Appendix A 2022

2021-11-03
US Court of Appeals for Second Circuit
Summary Order Filed

21-812
Cozzi v. N.Y. State Workers' Comp. Bd.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of November, two thousand twenty-one.

PRESENT: REENA RAGGI,
GERARD E. LYNCH,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

GUY COZZI,

Plaintiff-Appellant,

v. No. 21-812-cv

NEW YORK STATE WORKERS' COMPENSATION BOARD, THE AMERICAN STOCK EXCHANGE, PACIFIC INDEMNITY COMPANY, THE FOLLOWING LIST STATED IN APPENDIX 1, PAGE 10 OF 55, NAMES THE PARENT COMPANIES, SUBSIDIARIES AND AFFILIATES OF PACIFIC INDEMNITY COMPANY, FISCHER BROTHERS, ESQ., THE CHUBB CORPORATION, CHUBB INSURANCE COMPANIES,

Defendants-Appellees.

FOR PLAINTIFF-APPELLANT: Guy Cozzi, *pro se*, Greenwich, CT

FOR DEFENDANTS-APPELLEES: No appearances.

Appeal from a judgment of the United States District Court for the Southern District of New York (Louis L. Stanton, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED.

Guy Cozzi, proceeding pro se, appeals from the March 5, 2021 judgment of the United States District Court for the Southern District of New York (Stanton, J.), which dismissed his complaint seeking reversal of New York state-court

decisions relating to his claims for workers' compensation. The District Court dismissed Cozzi's claims sua sponte for lack of subject matter jurisdiction because his claims were barred by the Rooker-Feldman doctrine. We review de novo the District Court's application of the Rooker-Feldman doctrine. Hoblock v. Albany Cnty. Bd. of Elections, 422 F.3d 77, 83 (2d Cir. 2005). We assume the parties' familiarity with the underlying facts and procedural history, to which we refer only as necessary to explain our decision to affirm.

This case arises from Cozzi's claim for employee cleanup benefits, filed in 2014 with the New York State Workers' Compensation Board ("WCB"), for injuries Cozzi allegedly sustained following the terrorist attacks on September 11, 2001. Cozzi claimed that he was exposed to toxic debris and dust while participating as a volunteer during the subsequent cleanup and recovery efforts and while working in his office building located near Ground Zero in downtown Manhattan. The District Court fully set out the procedural history relating to Cozzi's 2014 claim before the WCB, as well as the decision of the Appellate Division to affirm the agency's rejection of the claim on the ground that it was not arbitrary, capricious, or an abuse of discretion. See Cozzi v. American Stock

Exch., 49 N.Y.S.3d 316 (3d Dep't 2017), appeal dismissed, 30 N.Y.3d 937 (N.Y. 2017).

Cozzi sought to reopen his case with the WCB in 2017, but the agency denied his petition for lack of jurisdiction. Cozzi appealed, and the Appellate Division again affirmed, this time concluding that the WCB did not abuse its discretion when it determined that it lacked jurisdiction to reopen Cozzi's case. See Cozzi v. American Stock Exch., 99 N.Y.S.3d 142 (3d Dep't 2019), appeal dismissed, 33 N.Y.3d 1129 (N.Y. 2019), cert. denied, 140 S. Ct. 971 (2020). In 2018, Cozzi sought to file another volunteer recovery claim with the WCB, which concluded that Cozzi was attempting to relitigate a previously denied claim and took no action. Cozzi apparently did not challenge in state court the WCB's decision not to act on this claim.

Before the District Court, Cozzi attacked the WCB's 2014 dismissal of his claim, the WCB's refusal to entertain his 2018 volunteer recovery claim, and the Appellate Division's two final, adverse judgments affirming the WCB's denial of his applications to reconsider and reopen his case. Under the Rooker-Feldman doctrine, district courts lack jurisdiction over "cases brought by state-court losers

complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005); see Vossbrinck v. Accredited Home Lenders, Inc., 773 F.3d 423, 426 (2d Cir. 2014). Here, as noted, Cozzi claimed that he was injured by the Appellate Division's two final, adverse judgments affirming the WCB's decisions against him, he expressly invited the District Court to reject both judgments, and both judgments were entered before Cozzi commenced suit in federal court. Accordingly, we agree with the District Court that the Rooker-Feldman doctrine deprived it of subject matter jurisdiction to consider Cozzi's challenge to those state-court judgments.[1]

To the extent that Cozzi's claims directly complain of injuries caused by

1 Cozzi also argues that the Rooker-Feldman doctrine is unconstitutional because, given the small number of cases the Supreme Court can review on certiorari, it effectively deprives the vast majority of state-court civil litigants of any recourse in the federal courts where they allege that a state court has violated their federal constitutional rights. As Cozzi acknowledged at oral argument, however, we have no authority to determine the validity of Supreme Court precedent, and so we limit our analysis to the application of the doctrine to the instant case.

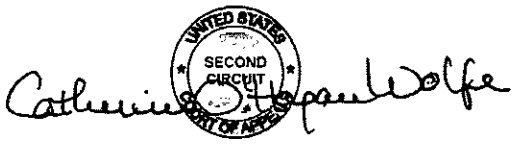
decisions of the WCB, a state administrative agency, it is not clear that the Rooker-Feldman doctrine barred the District Court's review of those claims. We have held that state administrative decisions unreviewed by state courts are not protected by that doctrine, see Mitchell v. Fishbein, 377 F.3d 157, 165 (2d Cir. 2004), but we have not considered in a precedential opinion whether the same is true of state administrative decisions that state courts have already reviewed.

We need not decide that question in the instant case, however, because claim preclusion barred the District Court from considering Cozzi's challenges to the WCB's decisions. Under New York law, "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy." Simmons v. Trans Express Inc., 37 N.Y.3d 107, 111 (N.Y. 2021) (emphasis omitted). The operative facts underlying Cozzi's federal claims are identical to those underlying the benefit claims presented to the WCB. Those benefit claims were litigated to finality, with the exception of his 2018 volunteer recovery claim. And it does not matter for purposes of claim preclusion that no court has ever reviewed the WCB's decision (or lack thereof)

regarding the latter claim, because it arises out of the same transaction as the claims that were litigated to finality: Cozzi's contribution to the clean-up efforts in the aftermath of the September 11 attacks. See Smith v. Russell Sage Coll., 54 N.Y.2d 185, 192–93 (N.Y. 1981) ("What factual grouping constitutes a transaction or series of transactions depends on how the facts are related in time, space, origin or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." (quotation marks omitted)). Accordingly, Cozzi cannot relitigate claims arising from the same facts in federal court.

We have considered Cozzi's remaining arguments and conclude that they are without merit. For the foregoing reasons, the judgment of the District Court is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: November 03, 2021
Docket #: 21-812cv
Short Title: Cozzi v. Workers' Compensation Board

DC Docket #: 21-cv-442
DC Court: SDNY (NEW YORK CITY)
DC Judge: Stanton

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:
* be filed within 14 days after the entry of judgment;
* be verified;
* be served on all adversaries;
* not include charges for postage, delivery, service, overtime and the filers edits;
* identify the number of copies which comprise the printer's unit;
* include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
* state only the number of necessary copies inserted in enclosed form;
* state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
* be filed via CM/ECF or if counsel is exempted with the original and two copies.

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: November 03, 2021
Docket #: 21-812cv
Short Title: Cozzi v. Workers' Compensation Board

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 21-cv-442
DC Court: SDNY (NEW YORK CITY)
DC Judge: Stanton

VERIFIED ITEMIZED BILL OF COSTS

Counsel for

_____

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

_____

and in favor of

_____

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____ ____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

_____
Signature

Appendix B 2022

2021-09-28
US Court of Appeals for Second Circuit
Oral Argument Hearing Calendar Notice

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: September 28, 2021
Docket #: 21-812cv
Short Title: Cozzi v. Workers' Compensation Board

DC Docket #: 21-cv-442
DC Court: SDNY (NEW YORK CITY)
DC Judge: Stanton

NOTICE OF HEARING DATE

Argument Date/Time:	Tuesday, October 26, 2021 at 10:00am.
Location:	Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY, 10007, 17th Floor, Room 1703

Time Allotment:	Guy Cozzi	5 minutes
	New York States Workers et al	On Submission

Counsel and non-incarcerated pro se litigants presenting oral argument must register with the courtroom deputy 30 minutes before argument.

Approximately one week prior to argument, the Court will advise the individuals who will appear of the format for the argument. The Court prefers to hold argument in person. However, argument may be held by Zoom, teleconference, or a combination of in-person and remote arguments, depending upon then current pandemic-related considerations. In addition, some parties who have demonstrated good cause by motion and judges may participate remotely. If an argument is in person, all individuals must wear a mask at all times in the courthouse, including in the courtroom and during oral argument. If an argument is remote, the parties will receive instructions to access Zoom or the teleconference.

A motion or stipulation to withdraw with or without prejudice must be filed no later than 3 business days prior to the scheduled date of argument. The Court will consider the motion or stipulation at the time of argument, and counsel's appearance is required with counsel prepared to argue the merits of the case. If a stipulation to withdraw with prejudice is based on a final settlement of the case, the fully-executed settlement must be reported immediately to the Calendar Team, and a copy of it must be attached to the stipulation.

Inquiries regarding this case may be directed to 212-857-8595.

See page 2 for additional information.

Counsel must file the completed form in accordance with Local Rule 25.1 or 25.2. Pro Se parties must submit the form in paper.

Name of the Attorney/Pro Se presenting argument:
Firm Name (if applicable):
Current Telephone Number:

The above named attorney represents:
( ) Appellant/Petitioner ( ) Appellee-Respondent ( ) Intervenor

Date:_____Signature: _____

NOTICE TO THE BAR

Offsite Video Argument. At this time the Court does not provide offsite video argument.

Recording of Argument. An audio recording of oral argument is available on the Court's website. In addition, a CD of an argument may be purchased for $31 per CD by written request to the Clerk. The request should include the case name, the docket number and the date or oral argument. CDs will be delivered by first class mail unless the request instructs to hold for pick- up or requests Federal Express Service, in which case a Federal Express account number and envelope must be provided.

Court Reporters. Parties may arrange - at their own expense - for an official court reporter to transcribe argument from a copy of the hearing tape or to attend and transcribe the hearing directly. A party must first obtain written consent from opposing counsel - or move the Court for permission - to have the court reporter attend and transcribe the hearing and must provide the calendar clerk written notice, including the name, address and telephone number of the attending reporter and, if applicable, the reporting firm at least one week prior to the hearing date.

Interpreter Services for the Hearing Impaired. Counsel requiring sign interpreters or other hearing aids must submit a written notice to the Calendar Team at least one week before oral argument.

Inquiries regarding this case may be directed to 212-857-8595.

Appendix C 2022

2021-03-05

US District Court For Southern District of New York

Order of Dismissal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GUY COZZI,

Plaintiff,

-against-

WORKERS' COMPENSATION BOARD, et al.,

Defendants.

21-CV-0442 (LLS)

ORDER OF DISMISSAL

LOUIS L. STANTON, United States District Judge:

Plaintiff, appearing *pro se*, brings this action invoking the Court's subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1332. He seeks the reversal of New York State courts' rulings in his workers' compensation case. By order dated March 3, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP). The Court dismisses the complaint for the reasons set forth below.

STANDARD OF REVIEW

The Court must dismiss an IFP complaint, or portion thereof, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they *suggest*," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

BACKGROUND

Plaintiff, a resident of Connecticut, brings this action against the New York State Workers' Compensation Board (WCB), the Chubb Corporation (Chubb), the American Stock Exchange (ASE), and Fisher Brothers, Esqs. – the law firm that represented Chubb and ASE in administrative and state-court proceedings. Plaintiff invokes both federal question and diversity jurisdiction and asserts that his federal constitutional and statutory rights were violated. He cites to the following provisions: "United States Constitution & United States Federal Laws. Separation of Powers–Article 1 & Article 3. Due Process–5th & 14th Amendments. Equal Protection–14th Amendment. 42 U.S.C. § 1983, U.S. Code § 706, [and] 5 U.S.C.S. § 7703(c)." (ECF No. 2, at 2.) Plaintiff seeks the reversal of the state-court judgment against him.

Plaintiff filed a 234-page complaint consisting of documents from the WCB's administrative proceedings and his state-court case. For the facts of his case, he refers the Court to the writ of *certiorari* he submitted to the United States Supreme Court and legal briefs he filed with the New York Court of Appeals and the New York Supreme Court, Appellate Division, Third Department (Appellate Division). These documents reveal the following: in September 2001, Plaintiff was employed in an office building near the World Trade Center (WTC). In the months following the September 11, 2001 terrorist attack, he sustained health injuries from breathing the "toxic 9-11 dust and debris" while participating in the cleanup and recovery efforts as a volunteer and working in his office building next to Ground Zero. (*Id.* at 18.)

In 2014, Plaintiff registered with the WCB under New York Workers' Compensation Law § 162, as a participant in the WTC rescue, recovery, and cleanup operations. He also filed a claim for workers' compensation benefits for injuries he suffered in 2001 at Ground Zero. But the WCB determined that Plaintiff was not a participant in the WTC cleanup efforts under Workers' Compensation Law § 161, and that his claim was untimely because it was not filed by

September 11, 2003 – within the two-year limitations period provided by state law, *see* Workers' Compensation Law § 28. On appeal, the Appellate Division affirmed the WCB's denial of benefits to Plaintiff, holding that it was not arbitrary, capricious, or constituted an abuse of discretion. *See Cozzi v. American Stock Exchange*, 148 A.D.3d 1500 (3d Dep't), *appeal dismissed*, 30 N.Y.3d 937 (2017).

In 2017, Plaintiff sought to reopen his claim with the WCB. But the WCB determined that it did not have jurisdiction to rehear or reopen the claim. Plaintiff again appealed, and the Appellate Division affirmed, finding that the WCB did not abuse its discretion in determining that it was without jurisdiction to reopen Plaintiff's claim. *See Cozzi v. American Stock Exchange*, 172 A.D.3d 1658 (3d Dep't), *appeal dismissed*, 33 N.Y.3d 1129 (2019), *cert. denied*, 140 S. Ct. 971 (2020).

Plaintiff now files this action seeking the reversal of the state courts' decisions. He asserts that the WCB and its Office of General Counsel denied him equal protection and due process when they refused to process his claim. (ECF No. 2, at 18.)

DISCUSSION

Plaintiff's complaint challenging the outcome of the state courts' decisions – which affirmed the New York State Workers' Compensation Board's denial of his claims – is barred under the *Rooker-Feldman* doctrine. The doctrine – created by two Supreme Court cases, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-86 (1983) – precludes federal district courts from reviewing final judgments of the state courts. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (holding that federal district courts are barred from deciding cases "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.").

The *Rooker-Feldman* doctrine applies where the federal-court plaintiff: (1) lost in state court, (2) complains of injuries caused by the state-court judgment, (3) invites the district court to review and reject the state court judgment, and (4) commenced the district court proceedings after the state-court judgment was rendered. *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 426 (2d Cir. 2014).

Plaintiff brings this action requesting that the Court reverses the state courts' decisions affirming the WCB's denial of workers' compensation benefits to him. He lost in state court, complains of injuries caused by the state-court judgment entered before this action commenced, and specifically invites this Court to reject the state courts' rulings. Plaintiff is therefore asking this Court to "sit in review of the state court judgment," *Vossbrinck*, 773 F.3d at 427, which the *Rooker-Feldman* doctrine prohibits. Because Plaintiff's claims are inextricably intertwined with the state-court judgment against him, the Court lacks subject matter jurisdiction under the *Rooker Feldman* doctrine to review his claims or reverse the state courts' rulings.

CONCLUSION

Plaintiff's complaint, filed IFP under 28 U.S.C. § 1915(a)(1), is dismissed for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). All other pending matters in this case are terminated.

Plaintiff has consented to electronic service. (ECF No. 3.)

SO ORDERED.

Dated: March 5, 2021
New York, New York

Louis L. Stanton

Louis L. Stanton
U.S.D.J.

Appendix D 2022

2021-03-05
US District Court For Southern District of New York
Civil Order Judgment Dismissal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GUY COZZI,

Plaintiff,

-against-

WORKERS' COMPENSATION BOARD, et al.,

Defendants.

21-CV-0442 (LLS)

CIVIL JUDGMENT

Pursuant to the order issued March 5, 2021, dismissing the complaint,

IT IS ORDERED, ADJUDGED AND DECREED that the complaint is dismissed under Rule 12(h)(3) of the Federal Rules of Civil Procedure.

Plaintiff has consented to electronic service. (ECF No. 3.)

SO ORDERED.

Dated: March 5, 2021
New York, New York

Louis L. Stanton

Louis L. Stanton
U.S.D.J.

Appendix E 2022

2021-06-10
Plaintiff-Appellant Principal Brief
filed at US Court of Appeals For Second Circuit

21-812

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Guy Cozzi - Plaintiff-Appellant

v.

Workers' Compensation Board, et al. - Defendants-Appellees

On Appeal from the United States District Court

for the Southern District of New York

PRINCIPAL BRIEF

Principal Brief of Appellant Guy Cozzi, Pro-Se & IFP

Guy Cozzi
29 Valley Drive, mailbox # 4083
Greenwich, CT 06831
Tel. 203-424-0811
Email: nemmar@gmail.com

Table of Contents

Index to Appendices

List of Appendices filed with my USDC complaint and this USCA brief:

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.
14. APPENDIX L - NY Daily News interview of ASPCA worker 9-11 WCB claim.
15. APPENDIX M - 2017-2018 emails about RB-89 rehearing and WTCvol-3 form.

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

Table of Authorities

Constitutional & Statutory Provisions Involved

United States Constitution

- Separation of Powers
  - Article 1 - The Legislative branch
  - Article 3 - The Judicial branch
- Due Process - 5th Amendment and 14th Amendment
- Equal Protection - 14th Amendment

United States Federal Laws

- Rooker-Feldman and Pullman Abstention doctrines
- 42 U.S.C. § 1983. Civil Rights claims for deprivation of rights and property rights without due process - https://www.law.cornell.edu/uscode/text/42/1983
- 28 U.S. Code § 1361 - https://www.law.cornell.edu/uscode/text/28/1361
- U.S. Code § 706. Scope of Review - www.law.cornell.edu/uscode/text/5/706
- 5 U.S.C.S. § 7703(c) - www.law.cornell.edu/uscode/text/5/7703
- Constitutional-Fact Doctrine - https://definitions.uslegal.com/c/constitutional-fact-doctrine/

New York State Constitution - www.dos.ny.gov/info/constitution.htm

- Article I Section 18 - [Workers' compensation] §18. Nothing contained in this constitution shall be construed to limit the power of the Legislature to enact laws for the protection of the lives, health, or safety of employees;
- Article III Section 1 - The Legislative power of this state shall be vested in the senate and assembly.

New York State Laws

- Article 78: N.Y. C.P.L.R. § 7801 - https://law.justia.com/codes/new-york/2012/cvp/article-78/
- New York CPLR 5501(a)(i)(ii)(iii) and CPLR 5602(a)(1)(i) - https://nycourts.gov/ctapps/forms/civiloutline.pdf
- 12 NYCRR 300.13 and 12 NYCRR 300.14 and RB-89 form for rehearings - www.wcb.ny.gov/content/main/SubjectNos/sn046_940.jsp
- New York Workers' Compensation Law (WCL) - www.nysenate.gov/legislation/laws/WKC
  - WCL Article 8-A - www.nysenate.gov/legislation/laws/WKC/A8-A
  - WCL § 123 - www.nysenate.gov/legislation/laws/WKC/123
  - WCL § 165 - www.nysenate.gov/legislation/laws/WKC/165
  - WCL § 164 - www.nysenate.gov/legislation/laws/WKC/164
  - WCL § 162 - www.nysenate.gov/legislation/laws/WKC/162
  - WCL § 161 - www.nysenate.gov/legislation/laws/WKC/161
  - WCL § 141 - www.nysenate.gov/legislation/laws/WKC/141

Subject Matter & Appellate Jurisdiction

FRAP 28(a)(4)

(a) I stated the relevant facts establishing jurisdiction in my documents filed with my complaint in the United States District Court (**USDC**) for Southern District of NY and also in this brief for the United States Court of Appeals for the Second Circuit (**USCA2**). (See above: *Constitutional & Statutory Provisions Involved).*

(b) The basis for the court of appeals' jurisdiction is included in this brief. See *Table of Contents* section above.

(c) The filing dates establishing the timeliness of the appeal or petition for review:

- Original complaint filed on January 15, 2021 in the USDC of NY.
- USDC of NY ruling to dismiss date was March 5, 2021.
- Notice of Appeal filed with USCA2 on March 29, 2021.

(d) The appeal is from a final order or judgment that disposes of all parties' claims.

Issues Presented For Review

FRAP 28(a)(5)

The issues presented for review are detailed in this brief.

The Rooker-Feldman doctrine is inapplicable and it is also unconstitutional.

Statement of the Case

FRAP 28(a)(6), LR 28.1

My original complaint was filed on January 15, 2021 in the USDC of NY. That was case 1.21-cv-00442-LLS Cozzi v. WCB, et al..

USDJ Louis L. Stanton issued the ruling to dismiss on March 5, 2021.

I filed the Notice of Appeal with the USCA2 on March 29, 2021.

Statement of the Facts

FRAP 28(a)(7)

The issues presented for review are detailed in this brief.

The Rooker-Feldman doctrine is inapplicable and it is also unconstitutional.

Summary of the Argument

This brief is in response to the March 5, 2021 Order of Dismissal by the USDC of NY. I object to the court's conclusions in that ruling. The Rooker-Feldman doctrine is inapplicable to this case based on facts in this brief. Moreover, the Rooker-Feldman doctrine is unconstitutional.

On February 19, 2021 I also received a Recommended Ruling to Dismiss by the USDC of CT Magistrate Judge. I may cite both rulings in this brief because they use the same basis for dismissal - the Rooker-Feldman doctrine.

I filed my original complaint in the federal district courts of ***both*** NY and CT on January 15, 2021. I am not a lawyer and 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.

On May 6 the Court ordered that this case be an Expedited Appeal with my brief due by June 10. Unfortunately, I had little time to write and edit this brief. I also was not able to do research at a law library due to the limits of my employment schedule and assisting my mother daily due to her serious health issues.

Appendix N has my ideas for the remedy to fix the Rooker-Feldman doctrine. That is separate from my legal arguments in this principal brief which show that the Rooker-Feldman doctrine is inapplicable and it is also unconstitutional.

- Note: I am representing myself without an attorney. I am not an attorney 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, stress, and health problems cause me to write anything that a judge would consider inappropriate for a court document.

- **The Covid-19 coronavirus pandemic should extend the statute of limitations by at least a year in the interest of justice.** I waited a year due to the coronavirus pandemic so that I could use a local law library to do research for the district court case. Unfortunately, the Covid-19 pandemic has still not ended and the law library remained closed when I filed the case.

- The Appendix documents I reference in this brief are those which 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 Abbreviations:** Many abbreviations used in this brief can be found in my Appendix #1 on pages 21-22 of my District court filing.

- 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]**

---

1 - Relief Sought

I would like to update the relief sought for my filing. Based upon the court's ruling to dismiss, I want to avoid any legal technicalities that block my case from moving forward. Therefore, I request the relief sought to include federal judicial review of:

1. NY State administrative agency, Workers Compensation Board (**WCB**) and WCB Office of General Counsel (**OGC**) actions, decisions and rulings.
2. I lost **administrative** decisions that the WCB Law Judges (**WCLJ**) and WCB ruled on. [Appendix G 1-5] Those were not *judicial court* decisions, but instead they were *administrative* decisions.
3. The actions of the WCB, OGC and WCLJ violated the Constitution for Separation of Powers, Due Process and Equal Protection.
4. NY State administrative agency (WCB) refused to process my Article 8-A WTCvol-3 claim for my *Volunteer Recovery* work.
5. I seek compensatory damages and equitable relief for the actions of the WCB and OGC which caused intentional infliction of emotional distress. (See point #11 Vitiated State Court Process).
6. New York State court rulings.
7. New York State statute violates the US Constitution. **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]
8. New interpretations of laws and doctrines raised in my brief and appendices.

If the federal court decides they lack jurisdiction for one of those (i.e. NY court rulings), then the other causes of action should be the focus of the relief sought. If

allowed, I also request federal judicial review for the new interpretations of laws and doctrines (i.e. Rooker-Feldman doctrine) as I write about in this brief.

---

2 - Defendants

The defendants include: the same 3 respondents/defendants since this case started in 2014; and the WCB and OGC for their actions that violated Separation of Powers and my Due Process and Equal Protection rights. Chubb Insurance company owns the Pacific Indemnity Insurance company. The list of defendants and the companies owned by Chubb are listed in the SCOTUS Writ of Certiorari. [Appendix #1 pg 10] I used the same list that the Chubb/Pacific Indemnity attorneys listed in their 06-21-2019 rebuttal submitted to the New York Court of Appeals.

1. New York State Workers' Compensation Board - Respondent
    a. WCB Office of General Counsel and WCB Judges
2. American Stock Exchange - Employer-Respondent
3. Pacific Indemnity Company - Carrier-Respondent
    a. The list constitutes the names of the parent companies, subsidiaries and affiliates of Pacific Indemnity Company. [Appendix #1 pg 10]

3 - 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 completely separate insurance claims for *different* accidents/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 and debris 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 and debris 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 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 violation 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 https://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 for this specific volunteer claim. 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 New York 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 **not** 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. Since my prior appeals were determined to be filed as "untimely" by the NY Supreme Court and the NY Court of Appeals, then my Article 8-A claim was never "*truly closed*" based on the intent of the NY Legislature.

4 - Pullman Abstention Doctrine

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

- A federal court's decision not to exercise jurisdiction over a case. **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 section above: *Constitutional and Statutory Provisions Involved).*

This case has **many** unresolved questions of both state law and the federal Constitution. This is clear from my SCOTUS Writ of Certiorari and Appendices. A federal court could get the state law question wrong because NY State Article 8-A law is so ***extraordinarily* rare and unique.** Therefore, the federal court needed to abstain until the state law questions were adjudicated. The problem now is that the state administrative agency and state courts ***ignored both*** the state law and the federal Constitution issues of the case. [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.*"

5 - Rooker-Feldman Doctrine

I'm not a lawyer and I had never heard of the Rooker-Feldman doctrine until I read it in the February 19, 2021 USDC of CT ruling to dismiss. I did an internet search to learn about that doctrine. This written brief is my analysis.

6 - 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 - 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:

- 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 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.

7 - 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 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? I believe 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 (NYSC), NY Court of Appeals (NYCA), 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? I believe the answer is "yes".

---

8 - NY State Statute is Unconstitutional

The Rooker-Feldman doctrine does **<u>not</u>** 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 example of how a statute applied in state court was unconstitutional. 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."

---

9 - Constitutional Violations Were Ignored

Does Rooker-Feldman only apply to constitutional issues raised **after** state court decisions? What about violations of the Constitution that are raised during the government administrative agency hearings, trials and appeals, but those violations (injuries) were **never remedied** (they were ignored) **before, during and after** the state court rulings? Does that make Rooker-Feldman 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 this case for the WCB Law Judge (WCLJ) administrative decisions and administrative Board decisions. They ignored the violations of the Constitution I raised. I then presumed the NYSC and NYCA courts would correct the violations of the Constitution in the WCB rulings. But those rulings were not corrected by those courts. So 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 appeal briefs to the NYSC, NYCA and SCOTUS.** [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.

---

10 - "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 government administrative agency hearings, trials and appeals, but those violations (injuries) were **never** addressed (they were ignored) **before, during and after** the state court rulings? Does that make the Rooker-Feldman doctrine inapplicable?

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 defend themselves** in appeals courts. Denying claimants that right would be 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.

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

You cannot have "**intelligent and meaningful judicial review**" when the WCB uses unconstitutional restrictions to deny valid Article 8-A claims, and then they use those *same* unconstitutional 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 basis and foundation 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 **defend themselves in court.**

---

11 - 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 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 #9 above.)
2. Another "prior injury that the state court failed to remedy" is noted in point #3 above. 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 final resolution** 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 ignored their own court guidelines, rules and their **"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 point #1 and #11).
5. The government used "*fruit of the poisonous tree*" to win their state court rulings as noted in point #10 above. That "vitiated the state-court process".

I provided the NY courts with evidence of the **vitiated state court process**. The WCB and OGC 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

- *(Rather than me reprint it all here, you can see it in Appendices M and H.)*

Appendix H page 13-14, and Appendix B - No. G110 9023 WCB 01-19-2018

- *(Rather than me reprint it all here, you can see pages 13-14 of Appendix H.)*

The following are some court precedent cases to support these arguments:

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

- "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)

- "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).*"

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

- "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.*
- Footnote 5. The Rooker-Feldman doctrine does not apply to state **administrative** judgments. *See Van Harken v. City of Chicago, 103 F.3d 1346, 1349 (7th Cir.), cert. denied, ___ U.S. ___, 117 S.Ct. 1846, 137 L.Ed.2d 1049 (1997)*"

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

- "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))."

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

- "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."

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

- **"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).*"

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

- "To the contrary, when the source of the injury is the defendant's actions (and not the state court judgments), the federal suit is independent, even if it asks the federal court to deny a legal conclusion reached by the state court:"
- "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).*"

---

12 - 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 fundamental aspects of this case. See point #4 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)

- "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)

- *"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 would waste judicial resources. **Yet they apply doctrines that might contradict each other and achieve the *diametrically opposite* effect. The doctrines actually encourage *more* cases to be filed in federal and state 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 question is...

1. Do courts want litigants to **not waste** court time and resources by **not** filing duplicative state and federal cases in the hopes that courts will apply the **Pullman Abstention** doctrine?
2. Or do courts want litigants to use 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*. To add insult to injury, Pro-Se and IFP litigants who are not lawyers and have no money to pay for legal counsel, **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.

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]

---

13 - 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. Pro-Se and IFP litigants who are not lawyers and have no money to pay for legal counsel and fees, 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 becoming **overwhelmed** with too many court cases as it is today. **Back in 1789 did SCOTUS get over 7,000 petitions to appeal every year, as they do today?** No. Therefore, 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?

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. **You have over 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. I say this with all due respect for SCOTUS. It's obvious that the nine Justices do not have the time nor the judicial resources to hear many cases each year. It's just 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 or an intermediate federal court will solve the problem. The Legislature is not a viable strategy for fixing conflicting judicial precedents.

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 Due Process and Equal Protection.

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

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

- **US Supreme Court Justice Thomas, concurring in the decision:**
  - "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."**

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. The *Federalist Papers* and *Marbury v. Madison* emphasize this.

Federalist Papers: Primary Documents in American History

- https://guides.loc.gov/federalist-papers/full-text
- 37 Concerning the Difficulties of the Convention in Devising a Proper Form of Government
- 40 The Powers of the Convention to Form a Mixed Government Examined and Sustained
- 41-43 General View of the Powers Conferred by the Constitution
- 44 Restrictions on the Authority of the Several States
- 45 The Alleged Danger From the Powers of the Union to the State Governments Considered
- 46 The Influence of the State and Federal Governments Compared
- 47 The Particular Structure of the New Government and Distribution of Power Among Its Different Parts
- 48 These Departments Should Not Be So Far Separated as to Have No Constitutional Control Over Each Other
- 51 The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments
- 78-83 The Judiciary Department

The Federalist Papers prove that the clear intent of the Framers of the Constitution was to ensure checks and balances on power. For example, here is a quick view of the basics for **Federalist No. 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 comparisons in terms of the **federal** courts as the 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, as exemplified by the Supreme Court's de facto revision of the Eleventh Amendment. 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, declared in its statutes, 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).*

Marbury v. Madison

I believe it should be the responsibility of federal **district** courts to provide judicial review to correct violations of the Constitution in **state** court rulings.

- https://en.wikipedia.org/wiki/Marbury_v._Madison
- *Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803),* was a landmark U.S. Supreme Court case that established the principle of judicial review in the United States, meaning that American courts have the power to strike down laws, statutes, and some government actions that they find to violate the Constitution of the United States. Decided in 1803, Marbury remains the single most important decision in American constitutional law. The Court's landmark decision established that the U.S. Constitution is actual law, not just a statement of political principles and ideals, and helped define the boundary between the constitutionally separate executive and judicial branches of the federal government.

---

14 - Judicial Discretion and Review

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

- https://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 to have federal district court judicial discretion and judicial review. It is a **gross injustice to <u>not</u>** allow judicial review by federal district courts of state rulings that violate the Constitution.

---

15 - 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 **<u>both</u> state and federal courts** - and do it quickly to not miss deadlines.
3. Pro-Se and IFP litigants are required to learn both of those at the same time so Rooker-Feldman doesn't block their federal court options.

All of that just because of Rooker-Feldman? **Why not just fix the doctrine itself and <u>eliminate</u> the problems for everyone?** What is the remedy for all the Rooker-Feldman problems? See Appendix N.

Here are some 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.*

- https://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**.

- https://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. (See Appendix N).

In Forma Pauperis - State and federal 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 access to getting 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 of Right to Counsel, Miranda Rights, and In Forma Pauperis, are clearly compatible with the **intent of the Framers**. The judicial branch also needs to correct injustices in the court system created by the Rooker-Feldman doctrine to *level the playing field* for Pro-Se and IFP litigants.

---

16 - 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...

- *"Sorry Dred Scott, game over for you. Sandford won in state court. The judicial branch has to uphold Rooker-Feldman."*
- *"Sorry Homer Plessy, you're too late. Ferguson won in state court. The judicial branch must adhere to Rooker-Feldman."*
- *"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 am merely trying to preserve and defend my rights under the Constitution. I respectfully ask the following questions:

- **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?
- How is my analogy, and many other court cases of injustice, **not** possible today in our judicial system due to Rooker-Feldman?
- 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 very 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 fundamental and crucial 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."

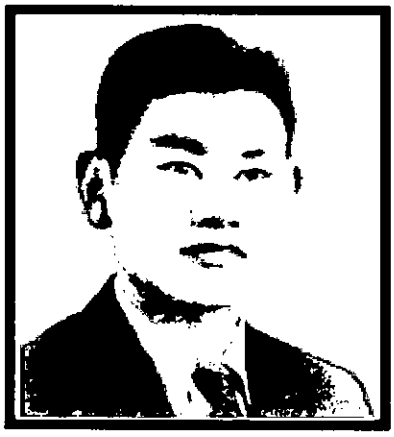
... "**One wonders what this Court waits for.** We failed to settle this dispute before the election, and thus provide clear rules. Now we again fail to provide clear rules for future elections. **The decision to leave election law hidden beneath a shroud of doubt is baffling.** By doing nothing, we 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

17 - Rooker-Feldman is Unconstitutional

Part 1:

The Rooker-Feldman doctrine is **unconstitutional** because it violates Due Process and Equal Protection of the US Constitution. Moreover, it gives **plenary power** to state courts against Pro-Se and IFP litigants who do not know the judicial system rules and procedures. To add insult to injury, the Rooker-Feldman doctrine conflicts with the Pullman Abstention doctrine. Those are plenty of reasons to show that **Rooker-Feldman violates the Constitution and the intent of the Framers**.

- Due Process - 5th Amendment and 14th Amendment
- Equal Protection - 14th Amendment

I respectfully ask this Court the following questions:

1. What is the criteria that 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 new interpretations of Workers Compensation laws I raised in my state court briefs)
3. Do federal district 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:

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, Secretary of State of the United States

- "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." https://www.law.cornell.edu/supremecourt/text/5/137

Part 3:

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 itself ignores or fails to correct violations of the Constitution?** Doesn't that violate a judges' 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:

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 SCOTUS Writ of Certiorari. (The page references cited below for each case refer to the page numbers in my Writ of Certiorari [Appendix #1 pg 16, 45].)

United States Supreme Court (SCOTUS) cases

1. Auer v. Robbins, 519 U.S. 452 (1997) **SCOTUS Court** - pg 47
2. Bountiful Brick Co. v. Giles, 276 U.S. 154 (1928) **SCOTUS Court** - pg 51
3. Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984) **SCOTUS Court** - pg 47
4. Christensen v. Harris County, 529 U.S. 576 (2000) **SCOTUS Court** - pg 49
5. Cudahy Packing Co. v. Parramore, 263 U.S. 418 (1923) **SCOTUS Court** - pg 50-51
6. Erie R. Co. v. Winfield, 244 U.S. 170 (1917) **SCOTUS Court** - pg 51
7. Heckler v. Day, 467 U.S. 104 (1984) **SCOTUS Court** - pg 48
8. Perez v. Mortg. Bankers Ass'n, 135 S. Ct. 1199 (2015) **SCOTUS Court** - pg 49
9. Pittston Coal Group v. Sebben, 488 U.S. 105 (1988) **SCOTUS Court** - pg 49
10. Skidmore v. Swift & Co., 323 U.S. 134 (1944) **SCOTUS Court** - pg 47

Federal Court cases

1. Holloway v. Merit Sys. Protection Bd., US App. LEXIS 10591 (1995) - pg 47
2. Jones v. MSPB, 256 Fed. Appx. 353 (2007) - pg 48
3. Rosler v. Derwinski, 1 Vet. App. 241 (1991) - pg 48

New York State Court cases

1. Alonzo v. NYC Dept. of Probation, 72 N.Y.2d 662 (1988) - pg 35
2. Bender v. Jamaica Hospital, 40 NY 2d 560 (1976) - pg 37
3. Caldas v. 86 Alda Restaurant and WCB, NYSC 167 A.D.2d 594 (1990) - pg 24
4. Capital IQ, 2012 NY Wrk Comp LEXIS 3749, WCB #00345281 - pg 34
5. Con Edison, 2008 NY Wrk Comp LEXIS 1247, WCB #00633043 - pg 34
6. Cucci v. Rexers Tang Soo Do Karate Aca., NYSC 34 A.D.3d 887 (2006) - pg 24

7. Dinelle v. Workshop Inc and WCB, NYSC 181 A.D.2d 969 (1992) - pg 24
8. Doctors Council v. NYCERS, 71 N.Y.2d 669 (1988) - pg 36
9. Dynamex Ins, 2013 NY Wrk Comp LEXIS 11957, WCB #00109840 - pg 34
10. Employer: EH&S Pro Staffing, G120 4942, 2016 WL 2607570 NY WCB - pg 29
11. Employer: NY State Police, G099 9174, 2015 WL 4549347 - pg 29
12. Employer: WTC Volunteer, AA05 0013, 2016 WL 5866243 NY WCB - pg 29
13. Field Delivery Service v. Lillian Roberts, Dept of Labor, NYCA 66 N.Y.2d 516 (1985) - pg 45
14. Goldberg v. 954 Marcy Corporation, 276 NY 313 (1938) - pg 41,42,44
15. Hazan v. WTC Volunteer Fund, NYSC AD3d, 517129 (2014) - pg 37,39
16. Johannesen v. City of New York Dept. of HPD, 84 N.Y.2d 129 (1994) - pg 23,31,41,52
17. Masse v. Robinson Co, 301 N.Y. 34 (1950) - pg 40
18. Merrill Lynch, 2012 NY Wrk. Comp. LEXIS 3861, WCB #0202479 - pg 34
19. Middleton v. Coxsackie Fac, 38 N.Y.2d 130 (1975) - pg 40
20. NYC Housing Preservation, 2012 NY Wrk Comp LEXIS 1712, WCB #00751273 - pg 34
21. NYC Transit Authority, 2009 NY Wrk Comp LEXIS 5438, WCB #00802941 - pg 34
22. PBA v. City of New York, 41 NY 2d 205 (1976) - pg 36
23. Richard Rosenblatt, 2012 NY Wrk Comp LEXIS 3490 WCB #00725502 - pg 34
24. Rodgers v. NYC Fire Department, NYSC AD3d, 508278 (2011) - pg 35
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

---

18 - Subject Matter Jurisdiction

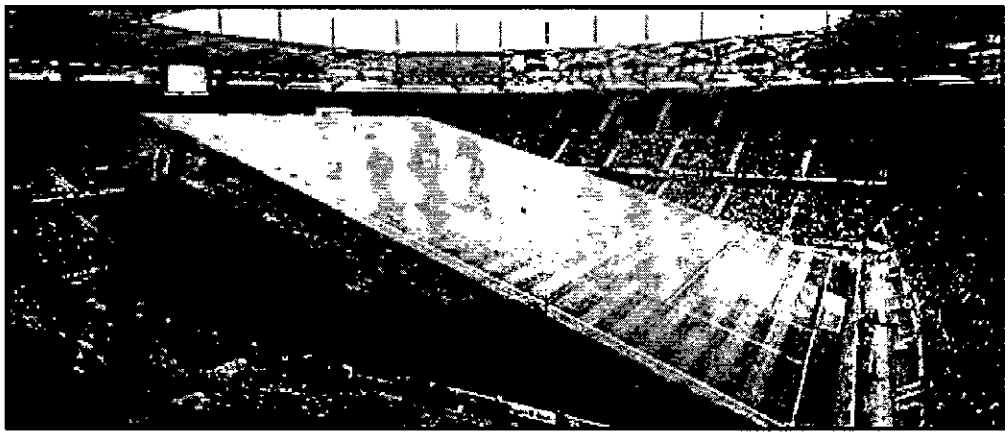
Long v. Shorebank Dev. Corp., 182 F.3d 548, 555 (7th Cir. 1999)

- "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).*"

Conclusion

What motivates me to keep fighting this *David v. Goliath* battle? **The United States Constitution.** Since *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.***



Government agencies cannot be allowed to use *"fruit of the poisonous tree".*
If the roots of the tree are poisonous *[violate the Constitution]* ...
then all the tree branches and fruit are poisonous *[violate the Constitution].*

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.**

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 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 case isn't about *me*. This case is about all injured workers 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.
And *now* this case is also about all the Pro-Se and IFP 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 the Rooker-Feldman doctrine. **God only knows how many people (and their families) have been denied justice for almost 100 years.**

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

I remember in the early 1990's, I saw an interview of a famous federal court judge after he retired. I don't remember his name or the court, but something he said was very profound. He was asked about overturning criminal convictions. He said:

*"If I thought someone was guilty, then I would make it **very difficult** to overturn the case; but if I thought someone was innocent, then I would **find** a way to overturn."*

My hope is that a federal court will agree with the latter and find a way to overturn this case. If the ruling to dismiss is reversed, then I don't think I need a trial. I would ask for a Summary Judgement, and that might be all I need to win.

On page 11 of the USDC of CT ruling to dismiss it says:

- *"The Court lacks jurisdiction to grant the relief Cozzi seeks. The Court will lack such jurisdiction no matter how creatively plaintiff may attempt to rephrase or reframe his Complaint. "The allegations set forth in [the] complaint, even if read liberally, are substantively deficient, and there is no information [plaintiff] could provide that would make his complaint viable." Turner v. Boyle, 116 F. Supp. 3d 58, 96 (D. Conn. 2015). "The problem with [plaintiff's] causes of action is substantive; better pleading will not cure it." Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000). "Where there is no indication that pleading additional facts would resuscitate a claim that has been dismissed, the Court need not grant leave to amend." Kleftogiannis v. Inline Plastics Corp., 411 F. Supp. 3d 216, 230 (D. Conn. 2019). Under such circumstances, amendment of the Complaint would be futile. Accordingly, the undersigned recommends that the Complaint be DISMISSED, without leave to amend."*

Never say *never*, because anything is possible in life.
Where there's a will, there's a way.

After you read this brief and appendices, I ask...
Does this Court still think amendment of my complaint is ***futile***?
Do ***any*** of my legal arguments change your mind about the ruling to dismiss?

Based upon the 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)

Respectfully submitted,

/s/ Guy Cozzi

Date: June 10, 2021

Appendix F 2022

2021-06-10
Plaintiff-Appellant Appendix N
filed at US Court of Appeals For Second Circuit

21-812

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Guy Cozzi - Plaintiff-Appellant

v.

Workers' Compensation Board, et al. - Defendants-Appellees

On Appeal from the United States District Court

for the Southern District of New York

APPENDIX N - Remedy for Rooker-Feldman

Appendix N of Brief of Appellant Guy Cozzi, Pro-Se & IFP

Guy Cozzi
29 Valley Drive, mailbox # 4083
Greenwich, CT 06831
Tel. 203-424-0811
Email: nemmar@gmail.com

Table of Contents

APPENDIX N - Remedy for Rooker-Feldman

This Appendix N has my ideas for the remedy to fix the Rooker-Feldman doctrine. This is separate from my legal arguments in my principal brief which show that the Rooker-Feldman doctrine is inapplicable and it is also unconstitutional.

1 - Rooker-Feldman is The Tail Wagging The Dog

There are many federal court rulings that show judges looking for ways to get around Rooker-Feldman and declare it **inapplicable** in those cases:

1. For the Pullman abstention (see my brief point #4, #12).
2. For nonjudicial administrative or legislative rulings, as opposed to judicial court rulings (see my brief point #7).
3. For challenges to the validity of state statutes (see my brief point #8).
4. For extrinsic fraud (see my brief point #11).
5. For vitiated state court processes (see my brief point #11).
6. 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 my brief point #12).
7. (If I had more time to do research I would find more examples).

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.

- https://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' is correct. Maybe 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** 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 a **statute of limitations** to block judicial review.

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. Would the Framers agree with the Rooker-Feldman doctrine?

Rooker Feldman doctrine is *the tail that wags the dog*. It's a game of *twister*.
Why not just fix the doctrine itself and <u>eliminate</u> the problems for everyone?
It's similar to how WCL § 123 is the reason why the WCB twists the facts into a pretzel to pick a "Date of Disablement". [Appendix #1 pg 30, 32]

---

2 - Remedy for Rooker-Feldman

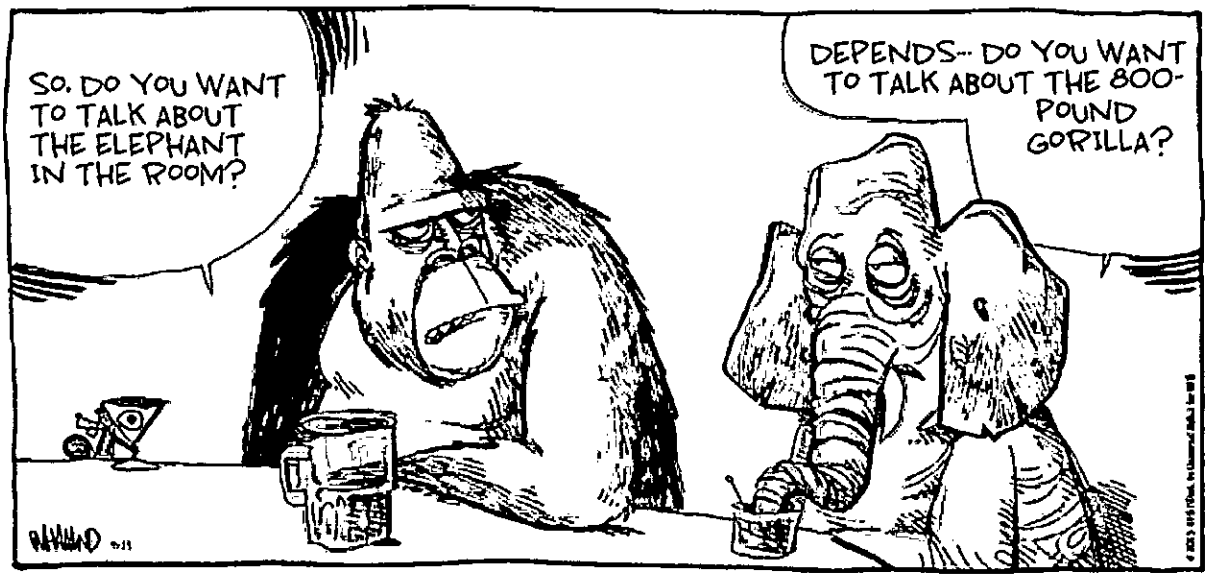
The Legislative and Judicial branches know that Pro-Se and IFP litigants are a **unique class that should not be blocked from defending their rights in court**. That logic must also apply to federal courts after state court appeals fail to address violations of the Constitution.

The courts have 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.

- Why won't the courts "level the playing field" to fix the problems caused by the Rooker-Feldman doctrine?
- 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 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 the doctrine named after them.

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*, **combined.**



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

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

---

3 - Miranda Rights for Rooker-Feldman

What is the 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 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 government should include a *Cozzi rights* warning about Rooker-Feldman on all rulings and filing forms. **The warning notice would explain the deadlines for the litigants 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 are not lawyers and have no money to pay for legal counsel, are able to **protect their rights and defend themselves if constitutional violations are not corrected by state courts.**

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 no mention of *federal* court deadlines in the state agency and court rulings, filing forms or guidebooks.** That is unfair and 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 or filing forms), I would not be in this position of trying to overturn a district court ruling to dismiss my case - **and neither would *countless* other Pro-Se and IFP litigants be in this situation.**

- *"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)

On page 12 of the February 19, 2021 USDC of CT ruling to dismiss, the federal judge did write in their ruling the details for an appeal deadline. That was *very helpful* and kind for the judge to do that. Why don't all judges do that? It should be required by law (or doctrine) to notify litigants of federal and state appeal deadlines in all court rulings. **Would this lead to the federal courts being overwhelmed by "duplicative" cases or by appeals from "losers in state courts" looking to get a *second* 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. *What's good for the goose is good for the gander.* For example...

1. **Rule 14(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 [**which may be violations of the Constitution**]."

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

---

4 - Tell People the Rules of the Game

For Pro-Se and IFP litigants who do not know the judicial system rules and procedures, 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 what the rules of the game are, but those rules are kept hidden from the other team. 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, parking signs, etc.. Why? **Because the government knows it has to tell people the *rules of the game***. You cannot play a game of *hide and seek* with the (laws) rules of the game. 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 information where it is readily seen by the people affected by those laws or rules. **That's the same concept for the *Cozzi rights* warning**. The government has to tell people the "rules of the game" to file federal and state appeals. That's not giving legal advice. That's merely telling people the rules so they can comply.

Here's a surprising fact... Look at the "*Comparing Federal & State Courts*" page today on the federal US Courts website. 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.

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?

https://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."*

---

5 - 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)

- https://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~~ **[lose]** upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible **[due to extrinsic fraud or a vitiated state court process]**. He lacks both the skill and knowledge adequately to prepare his ~~defense~~ **[appeal and 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

I'm fighting this legal battle for what I believe are valid reasons. I'm just trying to get a court to correct the obvious violations of the Constitution in the New York State administrative agency and court rulings for this case.

I'm not the only person who thinks I'm correct with my conclusions about this.... To qualify for Article 8-A you must have participated as a worker or volunteer in the rescue, recovery, or cleanup operations at the *World Trade Center site* anytime between September 11, 2001 and September 12, 2002. Firefighters, police, first responders and many other people already know about the World Trade Center *Victims Compensation Fund* (WTC VCF). There are many ads on television about the VCF from law firms trying to get clients to file those claims. **But Workers Compensation Article 8-A is a *totally* different situation.** I have not encountered any firefighters, police, or first responders that already know about Article 8-A. Maybe those that work in New York City know, but outside of NYC I have not encountered any that had ever even heard of Article 8-A. For example, I sometimes see firefighters, police, or first responder customers where I work. I sometimes ask them if they helped with the WTC disaster site rescue, recovery or cleanup work in 2001-2002. Whatever their response, there is always one common denominator - **none of them have ever heard of Article 8-A.** I have to explain Article 8-A to them so they realize they may be eligible for those Workers Comp benefits if they file a claim. I tell them about my court case and I give them the link to it. Once in a while I might see them again and they tell me they had the information checked by a lawyer and were told that I am correct. I don't ask for anything in return if they file Article 8-A claims and win their cases. My goal is just to make them aware of the Article 8-A Workers Comp benefits they might be eligible for. What happens after that is up to them.

Appendix G 2022

2022-01-10
Comparing Federal & State Courts
US Courts website page

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

Comparing Federal & State Courts

The U.S. Constitution is the supreme law of the land in the United States. It creates a federal system of government in which power is shared between the federal government and the state governments. Due to federalism, both the federal government and each of the state governments have their own court systems. Discover the differences in structure, judicial selection, and cases heard in both systems.

Court Structure

The Federal Court System	**The State Court System**
Article III of the Constitution invests the judicial power of the United States in the federal court system. Article III, Section 1 specifically creates the U.S. Supreme Court and gives Congress the authority to create the lower federal courts.	The Constitution and laws of each state establish the state courts. A court of last resort, often known as a Supreme Court, is usually the highest court. Some states also have an intermediate Court of Appeals. Below these appeals courts are the state trial courts. Some are referred to as Circuit or District Courts.
Congress has used this power to establish the 13 U.S. Courts of Appeals, the 94 U.S. District Courts, the U.S. Court of Claims, and the U.S. Court of International Trade. U.S. Bankruptcy Courts handle bankruptcy cases. Magistrate Judges handle some District Court matters.	States also usually have courts that handle specific legal matters, e.g., probate court (wills and estates); juvenile court; family court; etc.
Parties dissatisfied with a decision of a U.S. District Court, the U.S. Court of Claims, and/or the U.S. Court of International Trade may appeal to a U.S. Court of Appeals.	Parties dissatisfied with the decision of the trial court may take their case to the intermediate Court of Appeals.
A party may ask the U.S. Supreme Court to review a decision of the U.S. Court of Appeals, but the Supreme Court usually is under no obligation to do so. The U.S. Supreme Court is the final arbiter of federal constitutional questions.	Parties have the option to ask the highest state court to hear the case.
	Only certain cases are eligible for review by the U.S. Supreme Court.

Selection of Judges

The Federal Court System	The State Court System
The Constitution states that federal judges are to be nominated by the President and confirmed by the Senate. They hold office during good behavior, typically, for life. Through Congressional impeachment proceedings, federal judges may be removed from office for misbehavior.	State court judges are selected in a variety of ways, including • election, • appointment for a given number of years, • appointment for life, and • combinations of these methods, e.g., appointment followed by election.

Types of Cases Heard

The Federal Court System	The State Court System
• Cases that deal with the constitutionality of a law; • Cases involving the laws and treaties of the U.S.; • Cases involving ambassadors and public ministers; • Disputes between two or more states; • Admiralty law; • Bankruptcy; and • Habeas corpus issues.	• Most criminal cases, probate (involving wills and estates) • Most contract cases, tort cases (personal injuries), family law (marriages, divorces, adoptions), etc. 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.

Appendix H 2022

Rules Enabling Act of 1934
28 U.S. Code Section 2071

stituted for "Treasurer of the United States" because of section 1 of Reorganization Plan No. 26 of 1950 (eff. July 31, 1950, 64 Stat. 1280), restated as section 321 of the revised title contained in section 1 of the bill. The text of 31:725v(b)(last sentence) is omitted as obsolete.

§ 2044. Payment of fine with bond money

On motion of the United States attorney, the court shall order any money belonging to and deposited by or on behalf of the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution, or penalty imposed upon the defendant. The court shall not release any money deposited for bond purposes after a plea or a verdict of the defendant's guilt has been entered and before sentencing except upon a showing that an assessment, fine, restitution or penalty cannot be imposed for the offense the defendant committed or that the defendant would suffer an undue hardship. This section shall not apply to any third party surety.

(Added Pub. L. 101–647, title XXXVI, §3629(a), Nov. 29, 1990, 104 Stat. 4966.)

EFFECTIVE DATE

Section effective 180 days after Nov. 29, 1990, and applicable with respect to certain actions for debts owed the United States pending in court on that effective date, see section 3631 of Pub. L. 101–647, set out as a note under section 3001 of this title.

§ 2045. Investment of court registry funds

(a) The Director of the Administrative Office of the United States Courts, or the Director's designee under subsection (b), may request the Secretary of the Treasury to invest funds received under section 2041 in public debt securities with maturities suitable to the needs of the funds, as determined by the Director or the Director's designee, and bearing interest at a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

(b) The Director may designate the clerk of a court described in section 610 to exercise the authority conferred by subsection (a).

(Added Pub. L. 110–406, §8(a), Oct. 13, 2008, 122 Stat. 4293.)

CHAPTER 131—RULES OF COURTS

AMENDMENTS

1988—Pub. L. 100–702, title IV, §401(d), Nov. 19, 1988, 102 Stat. 4650, added items 2072 to 2075 and struck out former items 2072 "Rules of civil procedure", 2075 "Bankruptcy rules", and 2076 "Rules of evidence".

1982—Pub. L. 97–164, title II, §208(b), Apr. 2, 1982, 96 Stat. 55, added item 2077.

1975—Pub. L. 93–595, §2(a)(2), Jan. 2, 1975, 88 Stat. 1949, added item 2076.

1966—Pub. L. 89–773, §3, Nov. 6, 1966, 80 Stat. 1323, struck out "for district courts" in item 2072 and struck out items 2073 and 2074.

1964—Pub. L. 88–623, §2, Oct. 3, 1964, 78 Stat. 1001, added item 2075.

1954—Act July 27, 1954, ch. 583, §2, 68 Stat. 567, added item 2074.

§ 2071. Rule-making power generally

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

(c)(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

(f) No rule may be prescribed by a district court other than under this section.

(June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, §102, 63 Stat. 104; Pub. L. 100–702, title IV, §403(a)(1), Nov. 19, 1988, 102 Stat. 4650.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§219, 263, 296, 307, 723, 731, and 761, and section 1111 of title 26, U.S.C., 1940 ed., Internal Revenue Code (R.S. §§913, 918; Mar. 3, 1887, ch. 359, §4, 24 Stat. 506; Mar. 3, 1911, ch. 231, §§122, 157, 194, 291, 297, 36 Stat. 1132, 1139, 1145, 1167, 1168; Mar. 3, 1911, ch. 231, §187(a), as added Oct. 10, 1940, ch. 843, §1, 54 Stat. 1101; Feb. 13, 1925, ch. 229, §13, 43 Stat. 941; Mar. 2, 1929, ch. 488, §1, 45 Stat. 1475; Feb. 10, 1939, ch. 2, §1111, 53 Stat. 160; Oct. 21, 1942, ch. 619, title V, §504(a), (c), 56 Stat. 957).

Sections 219, 263, 296, 307, 723, and 731 of title 28, U.S.C., 1940 ed., gave specified courts, other than the Supreme Court, power to make rules. Section 761 of such title related to rules established in the district courts and Court of Claims. Section 1111 of title 26, U.S.C., 1940 ed., related to Tax Court. This section consolidates all such provisions. For other provisions of such sections, see Distribution Table.

Recognition by Congress of the broad rule-making power of the courts will make it possible for the courts

to prescribe complete and uniform modes of procedure, and alleviate, at least in part, the necessity of searching in two places, namely in the Acts of Congress and in the rules of the courts, for procedural requisites.

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.

Provisions of sections 263 and 296 of title 28, U.S.C., 1940 ed., authorizing the Court of Claims and Customs Court to punish for contempt, were omitted as covered by H. R. 1600, § 401, 80th Congress, for revision of the Criminal Code.

Provisions of section 1111 of title 26, U.S.C., 1940 ed., making applicable to Tax Court Proceedings "the rules of evidence applicable in the courts of the District of Columbia in the type of proceeding which, prior to Sept. 16, 1938, were within the jurisdiction of the courts of equity of said District," were omitted as unnecessary and inconsistent with other provisions of law relating to the Federal courts. The rules of evidence in Tax Court proceedings are the same as those which apply to civil procedure in other courts. See *Dempster Mill. Mfg. Co. v. Burnet*, 1931, 46 F.2d 604, 60 App.D.C. 23.

For rule-making power of the Supreme Court in copyright infringement actions, see section 25(e) of title 17, U.S.C., 1940 ed., Copyrights. See, also, section 205(a) of title 11, U.S.C., 1940 ed., Bankruptcy, authorizing the Supreme Court to promulgate rules relating to service of process in railroad reorganization proceedings.

SENATE REVISION AMENDMENT

By Senate amendment, all provisions relating to the Tax Court were eliminated. Therefore, section 1111 of Title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section as finally enacted. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

1949 ACT

This amendment clarifies section 2071 of title 28, U.S.C., by giving express recognition to the power of the Supreme Court to prescribe its own rules and by giving a better description of its procedural rules.

AMENDMENTS

1988—Pub. L. 100–702 designated existing provisions as subsec. (a), substituted "under section 2072 of this title" for "by the Supreme Court", and added subsecs. (b) to (f).

1949—Act May 24, 1949, expressed recognition to the Supreme Court's power to prescribe its own rules and give a better description of its procedural rules.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 407 of title IV of Pub. L. 100–702 provided that: "This title [enacting sections 2072 to 2074 of this title, amending this section, sections 331, 332, 372, 604, 636, and 2077 of this title, section 460n–8 of Title 16, Conservation, and section 3402 of Title 18, Crimes and Criminal Procedure, repealing former section 2072 and section 2076 of this title and sections 3771 and 3772 of Title 18, and enacting provisions set out as notes under this section] shall take effect on December 1, 1988."

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-462, § 4, Jan. 12, 1983, 96 Stat. 2530, provided that: "The amendments made by this Act [enacting provisions set out as notes below, amending Rule 4 of the Federal Rules of Civil Procedure, set out in the Appendix to this title, adding Form 18–A in the Appendix of Forms, and amending section 951 of Title 18, Crimes and Criminal Procedure] shall take effect 45 days after the enactment of this Act [Jan. 12, 1983]."

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 97–462, § 1, Jan. 12, 1983, 96 Stat. 2527, provided: "That this Act [enacting provisions set out as notes below, amending Rule 4 of the Federal Rules of Civil Procedure, set out in the Appendix to this title, adding Form 18–A in the Appendix of Forms, and amending section 951 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Federal Rules of Civil Procedure Amendments Act of 1982'."

SAVINGS PROVISION

Section 406 of title IV of Pub. L. 100–702 provided that: "The rules prescribed in accordance with law before the effective date of this title [Dec. 1, 1988] and in effect on the date of such effective date shall remain in force until changed pursuant to the law as amended by this title [see Effective Date of 1988 Amendment note above]."

RULEMAKING AUTHORITY OF SUPREME COURT AND JUDICIAL CONFERENCE

Pub. L. 109–2, § 8, Feb. 18, 2005, 119 Stat. 14, provided that: "Nothing in this Act [see Short Title of 2005 Amendments note set out under section 1 of this title] shall restrict in any way the authority of the Judicial Conference and the Supreme Court to propose and prescribe general rules of practice and procedure under chapter 131 of title 28, United States Code."

TAX COURT RULEMAKING NOT AFFECTED

Section 405 of title IV of Pub. L. 100–702 provided that: "The amendments made by this title [see Effective Date of 1988 Amendment note above] shall not affect the authority of the Tax Court to prescribe rules under section 7453 of the Internal Revenue Code of 1986 [26 U.S.C. 7453]."

ADMIRALTY RULES

The Rules of Practice in Admiralty and Maritime Cases, promulgated by the Supreme Court on Dec. 20, 1920, effective Mar. 7, 1921, as revised, amended, and supplemented, were rescinded, effective July 1, 1966, in accordance with the general unification of civil and admiralty procedure which became effective July 1, 1966. Provision for certain distinctly maritime remedies were preserved however in the Supplemental Rules for Certain Admiralty and Maritime Claims, rules A to F, Federal Rules of Civil Procedure, Appendix to this title.

§ 2072. Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4648; amended Pub. L. 101–650, title III, §§ 315, 321, Dec. 1, 1990, 104 Stat. 5115, 5117.)