NO. 21-703

In the

Supreme Court of the United States

RLR INVESTMENTS, LLC

Petitioner,

v.

CITY OF PIGEON FORGE, TENNESSEE,

Respondent,

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

BRIEF IN OPPOSITION FOR RESPONDENT CITY OF PIGEON FORGE, TENNESSEE

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December 15, 2021

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QUESTION PRESENTED

Whether the United States Court of Appeals for the Sixth Circuit properly applied the *Rooker-Feldman* doctrine to a case brought by the unsuccessful party in state court directly challenging and seeking to invalidate a state court order of possession in an eminent domain proceeding maintained under Tennessee law?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 DISCLOSURE STATEMENT

Petitioner is RLR Investments, LLC which was the Plaintiff before the United States District Court for the Eastern District of Tennessee and the Appellant before the United States Court of Appeals for the Sixth Circuit.

Respondent is the City of Pigeon Forge, Tennessee, a municipality under Tennessee law, and was the Defendant before the United States District Court for the Eastern District of Tennessee and the Appellee before the United States Court of Appeals for the Sixth Circuit.

Respondent is a governmental entity under Tennessee law, and is not subject to the disclosure requirements of Sup. Ct. R. 29.6.

STATEMENT OF RELATED PROCEEDINGS

RLR Invs., LLC v. City of Pigeon Forge, Tennessee, No. 20-6375 (6th Cir. July 13, 2021) (judgment entered) (order denying rehearing en banc issued August 12, 2021)

RLR Invs., LLC v. City of Pigeon Forge, Tennessee, No. 3:19-CV-279, (E.D. Tenn. Nov. 30, 2020) (judgment entered)

City of Pigeon Forge, Tennessee v. RLR Invs., LLC, No. 15-CV-372-I (Sevier County Circuit Court, May 31, 2016) (order of possession entered)

There are no additional proceedings in any court that are directly related to this case.

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The Sixth Circuit opinion is reported at 4 F.4th 380. App. 1a-51a.[1] The district court's opinion is unpublished, but can be found at 2020 WL 7038951. App. 52a-71a.

[1] All appendix citations are to Petitioner RLR Investments, LLC's Appendix.

JURISDICTION

The judgment of the Sixth Circuit was entered on July 13, 2021. The Sixth Circuit entered its order denying the petition for rehearing en banc on August 12, 2021. The petition for a writ of certiorari was filed on November 10, 2021.

INTRODUCTION

The Petitioner litigated and lost in an eminent domain action before the Circuit Court for Sevier County, Tennessee, which concluded that the taking proposed by the City of Pigeon Forge, Tennessee for a riverside pedestrian greenway was for a constitutionally sufficient public use and public purpose. Seeking a different answer in a different forum, the Petitioner filed this case before the district court, over three years after the state court's decision on the merits on the issue of public use. The Petitioner did not merely file a parallel Fifth Amendment takings action; it directly sought "[a] judgment declaring that the Order of Possession is unconstitutional" and an injunction against its enforcement. (Complaint, Prayer for Relief ¶¶ 1, 3, RE 1, Page ID # 11). The Petitioner repaired to federal court to undo and overturn a perceived unfavorable result in state court.

The Petitioner therefore brought this action after losing on the merits in state court, explicitly asking the district court to review and reject that state court judgment. The United States Court of Appeals for the Sixth Circuit correctly concluded that this case falls squarely within the boundaries of the

Rooker-Feldman doctrine most recently refined by this Court in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005) and *Lance v. Dennis*, 546 U.S. 459 (2006). The decisions of the district court and of the Sixth Circuit below amounted to nothing more than a routine application of a basic tenet of federal court jurisprudence. District courts do not exercise appellate jurisdiction over the decisions of state courts; their jurisdiction is strictly original. *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 415-416 (1923).

The decision of the Sixth Circuit below was consistent with this Court's *Rooker-Feldman* precedent. The Sixth Circuit correctly concluded that this case was brought by a "state-court loser[] complaining of injuries caused by [a] state-court judgment[] rendered before the district court proceedings commenced and inviting district court review and rejection of [that judgment]" *Exxon*, 544 U.S. at 283–84. The Petitioner's claim of an existential split of opinion amongst the Circuit Courts of Appeal on the issues decided below is overstated. The majority of the Circuit Courts of Appeal will apply *Rooker-Feldman* to interlocutory orders in appropriate circumstances, and the Sixth Circuit rightly concluded that the specific interlocutory order at issue in this case qualified under this Court's *Rooker-Feldman* precedent. Finally, the unique procedural and factual circumstances in this case make it a poor vehicle for review. The decision of the Sixth Circuit was tied to the specific, bifurcated nature of eminent domain proceedings under Tennessee law. And the procedural posture of the state and federal

proceedings make the dispute at issue very unlikely to reoccur in the same or similar circumstances in the future. For these reasons, and as more fully explained below, this matter does not warrant exercise of this Court's discretionary review.

STATEMENT OF THE CASE

This action arises from the construction of a pedestrian greenway adjacent to the Little Pigeon River in Pigeon Forge, Tennessee. The Petitioner operates a motel and a rental duplex on adjoining tracts. The litigation between the parties began on June 4, 2015, when the City of Pigeon Forge, Tennessee filed a Petition for Condemnation in Sevier County Circuit Court pursuant to Tennessee's eminent domain statute. Tennessee state law provides a constitutionally compliant structure for exercise of municipal eminent domain power that requires a bifurcated litigation process. Pursuant to Tennessee law, the City deposited funds in the amount of $131,450.00 with the Circuit Court Clerk for Sevier County, Tennessee to be held by the Clerk pending adjudication of the eminent domain cause. These funds remain on deposit with the Clerk.

Again as required by Tennessee law, the Sevier County Circuit Court first conducted an evidentiary hearing on the issue of whether the proposed condemnation was for a public use pursuant to the Tennessee and United States Constitutions. After hearing proof, the Sevier County Circuit Court found that the proposed condemnation was for a proper public use and public purpose. The Circuit Court's order of possession was entered on May 31, 2016. The Order awarded permanent greenway easements over two adjacent tracts owned by the Petitioner bordering the Little Pigeon River along with temporary construction easements to facilitate construction of the greenway. The construction of the greenway resulted in the loss of six parking spaces

in the Respondent's parking lot, but did not impact the structures. (*See* Order, RE 1-7, Page ID # 89). The Order of Possession with attachments was then recorded by the City of Pigeon Forge with the Register of Deeds Office for Sevier County, Tennessee on July 5, 2016 and August 24, 2016. Litigation has continued in state court on the issue of the value of the property rights awarded, and a jury trial on valuation is set to begin on July 13, 2022.

Since adjudication of the issue of possession, the property interests in question have been transferred to the City of Pigeon Forge, and are of record. The greenway has been constructed, and has now been in use for several years. The Petitioner filed a Motion for Summary Judgment on March 4, 2019, essentially asking the Sevier County Circuit Court to reconsider its decision on the order of possession entered three years earlier. After its Motion was denied orally at the hearing[2] on June 17, 2019, the Petitioner filed its claim in United States District Court exactly one month later.

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[2] In their Petition, the Petitioner quotes a statement made by prior counsel for the Respondent at the hearing on the Motion for Summary Judgment in Sevier County Circuit Court. Pet. 5-6. While neither this statement nor the underlying issue of whether the construction of a greenway (and appurtenant work on impacted property) was a constitutionally appropriate public use or public purpose is directly relevant to this appeal, the Respondent specifically disputes the characterization of its legal positions in state court. The provided quotation is bereft of necessary context. All aspects of the condemnation approved by the Sevier County Circuit Court benefited the public use and public purpose of the greenway.

The case from which this appeal arises was filed in the United States District Court for the Eastern District of Tennessee on July 17, 2019. The Petitioner directly sought review and rejection of the May 31, 2016 order of possession of the Sevier County Circuit Court.

In its Complaint, the Petitioner made the following allegations and sought the following relief:

> 34. RLR is therefore entitled to an Order enjoining the enforcement of the Order of Possession, and requiring that the City file a new petition, taking only that property required for the public purpose of the construction of the Greenway.
>
> …
>
> 40. As a result of the City's conduct, RLR is entitled to a declaration declaring the Petition for Condemnation unconstitutional and invalid, enjoining the City from enforcing any property rights granted in the Order of Possession; and requiring the City to refile a petition for condemnation to take only that portion of RLR's property for which there is a proper public purpose.
>
> …

> 44. The City takes the position that it may enforce an unconstitutional Order of Possession[.]
>
> …
>
> 1. A judgment declaring that the Order of Possession is unconstitutional and that the City took RLR's private property without a proper public purpose in violation of the Fifth Amendment of the United States Constitution and Article 1, Section 8 of the Tennessee Constitution;
> …
>
> 3. A judgment enjoining the City from (1) taking any action to interfere with RLR's right to peaceful possession and use of its property; (2) enjoining the City from exercising any ownership rights in RLR's property pursuant to the Order of Possession and from enforcing the Order of Possession; and (3) requiring the City to refile a new petition for condemnation limiting any taking of RLR's property to an appropriation for which there is a proper public purpose.

(Complaint, ¶¶ 34, 40, 44, Prayer for Relief ¶¶ 1, 3, RE 1, Page ID # 9-11). The allegations in the Complaint, and the Petitioner's recitation of its view of the underlying facts in the Petition, make clear

that it simply disagrees with the decision the state court made. Pet. 4-7.

As its responsive pleading, the Respondent filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). The Respondent argued that the district court lacked jurisdiction to entertain what was a functional appeal of a state court order under the *Rooker-Feldman* doctrine. In the alternative, the Respondent argued that the district court should have abstained under *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976) given the progress of the state court proceedings, and given that the state court was in possession of funds interpleaded with the clerk of court. Also in the alternative, the Respondent asked the district court to abstain under *Younger v. Harris*, 401 U.S. 37 (1971) given the ongoing state proceedings and the important state interests in play.

The district court granted the Respondent's motion to dismiss, relying on the *Rooker-Feldman* doctrine. The district court pretermitted the Respondent's arguments for abstention under *Colorado River* and *Younger*.

The Petitioner timely appealed to the United States Court of Appeals for the Sixth Circuit, which affirmed the judgment of the district court on the basis of *Rooker-Feldman*. The Sixth Circuit did not directly address the Respondent's alternative positions on appeal under *Colorado River* and *Younger*. The Petitioner sought rehearing en banc, which was denied with no judge on the Sixth Circuit

asking for the question to be polled. This Petition follows.

REASONS FOR DENYING THE PETITION

This matter does not warrant exercise of this Court's discretionary review. The decision of the United States Court of Appeals for the Sixth Circuit was consistent with the precedent of this Court, not fundamentally inconsistent with the decisions of other circuits, and limited in scope to the specific factual and procedural circumstances of this case. This is the precise type of case over which jurisdiction is prohibited by *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), an action "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 283–84 (2005). Certiorari should be denied.

I. THE DECISION OF THE SIXTH CIRCUIT IS CONSISTENT WITH THIS COURT'S PRECEDENT.

A. There is no direct relationship between this case and this Court's decision in *Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162 (2019).

The Petitioner asserts that the decision of the Sixth Circuit contravenes the spirit, if not the letter, of this Court's decision in *Knick v. Twp. Of Scott, Pennsylvania,* 139 S. Ct. (2019). *Knick* abrogated the state court litigation requirement for Fifth

Amendment takings claims originally established by *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). As the Respondent has emphasized several times in these proceedings, it is not challenging *Knick*, nor quibbling in any fashion with *Knick*'s holding. The Petitioner was not required to exhaust state court remedies under *Williamson County* before bringing suit in federal court.

The question presented by this appeal is not whether the district court was permitted to hear a Fifth Amendment takings claim. It is whether the district court was permitted to hear **this** Fifth Amendment takings claim in light of the specific facts and history at issue. The Petitioner did not bring suit in federal court until three years after the order of possession was entered, and well over four years after litigation had commenced in state court. Had the proceedings been initiated in a somewhat simultaneous manner, or at a minimum prior to entry of the order of possession, the arguments in this case might be different. The district court considered the impact of *Knick*, and recognized that its removal of the state court litigation requirement did not simultaneously except Fifth Amendment takings claims from all prudential, jurisdiction and abstention doctrines. App. 71a. The Petitioner's assertions, Pet. 3-4, that the decisions below somehow vitiate their rights recognized in *Knick* are simply baseless. Again, had *Knick* been decided sooner, and had the Petitioner brought an action in federal court prior to the entry of the order of possession, the analysis might be different. But those are not the facts. *Knick* has no direct relevance

to this claims at bar, and the decision of the Sixth Circuit in no manner undermines *Knick*.

B. The Sixth Circuit's decision was consistent with this Court's *Rooker-Feldman* precedent.

It is worthwhile to distill this dispute to its basics. There can be no plausible doubt that the Petitioner is seeking review and rejection of a state court order. There can be no plausible doubt that the May 31, 2016 order of possession entered by the Sevier County Circuit Court is the source of the Petitioner's "injury." The Sixth Circuit below reached these conclusions easily, explaining: "[t]here's no question that RLR asks us to 'review' what the state court did." App. 12a. "Nor is the City's conduct here independent of the state court's Order. The City took RLR's property as a consequence of the Order, not independently." Id.[3]

These holdings are entirely consistent with this Court's jurisprudence. In *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923), this Court considered whether a district court could entertain a suit purporting to

[3] This conclusion highlights the base futility of the Petitioner's case. There are myriad infirmities, but chief among them is that there was no Fifth Amendment taking by the Respondent. The Respondent did not actually seize any property – it sought the imprimatur of the state court by and through Tennessee's eminent domain statute. The state court awarded possession after an evidentiary hearing, and the Respondent relied upon that decision in going to considerable expense to construct the greenway. The Petitioner cannot be granted any relief save by the direct or implicit invalidation of the Sevier County Circuit Court's order of possession.

bring constitutional claims to declare null and void the judgment of an Indiana state court. This Court concluded that district courts are not empowered to sit as appellate tribunals reviewing the decisions of state courts:

> If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication. Under the legislation of Congress, no court of the United States other than this court could entertain a proceeding to reverse or modify the judgment for errors of that character. To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original.

Id. at 415-416 (internal citations omitted). The matter at bar is functionally identical to *Rooker*, saving that the present case has not yet matriculated through the Tennessee appellate courts. Sixty years after *Rooker*, this Court decided *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983). In that case, this Court rejected an attempt to

challenge a decision of the District of Columbia Court of Appeals filed in United States District Court.

In more recent years, this Court has attempted to constrain *Rooker-Feldman* to the limited kinds of cases that gave it its name. In both *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005) and *Lance v. Dennis*, 546 U.S. 459 (2006), this Court admonished lower courts for conflating traditional preclusion doctrines covered by the Full Faith and Credit Act, 28 U.S.C. § 1738, with the jurisdictional bar over functional appellate actions filed in district courts. In *Exxon*, this Court rejected the notion that the parties could engage in a "race to judgment" in contemporaneously filed state and federal lawsuits, invoking *Rooker-Feldman* when the state court reduced its decision to final judgment first. *Exxon*, 544 U.S. at 293-294. In *Lance*, this Court reached a similar conclusion, also finding that the suit filed in federal court challenging a state court decision must involve the same parties. *Lance*, 546 U.S. at 466. Summarizing the clarified boundaries of the doctrine, this Court stated in *Exxon*:

> The Rooker–Feldman doctrine, we hold today, 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. Rooker–Feldman does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions.

Exxon, 544 U.S. at 284.

The Sixth Circuit correctly applied this Court's precedent in holding that the *Rooker-Feldman* doctrine applies. This matter is a prototypical example of the type of case that is jurisdictionally barred by *Rooker* and its progeny. It is much more than parallel litigation; rather, this case represents a direct attempt to appeal and invalidate an order of a state court in place for over three years prior to the filing of the federal case. As the Sixth Circuit aptly concluded below:

> In other words, it remains true after Exxon that "lower federal courts possess no power whatever to sit in direct review of state court decisions." *Feldman*, 460 U.S. at 482 n.16, 103 S. Ct. 1303 (citation omitted). That's what happened here. RLR lost in state court and, dissatisfied with the result, asked the district court to come to the opposite conclusion and undo the state court's Order. That's not parallel litigation. RLR lost before it sought federal-court review, and RLR would not have had the injury it complained of but-for the

> state court's Order. RLR "plainly has ... repaired to federal court to undo the [state court] judgment," which, in the words of *Exxon*, is "the paradigm situation in which *Rooker-Feldman*" applies. 544 U.S. at 293, 125 S. Ct. 1517.

App. 25a-26a. This matter is of a fundamentally different character than the cases this Court confronted in *Exxon* and *Lance*, and is more akin to the matter that was the progenitor of the doctrine in *Rooker*.

Ultimately, the Petitioner's only argument of substance is that the interlocutory nature of the state court's order mandates a different outcome. The Sixth Circuit below considered and rejected that argument, though, as discussed in more detail in Sec. III below, the unique circumstances of how this matter was litigated under Tennessee's eminent domain statute make the decision below of limited future precedential value. And as the Sixth Circuit concluded, nothing in this Court's guidance directly holds that district courts are prohibited from exercising appellate jurisdiction over state court final judgments, but are somehow empowered to exercise appellate jurisdiction over interlocutory orders (which are not even subject to appeal as of right under Tennessee law). App. 26a.-28a; *see also Harold v. Steel*, 773 F.3d 884, 885-886 (7th Cir. 2014)[4]; *Pieper v. Am. Arbitration Ass'n, Inc.*, 336

[4] Holding:

F.3d 458, 462 (6th Cir. 2003) ("We find it difficult to believe that lower federal courts are prohibited from reviewing final state-court judgments, but yet are somehow permitted to review interlocutory decisions."); *Campbell v. Greisberger*, 80 F.3d 703, 707 (2d Cir. 1996) ("It cannot be the meaning of *Rooker–Feldman* that, while the inferior federal courts are barred from reviewing *final* decisions of state courts, they are free to review interlocutory orders.") (emphasis present in original). The decision of the Sixth Circuit below is consistent with the precedent of this Court, and does not call for an exercise of this Court's supervisory power.

II. THERE IS NO MEANINGFUL DISAGREEMENT AMONGST THE CIRCUITS ON THIS ISSUE.

The Petitioner alleges that the decision of the Sixth Circuit below creates a split amongst the Circuits. Respectfully, the scope and nature of this purported circuit split is exaggerated. As discussed above, there is nothing particularly unique or novel about the Sixth Circuit's decision below. It applies the foundational principles of *Rooker* and its

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> "Nothing in the Supreme Court's decisions suggests that state-court decisions too provisional to deserve review within the state's own system can be reviewed by federal district and appellate courts. The principle that only the Supreme Court can review the decisions by the state judiciary in civil litigation is as applicable to interlocutory as to final state-court decisions. A truly interlocutory decision should not be subject to review in *any* court; review is deferred until the decision is final."

Harold, 773 F.3d at 886 (emphasis present in original).

progeny, and relies upon the simple proposition that a district court cannot exercise appellate jurisdiction over the judgment of a state court. *See Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 644 n.3 (2002) ("The *Rooker–Feldman* doctrine merely recognizes that 28 U.S.C. § 1331 is a grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to this Court, see § 1257(a)"). The Sixth Circuit correctly concluded that the Petitioner was seeking that precise relief – the review and rejection of an order of a state court that qualified as a "judgment" for the purposes of 28 U.S.C. § 1257.

As discussed above, the only point of tension appears to be whether the interlocutory nature of the state court order disqualifies it from what would otherwise be a straightforward application of *Rooker-Feldman*. But the Petitioner is incorrect in positing that some foundational circuit split exists on this question. Courts of Appeal around the country have regularly held that either: (1) *Exxon* and *Lance* do not necessitate a different conclusion for interlocutory orders; or (2) that interlocutory orders may qualify for protection under *Rooker-Feldman* in appropriate circumstances. For example, the First Circuit in *Federacion de Maestros de Puerto Rico v. Junta de Relaciones del Trabajo de Puerto Rico*, 410 F.3d 17, 27 (1st Cir. 2005) set out a test for "practical finality"[5], determining when an otherwise

[5] Though the Sixth Circuit did not explicitly apply or rely upon the "practical finality" doctrine first espoused in *Federacion*, it certainly could have. One factor under *Federacion* is whether the interlocutory order in question "finally resolved all federal

non-final order might qualify under *Rooker-Feldman*, which has been relied upon by seven of the Circuit Courts of Appeal. *See Malhan v. Sec'y United States Dep't of State*, 938 F.3d 453, 459 (3d Cir. 2019) (collecting authority). And the Seventh Circuit has questioned the logical premise of distinguishing between interlocutory and final state court orders, while applying the doctrine to those state court orders that are "effectively final." *See Bauer v. Koester*, 951 F.3d 863, 867 (7th Cir. 2020); *see also* the authority cited by the Sixth Circuit at App. 19a-20a.

Certainly different Courts of Appeal have adopted different tests to determine when *Rooker-Feldman* applies. At least nine circuits have concluded that *Rooker-Feldman* still applies to interlocutory orders in appropriate circumstances. However, these kinds of deviations and distinctions in how a test is applied or what factors are considered does not mean there is some foundational split of authority on federal law that warrants an exercise of this Court's discretionary review. And, as discussed more in Sec. III below, this case does not present an effective opportunity for resolution of any purported split of circuit authority. The decision of the Sixth Circuit below is not irreconcilably in

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questions in the litigation" even though "state law or purely factual questions (whether great or small) remain to be litigated." *Malhan*, 938 F.3d at 459. Given the bifurcated nature of eminent domain proceedings in Tennessee, the state court has finally resolved the issue of public use, and the only matter remaining to be resolved below is the purely factual issue of the value of the property rights granted by the state court's order of possession.

conflict with the decision of another United States Court of Appeals on an important matter of federal law.

III. THIS CASE IS NOT A PROPER VEHICLE FOR REVIEW.

Ultimately, the unique factual and procedural background of this case limits the jurisprudential value of granting certiorari. There are at least three factors that render this case a poor vehicle for discretionary review. First, the Petitioner's claims are so clearly improper that review is likely to be futile. Second, the peculiar aspects of Tennessee eminent domain law make the Sixth Circuit's decision below fact-bound, and unlikely to be precedentially valuable in future matters. Third, the unique timing of the filing of the federal matter makes the factual and procedural scenario that created this dispute vanishingly unlikely to occur again.

First, the Petitioner has brought an action that flagrantly violates basic tenets of jurisdiction and justiciability. Of course, the Respondent has asserted the *Rooker-Feldman* doctrine, which was the basis of the decisions in its favor both in the district court and in the Court of Appeals. The Petitioner's Complaint sought "[a] judgment declaring that the Order of Possession is unconstitutional" and an injunction against its enforcement. (Complaint, Prayer for Relief ¶¶ 1, 3, RE 1, Page ID # 11). As discussed above, this type of request falls squarely within the prohibition on a district court exercising appellate jurisdiction – the narrow scope of *Rooker*

and *Feldman* as refined by *Exxon* and *Lance*. But even beyond *Rooker-Feldman*, the Petitioner's claims are foundationally deficient. Judge Clay recognized in his dissenting opinion below that the City's assertion of abstention under *Colorado River* was compelling. App. 50a-51a ("And where, as here, the parallel state court proceedings are far enough along that the state court issued an interlocutory order on the merits before the federal action was filed, several of the *Colorado River* factors tilt heavily in favor of the federal court abstaining"). And *Colorado River* abstention is all the more justified where the Sevier County Circuit Court is in possession of $131,450.00 in interpleaded funds.[6] Further review would not alter the underlying result.

Second, the decision of the Sixth Circuit was based upon entry of an interlocutory judgment as part of Tennessee's bifurcated eminent domain law. Under Tennessee's condemnation statute, a condemnation proceeding is initiated by the governmental entity by filing a petition. Tenn. Code Ann. § 29-17-104(a)(1). Tennessee law requires that the governmental entity "deposit funds with the court in the amount the condemner deems to be the amount of damages to which the owner is entitled pursuant to the condemnation[.]" Tenn. Code Ann. § 29-17-105. This amount must be fixed by an appraisal. Tenn. Code Ann. § 29-17-801. The matter proceeds in a bifurcated fashion. First, if the right to take is contested, "the court shall promptly determine, as a matter of law, whether the

[6] The Respondent also sought, in the alternative, abstention under *Younger v. Harris*, 401 U.S. 37 (1971), which was pretermitted in the district court and the Sixth Circuit.

condemner has the right to take the property or property rights sought to be condemned." Tenn. Code Ann. § 29-17-104(a)(2)(B). The state court is empowered to issue a writ or order of possession upon a finding that there is a legal right to take the property. Tenn. Code Ann. § 29-17-104(b).

After the determination is made on the propriety of the proposed taking, the matter proceeds into a second stage – the determination of just compensation. If the property owner is dissatisfied with the amount on deposit, a jury trial is conducted to determine the amount of just compensation. *Id.* The trial on damages is held after the Court has determined the legal propriety of the take, and has transferred possession to the condemning entity. Tenn. Code Ann. § 29-17-104(b). That is what occurred in the matter at bar; the Sevier County Circuit Court held a hearing on the right to take and concluded that the taking was legally justified and for a public purpose. (Order of Possession, RE 1-2, Page ID # 19-32).

The decision of the Sixth Circuit rested upon the specific nature of condemnation proceedings under Tennessee law. In conducting an evidentiary hearing on the merits at the conclusion of the first stage of the proceedings, "[p]lainly, the [state court] judge made a merits determination." App. 15a. The decision below may well have been different if the challenge had not been brought against an "effectively final" merits determination on the issue of public use, from which real and meaningful consequences follow. The Petitioner did not seek an interlocutory appeal under Tennessee law from the

order of possession. The transferred property rights have been recorded. The Respondent has engaged in extensive bank stabilization work along the Little Pigeon River and has constructed the greenway, which is now in use. The order of possession, though interlocutory, was a merits determination that was effectively final on the issue of public use, and upon which the Respondent has reasonably relied. These factors underlie why this interlocutory order in particular was entitled to protection from collateral appellate attack under *Rooker-Feldman*.

Third, the unique procedural posture of these two lawsuits renders a similar, future case unlikely. As discussed above, after *Knick*, litigants would be entitled to engage in parallel litigation in federal and state court, irrespective of existing state takings procedures. That is not the issue at bar. The federal matter was filed over three years after the entry of the order of possession – certainly after litigation had ended in state court on the issue of public use. The Petitioner claims this delay was caused, at least in part, by the decision in *Knick* in June of 2019. And that may well be true, but future litigants will not face the same bar that limited the Petitioner's ability to seek contemporaneous Fifth Amendment redress in federal court. While other doctrines of abstention might apply, *Exxon* makes it plain that *Rooker-Feldman* bars functional appeals of state court judgments filed after those judgments have been entered; it does not bar parallel litigation. In short, the likelihood of a similar case in a post-*Knick* environment is vanishingly small. Therefore, given these specific facts and procedural history, this case is a poor vehicle for review on a writ of certiorari,

and therefore does not warrant exercise of this Court's discretionary jurisdiction.

CONCLUSION

For the foregoing reasons, certiorari should be denied.

Respectfully submitted,

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