldman is **not** applicable and should not block this case from proceeding in federal court.

How to Challenge Administrative Decisions Using Article 78 of the New York CPLR: https://nemmar.page.link/456 and https://nemmar.page.link/457

As noted above, the NY WCB and their OGC **violated Separation of Powers and my Due Process and Equal Protection rights by *refusing* to process and give judicial review** for my Article 8-A WTCvol-3 form for my *Volunteer Recovery* work. [Appendix J 4] This is confirmed in the July 2018 emails. [Appendix M pg 7-11] The fact of me being an Article 8-A *Volunteer recovery worker* was never included in my original C-3 and WTC-12 forms of September 2014. Therefore, it is indisputable that my WTCvol-3 claim form as a volunteer never received any judicial review. The only claim the WCB ruled on was my *employee cleanup* worker claim. My *Volunteer* claim was ignored by the WCB. **They are two *different* worker's compensation claims for *different* accidents and injuries at *different* times and at *different* locations:**

1. My **Employee** claim was for medical health injuries I sustained from breathing toxic 9-11 dust while doing **cleanup** work as an **employee** inside an office building next to Ground Zero.
2. My **Volunteer** claim was for medical health injuries I sustained from breathing toxic 9-11 dust while doing **recovery** work as a **volunteer** at Ground Zero.

- [Appendix #1 pg 25-30, 47] [Appendix H pg 11-16] [Appendix M pg 7-11] [Appendix J-4 pg 18-20]

I think I have at least two remedies for this specific violation of law and my Constitutional rights by the WCB and OGC. The Federal statute to remedy this is 28 U.S. Code § 1361. That gives the district court original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff. The New York State statute to remedy this violation is Article 78: N.Y. C.P.L.R. § 7801.

- 28 U.S. Code § 1361 www.law.cornell.edu/uscode/text/28/1361
- Article 78: N.Y. C.P.L.R. § 7801 https://law.justia.com/codes/new-york/2012/cvp/article-78/

Based upon the law for an Article 78 proceeding, the statute of limitations has not yet begun to run. **The statute of limitations does <u>not</u> begin to run until you receive *final* notice from the *highest* possible administrative authority.** Due to the WCB and OGC refusing to even *begin* processing my WTCvol-3 claim form, they **prevented** me from receiving final notice from the highest possible administrative authority. They even prevented me from receiving final notice from ***any*** possible administrative authority. By refusing to process the form, they prevented any judicial review. Therefore, by law, this **statute of limitations has not even begun to run.** I found the following information online that is relevant to this:

- An Article 78 proceeding is a type of action you bring when a NY State official or administrative body has failed to do something that is required by law. This action is called a "mandamus to compel". When you bring this type of action, you are asking the court to order an official to do something that is his/her duty to do. The duty to be performed **[i.e. process my WTCvol-3 claim form]** is required by the law and is not "discretionary". This type of Article 78 proceeding is very important because it can force officials to follow the regulations that protect your rights.
- An Article 78 petition must be filed with the court within four months of the date that the administrative determination that you want to challenge becomes final. N.Y. C.P.L.R. 217(1) (McKinney 1990 & Supp. 2013). The statute of limitations will **<u>not</u>** begin to run until you receive **final notice from the highest possible administrative authority.**

My Article 8-A case was never "**truly closed**" which is a WCB legal designation.

- *"WCL § 123 ... this statute depends on whether they were truly closed...".*

  [Appendix #1 pg 31-32, Appendix H pg 22-23, 25-26, 37, Appendix I pg 8, 13]

The intent of the NY Legislature is to allow anyone denied in the past under the *old* Article 8-A laws, to now be given the opportunity of judicial review under the *new* amended law. My first round of prior appeals were determined to be filed as "untimely" by the NY Supreme Court and the NY Court of Appeals. Therefore, my Article 8-A claim was never "*truly closed*" based on the intent of the NY Legislature.

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21 - Vitiated State Court Process

The Rooker-Feldman doctrine is **inapplicable** when the alleged injury (constitutional violation) is distinct from the judgment. For instance, it is not applicable when the federal claim alleges a **prior injury that a state court failed to remedy.** (*Centres, Inc. v. Town of Brookfield, Wis., 148 F.3d 699, 702 (7th Cir.1998))*

Rooker-Feldman is also inapplicable when **extrinsic fraud** is involved and/or if the state court process is **vitiated**. (*Kougasian v. TMSL, Inc., 359 F.3d 1136, 1140 (9th Cir. 2004); Parker v. Lyons, 757 F.3d 701, 705 (7th Cir. 2014))*

To determine whether Rooker-Feldman bars a claim, a court looks beyond the four corners of the complaint to discern the actual injury claimed by the plaintiff. The facts of this case show that the Rooker-Feldman doctrine is **not** applicable.

- "**Extrinsic fraud** is conduct which prevents a party from presenting his claim in court." *Wood v. McEwen, 644 F.2d 797, 801 (9th Cir.1981).*

- "**vitiated** the state-court process" *Parker v. Lyons, 757 F.3d 701, 705 (7th Cir. 2014)*

- "because "[c]ompensatory damages cannot be awarded in [its administrative appeal,] ... the [Rooker-Feldman] doctrine is **not** applicable" *Thana v. Bd. of License Comm'rs for Charles Cnty., 827 F.3d 314, 318 (4th Cir. 2016)*

How does that relate to this case?

1. Facts in this case history show "*prior injury that the state court failed to remedy*" and violations of the Constitution that "vitiated the state-court process". (see point #18 above.)

2. Another "prior injury that the state court failed to remedy" is noted in point #20. An Article 78 proceeding is still an option in NY State for this case due to the WCB and OGC refusing to process my Article 8-A WTCvol-3 claim for my Volunteer Recovery work. As a result, there is **not yet a <u>final resolution</u>** in state court prior to me filing the case in federal district court. The **refusal** by the WCB and OGC to process my volunteer claim was "extrinsic fraud" and it "vitiated the state-court process".
3. The New York Court of Appeals "vitiated the state-court process" when they denied my **Appeal As Of Right** when the issues in my appeal brief were **clearly** "within the meaning of the Constitution". [Appendix C] The New York Court of Appeals did not follow its own court rules and ***Necessarily Affects Requirement***. [Appendix I, pg 11-13]
4. I seek compensatory damages as well as equitable relief for the actions of the WCB and OGC. *"Because "[c]ompensatory damages cannot be awarded in [its administrative appeal,] ... the [Rooker-Feldman] doctrine is **not** applicable".* [See Appendix E 2022 pg 10].
5. The government used *fruit of the poisonous tree* to win their state court rulings as noted in point #19 above. That "vitiated the state-court process".

I provided the NY courts with evidence of the **vitiated state court process**. The WCB and OGC violated Separation of Powers and denied me Due Process, Equal Protection and prevented me from presenting evidence in court, as noted above and as follows:

- Appendix M pages 7-8, and Appendix H page 8, items 20-21
- Appendix H page 13-14, and Appendix B - No. G110 9023 WCB 01-19-2018

The following 7 court precedent cases support these arguments:

Kougasian v. TMSL, Inc., 359 F.3d 1136, 1140 (9th Cir. 2004)

- https://casetext.com/case/kougasian-v-tmsl-inc
- "If, on the other hand, a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, **Rooker-Feldman does not bar jurisdiction.** ... "Extrinsic fraud is conduct which prevents a party from presenting his claim in court." *Wood v. McEwen, 644 F.2d 797, 801 (9th Cir.1981).* ... **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.** ... Extrinsic fraud on a court is, by definition, not an error by that court. It is, rather, a wrongful act committed by the party or parties who engaged in the fraud. **Rooker-Feldman therefore does not bar subject matter jurisdiction when a federal plaintiff alleges a cause of action for extrinsic fraud on a state court and seeks to set aside a state court judgment obtained by that fraud.**"

Parker v. Lyons, 757 F.3d 701, 705 (7th Cir. 2014)

- https://www.leagle.com/decision/infco20140707102
- "In the present case, there is a second reason why Rooker-Feldman does not apply. ~~Parker~~ **[Cozzi]** alleges that ~~Lyons~~ **[WCB and OGC]** ... vitiated the state-court process by collaborating with a friendly judge to rush the case to a foreordained judgment. **[They rushed the predetermined judgment *and* blocked Cozzi's additional evidence and judicial review of his Article 8-A Volunteer claim. This is also proven by email evidence]**. Because his claims are premised on detailed allegations that the winning party obtained a favorable civil judgment by corrupting the state judicial process, Rooker-Feldman does not bar them. *See Johnson v. Pushpin Holdings, LLC, 748 F.3d 769, 773 (7th Cir.2014); Loubser v. Thacker, 440 F.3d 439, 441-42 (7th Cir.2006); Nesses v. Shepard, 68 F.3d 1003, 1005 (7th Cir.1995).*"

Nesses v. Shepard, 68 F.3d 1003, 1005 (7th Cir. 1995)

- https://openjurist.org/68/f3d/1003/nesses-v-t-shepard
- **"But if he claims, as he does, that people involved in the decision violated some independent right of his**, such as the right (if it is a right) to be judged by a tribunal that is uncontaminated by politics, **then he can, without being blocked by the Rooker-Feldman doctrine, sue to vindicate that right and show as part of his claim for damages that the violation caused the decision to be adverse to him and thus did him harm.** *Nelson v. Murphy,44 F.3d 497, 503 (7th Cir. 1995); GASH Associates v. Village of Rosemont, supra,995 F.2d at 728.* **Otherwise there would be no federal remedy for a violation of federal rights whenever the violator so far succeeded in corrupting the state judicial process as to obtain a favorable judgment**, as alleged in cases such as *Dennis v. Sparks,449 U.S. 24 (1980), and Casa Marie, Inc. v. Superior Court,988 F.2d 252, 259 (1st Cir. 1993).*"

Johnson v. Orr 551 F.3d 564 (2008)

- https://www.leagle.com/decision/infco20081204108
- "Johnson relies heavily on Nesses v. Shepard, 68 F.3d 1003 (7th Cir.1995), but he misreads that case. The plaintiff in Nesses lost a series of lawsuits in state court and then brought a civil rights action in federal court against the lawyers and judges involved in the state litigation, alleging that **they had conspired to ensure that he lost** his lawsuits. We determined that Rooker-Feldman was not a barrier to Nesses' claims because he was not "merely claiming that the decision of the state court was incorrect." Id. at 1005. **Instead, he claimed that the defendants had violated an independent right**: "the right (if it is a right) to be judged by a tribunal that is uncontaminated by politics."

Great W. Mining & Mineral Co. v. Fox Rothschild, 615 F.3d 159, 173 (3d Cir. 2010)

- https://casetext.com/case/great-western-mining-v-fox-rothschild
- "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**:"
- "When, however, a federal plaintiff asserts injury caused by the **defendant's actions** and not by the state-court judgment, **Rooker-Feldman is not a bar to federal jurisdiction.** *See, e.g., Coles v. Granville, 448 F.3d 853, 859 (6th Cir. 2006); Davani v. Va. Dep't of Transp., 434 F.3d 712, 719 (4th Cir. 2006).*"
- **"If the matter was previously litigated, there is 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.** *Exxon Mobil, 544 U.S. at 293, 125 S.Ct. 1517 (internal quotation marks citation omitted; alteration in original).*"
- **"In a case subsequent to Exxon Mobil, the Supreme Court again emphasized that Rooker-Feldman is a "narrow doctrine" that "applies only in limited circumstances."** *Lance v. Dennis, 546 U.S. 459, 464-66, 126 S.Ct. 1198, 163 L.Ed.2d 1059 (2006) (internal quotation marks citations omitted).*"

Centres, Inc. v. Town of Brookfield, Wis., 148 F.3d 699, 702 (7th Cir. 1998)

- https://casetext.com/case/centres-inc-v-town-of-brookfield-wi
- "Therefore, a federal claim alleging injury caused by a state court judgment must be distinguished from a federal claim alleging a **prior injury that a state court failed to remedy**. *See Garry, 82 F.3d at 1366-67.*

Narey v. Dean, 32 F.3d 1521, 1525-26 (11th Cir. 1994)

- https://law.justia.com/cases/federal/appellate-courts/F3/32/1521/633887/
- "Contrary to the defendants' position, the Rooker-Feldman doctrine, unlike that of res judicata, **applies only to state court decisions, not to state administrative decisions.** *Ivy Club v. Edwards, 943 F.2d 270, 284 (3d Cir.1991), cert. denied, ___ U.S. ___, 112 S.Ct. 1282, 117 L.Ed.2d 507 (1992); see Feldman, 460 U.S. at 482, 103 S.Ct. at 1315* (holding that district courts have no jurisdiction "to review final judgments of a state *court* in judicial proceedings" (emphasis added))."

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22 - Rooker-Feldman is Unconstitutional

Part 1: Article I, and 5th & 14th Amendments

The Rooker-Feldman doctrine is **unconstitutional** because it violates the Necessary and Proper clause, Due Process and Equal Protection of the US Constitution. (see Section #1) Moreover, it gives **plenary power** to state courts against Pro-Se and IFP litigants who do not know the judicial system rules and procedures. (see point #16) To add insult to injury, Rooker-Feldman also conflicts with the Pullman Abstention doctrine. (see point #10) As a result, Rooker-Feldman violates the Constitution and the intent of the Framers.

- Necessary and Proper clause - Article I Section 8 Clause 18
- Due Process - 5th Amendment and 14th Amendment
- Equal Protection - 14th Amendment

I respectfully ask this Court the following questions:

1. What is the criteria federal courts use to determine if a precedent or doctrine needs to be **revisited and updated** for today's society? (i.e. Rooker-Feldman doctrine)
2. What is the criteria that courts use to determine if **new interpretations of laws** need to receive judicial review? (i.e. the new interpretations of laws/doctrines I raise in this brief and the Workers Compensation laws I raised in my state court briefs)
3. Do federal courts have ***any*** authority to correct unjust rulings and violations of the Constitution after the highest state court rulings?
4. **Do federal courts have a history of reversing precedent/doctrines when the situation is obviously in the interest of justice?**

Part 2: Very Essence of Civil Liberty

Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971)

- https://supreme.justia.com/cases/federal/us/403/388/
- "An agent acting -- albeit unconstitutionally -- in the name of the United States possesses a far greater capacity for harm than an individual trespasser exercising no authority other than his own."
- "**where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.**" ... "But it is . . . well settled that, where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, **federal courts may use any available remedy to make good the wrong done.**" *(Bell v. Hood, 327 U.S. 678 (1946))*
  https://supreme.justia.com/cases/federal/us/327/678/#684

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)

- www.law.cornell.edu/supremecourt/text/5/137
- "If he has a right, and that right has been violated, do the laws of his country afford him a remedy? **The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws**, whenever he receives an injury. One of the first duties of government is to afford that protection."

Part 3: Vitiated State Court Process

What about the "vitiated state court process" argument for violations of the Constitution? Is "extrinsic fraud" the only claim allowed for a "vitiated state court process" argument? **Isn't the state court process *vitiated* when the state court ignores or fails to correct violations of the Constitution?** Doesn't that violate their oath to uphold the Constitution? I would think a violation of the Constitution would ***automatically*** vitiate the state court process.

The Supremacy Clause of the US Constitution (Article VI, Clause 2) states:

- "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby**, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Part 4: Stare Decisis

Do conflicts with court precedent cases make Rooker-Feldman **inapplicable**? I would think state court rulings that conflict with many precedent cases and violate **Stare Decisis** would ***automatically*** "vitiate the state court process". The New York State court rulings conflict with all 43 of the following cases cited in my 2019 SCOTUS Writ of Certiorari. (The page references cited below for each case refer to the page numbers in my Writ of Certiorari **#19-6822** [Appendix #1 pg 16, 45].)

United States Supreme Court cases

Federal Court cases

New York State Court cases

25. Royal & Sun Alliance Insurance, 2008 NY Wkr Comp LEXIS 3532 - pg 34
26. Schreckinger v. York Distributors, Inc., NYSC 9 A.D.2d 333 (1959) - pg 25,26,30,31
27. Tompkins v. Morgan Stanley Dean Witter, 1 AD3d 695 (2003) - pg 44,50-51
28. Verizon, 2008 NY Wrk Comp LEXIS 7135, WCB #00711321 - pg 34
29. Williams v. City of New York, 2009 NY Slip Op 07556 [66 AD3d 1203] - pg 24,38
30. Williams v. City of New York, 89 AD3d 1182 [2011], lv denied 18 NY3d 807 [2012] Regan, 124 AD3d 994 [2015] - pg 34

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23 - Subject Matter Jurisdiction

Long v. Shorebank Dev. Corp., 182 F.3d 548, 555 (7th Cir. 1999)

- https://www.casemine.com/judgement/us/59147f69add7b04934461002
- "When reviewing a dismissal for lack of subject matter jurisdiction, we note that a district court must accept as true all well-pleaded factual allegations and draw all reasonable inferences **in favor of the plaintiff**. *Rueth v. United States EPA, 13 F.3d 227, 229 (7th Cir.1993).* "The district court may properly look beyond the jurisdictional allegations of the complaint and **view whatever evidence has been submitted** on the issue to determine whether in fact subject matter jurisdiction exists." *Capitol Leasing Co. v. FDIC, 999 F.2d 188, 191 (7th Cir.1993) (per curiam) (quoting Grafon Corp. v. Hausermann, 602 F.2d 781, 783 (7th Cir.1979)).* We review a district court's dismissal of an action under Rule 12(b)(1) de novo. *See Selbe v. United States, 130 F.3d 1265, 1266 (7th Cir.1997).*"

Constitutional-Fact Doctrine

- https://definitions.uslegal.com/c/constitutional-fact-doctrine/
- Constitutional-Fact Doctrine refers to a principle that administrative action affecting constitutional rights is subject to an independent judicial determination on both law and facts. The federal courts are not bound by an administrative agency's findings of fact when the facts involve whether the agency has exceeded constitutional limitations on its power, especially regarding personal rights. This rule is not very popular now even though it has not been overruled or wholly discredited. **It also refers to a rule that a federal appellate court is not bound by a trial court's findings of fact when constitutional rights are implicated.**

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24 - Rooker-Feldman is The Tail Wagging The Dog

So in a nutshell... If you look at all of this, what do you see?

The US Congress, SCOTUS, the federal Courts of Appeals, and District courts have been trying to find a solution to this problem for **over 100 years**. Here are some of the many steps taken in the past to try and fix this problem:

1. Congress: Section 25 of the Judiciary Act of 1789 (see point #3)
2. Congress: The Act of March 3, 1891 (see point #3)
3. Congress: The Act of September 6, 1916 (see point #3)
4. Congress: Judicial Conference of USA of 1922 - 28 U.S. Code § 331 (see point #6)
5. SCOTUS: Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) (see point #7)
6. Congress: The Act of February 13, 1925 (see point #3)
7. Congress: Rules Enabling Act of 1934 - 28 U.S. Code § 2071-2077 (see point #6)
8. Congress: 28 U.S. Code § 1257 on June 25, 1948 (see point #3)
9. SCOTUS: Court of Appeals v. Feldman, 460 U.S. 462 (1983) (see point #8)
10. Congress: All the amendments made over the years to the laws listed above.

Then add to that... All the federal court rulings which indicate that judges have been looking for ways to avoid Rooker-Feldman and declare it **inapplicable**:

1. For the Pullman abstention (see point #9, #10).
2. For nonjudicial administrative or legislative rulings, as opposed to judicial court rulings (see point #8).
3. For challenges to the validity of state statutes (see point #17).
4. For extrinsic fraud (see point #21).
5. For vitiated state court processes (see point #21).
6. For compensatory damages (see point #21).
7. For pending state cases, if the federal case is filed up to **one day *prior to*** the final ruling of the highest state court. (see point #10).
8. (If I had more time to do research I would find more examples).

It's like putting *fingers in the dike* to try and stop the dam from overflowing. It's hopeless. It doesn't solve the problem. Why? Because the *root* cause is what needs to be fixed.

The Rooker-Feldman doctrine is definitely *The Tail That Wags The Dog!*

- Definition of *The Tail Wagging The Dog* = Used to describe a situation in which an important or powerful person, organization, etc., is being controlled by someone or something that is much less important or powerful.
    - www.merriam-webster.com/words-at-play/wag-the-dog-idiom-meaning

The Rooker-Feldman doctrine is also like a game of *Twister* and the participants have to twist themselves into a *pretzel* to play the game. Even SCOTUS has tried to dramatically narrow the doctrine's use. For example, Justice Stevens wrote:

- "Last Term, in Justice Ginsburg's lucid opinion in Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U. S. 280 (2005), **the Court finally interred the so-called "Rooker-Feldman doctrine.**" And today, the Court quite properly disapproves of the District Court's resuscitation of **a doctrine that has produced nothing but mischief for 23 years.**" *Lance v. Dennis, 546 U.S. 459, 468 (2006) (Stevens, J., dissenting on other grounds).*

Justice Stevens was correct with his analysis. In my humble opinion, Rooker-Feldman is *"a doctrine that has produced nothing but mischief"* for **100 years since 1923.**

The list above shows how federal judges want to avoid Rooker-Feldman and declare it inapplicable. For example, if you commence a federal case even just **one day prior to** the final state court ruling, then it's constitutional. But one day ***after*** that, then it's unconstitutional. Is that logical or reasonable? Is this what the Framers *intended* when they wrote the Constitution? They wanted checks and balances. Instead, the Judicial branch often uses Rooker-Feldman like it's a **statute of limitations** to block federal judicial review of state court rulings. Would the Framers *agree* with the Rooker-Feldman doctrine? I don't think they would.

Why not just fix the doctrine itself and eliminate the problems for everyone? What is a possible remedy for all the Rooker-Feldman problems? See Section 4 below.

Section 4 - Remedy For Rooker-Feldman

This section has my ideas for a remedy to fix the Rooker-Feldman doctrine. In my humble opinion, the remedy has been *hiding in plain sight* for many decades.

25 - The Gorilla (Rooker) and the Elephant (Feldman)

The Judicial branch knows that Pro-Se and IFP litigants are a **unique class that should not be blocked from defending their rights in court**. That logic must also apply to federal courts after state court appeals fail to correct violations of the Constitution.

The Judicial branch has already created numerous precedents and doctrines to *level the playing field* for Pro-Se and IFP litigants so they are not at a big disadvantage:

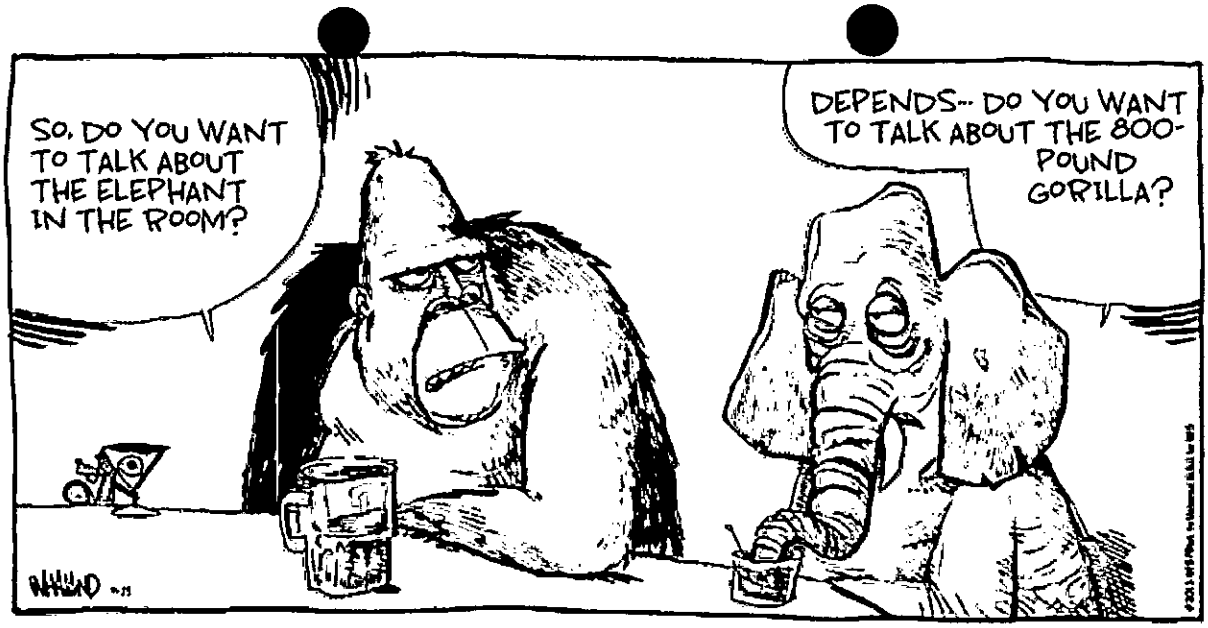
- Right to Counsel, Miranda Rights, and In Forma Pauperis.

So the questions to ask now are:

1. Why won't the courts level the playing field to fix the problems caused by the Rooker-Feldman doctrine?
2. Why leave Pro-Se and IFP litigants at a ***huge*** **disadvantage** by blocking judicial review and discretion in federal **district** courts when their constitutional rights are violated or ignored by state courts?

God only knows how many people have been denied justice since *Rooker v. Fidelity Trust in 1923*, and those that will be denied justice in the future, due to Rooker-Feldman. Whatever the number is, it's far too high. It's time to sit down with Mr. Rooker and Mr. Feldman and update their doctrine, because they've gotten *too big for their britches.*

Like the seven year limit of WCL § 123 [Appendix #1 pg 30], the Rooker-Feldman doctrine is **both** the *elephant in the room* and the *800 pound gorilla*, **<u>combined</u>.**



(photo © Reality Check by Dave Whamond for September 13, 2015)

(Mr. Rooker) **(Mr. Feldman)**

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26 - Miranda Rights for Rooker-Feldman

What is a possible remedy for all the Rooker-Feldman problems noted in this brief? A very easy solution to the problem would be something that I would call ***Cozzi Rights*** (like Miranda Rights) with a warning about Rooker-Feldman to all litigants. It would be an appeal deadline warning notice to help prevent litigants from being denied justice in state and federal courts when they appeal.

- (Note: I only mention my name for the "Cozzi" rights/warning as an example. I have no idea how courts name their doctrines.)

How to implement a *Cozzi rights* warning? All administrative agency and court rulings should be *required* to notify the litigants about the deadline dates to file an appeal in **state <u>and</u> federal court. The *Cozzi rights* warning notice must explain the deadlines to file appeals in <u>BOTH</u> state and federal courts.** That would be an extremely easy way to give upfront notice to all state court litigants so they can protect their rights in federal courts. We do it with Miranda, so why not with Rooker-Feldman also? It is the *only* way Pro-Se and IFP litigants, who do not know judicial system rules

and have no money to pay for legal counsel, are able to **protect their rights and defend themselves if state courts do <u>not</u> correct constitutional violations.**

In my case, a few of the state agency rulings had deadline dates for appeals to the state agency Board, but not for *federal* court appeals. Moreover, the New York court rulings did not have *any* mention of deadline dates to file appeals. **There is <u>no</u> mention of <u>*federal*</u> court deadlines in the state agency and court rulings, filing forms, rulebooks, or websites.** That is unfair and creates a huge disadvantage for non-lawyers who are Pro-Se and IFP litigants. Had there been ***any*** federal deadline notifications, (in state agency or court rulings, filing forms, rulebooks, or websites), then I would not be in this position of trying to overturn a district court ruling to dismiss my case. <u>And neither would *countless* other Pro-Se and IFP litigants be in this situation</u>.

- "Rooker-Feldman thus bars a losing party in state court from seeking what in substance would be appellate review of the state court judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Butcher v. Wendt, 975 F.3d 236, 243 (2d Cir. 2020)*

What would happen if it's required by law (or doctrine) to notify litigants of state and federal appeal deadlines in all court rulings?
Would this lead to federal courts being *overwhelmed* by "duplicative" cases or by appeals from "losers in state courts" looking to get a <u>*second*</u> *bite of the apple*?
No, and I will explain how and why ...

The solution to prevent federal courts from being overwhelmed with "duplicative" cases or from "losers in state courts" is to use the SCOTUS rule book as a guide. For example...

1. SCOTUS Rule 14.1(g)(i) for Writs of Certiorari **requires that the federal questions sought to be reviewed were raised in the state courts**.

2. "It is important to note that review in the [**Federal District**] Court by means of a writ of certiorari is not a matter of *right*, but of judicial *discretion*. The primary concern of the ~~Supreme~~ [**Federal District**] Court is ~~not~~ to correct errors in lower court decisions [**that are violations of the Constitution**]."

That would limit federal district court review to ***only*** state court cases that had merits of possible violations of the Constitution which were **raised in state courts** but not resolved. **Only those specific cases** would then be allowed to receive ***discretionary*** judicial review in a federal district court if those state judgments were rendered before the federal court proceedings commenced.

Dickerson v. United States, 530 U.S. 428 (2000)

- https://supreme.justia.com/cases/federal/us/530/428/
- "The law in this area is clear. **This Court has supervisory authority over the federal courts**, and we may use that authority to prescribe rules of evidence and procedure that are binding in those tribunals." *Carlisle v. United States, 517 U. S. 416, 426 (1996)*
- "But Congress may **not** legislatively supersede our decisions **interpreting and applying the Constitution**." *See, e. g., City of Boerne v. Flores, 521 U. S. 507, 517-521 (1997)*
- "It is beyond dispute that we do not hold a supervisory power over the courts of the several States. *Smith v. Phillips, 455 U.S. 209, 221 (1982)* ("Federal courts hold no supervisory authority over state judicial proceedings and may intervene only to **correct wrongs of constitutional dimension**"); *Cicenia v. Lagay, 357 U. S 504, 508—509 (1958).* With respect to proceedings in state courts, our "authority is limited to **enforcing the commands of the United States Constitution**." *Mu'Min v. Virginia, 500 U.S. 415, 422 (1991). See also Harris v. Rivera, 454 U.S. 339, 344—345 (1981)* (per curiam) (stating that "[f]ederal judges may not require the observance of any special procedures" in state courts "**except when necessary to assure compliance with the dictates of the Federal Constitution**")."
- "Indeed, the Court's ultimate conclusion was that the ~~unwarned confessions~~ [**State court rulings**] obtained in the four cases before the Court in Miranda "were obtained from the ~~defendant~~ [**appellant**] under circumstances that did not meet constitutional standards for protection of the privilege."
- "After discussing the "compelling pressures" inherent in ~~custodial police interrogation~~ [**Pro-Se and IFP cases**], the Miranda Court concluded that, "[i]n order to combat these pressures and to permit a full opportunity to exercise the privilege against ~~self-incrimination~~ [**unconstitutional State court rulings**], the ~~accused~~ [**Pro-Se and IFP litigant**] must be adequately and effectively appraised of his rights and the exercise of those rights must be fully honored. However, the Court emphasized that it could not foresee "the potential alternatives for protecting the privilege which might be devised by Congress or the States," and it accordingly opined that the Constitution would not preclude legislative solutions that differed from the prescribed Miranda warnings but which were "at least as effective in

apprising ~~accused~~ [**Pro-Se and IFP**] persons of their right of ~~silence~~ [**state and federal court appeals**] and in assuring a continuous opportunity to exercise it."

- "These decisions illustrate the principle - not that Miranda is not a constitutional rule - but that **no constitutional rule is immutable**. No court laying down a general rule can possibly foresee the various circumstances in which counsel will seek to apply it, and the sort of **modifications represented by these cases are as much a normal part of constitutional law as the original decision**."
- "Miranda requires procedures that will warn a ~~suspect in custody~~ [**Pro-Se or IFP litigant**] of his right to ~~remain silent~~ [**file a timely appeal**] and which will assure the ~~suspect~~ [**Pro-Se and IFP litigant**] that the exercise of that right will be honored." *See, e.g., 384 U.S., at 467.*
- "In Miranda, the Court noted that reliance on the traditional totality-of-the-circumstances test raised a risk of overlooking an ~~involuntary custodial confession, 384 U. S, at 457~~ [**unconstitutional State court ruling**], a risk that the Court found unacceptably great when the ~~confession~~ [**state-court process**] is ~~offered~~ [**vitiated**] in the case ~~in chief to prove guilt~~. The Court therefore concluded that something more than the totality test was necessary." *See ibid.; see also id., at 467, 490-491.*
- "While " 'stare decisis is not an inexorable command,' " *State Oil Co. v. Khan, 522 U.S. 3, 20 (1997) (quoting Payne v. Tennessee, 501 U.S. 808, 828 (1991))*, particularly when we are interpreting the Constitution, *Agostini v. Felton, 521 U.S. 203, 235 (1997)*, "even in constitutional cases, the doctrine carries such persuasive force that we have always required a departure from precedent to be supported by some 'special justification.' [**i.e State court rulings violating the Constitution**]"
- "In sum, we conclude that Miranda announced a constitutional rule that Congress may not supersede legislatively."

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27 - Tell People the Rules of the Game

For Pro-Se and IFP litigants who do not know judicial system rules and have no money to pay for legal counsel, getting hit with Rooker-Feldman is like... stepping into a quicksand trap, or a booby-trap, or a landmine. It's a hidden danger that destroys their case.

An analogy is like having a sporting event and only telling one team (the lawyers) what the rules of the game are, and those rules are kept hidden from the other team (Pro-Se and IFP). That's not a level playing field. That's not a fair fight. That's unfair and unjust.

Another analogy can be found on all streets in America. What do you see when you drive on the streets? You see traffic lights, stop signs, speed limit signs, street name signs, and parking signs. Why are they there? **Because the government knows it has to tell people the *rules of the game*.** You cannot play *hide and seek* with the laws (rules). That is like covering up traffic lights and roadway signs so people cannot see them when driving. **If people do not know the rules of the game, then how do you expect them to *comply* with those rules?**

The government has to post the traffic lights/signs so it's readily seen by the people affected by those laws. **That's the same concept for the *Cozzi rights* warning.** The government should tell people the "rules of the game" (deadline dates) to file state and federal appeals. That is **not** giving legal ***advice***. Why? Because that is merely telling people the rules (laws) so they can comply with those rules. Displaying court rules with *Cozzi rights* **cannot** be viewed as giving litigants legal advice. You are only stating a ***fact***, not an *opinion*. There's a *huge* difference between facts and opinions. Telling Pro-Se and IFP litigants the deadline dates to file documents, motions, and appeals is merely stating facts (rules of the court).

I will use another analogy of a street traffic light. Displaying court filing deadline dates only tells litigants that the light will stay *green* up until a specific date, and then the light changes to *red*. The court is **not** telling litigants that they ***should*** file a document, motion or appeal, nor is the court telling litigants what to ***write*** in their filing. The court is merely stating the date when the traffic light will change from *green* to *red*. What the

litigants do with that information is solely their decision. The litigants can then decide *if, when* and *how* they will proceed to move forward (green light), or stop (red light).

Just put a *Cozzi rights* warning on all government agency and court rulings and you eliminate the problems and injustices for Pro-Se and IFP litigants. **In addition, it will save *countless* resources and time for both state and federal courts, and litigants!** It's a win-win solution. The courts and litigants would not waste time and resources due to the dichotomy between the Pullman Abstention and Rooker-Feldman doctrines, and any appeal deadline rules that are confusing to litigants.

Ignorance of the Law Is No Excuse, But It Is Reality - Author: Paul Rosenzweig - The Heritage Foundation (2013) [4]

- https://www.heritage.org/crime-and-justice/report/ignorance-the-law-no-excuse-it-reality

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I humbly and very respectfully ask the Court the following questions. I'm not being sarcastic. I have a very curious mind and I love to learn knowledge about many topics. I truly am *curious* to know what it is that I don't know or see about all these arguments I raised, that seem clear to me as a non-lawyer with no legal training. What is it that an attorney who graduated law school sees that I am ***blind*** to?

1. If *Cozzi rights* notifying litigants of court deadline dates to file appeals is considered prohibited legal *advice*, **then doesn't that require every court in the USA to hide all of their rulebooks and guidebooks from litigants?**
2. Isn't the purpose of all of those court rule/guide books to provide *facts* posted publicly so attorneys and litigants can *comply* with those rules?
3. What's the difference between the USA courts posting rulebooks and guidebooks for all their rules, but *not* allowing them to put appeal deadline filing dates on rulings?
4. Should the federal courts delete all their content on the following website pages, because it could be considered prohibited legal *advice* of stating facts?
    a. SCOTUS website - Rules and Guidance page:
        i. https://www.supremecourt.gov/filingandrules/rules_guidance.aspx
    b. US Court's website - Rules and Policies page:
        i. https://www.uscourts.gov/rules-policies

[4] I found this article in January 2022 while doing online research for this appeal brief. The author provides details that confirm some of the arguments I raised in my current and prior appeal briefs.

Here's a surprising fact... Look at the "*Comparing Federal & State Courts*" page on the federal US Courts website. (viewed June 2021 and January 2022) [Appendix G 2022] What *don't* you see? The Federal US Courts website does **not mention** that State litigants can file ***concurrent*** cases in Federal court. It also does **not mention** that state litigants can file cases in district courts **prior to** a final state court ruling. Moreover, it only mentions that state litigants can appeal to SCOTUS - but it says ***nothing*** about Rooker-Feldman!

www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts

- "State courts are the final arbiters of state laws and constitutions. Their interpretation of federal law or the U.S. Constitution may be appealed to the U.S. Supreme Court. The Supreme Court may choose to hear or not to hear such cases."

I humbly and very respectfully ask the Court ...

How can you *possibly* expect Pro-Se and IFP litigants to have *any* chance of obtaining justice, if the Federal United States Courts' own website doesn't tell them the *basic* rules of the game?

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28 - Gideon v. Rooker-Feldman

What if you apply the ruling in *Gideon v. Wainwright* to this Rooker-Feldman case? Here's what you get...

Gideon v. Wainwright, 372 U.S. 335 (1963)

- www.law.cornell.edu/supremecourt/text/372/335
- https://en.wikipedia.org/wiki/Gideon_v._Wainwright
- "From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every ~~defendant~~ **[appellant]** stands equal before the law. This noble ideal cannot be realized if the poor man ~~charged with crime~~ **[IFP litigant]** has to face his accusers without ~~a lawyer~~ **[Cozzi rights]** to assist him. A ~~defendant's~~ **[appellant's]** need for ~~a lawyer~~ **[Cozzi rights]** is nowhere better stated than in the moving words of Mr. Justice Sutherland in Powell v. Alabama:"
- "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by ~~counsel~~ **[a federal court appeal]**. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If ~~charged with crime~~ **[his constitutional rights are violated]**, he is incapable, generally, of determining for himself whether the ~~indictment~~ **[state court ruling]** is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of ~~counsel~~ **[Cozzi rights]**, he may ~~be put on trial~~ **[lose in state court]** without a proper ~~charge~~ **[trial]**, and ~~convicted~~ **[denied]** upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible **[due to extrinsic fraud, a vitiated state court process, or Constitutional violations]**. He lacks both the skill and knowledge adequately to prepare his ~~defense~~ **[appeal to avoid Rooker-Feldman]**, even though he have a perfect one. He requires the guiding hand of ~~counsel~~ **[Cozzi rights]** at every step in the proceedings against him. Without it, though he be not ~~guilty~~ **[incorrect]**, he faces the danger of ~~conviction~~ **[losing]** because he does not know how to establish his ~~innocence~~ **[appeal to avoid Rooker-Feldman]**." 287 U.S., at 68-69, 53 S.Ct., at 64, 77 L.Ed. 158.

Epilogue - "E Pluribus Unum"

"All truth passes through three stages: First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident."
- *Arthur Schopenhauer*

"Truth will ultimately prevail where pains is taken to bring it to light."
- *George Washington*

"You are entitled to your opinion. But you are not entitled to your own facts."
- *Senator Daniel Patrick Moynihan*

The Founders of America and the Framers of the Constitution studied every form of government in history before they wrote the Declaration of Independence, the Constitution, and the Bill of Rights. They were brilliant, enlightened men with amazing wisdom and foresight who created the best form of government in world history. The Founders and Framers were also very enlightened spiritually.

- ***"E Pluribus Unum*** is the motto of the United States of America. *E Pluribus Unum* describes an action: *Many uniting into one*. An accurate translation of the motto is *"From Many, One"* or *"Out of Many, One"*. In 1956 the US Congress adopted the phrase *"In God We Trust"* as our national motto, replacing the historic *E Pluribus Unum* chosen by Thomas Jefferson, Benjamin Franklin and John Adams."

My viewpoint on this has a few spiritual analogies:

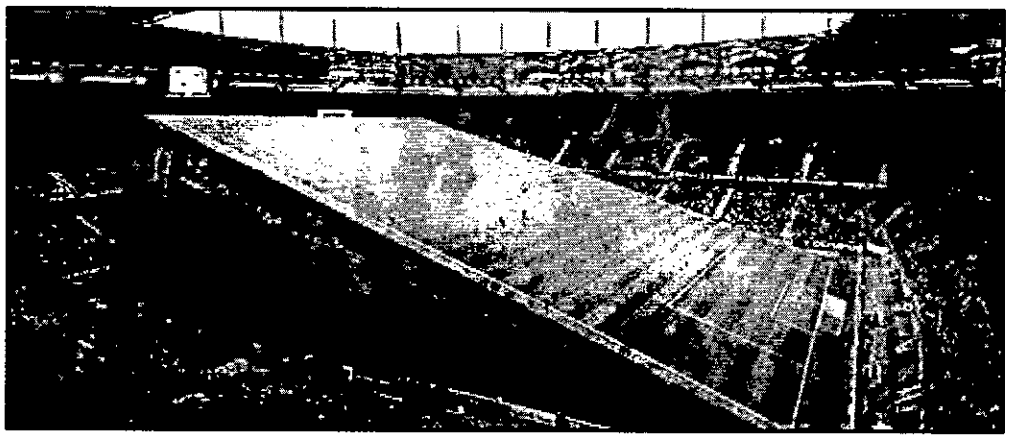
- God is like the ocean and each of us (and everything in the Universe) are each a drop of water in that ocean. Every drop of water is *equally* important to all the others. The drops of water ***are*** the ocean. That is why **we are all one**.

- Another analogy is that every thing in the Universe (person, animal, plant, etc.) are each like one thread in a tapestry. Every thread is *equally* important to all the others. When all the threads are woven together, they form the *tapestry of life*.

We are all one. ***E Pluribus Unum.***

Conclusion

What motivates me to keep fighting this *David v. Goliath* battle for the past 8 years? **The US Constitution.** The Constitution (and its amendments) is the greatest document ever created to promote liberty and prosperity. Due to *Rooker v. Fidelity Trust* in 1923, countless people have been denied justice. **The Constitution is the *key* that *unlocks the door* that has been *hidden and locked* for 100 years.** The Constitution levels the playing field for everyone - but ***only*** if all three branches of government **adhere to it.** Therein lies the problem. When one or more branches of our government stray from the intent of the Framers, then the ***playing field is no longer level.***



If the **roots of the tree** are ***poisonous*** *[violate the Constitution]* ...
then the **tree branches and fruit** are also ***poisonous*** *[violate the Constitution].*

Government agencies cannot be allowed to use *"fruit of the poisonous tree"*. If you give the government a ***sword*** and a ***shield*** to use against litigants, then it is ***required*** by the United States Constitution to give that same sword and shield to those litigants so they can **defend themselves in court.**

The underlying Article 8-A court case is about all injured workers/volunteers who were denied justice over the past 20 years, and those that will be denied justice in the future,

due to the WCB unconstitutional "Ground Zero" and "authorized entity/agency" restrictions, and the conflicts between the Article 8-A law and WCL § 123.

As I wrote in Appendix #1 pg 23, 52, Appendix H pg 15, and in Appendix I pg 6:
Question: Why would the WCB add "Ground Zero" and "Authorized entity/agency" restrictions that **violate** the Constitution?

Answer: **The New York Court of Appeals explained it well in a 1994 ruling:**
Matter of Johannesen v. City of New York Dept. of HPD, 84 N.Y.2d 129 (1994),
(it is also cited in the WCB Centennial Book [Appendix K]):

- "Finally, in a policy-based argument, ~~appellant~~ [**respondent**] suggests that recovery here will open floodgates and make every allergic reaction, common cold or ordinary ailment compensable. **This argument is often advanced when precedent and analysis are unpersuasive.**"

How *ironic* is that NYCA ruling, compared to the NY state court rulings against me? The following reference is cited often in NY Workers' Compensation Article 8-A court rulings. This citation makes it clear that the **New York Legislature intended the Article 8-A legislation to be liberally construed by the courts.**

Matter of Williams v. City of New York, 2009 NY Slip Op 07556 [66 AD3d 1203]:

- "Workers' Compensation Law article 8-A was enacted "to remove statutory obstacles to timely claims filing and notice for latent conditions resulting from hazardous exposure for those who worked in rescue, recovery or cleanup operations following the World Trade Center September 11th, 2001 attack" *(Senate Mem in Support, 2006 McKinney's Session Laws of NY, at 1915; see Minkowitz, Practice Commentaries, McKinney's Cons Laws of NY, Book 64, Workers' Compensation Law, art 8-A, at 488).* **It is undisputed that this legislation was intended to be liberally construed to provide a potential avenue of relief for workers and volunteers** suffering ill health as a result of their efforts in the aftermath of the terrorists' attacks. **The liberal intent of the statute is reflected by the fact that the Legislature has amended the law twice to extend the deadline for claimants to file for coverage** *(see L 2008, ch 489, § 18; L 2007, ch 199, § 1; see generally Matter of Smith v Tompkins County Courthouse, 60 NY2d 939, 941 [1983] [stating the general rule that the Workers' Compensation Law is to be liberally construed]).*"

Update since that 2009 ruling in Williams v. City of New York:

The Article 8-A law has been amended and extended about six times since it was first enacted by the New York Legislature. Moreover, the liberal intent of the statute is reflected by the fact that all six times the Legislature has extended the deadline, they have also made the law broader with a more liberal intent to cover more injured workers and volunteers. [Appendix #1 pg 25-28] [Appendix H pg 17-21]

This appeal case isn't about *me*. I'm insignificant to the story. It's the *message* that's important - not the *messenger*. As stated earlier, this case is about all the litigants who were denied justice for the past 100 years, since *Rooker v. Fidelity Trust* in 1923, and those that will be denied justice in the future, due to Rooker-Feldman. **God only knows how many people (and their families) have/will be denied justice.**

If not ***you***, then who? If not ***now***, then when?

Never say *never*, because anything is possible in life. Where there's a will, there's a way. Necessity is the mother of invention. Quoting the grandfather of Justice Clarence Thomas: *"Old Man Can't is dead. I helped bury him."* I hope I can borrow that wisdom to say:

"Old Man ~~Can't~~ **[Rooker-Feldman]** is dead. I helped bury him."

Based upon this Court's final ruling ...

I will find out if I *crash and burn*, or if I'm a ***phoenix rising from the ashes.***

Phoenix rising from the ashes in Book of Mythological Creatures
by Friedrich Johann Justin Bertuch (1747-1822)

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Guy Cozzi

Date: January 25, 2022