No. _____

In The
Supreme Court of the United States

BINYAMIN I. EFREOM, et al.,

Petitioners,

v.

DANIEL J. MCKEE, in his capacity as Governor of the State of Rhode Island; EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND, by and through Frank J. Karpinski, its Executive Director; SETH MAGAZINER, in his capacity as Chairperson of the Retirement Board,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The Petitioners brought their § 1983 suit due to the deprivation of their COLA[1] benefits relative to their state and municipal pensions which ensued under the 2015 Rhode Island State and Municipal Pension Reform legislation. The Petitioners had previously sued in a State lawsuit challenging the enactment of the 2012 state and municipal employee pensions reforms. That litigation resulted in a proposed settlement agreement, which both the federal District and Circuit Court acknowledge petitioners did **not** agree with. Petitioners were assured they would not be forced to agree to the Settlement Agreement and could as other groups did, continue with their litigation. A class action was filed by agreement of the Respondents and other pensioner groups, not Petitioners, where in the Rhode Island Superior Court irrespective of these assurances, the Superior Court subsumed the Petitioners into a binding class depriving them of their rights in derogation of the due process clause. The First Circuit viewed the foregoing factors as nothing more than unsatisfied state court litigants seeking to litigate the State Judgement in Federal Court holding the same barred by the *Rooker-Feldman* Doctrine.

1.) Whether Petitioners' procedural due process right and rights to sue for a taking without just compensation under the Fifth and Fourteenth Amendments of the United States Constitution and contract

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[1] Petitioners will refer to their cost of living adjustment to their pension as "COLA."

QUESTION PRESENTED FOR REVIEW
—Continued

rights pursuant to Article 1 section 10 thereof, were violated by a deprivation of federal remedy, where there is a sharp difference and split between the Circuits as to the application of the *Rooker-Feldman* Doctrine, exhorting correction by this Court, and the First Circuit nevertheless upheld denial of the federal cause of action, where Petitioners assert rights to redress of their of their continuing sufferance of damages, based on legislation enacted by cooperation of the three branches of Rhode Island State Government?

PARTIES TO THE PROCEEDINGS

The Petitioners were all Appellants in the First Circuit: Binyamin I. Efreom; Marilyn C. Distefano; Susan L. Hartnett; Adrienne R. Dimeo; Mary G. Kennedy; Cynthia J. Rondeau; Mary O'Connell Mckenna; Timothy H. Murphy; Dennis F. Ziroli; Annmarie Bolvin; William P. Berube; Joseph F. Clifford; Antonetta R. Mello; Maureen Rita Vavolotis; William Blair; Patricia E. Giammarco; Sandra A. Spina, (formerly known as Sandra A. Curren); Kathlyne E. Walsh; William H. Ferguson; Carol Schneider; Joanne A. Matisewski; Laurie A. Scialabba; Jean Petisce-Lynch; Anthony T. Bagaglia; Joann C. Lombardi; Anthony J. Ricci; Nancy A. Lemme; Mary F Sherlock; Pamela J. Delvecchio; Janet Keller; Dean L. Lees; Robert M. Pesaturo, Jr.; Janice M. Colerick; James H. Cox; Kathleen A. Crescenzo; Sandra L. Mccullough; Michael N. Senerchia; Norma Jean Palazzo; David Goodman; Robert J. Dimaio; Francesca Bedell; James Bedell, Margaret Harris; Mary Katherine O'Neill; and Brian Kennedy.

Barbara A. Moussalli, Karen M. Tanner, and James E. Barden were Appellants in the First Circuit and are no longer interested parties.

The respondents are all Appellees in the First Circuit: Daniel J. Mckee, in his capacity as Governor of the State of Rhode Island; Employees' Retirement System of Rhode Island, by and through Frank J. Karpinski, its Executive Director; Seth Magaziner, in his capacity as Chairperson of the Retirement Board.

CORPORATE DISCLOSURE

THE PETITIONERS ARE INDIVIDUALS.

THE RESPONDENTS ARE ACTING IN THEIR OFFICIAL CAPACITY IN THE STATE GOVERNMENT OF THE STATE OF RHODE ISLAND, AND THE EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND IS A RHODE ISLAND GOVERNMENTAL ENTITY.

LIST OF RELATED CASES

Binyamin I. Efreom, et al. v. Daniel J. Mckee, in his capacity as Governor of the State of Rhode Island; Employees' Retirement System of Rhode Island, by and through Frank J. Karpinski, its Executive Director; Seth Magaziner, in his capacity as Chairperson of the Retirement Board, U.S. District Court for the District of Rhode Island. Judgment entered April 15, 2021

Binyamin I. Efreom, et al. v. Daniel J. Mckee, in his capacity as Governor of the State of Rhode Island; Employees' Retirement System of Rhode Island, by and through Frank J. Karpinski, its Executive Director; Seth Magaziner, in his capacity as Chairperson of the Retirement Board, U.S. Court of Appeals for the First Circuit. Judgment entered August 18, 2022

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1. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND, CASE # WES-20-122.
2. FIRST CIRCUIT COURT OF APPEALS; CASE # 21-1382.

STATEMENT OF THE BASIS OF JURISDICTION

The First Circuit entered judgment August 18, 2022. (App. 28)

Jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment to the United States Constitution, section 1, provides in relevant part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or

> property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, Section 10 of the United States Constitution provides:

> No State shall * * * pass any * * * Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Article 3 Section 2 of the United States Constitution provides:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen

> of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

Petitioners sued in United States District Court pursuant to 42 U.S.C. § 1983 to redress the deprivation of federal constitutional rights. The facts alleged in the Petitioners' Complaint alleged the provisions of the Rhode Island Public Law Chapter 141 which contains within it, Article 21 relating to Pensions, enacted June 30, 2015 as applied to them, have and will continue to cause denial of their right to due process pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, violate the Takings Clause pursuant to the said amendments, and violate the Contracts Clause pursuant to Article I section 10 of the United States Constitution.

The Petitioners similarly alleged that in the same Public Law, Article 13 of Chapter 141 of the Public Laws of 2015 contained a provision striking language requiring excess general revenues to be transferred to the Employees Retirement Systems of the State as follows:

> "Section 2. Section 35-6-1 of the General Laws in Chapter 35-6 entitled "Accounts and Control" is hereby amended to read as follows:
>
> (d) Upon issuance of the audited financial statement, the controller shall transfer all general revenues received in the completed fiscal year, net of transfer to state budget reserve and cash stabilization account as required by § 35-3-20, in excess of those estimates adopted for that year as contained in the final enacted budget to the employees' retirement system of the State of Rhode Island as defined in § 36-8-2."

Petitioners have maintained the repeal of this provision and the numerous discretionary provisions in the Act result in rendering illusory any concept of meaningfully reaching 80% funding and in the operation of this act and is damaging them. The State Respondents consistently engage in policy decisions which negate any plan to meaningfully meet this threshold. The Petitioners Complaint set out allegations that the General Treasurer of the State of Rhode Island released a report quoted in the *Providence Journal* on December 18, 2019, stating as fact that the Pension Fund herein will not reach the 80% funding until 2031. That threshold would mark the beginning of a

greatly diminished cost of living increase. As Petitioners alleged, the average age currently of the Petitioners is more than seventy years. The approximate eleven years before that time leaves the Petitioners to continuing reduction in buying power and value and, considering mortality, elimination of meaningful opportunity to benefit from the said provision, especially impactful in this time of historic inflation brought on by the financial crisis of the pandemic and the war in Ukraine among other factors.

The State Respondents have asserted they had no reasonable alternative to the legislative enactment however events ensuing since enactment gainsay that argument where resort to State General Obligation bonding has been used to address financial stresses brought on by the pandemic shut down and emergency measures. The State declared that it in fact had ample capacity to issue bonds. The Petitioners alleged as much in Paragraph 67 of the Complaint averring that Respondents had reasonable alternatives including, without limiting the generality of the foregoing, general obligation bonding authority, and an asset reallocation which could have been used to make the Petitioners whole.

Petitioners' Complaint offered a history of the Pension litigation in Rhode Island which they were a part of. Paragraphs 1, 27-53 encapsulate that history and Petitioners accept the District Court's assessment of that history drawn from the "*RIPERC I*," "*RIPERC II*," and "*RIPERC III*" decisions. The First Circuit endorsed the parties' account. APP—7. Petitioners each are individual state and municipal employees who retired

prior to 2015 and have been and continue to receive pension payments from the Employees' Retirement System of Rhode Island. The pension each Plaintiff was to receive in the time leading up to their decision to leave public service included a cost-of-living adjustment ("COLA") of 3% of their annual pension such that the pension would keep pace with the rising cost of living. Without the COLA, the fixed income pension benefit would have steadily diminished buying power in an environment of rising cost-of-living expenses.

The District Court noted all then-49, now-45 Petitioners were members of the class certified in the class action, *see* Compl. ¶ 1, and Respondents here were the Respondents there. *Efreom v. McKee*, No. CV WES 20-122, 2021 WL 1424974, at *5 (D.R.I. Apr. 15, 2021). APP–31,32.

The District Court found, because the class was certified pursuant to Rule 23(b)(2) of the Rhode Island Superior Court Rules of Civil Procedure, class members did not have the ability to opt out.[3] *RIPERC II*, 2015 WL 3648161, at *14 (citing *DeCesare v. Lincoln*

[3] Here, it is Petitioners' position that in recognizing that they did not agree to the Settlement Agreement and that they were assured they would not be forced to agree to the Settlement Agreement the District Court erred in not finding the denial of their due process rights were violated. Other litigants with state suits pending namely the municipal police officers in any municipality and/or for fire personnel of the City of Cranston were excluded. As stated, the opt-out allowed above and denied to the Petitioners demonstrates ample proof of this denial of due process for which no remedy was available to the Petitioners in the state case.

Benefit Life Co., 852 A.2d 474, 490 (R.I. 2004)). *Id.* The District Court summarized that a condition precedent of the agreement was the passage by the Rhode Island General Assembly of legislation set out in the agreement.

The R.I. Superior court then entered judgment, stating:

> This Judgment is final and shall be binding on all parties and all class members in the above-referenced class action case for settlement purposes. Additionally, all class members are forever and completely barred from ever asserting any claims or causes of action that were alleged or brought or that could have been alleged or brought with respect to the various challenges to the Rhode Island pension statutes made and asserted in the above-captioned action and in each of the following matters, C.A. Nos. 10-2859, 12-3166, 12-3167, 12-3168, 12-3579, KC 14-0345,[4] as the Court has previously found, determined and ruled that the terms and conditions of the Settlement Agreement, as now implemented and made effective by the Pension Legislation, are fair and reasonable. *R.I. Pub. Emples. Retiree Coal. v. Raimondo*, No. PC 15-1468, 2015 WL 4501873, at *1 (R.I. Super. July 8, 2015) ("*RIPERC III*"). On the same date, the court also entered the following judgment in the *Clifford* case: "The claims and defenses

[4] Each of those actions challenged only the deprivations caused by the 2011 legislation RIRSA not the 2015 legislation, nor could they have as that legislation did not exist.

> asserted herein having been foreclosed by the entry of Final Judgment entered in *Rhode Island Public Employees' Retiree Coalition, et al. v. Raimondo, et al.*, CA. No. PC 15-1468, the complaint, as amended, is dismissed with prejudice." Final J., *Clifford v. Raimondo*, No. KC 14-0345 (R.I. Super. July 8, 2015). Certain class members, including all Plaintiffs here, appealed both judgments to the Rhode Island Supreme Court. In a consolidated opinion, the court affirmed the judgments in all respects, determining that the judge "did not abuse her discretion in concluding that the settlement was fair, reasonable, and adequate." Clifford, 184 A.3d at 695 (citation omitted)."

Efreom v. McKee, No. CV WES 20-122, 2021 WL 1424974, at *2 (D.R.I. Apr. 15, 2021) APP–11, 12.

Petitioners in their First Circuit Appeal disagreed with the District Court's parsing every divergence between the Petitioners' pension benefits at their retirement and those that exist now because of the 2015 legislation as being nothing more than an attempt at another appeal of the State litigation or a re-litigation of it. The First Circuit adopted the same approach in concluding it lacked jurisdiction. APP–16. Though the gravamen of the Petitioners' claim of injuries are from the application of the 2015 legislation to them and not the state court judgment the Circuit Court concluded they have not asserted they are not state court losers. It could not be plainer that Petitioners brought their federal suit on grounds complaining of due process deprivations, and injuries the 2015 legislation

continues to work upon them. How that posture is not a clear statement they are not state court losers in federal court defies logic. APP–16. This analysis parts company with the dictates of Rule 12(b)(6) motion to dismiss review, namely that the Court view the facts alleged in the complaint, are taken as true by the court, which also draws all inferences in the pleader's favor. The deprivations caused by RIRSA were repealed by the 2015 act and it is the 2015 provisions now that deprive the Petitioners of their rights. The 2015 Act has not been the subject of Petitioners' prior state court complaint. As noted, it was passed subsequent to it. APP–17.

REASONS FOR GRANTING THE WRIT

I. THE STATE AND RESPONDENTS ARE ADMINISTERING THE PROVISIONS OF THE 2015 PENSION REFORM ACT IN A MANNER CAUSING CONTINUING INJURY TO THE PETITIONERS. THEY HAVE HAD AND CONTINUE TO HAVE LESS INJURIOUS MEANS TO SECURE FINANCIAL SOLVENCY OF THE STATE EMPLOYEES RETIREMENT SYSTEM PENSION PLAN[5]

This Court should grant certiorari to establish that a federal court cannot deny jurisdiction for claims brought by aggrieved persons against litigation opponents while on the one hand the state court had

[5] Variously referred to herein as the Pension Plan.

assured litigants that if they did not agree with a proposed settlement agreement they would not be forced to accept it and where a state court thereafter, knowing they had not approved nonetheless consigned them to a class action subclass with no option to opt out in violation of those persons' procedural due process rights under the 5th and 14th amendments. Moreover, and on the same grounds, the source of their legal injuries and damages as averred in their federal complaint was the application of legislation severally reducing their COLAs, (legislation which did not exist when they a.) brought suit in state court and b.) came into being following the grant of the class action.

Petitioners alleged that the Respondents notwithstanding commitments made to the Petitioners, utilized the state court class action process to deny Petitioners' due process rights in the underlying state court litigation which ought to have allowed them to continue with their lawsuit and be exempted from the class as other groups were and in doing so thereby facilitated deprivation of their annual COLA adjustments, adjustments they relied upon on their decision to retire. The District Court upheld by the First Circuit, eschewed jurisdiction, the First Circuit doing so ultimately and solely on *Rooker-Feldman* grounds.

The First Circuit disallowed a federal remedy by incorrectly holding that *Rooker-Feldman* bars federal jurisdiction. It declared Petitioners' fact-grounded claims nothing more than state court judgment losers attempting a federal review of the that judgment. Petitioners asserted to the contrary pointing out to both

the District and Circuit Court that the Respondents were possessed of lesser means to alleviate the State Pension financial situation and were obliged to resort to them rather than unilaterally taking the promised COLA protections from the Petitioners. As noted above these included inter alia funding the pension deficit via the State's general obligation bonding power and/or reallocating and monetarizing valuable state assets to the Pension Fund, such as valuable parcels of real estate held in the State's name. These efforts continue to be available and have not been deployed. Petitioners were deprived by the District Court from discovery and an opportunity to prove that. The State having such options is obliged to use them. *United States Trust & Company of New York v. New Jersey*, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977). The Petitioners advised both lower courts that the legislature simultaneously with the 2015 legislation, the R.I. General Assembly with the approval of then Governor Raimondo, stripped provisions from the General Laws requiring budget surpluses be used to fund the Pension Plan to full funding. As noted at this time the Pension Plan remains below 80% funding notwithstanding the fact state coffers have exceeded budget estimates and garnered continuing surpluses. The State continues to elect against funding the Pension Plan because it is no longer obliged to out of surpluses. The application of the 2015 legislation is injuring Petitioners because of these decisions and other investment decisions of the Respondents under the 2015 act which have and will continue to cause the Pension Plan from reaching the 80% funding level when COLA benefits, though

significantly diminished, would return. Petitioners are entitled to their day in court to litigate their right to vindicate the State commitments made to them at the point of retirement and to seek redress from a law they have never challenged prior to the federal complaint which enacts a schema that severely undercut their retirement benefits and evermore so in this time of dramatic inflation.

The First Circuit's application of *Rooker-Feldman* to extinguish Petitioners' cause of action is an exaggerated application of the doctrine at odds with pronouncements of this Court and deprives them of their fundamental federal procedural due process rights.

II. RULE 10(a) AND (c)—QUESTIONS TO ANSWER

Supreme Court Rule 10(a) and (c) explains these very types of questions for this Court to answer. Rule 10 states:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; . . . or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) —[omitted]—
>
> (c) a state court or a United States court of appeals has decided an important question of

> federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Allowing *Rooker-Feldman* to block federal court claims for denial of due process violations by the vehicles explained here defeats the Petitioners' right to be heard in Federal Court. The case presents fundamental federal law to be settled that those who complain against state actors depriving them of federal rights including procedural due process, taking without just compensation, deprivation of contract rights, have a right to be heard before the federal courts as an independent judiciary separate and apart from the three branches of the State government all of which had a substantial role to play in the deprivation.

Petitioners were litigants in state court proceedings where they, as well as others, challenged the deprivation of their pension benefits under the 2011 passage by the Rhode Island General Assembly of the Rhode Island Retirement Security Act ("RIRSA"). They were unable to reach agreement as to the Settlement Agreement and notwithstanding assurances to the contrary, were not afforded the opportunity to resume litigation of their civil complaint alleging violations of the contract clause, violation of the taking clause and violation of their rights to due process all under the Rhode Island constitution. There is ample proof other groups were allowed to opt-out by the Court without any explanation from the Court or distinction drawn as to the reason for the different treatment. This

reality denied the Petitioners their rights to due process under the United States Constitution. The Petitioners preserved this argument urging first the Superior Court and the Supreme Court to recognize it. Neither did. Petitioners maintain that the Supreme Court never actually reached the question because at that point the matter before the court was whether the Settlement Agreement at issue in the Class Action was fair and reasonable. Here, the U.S. District Court suit is a challenge to the loss of their due process rights in this regard is not barred by *Rooker-Feldman* as the claim asserts rights guaranteed under the U.S. Constitution and injuries inflicted by a law passed subsequent to the Petitioners' own state court action

All of the aforesaid state suits were brought in opposition to the 2011 act not the 2015. The two are separate in time by 4 years. The 2015 act impacts the Petitioners negatively and differently from that of the earlier act. The challenged legislation did not exist at the time of the original suits and therefore could not form a convenient trial unit, nor could the parties have expected them to.

The *Rooker-Feldman* Doctrine is no bar to Petitioners' District Court action. As explained by the United States Supreme Court in *Skinner*, *infra*, noting the unwarranted expansion of the doctrine: " . . . we clarified in *Exxon* that *Rooker-Feldman* "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers . . . inviting district court review and rejection of [the state court's] judgments," 544 U.S., at 284, 125 S. Ct. 1517."

Petitioners tendered no such invitation, instead challenging the effect the 2015 legislation has had and will continue to have on their constitutional rights.

III. THE FIRST CIRCUIT'S EXPANSIVE APPLICATION OF THE *ROOKER-FELDMAN* THEORY IS AT ODDS WITH THIS COURT'S HOLDINGS AND OTHER CIRCUITS

"The *Rooker-Feldman* doctrine bars lower federal courts from conducting appellate review of final state-court judgments because 28 U.S.C. § 1257 vests sole jurisdiction to review such claims in the Supreme Court." *Berry v. Schmitt*, 688 F.3d 290, 298 (6th Cir. 2012); *see D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923). The doctrine has a limited scope. It does not, for example, bar "a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court." *Exxon*, 544 U.S. at 293, 125 S. Ct. 1517. It applies only to the "narrow" set of "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." *Id.* at 284, 125 S. Ct. 1517.

We determine whether *Rooker-Feldman* bars a claim by looking to the "source of the injury the plaintiff alleges in the federal complaint." *McCormick v.*

Braverman, 451 F.3d 382, 393 (6th Cir. 2006). If the source of the plaintiff's injury is the state-court judgment itself, then *Rooker-Feldman* applies. *Id.* "If there is some other source of injury, such as a third party's actions, then the plaintiff asserts an independent claim." *Lawrence v. Welch*, 531 F.3d 364, 368–69 (6th Cir. 2008) (quoting *McCormick*, 451 F.3d at 394). Here the state action withdrawing surplus payments to the Pension Plan is just such third party action. "A court cannot determine the source of the injury 'without reference to [the plaintiff's] request for relief.'" *Berry*, 688 F.3d at 299 (alteration in original) (quoting *Evans v. Cordray*, 424 F. App'x 537, 539 (6th Cir. 2011)). It is plain that Petitioners here sought redress for the deprivation of their COLA benefits caused by the application of the act to them and they wanted their day in court to show it was a violation of their due process, contract rights and constituted a taking without just compensation.

In *VanderKodde v. Mary Jane M. Elliott, P.C.*, 951 F.3d 397, 402–03 (6th Cir. 2020) the Sixth Circuit considered the applicability of *Rooker-Feldman* in recalling its holding in *Van Hoven*, a judgment debtor brought an FDCPA class action against a law firm that filed requests for writs of garnishment in Michigan state court to collect on her (and others') debts. *Id.* She alleged that those requests unlawfully "tacked on the costs of the request (a $15 filing fee) to the amount due" and "added the costs of prior failed garnishments." *Id.* Faced with the Respondents' jurisdictional challenge under *Rooker-Feldman*, we held that the doctrine did

not apply for two reasons. First, *Rooker-Feldman* "applies only when a state court renders a *judgment*—when the court 'investigates, declares, and enforces liabilities' based on application of law to fact." *Id.* at 892 (brackets omitted) (quoting *Feldman*, 460 U.S. at 479, 103 S. Ct. 1303). A writ of garnishment is not a judgment—it is the result of a "ministerial process," *id.* at 893, in which the clerk of the court has a nondiscretionary obligation to issue the writ if the request "appears to be correct," MCR 3.101(D). *Id.* Here the First Circuit departs from this view, instead finding a judicial ruling on the Petitioners' due process claims and assertions of injury from the enactment of the 2015 legislation, untested in any court for its continuing deprivation of the Petitioners' rights. *Id.* Second, the plaintiff's injuries stemmed not from the writs of garnishment themselves, but rather "the costs included in them." *Id.* That is, the plaintiff's allegations "target[ed] Buckles & Buckles' actions in tallying the amount of relief requested, not the writs of garnishment themselves." *Id. Van Hoven* also discussed *Todd v. Weltman, Weinberg & Reis Co.*, 434 F.3d at 435–37, which concerned an FDCPA action "alleging that a creditor made a false statement to obtain a garnishment order in state court." *Van Hoven*, 947 F.3d at 893. There, we similarly held that *Rooker-Feldman* did not apply because the plaintiff's injuries stemmed from the defendant's conduct, not the state-court judgment, as the plaintiff claimed he "was injured by [the defendant] when [the defendant] filed a false affidavit." *Todd*, 434 F.3d at 437.

The Sixth Circuit holding addresses where the state court litigant does not address, though they did assert, their rights in the suit below: "The same goes here, as Plaintiffs did not raise any objections in state court, either. The district court stated that applying *Rooker-Feldman* made "intuitive sense" because "[w]here parties are afforded an opportunity to challenge the amount of money that will be garnished, they should do so," instead of "sit[ting] on their hands" and later suing in federal court. *VanderKodde*, 314 F. Supp. 3d at 844–45. This is a valid concern, but not under *Rooker-Feldman*. Other doctrines, like res judicata, collateral estoppel, and forfeiture can discourage strategic sandbagging in litigation. *Rooker-Feldman*'s focus lies elsewhere." *VanderKodde v. Mary Jane M. Elliott, P.C.*, 951 F.3d 397, 404 (6th Cir. 2020). The Sixth Circuit's adherence to the narrow focus of *Rooker-Feldman* is rightly at variance with the expansive view of the matter in the First Circuit. In the First Circuit opinion the court holds: "As such, before we consider any merits issues, we must begin by addressing the 'threshold matter' of whether we have federal subject-matter jurisdiction over these claims. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998). Because we conclude under the *Rooker-Feldman* Doctrine that we lack jurisdiction, our inquiry with respect to Counts I-IV ends here." APP–14. The First Circuit on the one hand appears to capture the claim the Petitioners are making and on the other casts it aside. "Appellants nonetheless attempt to escape the vise of *Rooker-Feldman* by disputing, essentially, that their alleged injuries were actually "caused

by" the state-court judgments. *Id.* To this end, Petitioners emphasize that they primarily contest the constitutionality of the 2015 Amendments, whereas the earlier state-court judgments concerned RIRSA. On this theory, passage of the 2015 Amendments—by dint of "creating a distinct new law"—worked a separate injury from that at issue in the state-court litigation, and this should suffice to defeat the *Rooker-Feldman* Doctrine." APP–16, 17.

"Even assuming arguendo that Appellants' claims are indeed based on the 2015 Amendments rather than RIRSA, Appellants' attempts to evade the *Rooker-Feldman* Doctrine fail. Passage of the 2015 Amendments was a condition precedent for the settlement agreement that resolved the state-court pension litigation. Indeed, as the district court noted, "[t]he purportedly unconstitutional sections [of the 2015 Amendments] identified in the Complaint were contained verbatim in the settlement agreement," *Efreom*, 2021 WL 1424974, at *10, and the propriety of said settlement is the source of the alleged injury here." APP—16, 17. The First Circuit casts away Judge Sutton's sage advice; "Absent a claim seeking review of a final state court judgment, a federal court tempted to dismiss a case under *Rooker-Feldman* should do one thing: Stop. If the temptation lingers, the court should try something else: Reconsider." *VanderKodde v. Mary Jane M. Elliott, P.C.*, 951 F.3d 397, 409 (6th Cir. 2020).

Judge Sutton opined:

> After Justice Ginsburg's unanimous opinion in *Exxon Mobil v. Saudi Basic Industries*,

> 544 U.S. 280, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005), it looked like the Court finally and mercifully had driven a stake through *Rooker-Feldman*. The so-called doctrine had caused so much mischief, creating needless complications, distracting litigants and courts from the properly presented federal issues at hand, and helping no one, not even the supposed beneficiaries of its largesse: state court judgments. One could be forgiven for thinking, as I and others did, that, unless your name was *Rooker* or *Feldman*, this supposed limit on the jurisdiction of the federal courts applied to no one, save the occasional innocent who thought he could obtain appellate review of a final state supreme court decision in federal district court, as opposed to the U.S. Supreme Court. *See* Samuel Bray, *Rooker-Feldman (1923–2006)*, 9 Green Bag 2d 317, 317–18 (2006); *In re Smith*, 349 F. App'x 12, 17 (6th Cir. 2009) (Sutton, J., concurring in part and dissenting in part).

VanderKodde v. Mary Jane M. Elliott, P.C., 951 F.3d 397, 404–05 (6th Cir. 2020).

The First Circuit's application of *Rooker-Feldman* here interferes with efforts to vindicate federal rights and adds to the confusion in federal courts thinking they have no jurisdiction over cases Congress empowered them to decide. Numerous court decisions tangle with *Rooker-Feldman* applications as noted by Judge Sutton counting at least 80 in his own Circuit; "*See*, *e.g.*, *Hake v. Simpson*, 770 F. App'x 733, 736 (6th Cir. 2019); *Berry v. Schmitt*, 688 F.3d 290, 298–02 (6th Cir.

2012); *Edwards v. Thornton*, 413 F. App'x 802, 803–04 (6th Cir. 2011); *Lawrence v. Welch*, 531 F.3d 364, 370–72 (6th Cir. 2008)." *Id.*

Moreover the Judge does an admirable job collecting cases setting out the varied misapplications. "We are not alone. *Rooker-Feldman* continues to wreak havoc across the country. *See*, *e.g.*, *Klimowicz v. Deutsche Bank Nat'l Tr. Co.*, 907 F.3d 61, 64–66 (1st Cir. 2018); *Sung Cho v. City of New York*, 910 F.3d 639, 644–49 (2d Cir. 2018); *In re Phila. Entm't & Dev. Partners*, 879 F.3d 492, 498–03 (3d Cir. 2018); *Hulsey v. Cisa*, 947 F.3d 246, 249–52 (4th Cir. 2020); *Truong v. Bank of Am., N.A.*, 717 F.3d 377, 382–85 (5th Cir. 2013); *Kelley v. Med-1 Sols., LLC*, 548 F.3d 600, 605–07 (7th Cir. 2008); *Dodson v. Univ. of Ark. for Med. Scis.*, 601 F.3d 750, 754–56 (8th Cir. 2010); *Cooper v. Ramos*, 704 F.3d 772, 777–82 (9th Cir. 2012); *Mayotte v. U.S. Bank Nat'l Ass'n*, 880 F.3d 1169, 1173–76 (10th Cir. 2018); *May v. Morgan County*, 878 F.3d 1001, 1004–07 (11th Cir. 2017); *D.C. Healthcare Sys., Inc. v. District of Columbia*, 925 F.3d 481, 485–90 (D.C. Cir. 2019)." Add to this list the troubled holding of the First Circuit in this case. Petitioners also claim that *Rooker-Feldman* should not apply because their due process rights were violated by the Rhode Island courts' decision to certify the RIPERC class under Rule 23(b)(2) of the Rhode Island Superior Court Rules of Civil Procedure, which does not afford class members any opt-out rights. In support of their argument, Petitioners allege that they were treated differently from another group of pension litigants opposed to the settlement agreement—*i.e.*, the

active police officers and fire personnel of the City of Cranston (the "Cranston litigants")—who were not included in the certified class and thus able to litigate separately. *See Cranston Firefighters*, 880 F.3d at 47 (noting that while the Cranston litigants "receive some of the advantages of the 2015 Amendments, they did not participate in the settlement, and their members are not subject to the state court judgment approving the settlement"). Asserting that the "[s]tate [c]ourts did not take up the issue of the[ir] disapproval" of the settlement or consider their "repeated[ ] request[s]" to opt out of the class, in light of the Cranston litigants' exclusion therefrom, Petitioners posit that they were denied due process. This alleged due process violation, Petitioners suggest, generates an exception to the *Rooker-Feldman* jurisdictional bar. The Court goes on to dismiss the due process exception. The existence of an exception wherever there is a claim of a due process violation is dubious. *See*, *e.g.*, *Abbott v. Michigan*, 474 F.3d 324, 330 (6th Cir. 2007) (concluding that "the Supreme Court's recent decisions do not support the plaintiffs' asserted 'reasonable opportunity' exception to the *Rooker-Feldman* Doctrine"); *Postma v. First Fed. Sav. & Loan of Sioux City*, 74 F.3d 160, 162 n.3 (8th Cir. 1996) ("[T]here is no procedural due process exception to the *Rooker-Feldman* Doctrine."). For a survey of the jurisprudential thicket surrounding this issue, *see generally* 18B Wright, Miller & Cooper, Federal Practice and Procedure § 4469.3, at 163–70 (3d ed. 2019) (stating that "[s]tate-court disregard of due process rights creates genuine trouble for the *Rooker-Feldman* jurisdiction theory," but noting that much caselaw

"suggest[s] that federal jurisdiction is defeated [even] by a state judgment entered after proceedings that did not afford a full-and-fair opportunity to litigate, and indeed did not satisfy due process requirements"). APP–20, 21. Manifestly this observation is not in line with Exxon. Mobil's constraint on *Rooker-Feldman* notwithstanding *Exxon Mobil*'s efforts to return *Rooker-Feldman* to its modest roots Court's continue to invoke the rule and judges continue to dismiss federal actions under it.

As Judge Sutton recounted, The *Rooker* side of things had what seemed to be a humble start in 1923. The Supreme Court dismissed a federal lawsuit seeking to "declare" a state trial court judgment "null and void" after it had already been affirmed by the state's supreme court. *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 414, 44 S. Ct. 149, 68 L. Ed. 362. The brisk, unanimous opinion turned on a section of the Judicial Code, now located at 28 U.S.C. § 1257, that permits only the United States Supreme Court to review appeals from state supreme courts. *Id.* at 416, 44 S. Ct. 149. It was observed to be right—not because of comity concerns or any new doctrine that limited the jurisdiction of the federal courts—but because only the United States Supreme Court, not federal district courts, may entertain appeals from final judgments of the state courts. 28 U.S.C. § 1257. *VanderKodde v. Mary Jane M. Elliott, P.C.*, 951 F.3d 397, 404–05 (6th Cir. 2020).

Eventually this Court decided *Exxon Mobil v. Saudi Basic Industries*, 544 U.S. 280, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005). Justice Ginsburg wrote

"Variously interpreted in the lower courts, the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U.S.C. § 1738." *Id.* at 283, 125 S. Ct. 1517. The Court in *Exxon* emphasized the "narrow ground" the two decisions occupy. *Id.* at 284, 125 S. Ct. 1517. They apply only to litigants who sidestep § 1257 by trying to vacate or reverse final state court decisions in federal district court: namely, only to "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." *Id.* The key words are "review" and "judgments." The doctrine does not apply to federal lawsuits presenting similar issues to those decided in a state court case or even to cases that present exactly the same, and thus the most inextricably intertwined, issues. *See id.* at 293, 125 S. Ct. 1517. Else, *Rooker-Feldman* would extend "far beyond" its proper scope. *Id.* at 283, 125 S. Ct. 1517. As a jurisdictional doctrine focused on state court judgments, it's about one thing and one thing alone: efforts to evade Congress's decision to funnel all appeals from final state court decisions to the United States Supreme Court. Moreover consider the view Justice Stevens famously pronounced that *Exxon Mobil* had "finally interred" the doctrine after it had "produced nothing but mischief for 23 years." *Lance v. Dennis*, 546 U.S. 459, 468, 126 S. Ct. 1198, 163 L. Ed. 2d 1059

(2006) (Stevens, J., dissenting). Here it is clear the Petitioners' claims were not heard in the state court action.

Litigants like Respondents below continue to make expansive *Rooker-Feldman* arguments, even to this Court. *Skinner v. Switzer*, 562 U.S. 521, 531, 131 S. Ct. 1289, 179 L. Ed. 2d 233 (2011). And lower courts continue accepting them. *See id.* at 529, 131 S. Ct. 1289. The doctrine proliferated *even more* after *Exxon Mobil*'s attempt to limit it. Raphael Graybill, Comment, *The Rook That Would Be King:* Rooker-Feldman *Abstention Analysis After* Saudi Basic, 32 Yale J. on Reg. 591, 591–92 (2015).

The District Court recognized that the Petitioners have never approved the Settlement Agreement, the fairness of which became the subject of a class-action lawsuit in the Superior Court in Rhode Island. "A global settlement agreement was reached between many parties in the various actions (**but not Plaintiffs here**), and a class action complaint was filed for settlement purposes." *See RIPERC II*, 2015 WL 3648161, at *2. *Efreom v. McKee*, No. CV WES 20-122, 2021 WL 1424974, at *1 (D.R.I. Apr. 15, 2021) Petitioners were not originating parties in the Class Action Complaint. The Special Master appointed by the Superior Court in the consolidated state pension suits matter did not report the Petitioners' dissent from the Settlement. Rather he reported: "The only parties that are not in agreement with the settlement proposal are the police unions that are Petitioners in PC-12-3169, Cranston Firefighters, IAFF Local 1363, AFL-CIO

(PC-14-4343) and International Brotherhood of Police Officers, Local 301, AFL-CIO (PC-14-4768), which represent approximately 733 employees."

The District Court, rightly, for purposes of deciding the motion, accepted the fact gleaned from any fair reading of the state court decisions that the Petitioners did not agree to the Settlement Agreement. APP–31. Having so found, and the Circuit Court concluding the same, both failed to recognize that Petitioners' due process rights were abridged and therefore actionable in federal court.

In *RIPERC III*, the Superior Court in Final Judgment recognized an exclusion from the class to which the Judgment would apply. That exception was: " . . . excepting only those individuals who on July 1, 2015 are participating in a municipal retirement system administered by ERSRI for municipal police officers in any municipality and/or for fire personnel of the City of Cranston." *Rhode Island Public Employees' Retiree Coalition v. Raimondo*, No. PC20151468, 2015 WL 4501873, at *1 (R.I. Super. July 08, 2015); *Cassie M. ex rel. Irons v. Chafee*, 16 F. Supp. 3d 33, 44 (D.R.I. 2014), *vacated sub nom. Danny B. ex rel. Elliott v. Raimondo*, 784 F.3d 825 (1st Cir. 2015). The Petitioners **are not seeking class certification for the following: (1) non-retired participants in the City of Cranston's fire MERS pension systems and (2) non-retired participants in a police pension system for any Rhode Island municipality participating in MERS.** *Rhode Island Public Employees Retiree Coalition v. Raimondo*, No. PC 2015-1468, 2015

WL 1872189, at *2 (R.I.Super. Apr. 16, 2015). This finding by the Superior Court is cited as evincing the denial of the Petitioners similar right to be excluded and in support of the clear reality that some groups were treated differently.

The First Circuit holding is inconsistent with its own prior holdings on the *Rooker-Feldman* Doctrine as a bar to this challenge must fail. *See Roy v. City of Augusta, Maine*, 712 F.2d 1517, 1522 (1st Cir. 1983). In *Roy* the district court dismissed Roy's complaint for failure to state a claim under section 1983 but held a complaint, however, "should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45–46, 78 S. Ct. 99, 101–02, 2 L. Ed. 2d 80 (1957). (Finding the Court erred in dismissing the complaint against the individual where he was deprived of a property right, and ultimately his business, without due process.) Finding Roy's claims reached constitutional magnitude and to be cognizable under section 1983, he alleged that Respondents acted under color of state law, and that he was deprived of constitutionally protected property because of Respondents' actions, and that the deprivation occurred without due process of law. *Parratt v. Taylor*, 451 U.S. 527, 536–37, 101 S. Ct. 1908, 1913–14, 68 L. Ed. 2d 420 (1981). In *Roy*, there was no question that Respondents acted under color of state law. The Court found that Roy's interest in renewing the license may have been "property" within the meaning of the fourteenth

amendment. Property rights, although protected by the Constitution, are created by state law. *See Bishop v. Wood*, 426 U.S. 341, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976). *Roy v. City of Augusta, Maine*, 712 F.2d 1517, 1522 (1st Cir. 1983). Similarly, here the Petitioners claimed a deprivation of their property rights and contract rights in and to the COLA granted to them by the legislature, indisputably under color of state law.

The District Court erred in construing the averments of the complaint explaining what the Petitioners enjoyed at their retirement and are left with now, under the 2015 Act, as supporting a continuity of the state cases. In doing so the Court points to various paragraphs of the Complaint: "Compl. ¶ 1 ("The pension each Plaintiff was to receive in the time leading up to their decision to leave public service included a cost-of-living adjustment ("COLA") of 3%. . . ."); *id.* ¶ 32 ("State law provided, and the State promised all of the Plaintiffs, upon retirement, a three-percent compounded cost-of-living retirement adjustment. . . ."); *id.* ¶ 36 ("The Respondents did not, upon or at any time prior to the Plaintiffs' retirement, represent to the Petitioners that their respective Allowances and/or COLAs could or would ever be reduced, suspended or eliminated. . . ."); *id.* ¶ 37 ("Respondents, by and through their employees and/or agents, calculated the projected COLA-adjusted pension payments retirees could expect to receive as part of the retirement process."); *id.* ¶ 42 ("The suspension of the Respondents' receipt of the COLAs, pursuant to RIRSA, has substantially diminished, and continues to substantially

diminish, the amount of the Plaintiffs' respective Allowances."); *id.* ¶ 55 ("Each of the Petitioners entered into an agreement with the State with respect to the State's provision of a mandatory, contributory and defined-benefit pension plan and/or benefits, including, without limitation, the Allowance and COLA, to each of the Plaintiffs, in exchange for Plaintiff's respective performance of certain duties. . . ."); *id.* ¶ 56 ("The State breached the terms and conditions of the Agreement, including . . . those terms and conditions requiring the provision of a . . . COLA. . . .")." *Efreom v. McKee*, No. CV WES 20-122, 2021 WL 1424974, at *6 (D.R.I. Apr. 15, 2021). APP–46.

To the contrary, these averments are statements of historical facts as known to the Petitioners, they are not statements demonstrating reliance on the former RIRSA enactment, they are statements giving an historical backdrop to Petitioners' current challenge to the 2015 law. The First Circuit review ought to recognize that.

The District Court similarly took issue with the Petitioners ad damnum clause seeking restoration of their benefit package to that provided at the time of their retirement as demonstrating that they are merely complaining about RIRSA losses. The Court finds fault with the backward-looking claim of damages to the time of the first deprivation that Plaintiff makes. The Circuit and District Courts failed to see that there is a component to the Petitioners' claim that seeks forward-looking continuing damages flowing

from the application of the 2015 act which deserved a hearing in Federal Court.

In *Skinner v. Switzer*, 562 U.S. 521, 131 S. Ct. 1289, 1291, 179 L. Ed. 2d 233 (2011) the United States Supreme Court reviewed the requirements for review of a complaint on a motion to dismiss for failure to state a claim. "Because this case was resolved on a motion to dismiss for failure to state a claim, the question below was "not whether [Skinner] will ultimately prevail" on his procedural due process claim, *see Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974), but whether his complaint was sufficient to cross the federal court's threshold, *see Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 514, 122 S. Ct. 992, 152 L. Ed. 2d 1 (2002). Skinner's complaint is not a model of the careful drafter's art, but under the Federal Rules of Civil Procedure, a complaint need not pin plaintiff's claim for relief to a precise legal theory. Rule 8(a)(2) of the Federal Rules of Civil Procedure generally requires only a plausible "short and plain" statement of the plaintiff's claim, not an exposition of his legal argument. *See* 5 C. Wright & A. Miller, Federal Practice & Procedure § 1219, pp. 277–78 (3d ed. 2004 and Supp. 2010). As we explained in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005), the *Rooker-Feldman* Doctrine has been applied by this Court only twice, *i.e.*, only in the two cases from which the doctrine takes its name: first, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923), then 60 years later, *District of Columbia Court*

of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983). Both cases fit this pattern: The losing party in state court filed suit in a U.S. District Court after the state proceedings ended, complaining of an injury caused by the state-court judgment and seeking federal-court review and rejection of that judgment. Alleging federal-question jurisdiction, the Petitioners in *Rooker* and *Feldman* asked the District Court to overturn the injurious state-court judgment. We held, in both cases, that the District Courts lacked subject-matter jurisdiction over such claims, for 28 U.S.C. § 1257 "vests authority to review a state court's judgment solely in this Court." *See Exxon*, 544 U.S., at 292, 125 S. Ct. 1517. *Id.*

IV. *ROOKER-FELDMAN* DOCTRINE NOT IMPLICATED

The *Skinner* Court went on to explain the *Rooker-Feldman* Doctrine's application the and wrongheaded expansion that has occurred pursuant to it. "We observed in *Exxon* that the *Rooker-Feldman* Doctrine had been construed by some federal courts "to extend far beyond the contours of the *Rooker* and *Feldman* cases." 544 U.S., at 283, 125 S. Ct. 1517. Emphasizing "the narrow ground" occupied by the doctrine, *id.*, at 284, 125 S. Ct. 1517, we clarified in *Exxon* that *Rooker-Feldman* "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers . . . inviting district court review and rejection of [the state court's] judgments," 544 U.S., at 284, 125 S. Ct. 1517. Skinner's litigation, in

light of *Exxon*, encounters no *Rooker-Feldman* shoal. "If a federal plaintiff 'present[s][an] independent claim,'" it is not an impediment to the exercise of federal jurisdiction that the "same or a related question" was earlier aired between the parties in state court. 544 U.S., at 292–93, 125 S. Ct. 1517 (quoting *GASH Assocs. v. Rosemont*, 995 F.2d 726, 728 (C.A.7 1993); first alteration in original); *see In re Smith*, 349 Fed.Appx. 12, 18 (C.A.6 2009) (Sutton, J., concurring in part and dissenting in part) (a defendant's federal challenge to the adequacy of state-law procedures for postconviction DNA testing is not within the "limited grasp" of *Rooker-Feldman*). *Id.*

Moreover in *Skinner*, as this Court noted: " . . . Skinner does not challenge the adverse CCA decisions themselves; instead, he targets as unconstitutional the Texas statute they authoritatively construed. As the Court explained in *Feldman*, 460 U.S., at 487, 103 S. Ct. 1303, and reiterated in *Exxon*, 544 U.S., at 286, 125 S. Ct. 1517, 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**. (Emphasis added). Skinner's federal case falls within the latter category. There was, therefore, no lack of subject-matter jurisdiction over Skinner's federal suit." *Id.* Appellant here challenged as unconstitutional the Rhode Island Statute governing the State Court decision. The Rhode Island 2015 statute effected a repeal of the pension benefits afforded the Petitioners at the time of their retirements as addressed above. It was a legislative enactment which

was not the subject of the Petitioners' state court challenge in the "*Clifford* Case" which challenged an earlier state enactment. The *Skinner* case make clear that while the Petitioners cannot challenge the state court decisions in Federal Court and indeed the Petitioners' complaint challenges the 2015 enactment as curtailing and diminishing their pension benefits if not to the same degree to the 2011 act it replaced, still to a great degree. The District Court in reading everything in the Appellant's complaint as relitigating of the 2011 act's effect on the Appellant's erred in ignoring this controlling distinction. The 2015 act repealed the 2011 act.

Skinner's holding refutes the circuit's and the lower Court's view of the cases as well that the final judgment entered in the state courts provides an immunization from challenge to the 2015 law. It does not. What the First Circuit failed to appreciate was the separate act of R.I. General Assembly in passing the 2015 legislation and the Governor signing the same creating a distinct new law, repealing the 2011 Act and negatively impacting the Appellant's constitution rights. That law cannot be insulated from Constitutional challenge where since its passage the Petitioners have continued to suffer injury in the loss of pensions benefits as described above. *See id.*

It is clear the General Treasurer of the State of Rhode Island released a report quoted in the Providence Journal on December 18, 2019, stating as fact that the Pension Fund herein will not reach the 80% funding until 2031, after which a greatly diminished cost of living increase could at least begin. The average

age currently of the Petitioners is more than seventy years. The approximate eleven years before any adjustment for the cost of living leaves the Petitioners to continuing reduction in buying power and value and, considering mortality, elimination of meaningful opportunity to benefit from the said provision. The Respondents, notwithstanding the language of the legislation aforesaid allowing resumption of regular COLA payments following the attainment of 80% funding, continually propose and take actions in pursuit of other policies and agendas which render it unfeasible for the Respondents to meaningfully attain the 80% funding level.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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