No. 24-470

IN THE

Supreme Court of the United States

MICHELLE R. GILBANK,

Petitioner,

v.

WOOD COUNTY DEPARTMENT OF HUMAN SERVICES, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONDENTS MARSHFIELD POLICE DEPARTMENT, DEREK IVERSON, WOOD COUNTY DEPARTMENT OF HUMAN SERVICES, THERESA HEINZEN-JANZ, MARY CHRISTENSEN, AND MARY SOLHEIM'S JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF THE QUESTION PRESENTED

In applying the Court's guidance from *Exxon Mobil Corp. v. Saudi Basic Industries, Corp.*, 544 U.S. 280, 284 (2005), should a federal court employ a practical approach when determining whether a plaintiff is "essentially invit[ing]" the federal court to review, reject, overturn, undo, revise, set aside, or alter a state-court judgment, as barred under the *Rooker-Feldman* doctrine, when a plaintiff seeks damages explicitly arising from state-court judgments, regardless of whether the state-court judgments themselves awarded monetary relief?

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INTRODUCTION

This case arises from a federal plaintiff's attempt to relitigate issues stemming from state court custody proceedings under the guise of constitutional claims. Following her arrest for methamphetamine possession and refusal to cooperate with safety planning for her young daughter, the state court determined that the plaintiff, Michelle Gilbank, was unfit to retain custody for a period of time. Rather than appealing or asserting her rights in state court, Gilbank filed a sprawling federal lawsuit against nearly every individual involved in the state proceedings, including state court judges, social workers, and a police officer, alleging constitutional violations. Her claims, however, rely on unproven allegations and effectively invite federal review of state court judgments.

Gilbank's Petition is built on misleading labels and mischaracterizations of the Seventh Circuit's en banc decision. At its core, the Petition seeks review of a dissenting opinion, not the majority holding. The Seventh Circuit explicitly ruled in her favor on the question she presents, holding that the *Rooker-Feldman*[1] doctrine does not bar claims for damages where the state court judgment did not award or deny such relief. Despite this, she now asks this Court to review an issue she has already prevailed on, using rhetoric that distorts the actual holding of the case.

The Petition should be denied for three reasons. First, the question presented has already been resolved in Gilbank's favor, making further review of the question unnecessary and inappropriate. Second, the Petition is

1. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983).

procedurally improper, as it rests on a dissenting opinion rather than the controlling decision, and the dismissal of her claims was based on alternative grounds, including the application of the *Heck* doctrine, which make her Petition a very poor vehicle for review of the *Rooker-Feldman* doctrine. Finally, the broader issue of the *Rooker-Feldman* doctrine does not warrant review, as lower courts, including the Seventh Circuit, have already narrowed its application consistent with this Court's guidance in *Exxon Mobil*.

Gilbank's petition does not present a significant federal question, nor does it provide a suitable vehicle for review. For these reasons, this Court should deny certiorari.

STATEMENT OF THE CASE

I. Factual Background

Gilbank dedicates six paragraphs of her brief to recounting her sensationalized, unsubstantiated, self-serving narrative of events preceding the state court proceedings. However, the claims stemming from her distorted facts have already been thoroughly rejected on their merits by the district court and affirmed by the en banc court. Gilbank does not challenge the dismissal of those claims and those claims do not form the basis of the question Gilbank presents to this court. Yet, contrary to this Court's directive under Rule 14(1)(g), Gilbank recounts unsupported allegations immaterial to the issues at hand. While Respondents will not exhaust this Court's time on immaterial allegations, it is necessary to address and correct key misrepresentations.

The undisputed facts paint a vastly different picture of Gilbank's circumstances.[2] Her pervasive history of methamphetamine use and criminal activity is well-documented with a lengthy criminal history, including multiple DUI offenses. In late 2017, while she had sole custody of her then three-year-old daughter, T.E.H., Gilbank was arrested and charged with possession of methamphetamine. App.94a.

By early 2018, Gilbank was unable to provide stable housing for T.E.H., and moved into the apartment of Ian Hoyle, T.E.H.'s father. App.93a. Hoyle himself had a troubling history, but there is no evidence in the record to corroborate Gilbank's current claims of an "abusive living situation" or "safety issues with Hoyle" during this time. Indeed, Gilbank did not raise such concerns until after the events giving rise to this case.

In June 2018, during a period of extreme heat, Wood County Human Services Department received a referral expressing concern that T.E.H. was living in Hoyle's garage, which lacked air conditioning. App.94a. Social worker Teresa Heinzen-Janz and law enforcement responded to the referral that same day. *Id.* While T.E.H. appeared physically well, Gilbank openly acknowledged that the environment was "not a good environment for T.E.H." *Id.* Gilbank also admitted she needed assistance with housing, prescription medications, and mental health care for herself. *Id.* A meeting was set for the following week. *Id.*

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2. The majority of these facts were adopted by the district court as part of its undisputed findings of fact at summary judgment. *See generally* App.93a-103a. The remainder were not disputed by Gilbank during summary judgment but were not adopted by the court.

Ahead of the follow up meeting, Heinzen-Janz learned several details that raised additional concerns. *Id.* Heinzen-Janz learned of the pending methamphetamine possession charge from 2017, and that Gilbank had a prior history with Human Services, facts Gilbank conveniently failed to disclose at her initial meeting with Heinzen-Janz. *Id.* She also learned from Hoyle that he had concerns about Gilbank's ongoing drug use and requested that she leave his apartment. *Id.*

On July 3, 2018, Heinzen-Janz and Detective Derek Iverson met with Gilbank to discuss these issues. *Id.* Gilbank admitted during the meeting that she had a history of methamphetamine use, including use as recently as three weeks prior, despite her claims of sobriety. App.95a. She then voluntarily agreed to provide a urine sample for testing.[3] *Id.* The urinalysis confirmed the presence of amphetamines and methamphetamines. *Id.* At a subsequent meeting, when Heinzen-Janz and Iverson shared the test results with Gilbank, she denied using drugs and insisted the results were wrong. *Id.* She then claimed that her use of Hoyle's sinus inhaler might have caused a false positive. *Id.* While Gilbank continued to dispute the urinalysis results, she subsequently admitted to smoking methamphetamine "residue" on July 1, 2018—just two days before providing the urine sample. *Id.*

Despite Gilbank's positive urinalysis, neither Heinzen-Janz nor Iverson threatened or attempted to

3. Gilbank repeatedly misrepresents this and claims she was "made to take a drug test." This is demonstrably false. Both the district court and the Seventh Circuit expressly found—based on Gilbank's own sworn testimony—that she voluntarily consented to the test. App.64a.

arrest Gilbank or remove T.E.H. from Gilbank's custody. *Id.* It was only on August 21, 2018—when Gilbank's actions unequivocally endangered her child—that events unfolded as they did. That day, Gilbank was pulled over for driving with a suspended license, with T.E.H. in the car. *Id.* A K9 unit alerted officers to drugs in the vehicle, and a subsequent search uncovered methamphetamine, drug paraphernalia, and plastic bags containing residue. Gilbank called Hoyle to take custody of T.E.H. *Id.* She was then arrested for possession of methamphetamine and drug paraphernalia. App.96a.

During her subsequent interview at the police department, Gilbank was read her *Miranda* rights, and she invoked her right to counsel. *Id.* Detective Iverson, respecting her rights, ceased discussing the incriminating items found in her vehicle. *Id.* However, as part of their duty to ensure T.E.H.'s safety, Heinzen-Janz and Iverson addressed Gilbank's ongoing drug use and its impact on T.E.H. *Id.* Gilbank admitted to self-medicating with methamphetamine yet continued to deny her methamphetamine problem, despite the recent positive drug test and the drugs found in her vehicle with T.E.H. present. *Id.* Heinzen-Janz attempted to establish a safety plan that would allow T.E.H. to remain with Gilbank, but Gilbank's refusal to cooperate made that impossible. *Id.* Ultimately, Heinzen-Janz informed Gilbank that T.E.H. would temporarily stay with Hoyle, pending a court hearing.[4] *Id.*

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4. As will be discussed in Sections II & III, Gilbank's claims arising prior to the state-court judgments were dismissed on their merits, and those dismissals were affirmed by the entire en banc panel. App.61a-68a.

While Gilbank devotes significant space to rehashing these previously rejected allegations, her Petition glosses over the state court proceedings giving rise to her claims in this Petition with a misleading claim that "[t]he court then issued orders leaving T.E.H. in Hoyle's custody, largely based on testimony from Heinzen-Janz." This oversimplified statement understates the extensive judicial process in which Gilbank was represented, had the opportunity to present evidence, and raised her due process arguments.

The state court proceedings included multiple evidentiary hearings, each affirming Gilbank's unfitness to care for T.E.H., due to her methamphetamine addiction and failure to cooperate with safety planning. App.98a-102a. At the August 23, 2018, temporary custody hearing, the court concluded that probable cause existed and that T.E.H. needed protection from Gilbank. App.98a.

Subsequent hearings reaffirmed the state court's determination that Gilbank posed a risk to T.E.H. App.98a-102a. Gilbank was represented by counsel at each of those hearing and had every opportunity to cross-examine witnesses and present her case. *Id.* At a September hearing, testimony from Hoyle, law enforcement, and Heinzen-Janz established Gilbank's continued denial of drug use and lack of cooperation. App.99a. The state court found that her failure to admit to her addiction or create a safety plan rendered her unfit, and ordered that custody remain with Hoyle. *Id.* Gilbank did not seek state appellate relief from this order.

At an October hearing, Gilbank testified and presented letters and witness testimony about her parenting. App.101a. Despite this, the court found that her methamphetamine addiction and ongoing failure to cooperate with Social Services warranted continued placement of T.E.H. with Hoyle. *Id.* Again, Gilbank failed to seek state appellate relief of this order.

Ultimately, custody of T.E.H. was returned to Gilbank as part of a separate family court proceeding between her and Hoyle.[5] App.101a-102a. The parties stipulated to terminating the CHIPS proceeding, which was appealed by Gilbank and dismissed by the appellate court because of the stipulation. *Id.*; App.102a. This was the only appellate relief that Gilbank sought during this process.

In sum, the state court did not deny Gilbank procedural opportunities—it repeatedly considered and rejected her arguments based on the evidence presented, which contradicted Gilbank's narratives. It is these state-court judgments that Gilbank's claims at issue arise from and which Gilbank glossed over.

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5. Gilbank continues to assert in her Petition that "Hoyle admitted to touching T.E.H.'s genitals daily and that his admission led a state court to reverse the earlier custody decision and return T.E.H. to her." Pet.11. This claim is patently false. The claim is not supported by any evidence and the district court found, as an undisputed fact, that the CHIPS petition was terminated upon agreement by all parties because of the separate family court proceeding. App.101a-102a. Indeed, the Seventh Circuit, in reviewing her allegations, explicitly noted that "there was no finding, admission, or even admissible evidence in our record of sexual assault or other wrongdoing." App.10a.

II. Procedural Posture at District Court

In June 2020, Gilbank filed a pro se complaint in the Western District of Wisconsin on behalf of herself and T.E.H, suing nearly everyone involved. App.10a. She brought claims under 42 U.S.C. § 1983, along with conspiracy claims under 42 U.S.C. §§ 1985 and 1986, based on constitutional and statutory violations. *Id.* The district court dismissed T.E.H. as a plaintiff and dismissed claims against certain defendants, including the juvenile court judges and the Wood County Department of Human Services. App.102a. During discovery and briefing, Gilbank withdrew additional claims. *Id.*

At summary judgment, the remaining defendants were the Marshfield Police Department, Detective Derek Iverson, and four Wood County social workers. App.103a. The remaining claims involved constitutional violations related to lead up and ultimate removal of T.E.H. from Gilbank's custody, including claims of unreasonable searches and seizures, due process violations, conspiracy under § 1985, and fraud in the CHIPS proceedings. *Id.*

In December 2021, the district court granted summary judgment in favor of the Wood County defendants and the Marshfield defendants. App.109a. The court held that Gilbank's principal claims arose from injuries caused by state court orders during the CHIPS proceedings, rendering them barred under the *Rooker-Feldman* doctrine. *Id.* This included claims related to the removal and custodial placement of T.E.H. *Id.*

The district court also addressed Gilbank's remaining constitutional claims, which she argued were independent of the state court's orders. App.107a-108a. The court found

that Gilbank consented to the urinalysis, precluding any Fourth Amendment violation. *Id.* It also ruled that the Fifth Amendment was not implicated because Gilbank's statements were never used in a criminal proceeding. *Id.* The court determined that her procedural due process claim was barred by issue preclusion and held that alleged violations of state statutes did not establish a federal due process violation. *Id.*[6]

III. Procedural Posture before the 7th Circuit

On January 9, 2022, Gilbank appealed the District Court's final judgment and prior rulings to the Seventh Circuit. After initial briefing, the court recruited counsel for Gilbank and directed the parties to address the application of the *Rooker-Feldman* doctrine. Briefing occurred again and argument was held before a three-judge panel. Before a decision was issued, the Seventh Circuit ordered en banc review and sought additional briefing on the *Rooker-Feldman* doctrine. On August 1, 2024, the en banc court issued a decision affirming the district court's dismissal of Gilbank's claims. The ruling included multiple opinions, but a clear majority rejected the application of the *Rooker-Feldman* doctrine to her claims, based on the "review and rejection" element.

The en banc opinion contains opinions by three authors (Judges Hamilton, Easterbrook, and Kirsch), with the "majority" opinion shifting primarily between Judges Hamilton and Kirsch. It is worth taking a moment to map out those shifting majorities to understand which opinion

6. The dismissal of these claims was affirmed by the entire en banc panel. App.61a-68a. The Petition does not challenge these claims.

is controlling—and when. This is especially important because Gilbank's Petition frequently obscures which opinion is the controlling majority opinion when discussing them.

Judge Hamilton's opinion is the lead opinion and is majority opinion as to the factual background,[7] the affirmance of the dismissal on the merits of Gilbank's claims arising prior to the state court judgments,[8] the history of the *Rooker-Feldman* doctrine,[9] and the first three elements of the *Rooker-Feldman* analysis provided by this Court in *Exxon Mobil*.[10]

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7. This was Part I of Judge Hamilton's opinion and it, as well as Part II (legal standards) carries the majority vote with six votes: Judges Rovner, Hamilton, Brennan, Jackson-Akiwumi, Pryor, and **Easterbrook**. App.2a-3a. This grouping of judges also carries the majority as to Part V of Judge Hamilton's opinion, which finds that Gilbank had an opportunity to raise her federal issues in state court, which Gilbank does not challenge. App.3a.

8. This is Part VIII of Judge Hamilton's opinion and is joined by the entire en banc panel. App.3a, App.61a. The entire en banc panel also agreed that the Seventh Circuit would no longer use the "inextricably intertwined" language previously employed when analyzing the doctrine (Part III, Footnote 5) and that whatever the proper scope of the *Rooker-Feldman* doctrine was, it should not contain a "fraud exception" (Part VI of Judge Hamilton's opinion). App.3a, App.18a-19a, App.48a. The Petition does not challenge these parts.

9. This is Part III.A of Judge Hamilton's opinion and carries the majority vote with six votes: Judges Rovner, Hamilton, Brennan, Jackson-Akiwumi, Pryor, and **Easterbrook**. App.2a-3a.

10. This is Part III.B of Judge Hamilton's opinion and carries the majority vote with six votes: Judges Rovner,

The majority opinion then shifts to Judge Kirsch at the fourth element of the *Exxon Mobil* analysis, as Judge Easterbrook's vote shifts to align with Judge Kirsch's opinion.[11] The fourth element requires that the claims seek "review and rejection" of the state-court judgment by the federal court for the doctrine to apply. This is the element of the analysis that Gilbank's claims turn on—and that Gilbank prevailed on.

This majority explicitly finds that Gilbank's claims arising from the state-court judgements (to which the district court had applied the *Rooker-Feldman*) did not meet this element. Writing for the majority on that issue, Judge Kirsch concluded that awarding Gilbank the relief she sought—monetary damages—would not amount to a "review and rejection" of the state court judgments because those judgments were not sounded in monetary terms. This majority held that *Exxon Mobil* focuses on the type of relief sought, and damages would not undo the state court judgments. While Judge Hamilton may have had the "lead opinion," his analysis of the fourth element (Part IV) is explicitly and repeatedly identified as a dissent. Judges Rovner, Hamilton, Brennan, Jackson-Akiwumi, and Pryor maintained that the *Rooker-Feldman* doctrine was appropriately applied to these claims and would have affirmed the district court's dismissal on this basis.

Hamilton, Brennan, Jackson-Akiwumi, Pryor, and **Easterbrook**. App.2a-3a.

11. This is Part I of Judge Kirsch's opinion and carries the majority vote with six votes: Chief Judge Sykes, Judges Scudder, St. Eve, Kirsch, **Easterbrook**, and Lee. App.3a.

After the Kirsch majority found that the *Rooker-Feldman* doctrine did not apply to Gilbank's claims arising from the state-court judgments, the court addressed the disposition of those claims. Judge Kirsch, along with Chief Judge Sykes, and Judges Scudder, St. Eve, and Lee, determined that the claims should remanded to the district court for further proceedings on the merits. However, at this point, Judge Kirsch's opinion loses the vote of Judge Easterbrook and is no longer a majority opinion.

The majority shifts a final time as to the court's mandate. Writing separately and concurring in judgment, Judge Easterbrook provided the decisive sixth vote. He found that under *Heck v. Humphrey*, a federal court must dismiss § 1983 claims seeking damages that would imply the invalidity of a state court judgment unless the state court judgment has been set aside. He noted that while *Heck* originally applied to criminal cases, its principle has been extended to other contexts. He concluded that, like *Rooker-Feldman*, *Heck* serves to prevent federal courts from undermining state judgments and precluded Gilbank's claims for damages because the custody order had not been vacated. Judge Easterbrook's concurrence, combined with the five dissenting votes supporting the application of *Rooker-Feldman*, affirmed the district court's dismissal of all claims, with no remand required.[12]

The following chart maps the various controlling opinions and votes:

12. As mentioned, the entire en banc panel also affirmed the merits dismissals of Gilbank's claims arising prior to the state court judgment. Additionally, without a viable constitutional claims, the dismissal of Gilbank's section 1985 and *Monell* claims were also affirmed.

Issue	Majority Author	Section of Opinion	Majority Votes
Rooker-Feldman Background	Hamilton	Part III.A	Rovner, Hamilton, Brennan, Jackson-Akiwumi, Pryor, **Easterbrook**
First Three Elements of *Exxon Mobil* Analysis	Hamilton	Part III.B	Rovner, Hamilton, Brennan, Jackson-Akiwumi, Pryor, **Easterbrook**
Fourth *Exxon Mobil* Analysis	Kirsch	Part I	Kirsch, Sykes, Scudder, St. Eve, Lee, **Easterbrook**
Rooker-Feldman Does Not Apply	Kirsch	Part I	Kirsch, Sykes, Scudder, St. Eve, Lee, **Easterbrook**
Mandate Disposing of Gilbank's Claims Arising from the State-Court Judgments	Hamilton & Easterbrook	Hamilton's conclusion; Easterbrook's concurrence	Rovner, Hamilton, Brennan, Jackson-Akiwumi, Pryor, **Easterbrook**

After the decision resulted in a mandate affirming the dismissal of all of Gilbank's claims, Gilbank filed this petition for writ of certiorari. She frames the issue as whether the *Rooker-Feldman* doctrine should "extend to bar federal claims for damages where the state judgment neither awarded nor denied damages, meaning the federal claim could not vacate or modify the judgment's relief?" Pet.i. *The en banc court found in Gilbank's favor on this question*. This question is governed by Judge Kirsch's opinion (Part I) and has a clear majority, including Judge Easterbrook's vote. The en banc panel found that the *Rooker-Feldman* doctrine did not apply to Gilbank's claims. However, Gilbank's claims were ultimately dismissed because Judge Easterbrook applied the *Heck* doctrine, which Gilbank does not challenge. Instead, her Petition raises a question that she already prevailed on and which is now settled law in the Seventh Circuit.

REASONS FOR DENYING CERTIORARI

I. This Case Is a Poor Vehicle for Review Because Gilbank Prevailed on Her Question Presented, and Judgment Was Affirmed Against Her on Other Grounds that She Fails to Address in Her Petition.

This Court should reject Gilbank's Petition because it is a poor vehicle for reviewing her question presented. It is a poor vehicle because Gilbank prevailed on the question she now presents. The Seventh Circuit adopted the narrower interpretation of the *Rooker-Feldman* analysis for which Gilbank advocates, finding that the doctrine does not apply to claims for damages where the state court did not issue a judgment sounding in damages. *After making this finding, the Seventh Circuit explicitly found that the Rooker-Feldman doctrine did*

not apply to Gilbank's claims based on the state-court judgments. Because the *Rooker-Feldman* doctrine was not applied to Gilbank's claims, her Petition is a very poor vehicle for seeking review of the *Rooker-Feldman* doctrine. Ultimately, dismissal of Gilbank's claims stems from Judge Easterbrook's concurrence-in-part, which was based on the *Heck* doctrine. Therefore, to grant Gilbank relief, the Court would need to address Judge Easterbrook's application of the *Heck* doctrine to Gilbank's claims. Consequently, Gilbank's Petition is a very poor vehicle for reviewing the *Rooker-Feldman* doctrine or her question presented.

A. The Seventh Circuit Has Already Decided Gilbank's Question Presented in Her Favor.

In Judge Kirsch's majority opinion, the Seventh Circuit determined that the *Rooker-Feldman* doctrine does not bar a claim for damages when the state-court judgments did not involve monetary relief. Specifically, the Kirsch majority explained that the courts in the Seventh Circuit must:

> consider the relief requested in determining if the plaintiff has indeed asked the court to reject a state court judgment. And it is unlikely, although not impossible, that a plaintiff seeking damages, like Gilbank, has requested a court to do so: awarding damages usually does not affect a state court judgment not sounding in monetary terms.

App.75a-76a. This is the precise question Gilbank presents in her Petition. Pet.i. The Seventh Circuit has joined other

circuits applying the "narrow" and "formal" application[13] of the *Exxon Mobil* analysis,[14] particularly the fourth element—the "review and reject" element. Pet.3. The Court should not accept a petition with a question presented that the petitioner has already prevailed on. The position Gilbank advocates for is now the controlling law in the Seventh Circuit. App.75a.

But Gilbank fails to acknowledge that Judge Kirsch's opinion is the majority. Instead, she argues that the "leading opinion" is incorrect and claims the shifting majorities will create confusion regarding the *Rooker-Feldman* analysis.

Gilbank's alleged concerns over confusion are unfounded. The Seventh Circuit courts have quickly responded to the narrowing of the application of the *Rooker-Feldman* doctrine that arises from Judge Kirsch's opinion and have been following the Court's guidance as such. *See*, *e.g.*, *Muhammad v. Lone Star Funds*, No. 24-1730, 2024 WL 4986851, at *1 (7th Cir. Dec. 5, 2024) (unpublished summary affirmance)[15] (explaining that

13. Make no mistake, the "practical approach" was not adopted by the Seventh Circuit, and was explicitly rejected in favor of the "narrow" approached advocated for by Gilbank and articulated by Judge Kirsch. App.23a, App.75a-76a.

14. None of the Parties contest that the Seventh Circuit's new test for the *Rooker-Feldman* doctrine is the four-element analysis from *Exxon Mobil*, 544 U.S. at 284, as well as an inapplicable fifth element, which explains that the *Rooker-Feldman* doctrine does not apply if the plaintiff did not have a reasonable opportunity to raise the claim in the state courts. App.43a.

15. Respondents acknowledge that pursuant to Seventh Circuit Rule 32.1(b), an unsigned, unpublished order is not

Gilbank "h[eld] that the *Rooker-Feldman* doctrine no longer applies to a plaintiff 's federal claims for money damages for injuries inflicted by a state-court judgment"); *Brookside MHP, LLC v. Michalak*, No. 24-cv-416-jdp, 2024 WL 4891947, at *1 (W.D. Wis. Nov. 26, 2024) (Peterson, J.) (explaining that while the *Rooker-Feldman* doctrine barred the court from "vacat[ing] the judgment issued by the state court," it could "still consider Michalak's claims for money damages");[16] *Foster v. Carver Cnty. Health and Human Servs.*, No. 24-cv-265-jdp, 2024 WL 4582356, at *2 (W.D. Wis. Oct. 25, 2024) (Peterson, J.) (citing *Gilbank* and explaining "[t]his court does have jurisdiction to decide claims for damages against county entities for making false accusations against Foster, even if those claims would imply that a state-court judgment was wrong"); *Rader v. Ally Fin., Inc.*, No. 23-cv-668-jdp, 2024 WL 3905087, at *2 (W.D. Wis. Aug. 22, 2024) (Peterson, J.) (recognizing that a portion of Judge Kirsch's opinion "operat[es] as the majority" and explaining "*Rooker-Feldman* does not bar all claims for money damages but it does bar damages claims meant to offset the value of the property subject to the writ of replevin"); *Austin v. Cook Cnty., Ill.*, No. 22-2856, 2024 WL 3649022, at *2 (7th Cir. Aug. 5, 2024) (unpublished summary affirmance) (explaining that Austin's request for damages "did not ask the court to reverse, undo, or overturn any state-court order" and

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precedent for the circuit. Respondents cite it not as precedent but to show how the en banc *Gilbank* decision is being interpreted.

16. It's worth noting that Judge Peterson is the district judge who issued the underlying decision at issue in this case and whose application of the *Rooker-Feldman* doctrine was under review by the Seventh Circuit. This belies Gilbank's concerns that the lower courts will be unable to follow the shifting majorities.

thus *Rooker-Feldman* did not deprive the district court of jurisdiction).[17]

While Respondents acknowledge that Judge Kirsch's opinion on the "review and reject" element is the controlling precedent in the Seventh Circuit, they do not agree that it is the correct result and would not seek to defend it upon grant of certiorari. As discussed further, *infra*, Respondents assert that Judge Kirsch's majority opinion was wrongly decided. Despite Respondents' position on Judge Kirsch's majority, the Seventh Circuit district court cases interpreting *Gilbank* show that the lower courts are understanding and following the Seventh Circuit's mandate.

B. A Majority of the Seventh Circuit Already Found that *Rooker-Feldman* Did Not Apply to Gilbank's Claims.

Reading Gilbank's Petition would leave one thinking that the Seventh Circuit affirmed the application of *Rooker-Feldman* to her claims, but that is not true. Pet.13-14, Pet.30-36. After narrowly interpreting the

17. *See also Sharritt v. Henry*, No. 23-C-15838, 2024 WL 4524501, at *6 (N.D. Ill. Oct. 18, 2024); *Brown v. Vancil*, No. 4:23-cv-4190-SLD, 2024 WL 4275961 at *8 (C.D. Ill. Sept. 24, 2024); *East Gate-Logs. Park Chi., LLC v. CenterPoint Props. Trust*, No. 24-C-3742, 2024 WL 4265184, at *3-4 (N.D. Ill. Sept. 23, 2024); *Schiller v. Wisconsin*, No. 23-cv-177-jdp, 2024 WL 4249237, at *2 (W.D. Wis. Sept. 20, 2024) (Peterson, J.); *Vega v. Adjudicator 4318*, No. 23-CV-1124-SCD, 2024 WL 4212865, at *2 (E.D. Wis. Sept. 17, 2024); *Keith v. Off. of Sec. of State*, No. 24-CV-1015-JPS, 2024 WL 4119481, at *4 (E.D. Wis. Sept. 9, 2024); *Shopar v. Pathway Fam. Servs., LLC*, No. 22-cv-02333, 2024 WL 3950215, at *4 (N.D. Ill. Aug. 27, 2024).

fourth *Exxon Mobil* element, Judge Kirsch's majority concluded that Gilbank's claims are not barred by the *Rooker-Feldman* doctrine: "A majority of the court agrees that Gilbank's lawsuit does not fall within the narrow parameters of the *Rooker-Feldman* doctrine because Gilbank's suit cannot and will not modify the since resolved judgment." App.73a.

Gilbank repeatedly refers to Judge Hamilton's opinion as the "lead opinion" and spends much of her Petition attacking it. However, this portion of Judge Hamilton's opinion is explicitly and repeatedly referred to as a dissent. App.3a, App.23a. In his dissent on the "Controversial Fourth Element: 'Review and Reject' the State Court Judgment," Judge Hamilton states:

> I believe that plaintiff 's claims for damages for injuries inflicted by state court judgments invite "review and rejection" of those judgments, so that *Rooker-Feldman* bars jurisdiction here. **But a majority of the *en banc* court disagrees in Judge Kirsch's opinion, as joined in part by Judge Easterbrook.** This Part IV should thus be read as a **dissent** from Part I of Judge Kirsch's opinion.
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> . . .
>
> The majority takes the approach, though, that plaintiff 's claims based on injuries inflicted by the state-court judgments do not invite a federal court to "review and reject" those state-court judgments. So long as plaintiff is seeking only monetary damages rather than a federal-

> court order directly nullifying the state court's custody orders, the majority reasons, ***Rooker-Feldman* does not apply** and the federal court is free to decide those damages claims on their merits.

App.22a-23a. (emphasis added). This is repeated by Judge Easterbrook, who makes clear in his opinion, that he joins Judge Kirsch's opinion in creating the majority that *Rooker-Feldman* does not bar Gilbank's claims: "But I agree with Judge Kirsch that the Rooker-Feldman doctrine does not deprive federal district courts of jurisdiction to award damages for injury caused by a state court's judgment. This is so because damages do not modify a judgment and are not a form of appellate review. I join Part I of Judge Kirsch's opinion." App.68a-69a.

Gilbank dismisses these statements as mere "labels" that "have the potential to mislead." Pet.16. But these are not just "labels"—they are the deciding votes of the court, which establish the framework for applying the *Rooker-Feldman* doctrine in the Seventh Circuit.

C. Gilbank's Claims Were Not Dismissed Because of *Rooker-Feldman*.

Despite presenting a question as to the application of the *Rooker-Feldman* doctrine, Gilbank's claims were not dismissed because of *Rooker-Feldman*. The majority explicitly found that the *Rooker-Feldman* doctrine did not apply to Gilbank's claims arising from the state-court judgments because she sought only monetary damages and those would not directly nullify the state-court judgments. App.3a, App.23a.

The dismissal of Gilbank's claims arising from the state-court judgments was affirmed because Judge Easterbrook—who also found *Rooker-Feldman* inapplicable—upheld dismissal on other grounds.[18] App.69a-72a. He found that remand of Gilbank's claims would be pointless because damages were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), and *Edwards v. Balisok*, 520 U.S. 641 (1997). Under *Heck*, the state-court judgments needed to be set aside before Gilbank could seek damages for her claims arising from those judgments under 42 U.S.C. § 1983. *Id.*[19] Judge Easterbrook found that the principle of *Heck* applied beyond criminal prosecution and that after the Seventh Circuit held that "*Heck* continue[d] to apply even after a prisoner's release and the end of all options to seek collateral review" in *Savory v. Cannon*, 947 F.3d 409 (7th Cir. 2020) (en banc), the Court "must treat *Heck* as generally applicable to state-court judgments that have not been set aside." App.69a-70a. Therefore, it was not *Rooker-Feldman*, but Judge Easterbrook's application of *Heck*, that resulted in the affirmance of the district court's dismissal of Gilbank's claims. *Id.*

18. Gilbank remarks that Judge Hamilton's dissent, which would have applied the *Rooker-Feldman* doctrine to her claims, was necessary to the ultimate mandate. This is true, but the deciding factor in her mandate was Judge Easterbrook's concurrence-in-judgment—making that the true source of her claims.

19. Notably, Judge Easterbrook explained that if Gilbank's claims arose from state law and were before the court on diversity, he would have voted with Judge Kirsch to remand Gilbank's claims. App.69a.

D. The Court Will Need to Address Judge Easterbrook's Application of the *Heck* Doctrine to Provide Gilbank the Relief She Seeks.

Because Judge Easterbrook's vote was decisive in affirming the dismissal of Gilbank's claims, this Court will need to address his application of the *Heck* doctrine before granting Gilbank the relief she seeks. It bears repeating that Judge Easterbrook concluded that remanding the claims would be "pointless" when the *Heck* doctrine barred her recovery.

To grant Gilbank the relief she seeks, this Court will need to address Judge Easterbrook's application of the *Heck* doctrine to Gilbank's claims, which—more broadly—will require this Court to examine the issue of whether the *Heck* doctrine applies broadly to § 1983 claims, or only those arising from confinement-based claims.

This case is a poor vehicle for determining whether the *Heck* doctrine should apply broadly to § 1983 claims involving state-court judgments because this issue was not addressed or briefed by any party in the lower courts, as Gilbank acknowledges. Pet.29-30. The Parties did not raise *Heck*, *Edwards*, or *Savory* at the district court; moreover, those cases were not addressed in any of the briefing at the Seventh Circuit. *Id.* Neither Judge Hamilton's nor Judge Kirsch's opinions provide any deep discussion or analysis on the *Heck* doctrine's applicability. App.59a; App.90a. Therefore, this case does not present sufficient discussion or briefing of this issue to properly prepare this Court for such review.

E. This Court Will Need to Address the *Heck* Issue to Address the *Rooker-Feldman* Issue.

This *Rooker-Feldman* issue cannot be untangled from the *Heck* issue. Although Gilbank was quick to dismiss Judge Easterbrook's opinion as a non-issue, claiming it "does not disrupt clean review of the question presented," that's simply incorrect. Pet.30. The mandate by the Seventh Circuit to affirm the dismissal of Gilbank's claims is because of Judge Easterbrook's deciding vote. App.58a, App.90a. Besides, Gilbank would not be seeking a review of the *Rooker-Feldman* analysis if not for Judge Easterbrook's decision to apply *Heck* to the claims because Judge Easterbrook joined the Kirsch majority which found that the *Rooker-Feldman* doctrine did not apply to Gilbank's state-court judgment based claims. Therefore, the question presented actually seeks an affirmance of the Seventh Circuit's findings as to the *Rooker-Feldman* but a correction as to Judge Easterbrook's *Heck* application. The review of the dismissal of Gilbank's claims cannot be taken up without addressing Judge Easterbrook's application of the *Heck* doctrine to those claims.

It's also worth addressing Gilbank's assertion that "not only do Judge Easterbrook's positions cause confusion about which opinions control, but they also do nothing to resolve the circuit split on which Gilbank seeks review." Pet.16. This is not true. Judge Easterbrook cast the deciding vote on the analysis that Seventh Circuit courts are to perform on the "review and reject" element of the *Exxon Mobil* analysis. There is no evidence of an internal split within the circuit on how to apply *Exxon Mobil*. *See supra* Note 17.

II. This Court Does Not Engage in Error Correcting, Which Is What Gilbank's Petition Seeks.

The unique disposition of Gilbank's claims renders her Petition a purely error correcting petition. This Court does not engage in error-correcting, especially when such errors are unlikely to recur. Sup. Ct. R. 10. The error-correcting nature of Gilbank's Petition can be seen through Gilbank's attacks on the "lead opinion," rather than the "majority opinion." Additionally, Respondents would defend Judge Hamilton's opinion upon review and would be advocating that this Court reject the majority's application of the fourth *Exxon Mobil* element. The fact that Respondents would not be defending the majority opinion, but only the ultimate judgment, further highlights that the Petition is primarily for error-correcting.

A. Gilbank's Petition Is Error Correcting Because She Seeks to Change the Judgement But Not the Majority Opinion's Analysis.

The error-correcting nature of Gilbank's Petition is clear in her *Rooker-Feldman* argument. Gilbank frequently attacks the "en banc ***judgment***" and the "***lead*** opinion," Pet.33-37 (emphasis added), because she cannot attack the majority opinion or its application of *Rooker-Feldman* to her state-court judgment claims when she prevailed on both.

Gilbank wants the Court to adopt—not overturn—the majority's opinion (Judge Kirsch's opinion) as to the fourth element of the *Rooker-Feldman* analysis. She does not want that changed. Rather, she wants the Court's final mandate changed (where Judge Easterbrook voted

to affirm the dismissal of the claims as barred by *Heck*). But this Court does not sit as an error-correcting court, especially when the correction would benefit only Gilbank. Because Judge Kirsch's opinion is now the law of the land in the Seventh Circuit and is currently being applied by the lower courts, this alleged error that Gilbank faces is unlikely to be repeated.

B. Judge Kirsch's Majority Holding that *Rooker-Feldman* Did Not Apply to Gilbank's Claims Because She Sought Damages Is Wrong.

Although Respondents do not believe certiorari should be granted,[20] if it is, Respondents will seek only to defend the ultimate mandate but will not defend the Kirsch majority opinion's application of the *Rooker-Feldman* doctrine. This further shows that Gilbank's Petition is primarily error-correcting.

Respondents will argue that this Court should reject Judge Kirsch's majority opinion. Judge Kirsch's majority is wrong because it puts the form of the pleading over allowing the court to conduct a practical analysis of the claim, resulting in arbitrary and inconsistent results.

The primary issue presented in Gilbank's Petition is the proper analysis of the Fourth *Exxon Mobil* element: whether plaintiff's claim was inviting the federal court to "review and reject" the state-court judgment. App.22a-23a. Gilbank argues—and Judge Kirsch's

20. For purposes of Rule 15.2 and to preserve Respondents' rights to challenge Judge Kirsch's opinion and the final determination that the *Rooker-Feldman* doctrine did not apply to Gilbank's claims, Respondents raise this argument.

opinion adopts—that she did not seek to "reverse, modify, "declar[e] void" or seek to "undo" the state-court custodial judgment by seeking monetary damages because there was no monetary relief in the state-court judgements. Pet.34; App.81a-82a.

But this apples-to-apples comparison of the relief requested is too narrow of an interpretation of *Exxon Mobil*. As Judge Hamilton's dissent astutely acknowledges, the *Exxon Mobil* Court used a number of descriptive verbs to describe what lower federal courts were not allowed to do with respect to state court judgments: review, reject, overturn, undo, reverse, set aside, and alter. App.24a (citing *Exxon Mobil*, 544 U.S. at 283-93). Likewise, the *Exxon Mobil* Court warned against claims that "*essentially invited* federal courts of first instant to review and reject unfavorable state-court judgments." 544 U.S. at 283 (emphasis added). This language supports a practical approach to the *Rooker-Feldman* analysis: to examine whether the federal plaintiff was effectively seeking appellate review of a state-court judgment, regardless of the title or form of the claim. Without such an analysis, a federal plaintiff could plead herself into federal jurisdiction—even when she was seeking review of the state-court judgment—simply by claiming damages.

Yet, Gilbank's Petition, and Judge Kirsch's majority opinion, reduces this "review and rejection" analysis to a more literal, apples-to-apples comparison. If damages were not awarded at the state-court judgment and are sought now, the doctrine does not apply—even if the damages sought are explicitly for injuries caused by the state-court judgment. Pet.34; App.76a-78a.

Such an application will lead to arbitrary and inconsistent results and could result in two similarly situated plaintiffs having the *Rooker-Feldman* doctrine applied oppositely against them. As Judge Kirsch's majority opinion concedes, a federal plaintiff could not seek monetary relief in federal court if the "state-court judgment sounded in monetary relief." App.82a. Because, in that situation, a monetary judgment would "nullify or modify the judgment." *Id.* Gilbank concedes the same: "if a state court orders Smith to pay Jones $100,000 in damages, Smith cannot ask a federal court to review that judgment and reduce the damages to $50,000." Pet.34. Thus, by Gilbank's argument, she can seek monetary damages because there was no monetary award against her in the state-court judgment.

But what if the state court had ordered Gilbank to pay child support to Hoyle while she lost custody? By Gilbank's own argument, she would not be able to seek damages for that award, because she had a monetary judgment entered against her. Or would the federal court be forced to delineate which of Gilbank's damages claims were for the loss of custody and which were for the child support order that accompanied the custodial loss? Alternatively, under Gilbank's own analogy, if the state court ordered Smith to pay Jones $100,000 in damages, would Smith be allowed to pursue a claim of damages for $150,000, because that exceeds the amount he was ordered to pay Jones? Even if in so doing, such a payment would completely nullify the state-court damages award? Would Smith be able to pursue a claim for $50,000 in damages, because he's not seeking an order to reduce the judgment against him but rather seeking a damages award? Even if in doing so, the federal court judgment would essentially nullify or undo half of the state-court judgment?

As these few examples show, Judge Hamilton's concerns, which warns of the arbitrary and inconsistent results of the majority's rule, are well founded. Moreover, these concerns do not "transform" the doctrine into another "preclusion test." Pet.35. Rather, it allows the lower courts the flexibility needed to determine whether the federal plaintiff is "essentially invit[ing] federal courts of first instance to review and reject unfavorable state-court judgments." *Exxon Mobil*, 544 U.S. at 283. Thus, Judge Kirsch's application of the "review and reject" element of the *Exxon Mobil* is wrong and should be rejected.

III. The Circuits Are Already Heeding *Exxon Mobil's* Warning and Narrowing the Application of the *Rooker-Feldman* Doctrine Themselves.

Recent decisions by the Sixth, Seventh, and Eleventh Circuits show that the Circuits are heading the cautions of *Exxon Mobil* and narrowing its application by the lower courts. Because the Circuits are taking actions to narrow the doctrine themselves, this is not an issue demanding this Court's attention, even if there seems to be circuit split. As Judge Kirsch's majority opinion explains, its holding that Gilbank's state-court judgment claims were not barred by the *Rooker-Feldman* doctrine brings the Seventh Circuit in line with a number of its sister circuits, including the Third, Fourth, Sixth, Eighth, Tenth, and Eleventh. App.77a-78a. Not only does Judge Kirsch's opinion bring the Seventh in line with the circuits he identified, it also brings the Seventh in line with the Second Circuit. *See, e.g.*, *Dorce v. City of New York*, 2 F.4th 82 (2d Cir. 2021) (holding the *Rooker-Feldman* doctrine did not apply because plaintiffs did not seek to void a

foreclosure judgment or the return of their property, but rather sought specific compensation). If the circuits are starting to align themselves, intervention by this Court is not necessary.

Additionally, the language in some of the recent decisions shows an active desire by the circuits to narrow the doctrine. *See*, *e.g.*, *Hohenberg v. Shelby County*, 68 F.4th 336, 341 (6th Cir. 2023) (describing it as an "'exceedingly narrow' limitation"); *Behr v. Campbell*, 8 F.4th 1206, 1214 (11th Cir. 2021) (explaining the "doctrine occupies 'narrow ground'"). Notably, in the Law Professors' amicus brief, they too identify recent cases in the Fourth and Sixth Circuits that narrow the doctrine and remind the lower courts not to confuse *Rooker-Feldman* with other doctrines, like preclusion and abstention. Prof.Amicus.7 (citing *VanderKodde v. Mary Jane M. Elliott, P.C.*, 951 F.3d 397, 402 n.2 (6th Cir. 2020); *Jonathan R. by Dixon v. Justice*, 41 F.4th 316, 341 (4th Cir. 2022).

The Circuits' actions to reign in the application of the *Rooker-Feldman* doctrine, in accordance with the *Exxon Mobil* Court's guidance, is most evident in this very case where the Seventh Circuit explicitly recruited Gilbank's counsel to represent her pro bono so that the issue of the *Rooker-Feldman* doctrine could be more thoroughly examined through represented counsel. App.2a.

The use of dated cases to exaggerate a circuit split does not accurately reflect the trends in the Circuits towards narrowing the doctrine. For example, Gilbank cites to old Seventh Circuit precedent (*Hadzi-Tanovic v. Johnson*, 62 F.4th 394 (7th Cir. 2023)) to assert that the Seventh should be considered amongst the Ninth

and Tenth in applying the doctrine too broadly.[21] But *Hadzi-Tanovic* predates *Gilbank*, so *Gilbank's* narrower interpretation is the controlling law in the Seventh Circuit. As Judge Kirsch's majority opinion identifies, its holding that *Rooker-Feldman* requires courts to focus on the relief sought brings the Seventh into alignment with the Third, Fourth, Sixth, Eighth, Tenth, and Eleventh. App.77a-78a.

Additionally, both the Law Professors' and the Cato Institute's amicus briefs cite to language in a concurrence from Judge Sutton, in *VanderKodde*, in which he remarks that "*Rooker-Feldman* continues to wreak havoc across the country." 951 F.3d at 405. Yet, in so doing, they fail to acknowledge that *VanderKodde* is actually evidence that the circuits are addressing the scope of *Rooker-Feldman* sufficiently on their own. *See generally VanderKodde*, 951 F.3d at 402-04 (holding *Rooker-Feldman* did not apply and was not to be applied like re judicata, collateral estoppel, and forfeiture).

The recent cases, like *Gilbank*, *Behr*, *Hohenberg*, and *VanderKodde*, show that the Circuits are taking on the issue of the scope of *Rooker-Feldman* themselves. This Court need not intervene when the Circuits are acting on their own accord.[22]

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21. The Law Professors' amicus brief errs more egregiously by asserting that Judge Hamilton's dissent is actually the holding and inaccurately describes the Seventh as employing the "practical method" that Judge Kirsch's majority explicitly rejects. Prof. Amicus.7. Likewise, many of the cases the Law Professor's Amicus brief cite to seemingly demonstrate a misapplication of the *Rooker-Feldman* doctrine are over ten years old and do not reflect the recent trends in the circuits. Prof.Amicus.8-9.

22. By taking the position that the Circuits are narrowing the application of the *Rooker-Feldman* doctrine, and thus, this

Likewise, the claim that the *Rooker-Feldman* "has been invoked in tens of thousands of circuit and district court decisions" needs to briefly be addressed. Gilbank's Petition, as well as many of the amicus briefs, repeatedly cite to a remark in Judge Hamilton's opinion about the number of times the doctrine is invoked. With all due respect to Judge Hamilton, the remark is made without any citation or support, so it is unclear precisely the source of the claim. Moreover, the Cato Institute's search for the term "rooker-feldman" does not provide enough information to draw any reasonable conclusion about the use of the terms. The fact that the term "rooker-feldman" appears in a case does not mean that the doctrine was invoked, yet alone applied in a case. The Cato Institute's information reflects, at best, the appearances of the term.[23]

Court need not intervene, Respondents are not taking the position that these decisions are correct—nor would Respondents seek to necessarily defend such decisions if certiorari was granted. As previously expressed, Respondents will not defend Judge Kirsch's majority opinion on the fourth "review and reject" *Exxon Mobil* element because Respondents believe it to be wrong. While Respondents may not agree with these decisions, they do acknowledge that the several circuits have narrowed the application *Rooker-Feldman* doctrine.

23. Respondents do not contest the frequency of *Rooker-Feldman*'s invocation but address the unsupported assertion that it has been invoked in "tens of thousands" of cases. Additionally, the Cato Institute's claim that "some lower courts [were] applying a more expansive version of the doctrine than the one this Court mandated" lacks empirical support.

IV. As Judge Easterbrook's Concurrence Correctly Explains, Gilbank's Claims Face a Plethora of Problems, Which Makes This Case a Poor Vehicle for Review.

As Judge Easterbrook astutely, and correctly, identified, there are numerous other issues with Gilbank's claims such that he concluded: "[t]here is just no point to a remand in this case. . . ." App.72a. Petitioner's assertion that "[n]o alternative grounds for affirmance or other vehicle pitfalls lurk," Pet.39, is simply not true. To the extent this Court agrees with Judge Easterbrook's application of the *Heck* doctrine, that would be an alternative ground for affirmance.[24] As Judge Easterbrook articulated during oral arguments[25], if the *Heck* doctrine applies, then her claims would be barred not because of subject matter jurisdiction but because of prematurity and Gilbank would lose at the same stage either way. Judge Easterbrook further explained: while there may be a slight dispute between whether the dismissal should be "for want of jurisdiction" or "for prematurity," such a dispute really did not matter when the results (that she could not proceed on her claims) were the same. Thus, this case is a poor vehicle because there are other grounds upon which the dismissal could be affirmed, as Judge Easterbrook's concurrence proves.

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24. It is also worth noting, whether the *Heck* issue was briefed at the lower court is irrelevant to whether this Court could consider it as an alternative ground for affirmance, because this Court can examine that issue if it was decided by a lower federal court. *See United States v. Williams*, 504 U.S. 36, 41-45 (1992).

25. A copy of the en banc oral argument recording may be found here: https://media.ca7.uscourts.gov/sound/2024/kra.22-1037.22-1037_02_06_2024.mp3.

Beyond the *Heck* issue, there are numerous other alternative grounds upon which affirmance could occur, as Judge Easterbrook also correctly identified. App.73a. The underlying decision occurred at the summary judgment stage, which was fully briefed by Gilbank and the Respondents, who filed cross-motions for summary judgment. M.Defs.C.A.App.1-29. As Judge Easterbrook explained, certain defendants are not "persons" for purposes of § 1983, which is a defense that had been raised by the Marshfield Respondents at summary judgment, as the Marshfield Police Department was not subject to suit.[26] App.72a; M.Defs.C.A.App.8-9. Judge Easterbrook also expressed concerns with Gilbank's claim including various immunities and the proper role of the federal court in abstaining from resolving child-custody disputes. App.72a.

It bears reminding that the underlying resolution of Gilbank's claims occurred at the fully briefed summary judgment stage. The Respondents raised a plethora of other defenses to Gilbank's complaint at the summary

26. The Marshfield Defendants argued on appeal that the court could affirm on any ground raised at summary judgment, and identified one such ground to be that MPD was not a suable entity. M.Defs.C.A.Br.42-43. Such a dismissal would be without prejudice because it would be for failure to state a claim against MPD as an entity. At the court of appeals, Gilbank repeatedly argued that Respondents' alternative arguments could not be considered without a cross-appeal because it would be moving from a dismissal without prejudice to a dismissal with prejudice. This argument improperly groups all of Respondents' alternative arguments at summary judgment without considerations as to what type of dismissal would result. Additionally, the entire en banc panel affirmed the dismissal of several of Gilbank's claims on their merits, so the judgment was not entirely without prejudice, as Gilbank asserts. App.61a-68a.

judgment stage, including quasi-judicial immunity, qualified immunity, issue preclusion, and failure to state a claim as to various alleged constitutional violations. M.Defs.C.A.Br.42-55; W.Cnty.Defs.C.A.Br.27-55. These would be alternative grounds upon which Gilbank's would fail. Accordingly, Gilbank's claim that there are "[n]o alternative grounds for affirmance or other vehicle pitfalls [that] lurk" is entirely inaccurate. Pet.39.[27]

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27. Gilbank is likely to argue that the alternative grounds that Respondents assert required Respondents to file a cross-appeal because it would enlarge the Respondents' rights. First, the cross-appeal rule should not apply because the district court's judgment included the dismissal of several claims, on their merits, which were unanimously affirmed by the 11-member en banc panel. App.61a-68a. Because claims were dismissed on their merits, Respondents are not seeking to enlarge rights by advocating for affirmances on other grounds.

Second, even if the Court determines that the cross-appeal rule needs to be assessed on a claim by claim basis and examines whether a cross-appeal notice was needed as to the claims that the *Rooker-Feldman* doctrine was applied to, the Court can choose not to apply it given the circumstances; the cross-appeal rule is not an unwaivable jurisdictional bar. *See, e.g.*, *Greenlaw v. United States*, 554 U.S. 237, 245 (2022) (articulating that the requirement is not jurisdictional); *U.S. S.E.C. v. Ahmed*, 72 F.4th 379, 399 (2d. Cir. 2023); *Georgia-Pacific Consumer Prods. LP v. NCR Corp.*, 40 F.4th 481, 485-486 (6th Cir. 2022); *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1085 (9th Cir. 2015); *Gross v. FBL Fin. Servs., Inc.*, 588 F.3d 614, 621 (8th Cir. 2009); *Coe v. Cnty. of Cook*, 162 F.3d 491, 497 (7th Cir. 1998). As the Seventh Circuit explained in *Coe*, "there is no compelling reason to enforce [the rule] when the appellant has been adequately notified of the appellee's intentions." 162 F.3d at 497. Respondents have consistently argued that the courts could affirm for any of the grounds raised at summary judgment, including their defenses on their merits, which would be dismissals with prejudice. Gilbank had notice of Respondents' intent.

CONCLUSION

For all of the aforementioned reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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At minimum, having to untangle the issue of whether a cross-appeal is necessary in this situation, in addition to the plethora of alternative grounds for affirming the district court's decision make this case a poor vehicle for review. As Judge Easterbrook remarked after naming just a handful of the issues with Gilbank's claims, "[t]here is just no point to remand this case. . . ." App.71a.