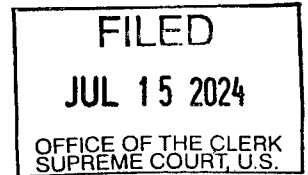


No. 24-65



IN THE SUPREME COURT OF THE UNITED STATES

TONY PING YEW, EXECUTOR OF ESTATE OF JOHN Y WEI,
PETITIONER,

v.

ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, ET AL.,
RESPONDENTS.

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

PETITION FOR A WRIT OF CERTIORARI

Petitioner Tony Ping Yew,
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QUESTIONS PRESENTED

1. The very act of invoking judicial, sovereign immunity and *Rooper-Feldman* to dismiss may have violated Fed. R. Civ. P. 60(b)(4) where a void judgment may permit relief at anytime after judgment following the State Tax Court own admission of inadvertence. This inadvertence is an inherent procedural defect and fall under Fed. R. Civ. P. 60(b)(1). Refusal to vacate the flawed court process granting summary judgment Order to defendant Director, Division Of Taxation can be seen as satisfying Fed. R. Civ. P. 60(b)(4) making the summary judgment Order void.

The question presented is:

Whether the Third Circuit have *any* jurisdictional power to rule *to begin with*; and even if the lower courts have jurisdictional power,

Whether it is *very short lived* and *should have voluntarily terminate and divest itself* from further adjudicative action upon noticed of the state tax judge own admission of ‘inadvertence’,

where on *the face of it*, the State Tax Court summary judgment Order *may* have been a void judgment following judge Brennan own admission of inadvertence *and in particular*,

Whether her *persistent* refusal to vacate her Order while Petitioner was unrepresented make her Order *inherently void*.

2. Whether the Third Circuit made an overly broad interpretation of *Rooker-Feldman* doctrine, misread Petitioner pleading, to meet the four elements of *Rooker-Feldman* to affirm the District Court opinion and also whether ‘affirmance’ without squarely addressing the District Court ruling do not technically meet the definition of ‘affirmance’. (Pet. App. B 3a-6a)
3. Whether the District Court dismissal which was apparently based *solely* on the *necessary* caption to identify Defendants (Defendants Attorney General of the State of New Jersey (the “Attorney General”), and the Honorable Mary Siobhan Brennan’s (“Judge Brennan”) for the purpose of initiating the Complaint, *was only procedural based, and* without addressing Petitioner *merits* argument “no monetary damage was claimed from the state judge and the state“ *whether this manner of dismissal* was inconsistent with the provision of the judicial and sovereign immunity case law. (Pet. App. C 7a-10a).
4. Whether the en banc rules should be changed to exclude the original three judge panel from voting, and if yes, *whether* it could have result in grant of en banc rehearing to Petitioner.

PARTIES TO PROCEEDING

Tony Ping Yew, Executor Of Estate Of John Y Wei, *v.* Attorney General State Of New Jersey; Hon. Mary Siobhan Brennan, J.T.C., No. 23-2069, United States District Court District Of New Jersey. Letter Order October 18, 2023.;

Tony Ping Yew, Executor Of Estate Of John Y Wei, *v.* Attorney General State Of New Jersey; Hon. Mary Siobhan Brennan, J.T.C., No. 23-3005, United States Court Of Appeals For The Third Circuit. Opinion filed: March 21, 2024.;

Tony Ping Yew, Executor Of Estate Of John Y Wei, *v.* Attorney General State Of New Jersey; Hon. Mary Siobhan Brennan, J.T.C., No. 23-3005, United States Court Of Appeals For The Third Circuit. Petition for rehearing by the Court en banc is denied. Entered April 18, 2024.

LIST OF PROCEEDINGS BELOW

1. Tony Ping Yew, Plaintiff, v. Director, Division Of Taxation, Defendant.
Docket No. 008858-2019. Petitioner Complaint was dismissed by Summary Judgment Order on 06/19/2020. (Pet. App. D 11a-18a).
2. Petitioner Motion For Reconsideration refused for consideration by state tax court on 07/08/2020. (Pet. App. E 19a-20a).
3. Petitioner Motion For Recusal refused for consideration by state tax court on 02/07/2022. (Pet. App. F 21a-22a).
4. Tony Ping Yew, Executor Of Estate Of John Y Wei, v. Attorney General State Of New Jersey; Hon. Mary Siobhan Brennan, J.T.C., No. 23-2069, United States District Court District Of New Jersey. Letter Order October 18, 2023. (Pet. App. C 7a-10a).
5. Tony Ping Yew, Executor Of Estate Of John Y Wei, v. Attorney General State Of New Jersey; Hon. Mary Siobhan Brennan, J.T.C., No. 23-3005, United States Court Of Appeals For The Third Circuit. Opinion filed: March 21, 2024. (Pet. App. B 3a-6a).
6. Tony Ping Yew, Executor Of Estate Of John Y Wei, v. Attorney General State Of New Jersey; Hon. Mary Siobhan Brennan, J.T.C.,

No. 23-3005, United States Court Of Appeals For The Third Circuit. Petition for rehearing by the Court en banc is denied. Entered April 18, 2024. (Pet. App. A 1a-2a).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petition for a writ of certiorari to review the decisions of the courts below.

OPINIONS AND ORDERS BELOW

- a. The Not Precedential Opinion of the United States Court Of Appeals For The Third Circuit was affirmed on March 21, 2024. Affirmance was on the basis of *Rooker-Feldman* doctrine alone. (Pet. App. B 3a-6a).
- b. The United States District Court District Of New Jersey dismissed Petitioner Complaint on October 18, 2023. Dismissal was solely based on judicial immunity and the Eleventh Amendment. (Pet. App. C 7a-10a).
- c. Petitioner Complaint was dismissed by Summary Judgment Order on June 19, 2020. (Pet. App. D 11a-18a).

JURISDICTION

The judgment of the Third Circuit was entered on March 21, 2024. (Pet. App. B 3a-6a). A timely filed petition for both panel and en banc rehearing was denied on April 18, 2024. (Pet. App. A 1a-2a). This petition is timely filed on July 12, 2024.

The State Tax Court grant summary judgment to defendant Director, Division Of Taxation on June 19, 2020. (Pet. App. D 11a-18a). No Notice Of Appeal nor Petition was possible to the state higher courts because Petitioner was unable to even have his Motion For Reconsideration, Motion For Recusal considered by the State Tax Court due to the State Tax Court judge demand for representation to

have his case considered. (Pet. App. E;F 19a-22a). This matter is at an impasse at the state level. There was thus no further higher court judgment there.

The question is whether the summary judgment order is final judgment for the purpose of *Rooker-Feldman* to bar Petitioner Complaint and if not, whether the courts below adjudication is inherently void under Fed. R. Civ. P. 60(b)(4) for lack of jurisdiction due to lack of finality in the state courts.

Fed. R. Civ. P. 60(b)(1);(4);(6) is implicated here to confer this Court jurisdiction over the state court summary judgment order. The State Tax Court 'inadvertance' is a fatal error *of a judicial nature*. (Pet. App. E 19a-20a). The State Tax Court *lack inherent power* to enter a summary judgment order in *an improperly conducted judicial proceeding*.

In particular, the very act of refusal to vacate summary judgment order granted to defendant Director, Division Of Taxation in a fatally flawed court proceeding implicate Fed. R. Civ. P. 60(b)(4).

"(1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any adequate remedy at law." 114 F.3d 484, 487 (CA5 1997).

United States v. Beggerly, 524 U.S. 38, 41 (1998)

Justice is involved here. This matter is not merely a procedural issue. This action is an "independent action" which sounded in equity. The injustice of the

State Tax Court refusal to vacate the fatal procedurally flawed summary judgment Order should be deemed sufficiently gross to demand a departure from rigid adherence to court procedural rules. This Court have jurisdiction to determine the legality of the state court Order. Element (1) and (5) should apply here to confer this Court jurisdiction.

Further, the District Court and Third Circuit having exercised jurisdiction over this matter and Petitioner having exhaust his appeal automatically confer jurisdiction to the Court. Petitioner invoke this Court's jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION, COURT RULES AND DOCTRINES INVOLVED

1. *Rooker-Feldman* doctrine.

Under the *Rooker-Feldman* doctrine, federal courts are deprived of subject-matter jurisdiction over claims when “(1) *the federal plaintiff lost in state court*; (2) *the plaintiff ‘complains of injuries caused by the state-court judgments’*; (3) *those judgments were rendered before the federal suit was filed*; and (4) *the plaintiff is inviting the district court to review and reject the state judgments.*” *Great W. Mining & Min. Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010) (alterations omitted) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)).
(Pet. App. B 6a).

2. Eleventh Amendment sovereign immunity.

3. Judicial immunity doctrine.

4. Fed. R. Civ. P. 60(b).

Rule 60. Relief from a Judgment or Order

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal

representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, **inadvertence**, surprise, or excusable neglect;

(4) the judgment is **void**;

(6) any other reason that justifies relief.

5. En banc court rules.

Rule 35. En Banc Determination

(f) Call for a Vote. A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.

STATEMENT OF THE CASE

A. Introduction

This is an estate action which Petitioner is Executor. This appear to be a first impression case.

This federal action was filed against the Tax Court judge Brennan and the Attorney General Of The State Of New Jersey.

The dispute Petitioner have with defendant Director, Division Of Taxation in the State action is Petitioner believe beneficiary Anthony Hui Yew should be classified as Class A tax exempt while the State classify beneficiary as Class C at 15% tax rate. The Mutually Acknowledged Child State statute N.J.S.A. 54:34-2.1 parental relationship between a child and a decedent is the source of this differing interpretation.

B. Statement of Facts

Petitioner filed his Complaint as an unrepresented litigant in the State Tax Court.

Petitioner suit was stuck at the Motion For Reconsideration stage in the State Tax Court where judge Brennan in that court demand Petitioner to be represented.

Judge Brennan refused to vacate her Order after she admitted inadvertence for permitting Petitioner to be unrepresented in the initial court hearing that resulted in dismissal of his Complaint.

Judge Brennan later further refused to recuse herself.

Thereafter, with no viable recourse left in the state courts, Petitioner file his Complaint in the District Court.

Complaint was dismissed for lack of jurisdiction on judicial immunity and the Eleventh Amendment sovereign immunity basis. Petitioner made no claim for monetary damage.

Petitioner appealed. Appeal to the Third Circuit was affirmed on March 21, 2024. Affirmance was on the basis of *Rooker-Feldman* doctrine alone. No decision was made on the District Court basis for dismissal.

Petition for rehearing under IOP Chapter 9.5.1 was sought and en banc was paneled. Rehearing was denied on 04/18/2024.

C. Procedural History

Petitioner, as Unrepresented Executor Tony Ping Yew Of Estate of John Y Wei filed an Inheritance Tax Complaint in the New Jersey State Tax Court on

05/17/2019.

Petitioner Complaint was dismissed in the State Tax Court by Summary Judgment Order on June 19, 2020. (Pet. App. D 16a;17a).

Upon filing Motion For Reconsideration, judge Brennan responded with an inadvertance letter dated July 9, 2020 and refused to consider Petitioner Motion For Reconsideration. (Pet. App. E 19a-20a).

Petitioner Motion For Recusal was refused for consideration on February 7, 2022 on the basis Petitioner need representation. (Pet. App. F 21a-22a).

Given the impasse, Petitioner filed a Complaint with the United States District Court District Of New Jersey on April 10, 2023.

The District Court dismissed Petitioner Complaint on October 18, 2023. (Pet. App. C 7a-10a).

Thereafter, a Notice Of Appeal was filed with the Third Circuit on November 7, 2023. Appeal was denied on March 21, 2024. (Pet. App. B 3a-6a).

Petition for rehearing was received by the Third Circuit on April 2, 2024. En banc rehearing was denied on April 18, 2024. (Pet. App. A 1a-2a).

REASONS FOR GRANTING THE PETITION

This multi faceted matter is of fundamental legal significance. This case is an ideal vehicle for the Court to resolve important issues that appear to be first impression. There is no exact issue before the courts before. It is likely to recur if left unaddressed. The lower courts appeared to overreach beyond the limits of the

judicial and sovereign immunity case laws and *Rooker-Feldman* doctrine to deny Petitioner jurisdiction. Below is a quick summary, followed by detailed argument.

(a). There do not appear to be any precedent for application of *Rooker-Feldman* to this case. The Court should review whether the Third Circuit Not Precedential *Rooker-Feldman* doctrine Opinion “Those elements are *all* present here.” was *an overly broad interpretation* of every element of this doctrine to deny jurisdiction to hear Petitioner Complaint. The alleged overbroad interpretation of *Rooker-Feldman* as to ‘lost’, ‘judgment’, ‘review and reject’ terms, true meaning of ‘affirm’, jurisdiction overreach and context of Petitioner pleading should be settled by this Court.

(b). Petitioner did not sue the state judge and state for monetary damages. It appear the District Court dismissal was solely based on Petitioner naming the state Defendants in the Caption. There was no dismissal based on having met the Fitchnik factors. “To determine whether an entity is an “arm of the state” and entitled to immunity, the Court must determine: (1) whether payment of a judgment resulting from the suit *would come from the state treasury*, (2) ***.” *Fitchnik v. New Jersey Transit Rail Operations, Inc.*, 873 F.2d 655, 659 (1989). Clarifying validity of such a ruling by the District Court will provide future federal courts a clear jurisdiction guidepost *in a situation where a plaintiff seek no monetary damage*.

The failure of the Third Circuit to address the District Court apparent clear error of law require this Court intervention.

(c). Further, this Court should review to determine whether the lower

courts jurisdictional power should be *very short lived* and *should have divest itself of jurisdiction* upon being noticed of the state tax judge admission of 'inadvertence'.

'Inadvertence' is one of Fed. R. Civ. P. 60(b)(1) relief element which should be available to Petitioner *immediately* before even moving on to consider jurisdictional issues.

Fed. R. Civ. P. 60(b)(4) void relief is also implicated here given the State Tax Court refusal to vacate the Summary Judgment Order granted to defendant Director, Division of Taxation in the initial court *while Petitioner was unrepresented* in a fatally defective judicial proceeding.

The state court cannot demand representation post grant of summary judgment to defendant Director, Division of Taxation while keeping the fatally flawed initial court proceeding Order intact. The *possibility* of Fed. R. Civ. P. 60(b)(4) void relief call for the Court to review whether the courts below should have divested their jurisdictional power *immediately* upon awareness of the fatally flawed state court proceeding. If so, their decisions are equally void as well and/or should be vacated under Fed. R. Civ. P. 60(b)(6) extraordinary circumstance for wrongful exercise of jurisdictional power.

(d). The very fact en banc was ordered means *Rooker-Feldman* may not have been properly applied to this case. Abstention of votes, the initial three panel judge as virtually a given 'No' vote favor denied order. The Court intervention is needed as the en banc voting system may not be impartial and could have lead to en banc denied instead of grant in a very close vote if that is in fact the case here.

I. The Lack Of Precedence In The Third Circuit Overbroad Interpretation Of Rooker-Feldman Doctrine Require This Court Intervention.

Under the *Rooker-Feldman* doctrine, federal courts are deprived of subject-matter jurisdiction over claims when “(1) *the federal plaintiff lost in state court*; (2) *the plaintiff ‘complains of injuries caused by the state-court judgments’*; (3) *those judgments were rendered before the federal suit was filed*; and (4) *the plaintiff is inviting the district court to review and reject the state judgments.*” *Great W. Mining & Min. Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010) (alterations omitted) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)). (Pet. App. B 6a).

A. The Third Circuit misapplied “Element (1) The Federal Plaintiff Lost In State Court Is Met”.

Multiple cites are necessary to conclusively prove *Rooker-Feldman* element

(1) ‘Lost’ is not met.

(a)

In a recent decision, the Supreme Court held that the *Rooker-Feldman* doctrine “is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil*, 544 U.S. at 284, 125 S.Ct. 1517. Thus, any discussion of the scope of the doctrine must begin with an examination of its namesake cases.

The Supreme Court characterized the lawsuit at issue in *Rooker* as an attempt “to have a judgment of a circuit court in Indiana, which was affirmed by the Supreme Court of the state, declared null and void, and to obtain other relief dependent on that outcome.” 263 U.S. at 414, 44 S.Ct. 149. *Rooker* and others, who had lost in state court, sought relief in federal district court, arguing that the state-court judgment was “in contravention of” the United States Constitution. *Id.* at 415, 44 S.Ct. 149. The Supreme Court affirmed the dismissal by the district court for lack of jurisdiction.

Great Western Mining v. Fox Rothschild, 615 F.3d 159, 164 (3d Cir. 2010)

Great Western Mining, cited by the Third Circuit do not fully apply to this case. In that case, the state action have reached finality as in “which was affirmed by the Supreme Court of the state” and is thus a final judgment. In Petitioner case, he appealed the interlocutory Order in judge Brennan court. This is far from being considered a final judgment. ‘Lost’ must mean finally, fully adjudicated by the Appellate Division and the State Supreme Court. ‘Lost’ *cannot be applied to an incomplete judicial process* when appeal have not yet being decided by the highest state court.

Importantly, the impediment to Petitioner ability to appeal to higher state courts was caused by judge Brennan unreasonable demand for representation while refusing to vacate her own erroneous initial grant of summary judgment to defendant Director, Division Of Taxation while Petitioner was unrepresented.

This case is a situation where ‘Lost’ is not caused by Petitioner, but by the state court deficient court process. The meaning of ‘Lost’ in such a situation require clarity that need this Court intervention.

(b)

As the elements suggest, *Rooker-Feldman* applies only when there was a prior state-court judgment. *Id.* What qualifies? There are three essential scenarios: (1) “when the highest state court in which review is available has affirmed the judgment below,” (2) “when the state action has reached a point where neither party seeks further action,” and (3) when the “state proceeding has finally resolved all the federal questions in the litigation, even though state law or purely factual questions . . . remain.” ***.

On the first, the proceeding *has not even reached an appellate court, let alone the New Jersey Supreme Court.*

Accordingly, there has been no state-court judgment for *Rooker-Feldman* purposes, so that doctrine does not deprive this court of jurisdiction.

Ponce v. Wilmington Sav. Fund Soc'y, FSB, Civ. 22-4834 (KM) (JBC), at *6-7 (D.N.J. June 26, 2023)

There is a parallel here. Because judge Brennan summary judgment Order was not affirmed by the highest state court, the Third Circuit Opinion conflict with another federal court, even though it is a lower court. This conflict warrant review by the Court.

(c)

Plaintiffs claims meet all four prongs. First, Plaintiff lost in state court. The state trial court dismissed Plaintiffs claim, *the state appellate court affirmed the dismissal, and the state's highest court denied Plaintiffs petition for certification.* (Compl. ¶21.) *** Third, the challenged state judgments were rendered before the federal suit was filed. The state trial decision was issued in July 2020, the state appellate court's decision was issued in May 2022, *and the New Jersey Supreme Court denied the petition for certification in January 2023.* (Id. ¶ 21.) ***.

Thorpe v. Cipparulo, Civil Action 23-3590 (RK) (RLS), at *6 (D.N.J. Feb. 29, 2024)

For contrast, *Thorpe* satisfied element (1) 'lost' for *Rooker-Feldman* dismissal whereas here, Petitioner have no opportunity to file a Notice Of Appeal to the Appellate Division and Petition to the state Supreme Court.

'Lost' are for final judgments only. 'Lost' have not happened yet in Petitioner case. 'Lost' cannot happen until appeal is completed to the state Supreme Court and denied.

Judge Brennan interlocutory summary judgment Order, lacking finality, and Petitioner having not appealed to the highest state court, through no fault of his own, did not meet the 'Lost' definition. Thus, "(1) the federal plaintiff 'lost' in state court." *Rooker-Feldman* element is unmet.

(d)

Plaintiff's complaint is squarely barred by the *Rooker-Feldman* doctrine. First, Plaintiff lost in state court prior to bringing her claim in this Court on April 8, 2022. [Docket 1.] Plaintiff's claim for accidental disability retirement benefits was denied by ALJ Buono and the Board (both initially and upon reconsideration) and her appeal of the agency decision was denied by both the New Jersey Superior Court, Appellate Division and the New Jersey Supreme Court.

Shorter v. N.J. Div. of Pension & Benefits, Civil 22-02062 (RMB/AMD), at *10 (D.N.J. Apr. 6, 2023)

There is another parallel here. Petitioner Complaint was not yet denied by both the state Appellate Division and state Supreme Court. The Third Circuit Opinion is inconsistent with yet another this federal case even though only at the District Court level. Two recent District Court rulings does carry some legal weight.

The Third Circuit did not take into account Petitioner never abandon his claim. So, a default 'final judgment' cannot even be established here to fit the meaning of 'Lost'.

The Third Circuit failed to consider it was judge Brennan deprivation of Petitioner due process rights for refusal to consider his motions for reconsideration and recusal make 'Lost' an unmet element of *Rooker-Feldman* dismissal. 'Lost' cannot happen when the State Tax Court deprived Petitioner his due process rights.

B. The Third Circuit misapplied “Element (2) The Plaintiff Complains Of Injuries Caused By The State-Court Judgments Is Met”.

Here, Petitioner show the source and timing of the injury he suffered present an independent claim thereby giving the federal court jurisdiction.

(a)

The *Rooker-Feldman* doctrine does not divest this Court of subject-matter jurisdiction because Michael is not complaining about injuries caused by the probate court's judgment. The *Rooker-Feldman* doctrine occupies a “narrow ground.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The doctrine applies to “cases brought by state-court losers complaining of injuries caused by state-court judgments ***. There are four elements required for the *Rooker-Feldman* doctrine to apply: “(1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state-court judgments; (3) ***. (4) ***. *Great W. Mining & Min. Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010) ***. All four elements of the *Rooker-Feldman* doctrine need to be satisfied for the case to be dismissed. *Holton v. Henon*, 832 Fed.Appx. 781, 784 (3d Cir. 2020). Because the second element is not satisfied, the *Rooker-Feldman* doctrine does not apply. ***.

[T]he ***. When a “plaintiff asserts injury caused by the defendant's actions and not by the state-court judgment, [*Rooker-Feldman*] is not a bar to federal jurisdiction.” Id. at 167. ***.

The timing of the injury is a “useful guidepost.” Id.; see also *McKithen v. Brown*, 481 F.3d 89,98 (2d Cir. 2007) (“[A] party is not complaining of an injury ‘caused by’ a state-court judgment when the exact injury of which the party complains in federal court existed prior in time to the state-court proceedings, and so could not have been ‘caused by’ those proceedings.”); *Am. Music Theater Festival, Inc. v. TD Bank, N.A.*, No. 10-CV-00638, 2011 WL 611837, at *4 (E.D. Pa. Feb. 18, 2011) (“The majority of Plaintiffs' claims are based upon Defendant's actions in the years preceding the state-court litigation.... [*Rooker-Feldman*], then, cannot apply to these claims.”).

Crane v. Crane, 23cv01527 (EP), at *5-7 (D.N.J. Mar. 12, 2024)

There is a parallel here. Petitioner injury occurred before he filed his state court action. Petitioner injury was not caused by the state court judgment itself,

but by the Director, Division Of Taxation refusal to refund the prepaid inheritance tax.

The source of Petitioner injury is the Director, Division Of Taxation, not the state court judgment. This financial injury happened before the state court Order. Thus, element (2) injury was not satisfied to invoke *Roquer-Feldman*. (Pet. App. G 23a-24a).

In addition, since Petitioner is not privy to the Third Circuit legal analysis, Petitioner have to guess the only reason injury was deemed met for dismissal is what Petitioner wrote in (Pet. App I 28a) “It is concrete and particularized and *actual harm have occurred* to Plaintiff Executor with *a dead end litigation in the State court* whereby *judge Brennan rulings make relief unattainable* with onerous financial burden for attorney representation.” under POINT III argument in the standing specific argument.

A close examination reveal Petitioner was only making a factual statement and in the context of the standing specific argument. Petitioner did not *directly* say ‘the state court *caused*’ his injury. The Third Circuit cannot read beyond the statement made in the standing context that also do not explicitly say the state court caused Petitioner injury.

So, the context is important here. *Roquer-Feldman* cannot be applied even if read as the court caused injury *otherwise standing can never be proven the moment ‘injury-in-fact’ is mentioned*. Here, there is a *conflict of law between standing and Roquer-Feldman* that need this Court involvement to determine whether the Third

Circuit read beyond the intent of Petitioner pleading to satisfy element (2) to dismiss.

(a)

"Hence, if a plaintiff 'present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction.' Exxon Mobil.

(b)

Dooley v. Dasher, Civil Action 21-4036 (JXN) (ESK), at *11 (D.N.J. Sep. 6, 2023) ("[W]hen the source of the injury is the defendant's actions (and not the state court judgments), the federal suit is independent, even if it asks the federal court to deny a legal conclusion reached by the state court")

Having shown above Petitioner source of injury is defendant Director, Division Of Taxation (and not the state court judgment), this federal suit is independent even though Petitioner ask the lower federal courts to deny a legal conclusion reached by the state court. *Exxon Mobile* and *Dooley* is clear proof all federal courts have jurisdiction over this matter. The Third Circuit erred in barring Petitioner claim under element (2) of *Rooker-Feldman*.

C. The Third Circuit misapplied "Element (3) Those *Judgments Were Rendered Before The Federal Suit Was Filed Is Met*".

The third requirement of the *Rooker-Feldman Doctrine* requires the Court to determine if the state court judgments "*were rendered.*" This Circuit requires that the result of the state court action be "*effectively final*" before the institution of the federal suit to qualify for the application of the *Rooker-Feldman Doctrine*. See Merritts, 62 F4th at 776-77. The "effectively final" standard is a "waive-or-exhaust" rule for federal claims in state courts, where a state court judgment becomes effectively final in three ways:

- 1) the highest state court has issued a terminal ruling;
- 2) a lower state court has issued a ruling for which the time to appeal has expired or the parties have voluntarily terminated the case; or

3) all questions of federal law have been resolved by the highest state court.

Kennedy v. The N.J. Court Sys., Civil Action 22-05797-KMW-MJS, at *13 (D.N.J. Sep. 29, 2023)

The Third Circuit cite no parallel case to apply “Element (3) Those *Judgments Were Rendered Before The Federal Suit Was Filed Is Met*” to bar Petitioner Complaint. It is an opaque Opinion only the Court is privy to understanding the logic of its analysis. The Court should grant petition to make a detailed review of the deliberative process of the three judge panel Opinion to determine whether their Opinion is based on settled law or a newly formed overbroad reading of summary judgment Order as ‘rendered’.

Of note, in addition to item 1 not satisfied because the highest state court have not issued a terminal ruling, item 2 is also not satisfied because the lower state court have not issued a ruling for which the time to appeal has expired. So, there is no rendering of an effectively final judgment.

Additionally, the Third Circuit failed to consider the possibility judge Brennan refusal to consider Petitioner Motions For Reconsideration and Recusal make her summary judgment Order void. An Order is fundamentally infirmed and thus void *due to incompleteness of process to the highest state court*. A void Order can never make it deemed rendered as an effectively final judgment. Element (3) is therefore not satisfied for dismissal.

D. The Third Circuit misapplied “Element (4) The Plaintiff Is Inviting The District Court To Review And Reject The State *Judgments Is Met*”.

Subparts analyze why the Third Circuit misapplied “Review And Reject” and “Judgment” to dismiss.

1. Because the state summary judgment Order is not a Judgment, the Third Circuit misapplied “Element (4) The Plaintiff Is Inviting The District Court To Review And Reject The State *Judgments* Is Met” as met to bar Petitioner Complaint.

2. The Third Circuit deemed Element (4) as met, on the basis Petitioner mention of “vacate” to mean “review and reject” in his Complaint in the District Court. The Third Circuit assumption is erroneous because it was not read in context. The context is very important.

When Petitioner mention “vacate” in “Relief Sought” (Pet. App. H 25a), it was in the Introduction section, not under Point I heading legal argument. An Introduction is not a *legal argument* seeking the District Court relief. It is merely a request in a general statement before actual legal argument. An introductory statement is not a legal brief. It should not have legal effect since it is not a legal brief/argument.

“Vacate” should not be read literally and out of context to mean “review and reject” for *Rooker-Feldman* purpose. “Vacate” in this case should be read as “**remand**” because it is in the *same* paragraph Petitioner state “and *permit* Plaintiff *to continue his suit* as Unrepresented Executor of Estate of John Y Wei in the State court so as to facilitate Plaintiff right to recover the \$34,425 sought in the state court.”. *U.S. v. Williams*, 553 U.S. 285, 294 (2008) (“In context, however,

those meanings are narrowed by the commonsense canon of *noscitur a sociis*—which counsels that *a word is given more precise content by the neighboring words with which it is associated*”) *noscitur a sociis* canon is applicable here.

Further, “Vacate” as phrased in context here really mean “Remand” where there is an end point for further deliberation in the state court.

Contrast with the Third Circuit interpretation taking “vacate” to mean “review and reject” where there is no end point. The action just terminate at the federal level. The “review and reject” did not call for action like “remand” where the action continue at the state level if granted.

The act of rejection as in “review and reject” is up to the state court judge upon remand. The federal court play no part in “rejection” because Petitioner only ask for a remand. The federal court only play a part in “remand” if granted. A remand is not seeking the federal court to overrule the state court judgment whereas a rejection overrule the same. Petitioner “remand” is thus different from “review and reject” to deny *Rooper-Feldman* element (4) from barring his Complaint.

3. There is another evidence in the appendix referenced here Petitioner plead in his appeal in the Third Circuit itself a remand is sought, not review and reject the state court Order. (Pet. App. J 29a).

4. Further proof Petitioner really meant “remand”, not “review and reject” as indicated in “Plaintiff seek this Court intervention to *remand* with a substitute judge to take over this case” in POINT II in his Complaint filed with the District Court. (Pet. App. H 27a).

5. Further, Petitioner did not seek the federal court to *reverse* the state court order. A reversal is tantamount to rejection after review. Since Petitioner did not seek a reversal of the state court order, there is no “review and reject” to speak of. *Rooker-Feldman* element (4) is thus not applicable here.

6. Further, on the assumption the Third Circuit find every reason to deem “vacated” to mean “review and reject”, “Judge Brennan violation of Rule 56(a) require her order to be vacated.” (Pet. App. H 26a) should be read in the the context of Rule 56 (a) summary judgment rule. This is a federal rule violation which all federal courts have jurisdiction to address. ‘vacated’ here have no relevance for *Rooker-Feldman* consideration.

7. Additionally, in Point II heading, “Vacated” is in the context of federal statute 28 U.S.C. § 455(a) failure to recuse. This is also within all federal courts jurisdiction. (Pet. App. H 26a). “Vacated” here have no relevance for *Rooker-Feldman* consideration.

8. The Third Circuit interpretation of “judgments” within element (4) also conflict with the “waive-or-exhaust” rule for the “effectively final” standard. Petitioner never abandon nor waive-or-exhaust his claim, so the state court Order is not “effectively final”. Because Petitioner never exhaust his appeal to the highest state court, and did not create the condition to impede prosecuting his action to the highest state court, no review and reject is possible *on a judgment* in the state court. As such “Element (4) *** Review And Reject The State *Judgments* Is Met” condition is *not met* to bar Petitioner Complaint.

According to *Holton*, “All four elements of the *Rooker-Feldman* doctrine need to be satisfied for the case to be dismissed. *Holton v. Henon*, 832 Fed.Appx. 781, 784 (3d Cir. 2020)”. Thus, if the Court find even one of the four elements unmet, *Rooker-Feldman* cannot be basis to bar Petitioner Complaint.

II. The Possibility Of Fed. R. Civ. P. 60(B) Relief Call For The Court Intervention.

A. Fed. R. Civ. P. 60(b)(4) Relief Is Possible Due To The Lack Of Jurisdiction In The Federal Courts And Lack Of Finality In The State Court.

Fed. R. Civ. P. 60(b)(4)

“A void judgment is a legal nullity.” *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010). “[A] void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final.” *Id.* But a judgment is not void simply because it is erroneous, and a “motion under Rule 60(b)(4) is not a substitute for a timely appeal.” *Id.* A judgment is void if it “is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard.” *Id.* at 271.

Int'l Transp. Mgmt. Corp. v. Brooks Fitch Apparel Grp., Civil Action 11-1921 (ES) (JSA), at *7-8 (D.N.J. Jan. 10, 2022)

The lower courts jurisdictional power may be very short lived. Federal courts have no authority to adjudicate before the matter of possible Fed. R. Civ. P. 60(b)(4) relief for Petitioner is addressed first. Invoking judicial, sovereign immunity and *Rooker-Feldman* to dismiss may be premature when Fed. R. Civ. P. 60(b)(4) relief may be available to Petitioner. The circumstance of this case require detailed analysis to determine whether Petitioner is entitled to Fed. R. Civ. P. 60(b)(4) relief first before the lower courts can proceed to address other issues.

Here, the question is whether the lower courts have jurisdictional power to even rule on Petitioner Complaint. If the State Tax Court Order is found to be void, as apparent on its face, as per '*inadvertance*' Fed. R. Civ. P. 60(b)(1), and consequently *also implicate* Fed. R. Civ. P. 60(b)(4), then the lower courts do not have jurisdiction to rule on this matter thereafter. Jurisdictional power end immediately if the State Tax Court Order is found to be void. This should then lead to immediate dismissal of this federal case. Then Petitioner can take this outcome and file a motion in the state court for further action there.

Fed. R. Civ. P. 60(b)(4) is implicated because of

- (a) the incomplete adjudication process and the cause of incompleteness can be attributed to the State Tax Court refusal to consider Petitioner Motions For Reconsideration And Recusal.
- (b) the State Tax Court refusal to vacate the summary judgment Order granted to defendant Director, Division Of Taxation. This Order was executed in a fatally deficient court proceeding where Petitioner was unrepresented. The State Tax Court require representation in subsequent motions proceedings. This requirement must apply to the initial proceeding as well to make the proceeding legitimate. Lacking legitimacy is ground for voiding the summary judgment Order.
- (c) Fed. R. Civ. P. 60(b)(4) void relief is available at anytime after a ruling. Federal courts have a duty to investigate whether this relief is applicable here before even consideration Petitioner Complaint.
- (d) the fact summary judgment Order lack finality. The State Tax Court summary judgment Order never ripened into "judgment rendered". Once the summary judgment Order is deemed void for lack of finality, jurisdictional power for the federal courts cease to exist. This voidness moot all federal courts rulings as unripe for ruling.

The Court intervention is requested to review this jurisdictional controversy.

B. The Court Should Intervene To Determine If Affirmance Is Void Due To Incompleteness Of Adjudication In The Third Circuit.

Affirmance means “to confirm or ratify.” It means the court agrees that the prior ruling was “valid and right and must stand *as rendered below*”.

On the face of it, the Third Circuit did not explain her rational for affirming judicial analysis as rendered below. Because the Third Circuit affirmance is devoid of judicial analysis that pertain to the District Court ruling, affirmance is void. (Pet. App. B 5a-6a).

Courts make mistakes all the time. Affirming without tackling the lower court rulings can cause bad rulings to be cited. This will obviously affect the integrity of the courts.

The Third Circuit cannot affirm without explaining her rational. It must be put in written form for litigants to understand and appeal against. Petitioner had argued in the Third Circuit since no monetary damage was claimed, the District Court dismissal was erroneous but ignored.

Because the Third Circuit failed to meet the very definition of ‘affirm’ which necessarily require a detailed written explanation in support of the District Court ruling, the Court should intervene to clarify the law as to the meaning and documentation requirement for affirmance.

C. The Court Is Called Upon To Determine Whether The Inconsistency In The Requirement For Representation In The State Court Proceedings Make Fed. R. Civ. P. 60(B) Relief Available To Petitioner.

The State Tax Court cannot in the initial stage of the court proceeding violate Fed. R. Civ. P. 60(b)(1) for inadvertence and thereafter demand representation in court proceedings from Motion For Reconsideration forth.

Judge Brennan “inadvertence” is a fatal court proceeding error. It is not ministerial in nature. It occurred during proceedings under her control.

Representation must be *from the beginning* of the court action in the State Tax Court to the state supreme court. Inconsistent representation requirement is unfair court process tilting the outcome against an unrepresented litigant. The Court is called upon to review the inconsistency in representation requirement which put an unrepresented litigant at a severe disadvantage against seasoned attorneys.

III. The Court Should Intervene To Clarify Whether The District Court Apparent Reliance On Petitioner Complaint Caption For Immunity Dismissal Order Is Permitted To Be Left Unaddressed By The Third Circuit And Left To Become Case Law For Others To Cite Later.

The District Court Dismissal Order did not clarify exactly which part of Petitioner pleading trigger dismissal due to judicial and sovereign protection to the state actors.

Petitioner can only guess it was based on the Complaint Caption. The caption identify Defendants as Attorney General of the State of New Jersey (the “Attorney General”), and the Honorable Mary Siobhan Brennan’s (“Judge Brennan”). (App. C 8a).

The Complaint caption is *necessary* in identifying parties in initiating a court

action. The Caption is not a place where legal arguments take place. The District Court obviously go no further than reading the Caption and ignored all arguments made under the Point heading.

An erroneously determined case, left unchallenged will fester in the court system and waste judicial resources. Future litigants will cite and repeat the errors. The District Court dismissal was inconsistent with established law for judicial and sovereign immunity.

The Third Circuit failed to address the District Court Order which did not appear to address Petitioner Points arguments at all. In particular, Petitioner never claim monetary damages from the state judge or the state. There is no case law that permit an immunity based dismissal when no monetary damage was claimed. The first *Fitchnik* factor is not met in this case since no money would come from the state treasury. *Id.* at 9. The case laws cited by the District Court have no pertinence to this case. (Pet. App. C 7a-10a).

The Third Circuit have a duty to make a documented explanation of her affirmance of the District Court Order. Affirmance without documentation explaining the rational of the District Court Order is void as it is incomplete adjudication.

Dismissal based solely on the Caption of Petitioner Complaint is not an adjudication on the merits. A dismissal based on procedural law, which this dismissal appear to be, do not consider the merits of Petitioner Complaint. Since the Third Circuit took no action, the Court intervention is necessary to clarify

the law pertaining to this specific issue.

IV. The Possible Lack Of Fairness In The Current En Banc Voting Rule Could Have Tilted The Outcome Against Petitioner Which Could Otherwise Be Granted In A Close Vote.

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, *and no judge who concurred in the decision having asked for rehearing*, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the the Court en banc, is denied. (Pet. App. A 2a).

The fact that an en banc vote was called means at least one judge find the Third Circuit affirmance may be erroneous. *Id.* at 5. It is serious enough for this judge to call for an en banc voting.

Had the current en bank rule exclude the original three judge panel from voting, especially when all three voted to affirm, the en banc outcome could have resulted in grant for rehearing in a close vote.

It is hard to see the original panel of judges willingness to grant a rehearing. An en banc panel must be limited to a panel of voting judges to include only those with a truly independent open mind. They can only be judges who are unaffected by prior rulings.

A unanimous three judge panel opinion stack heavily against grant of rehearing. It is a fact motion for reconsideration or rehearing is rarely granted. The system lack fairness, especially when no reason was given for the original panel 'No' vote. Petitioner is obviously not privy to their reasoning.

Additionally, the Third Circuit Per Curiam and Not Precedential Opinion is

not settled law. So, it is not authoritative to give weight for inclusion of the original panel of judges to vote in an en banc setting.

The Court should intervene to determine if there is a structural defect in the en banc voting system in order to promote a fair outcome.

The Court is privy to the deliberated en banc process. If, after finding the vote is very close and the inclusion of the original three judge votes caused en banc to be denied, then a remand to the Third Circuit may be necessary for redetermination.

CONCLUSION

The legality of *Rooper-Feldman* dismissal is in question. Given the myriads of issues raised challenging its legality to dismiss this case, the Court should step in.

This matter, at an impasse in the state court have now spilled into the federal court. Petitioner is caught in a legal loop with no just way out.

As can be seen above, merits was never actually considered by both the District Court and the Third Circuit. The plethora of issues raised here is important enough for the Court to exercise her supervisory authority. Clarifying the law is very important to discourage erroneous rulings from being cited by future litigants and even the courts themselves. Negative treatment cases waste judicial and litigants resources and tarnish courts reputation.

Given the extraordinary circumstance of this case and its importance in clarifying the law in question, this petition or summary reversal of the lower courts

ruling should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tony Ping Yew". The signature is fluid and cursive, with a long horizontal stroke at the end.

s/ Tony Ping Yew, Executor Of Estate Of John Y Wei

July 13, 2024

APPENDIX A

**UNITED STATES COURT OF APPEALS.
FOR THE THIRD CIRCUIT**

No. 23-3005

**TONY PING YEW,
Executor of Estate of John Y. Wei,
Appellant**

v.

**ATTORNEY GENERAL NEW JERSEY;
HON. MARY SIOBHAN BRENNAN, J.T.C.
Tax Court of New Jersey**

(D.C. Civil No. 2-23-cv-02069)

ORDER

Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES and CHUNG, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the the Court en banc, is denied.

BY THE COURT;
s/ David J. Porter
Circuit Judge

Date: April 18, 2024
PDB/cc: Tony Ping Yew
All Counsel of Record