

**“INEXTRICABLY INTERTWINED” EXPLICABLE AT LAST?  
ROOKER-FELDMAN ANALYSIS AFTER THE SUPREME COURT’S EXXON MOBIL  
DECISION**

By Thomas D. Rowe, Jr., and Edward L. Baskauskas \*

**Abstract**

The Supreme Court’s March 2005 decision in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.* substantially limited the “*Rooker-Feldman*” doctrine, under which lower federal courts largely lack jurisdiction to engage in what amounts to de facto review of state-court decisions. *Exxon Mobil*’s holding is quite narrow—entry of a final state-court judgment does not destroy federal-court jurisdiction already acquired over parallel litigation. But the Court’s articulation of when *Rooker-Feldman* applies, and its approach in deciding the case, have significant implications for several aspects of *Rooker-Feldman* jurisprudence.

Chief among our claims is that although the Court did not expressly repudiate or limit the applicability of the “inextricably intertwined” formulation from prior cases, which had been a primary test for many lower courts, that concept appears to have been relegated to some secondary role and no longer to be a general or threshold test. The *Exxon Mobil* Court properly did not elaborate on just what the concept’s role should be, but we offer a suggestion based on an earlier Ninth Circuit decision. We also discuss the apparent impact of *Exxon Mobil* on other aspects of *Rooker-Feldman* doctrine as the lower federal courts had developed it, including relation to preclusion doctrines, the significance of whether the federal plaintiff was plaintiff or defendant in state court, and the doctrine’s applicability a) to those not parties to prior state-court litigation, b) to interlocutory state-court rulings and decisions of lower state courts, and c) when federal-court plaintiffs did not raise their federal claims in state court. A February 2006 per curiam decision applying *Exxon Mobil*, *Lance v. Davis*, reinforces the Court’s position on some of these issues.

---

\* **Thomas D. Rowe, Jr.**, is Elvin R. Latty Professor of Law at Duke University and Straus Distinguished Visitor at Pepperdine University School of Law. **Edward L. Baskauskas** is Adjunct Professor of Law at Golden Gate University School of Law. They are, respectively, reviser and drafter for Chapter 133 of *Moore’s Federal Practice*, which includes coverage of the *Rooker-Feldman* doctrine. The views expressed here are their own. Professor Rowe is grateful for research support received from the Eugene T. Bost Research Professorship of the Charles A. Cannon Charitable Trust No. 3. For careful and valuable editorial suggestions we are thankful to Professor David Shapiro, Magistrate Judge Kenneth Neiman, and Professor Rowe’s colleague and running partner Joan Magat. Surviving errors are of course ours.

**Table of Contents**

- I. INTRODUCTION
- II. THE BASICS OF THE *ROOKER-FELDMAN* DOCTRINE
- III. THE *EXXON MOBIL* LITIGATION AND OPINION
- IV. *EXXON MOBIL'S* LIGHT AND SHADOWS
- V. CONCLUSION

## I. INTRODUCTION

Under the federal courts' *Rooker-Feldman* doctrine, it has been significant for jurisdictional purposes whether a claim made in district court is "inextricably intertwined" with a state court's decision.<sup>1</sup> In its treatment of the doctrine, *Moore's Federal Practice* let a droll Freudian slip creep into a footnote heading: "State claim must be inexplicably [*sic*] intertwined with federal claim for doctrine to apply."<sup>2</sup> The error probably expresses the attitude of many lawyers, judges, and academics toward what had become a much-used but murky limit on the original subject-matter jurisdiction of federal district courts.<sup>3</sup> Sweeping extensions and conflicting interpretations of *Rooker-Feldman* finally led to a clarifying Supreme Court decision last year in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*<sup>4</sup> That case has since been followed by *Lance v. Dennis*,<sup>5</sup> in which the Court summarily reaffirmed *Exxon Mobil's* narrow view of *Rooker-Feldman*.

This Article surveys the *Rooker-Feldman* seascape in the wake of the *Exxon Mobil* opinion. It provides brief background but does not attempt full exploration of the many strands of *Rooker-Feldman* lore in earlier decisions by the lower federal courts or in commentary—partly because we believe that *Exxon Mobil* provides a new enough starting point that detailed background is not warranted.<sup>6</sup> The Article then analyzes the *Exxon Mobil* opinion—at some length to tease out its subtleties—and considers how several aspects of *Rooker-Feldman* appear to have been affected by the decision.<sup>7</sup> Chief among our claims is that the "inextricably intertwined" formulation, although not expressly repudiated or limited, appears to have been rele-

---

<sup>1</sup> The phrase first appeared in this context in the Supreme Court's second major decision in the *Rooker-Feldman* line, *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). *See id.* at 482 n.16 ("If the constitutional claims presented to a United States district court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state bar, then the district court is in essence being called upon to review the state-court decision. This the district court may not do."), 486-87 (some of the plaintiffs' allegations in their complaints "are inextricably intertwined with the District of Columbia Court of Appeals' decisions, in judicial proceedings, to deny [their] petitions [for admission to the D.C. Bar]. The District Court, therefore, does not have jurisdiction over these elements of [their] complaints.") (alteration to original).

<sup>2</sup> 18 MOORE'S FEDERAL PRACTICE § 133.30[3][c][ii], at 133-30 n.26 (3d ed. 2004) (boldface omitted). The mistaken use of "inexplicably" appeared as recently as the publication's Release 144, issued December 2004. But you won't find it any more; killjoys that we are, we've corrected the slip.

<sup>3</sup> See, for example, the title of a foreword to a symposium on the *Rooker-Feldman* doctrine—Thomas D. Rowe, Jr., *Rooker-Feldman: Worth Only the Powder to Blow It Up?*, 74 NOTRE DAME L. REV. 1081 (1999).

<sup>4</sup> 544 U.S. 280 (2005).

<sup>5</sup> 126 S. Ct. 1198 (2006) (per curiam).

<sup>6</sup> Besides, we don't want to write all the footnotes that law-review editors would make us include if we gave extensive background.

<sup>7</sup> Footnotes discuss several significant lower-court applications of *Exxon Mobil* since that decision.

gated to—at most—some secondary role and in any event no longer to be a general or threshold test. We also discuss the apparent impact of *Exxon Mobil* and *Lance* on other aspects of the *Rooker-Feldman* doctrine as the lower federal courts had developed it, including a) its relation to preclusion doctrines, b) the significance of whether the federal plaintiff was the plaintiff in state court, and c) the doctrine's applicability i) to those not parties to prior state-court litigation, ii) to interlocutory state-court rulings and decisions of lower state courts, and iii) when federal-court plaintiffs did not raise their federal claims in state court. We confine ourselves to the main effects of the *Exxon Mobil* decision and do not try to cover comprehensively aspects of *Rooker-Feldman* that appear to be unchanged, such as its being a subject-matter jurisdictional doctrine that federal courts are supposed to raise on their own initiative if the parties do not.<sup>8</sup>

## II. THE BASICS OF THE *ROOKER-FELDMAN* DOCTRINE

The *Rooker-Feldman* doctrine takes its name from two cases decided sixty years apart, *Rooker v. Fidelity Trust Co.*<sup>9</sup> and *District of Columbia Court of Appeals v. Feldman*.<sup>10</sup> It rests on inferences from two aspects of the federal courts' statutory jurisdictional structure—that district-court jurisdiction is original, not appellate,<sup>11</sup> and that the Supreme Court is the only federal court given statutory appellate jurisdiction over decisions of any state courts.<sup>12</sup> It follows that lower federal courts have no jurisdiction to entertain what is, or amounts to, an appeal from a state-court decision.<sup>13</sup> The doctrine thus operates in a unique way to constrain federal subject-matter jurisdiction: a federal district court, dealing with a case that on its face comes within an express grant of jurisdiction (most commonly because it presents a federal claim), will nonetheless lack jurisdiction because of prior state-court adjudication.

---

<sup>8</sup> See, e.g., 18 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* § 133.30[3][b], at 123-25 (3d ed. 2006).

<sup>9</sup> 263 U.S. 413 (1923).

<sup>10</sup> 460 U.S. 462 (1983).

<sup>11</sup> See, e.g., 28 U.S.C. § 1330(a) (2000) (actions against foreign states); 28 U.S.C. § 1331 (2000) (federal question); 28 U.S.C. § 1332(a) (2000) (diversity and alienage); and 28 U.S.C. § 1333 (2000) (admiralty) (each of which refers to "original jurisdiction").

<sup>12</sup> See 28 U.S.C. § 1257(a) (2000) ("Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court" under certain circumstances).

<sup>13</sup> A semi-exception is federal habeas corpus for state prisoners under 28 U.S.C. § 2254(a) (2000), which allows some degree of collateral federal attack upon state criminal convictions and civil commitments. The attack takes the form of a new federal civil action, typically against the habeas petitioner's warden or the state corrections superintendent, but if allowed it involves federal lower-court review of state courts' federal-law rulings and sometimes their fact findings. See *Exxon Mobil*, 544 U.S. at 292 n.8 ("Congress, if so minded, may explicitly empower district courts to oversee certain state-court judgments and has done so, most notably, in authorizing federal habeas review of state prisoners' petitions.").

Application of the *Rooker-Feldman* constraint can be easy when a federal-court plaintiff baldly seeks to have the court set aside a state-court judgment, as some plaintiffs occasionally do despite the doctrine.<sup>14</sup> But the relationship between a federal claim and state adjudication, and hence the applicability of *Rooker-Feldman*, is not always so simple and raises many issues, for example, the extent to which the doctrine's jurisdictional constraint overlaps state preclusion doctrines applicable in federal court under the full faith and credit statute.<sup>15</sup> Some circuits such as the Second, Eighth, and Tenth had taken *Rooker-Feldman* quite far, by largely conflating it with preclusion,<sup>16</sup> making it applicable when federal-court plaintiffs had had no opportunity to raise their claims in state court,<sup>17</sup> or even extending it to nonparties to prior state-court proceedings.<sup>18</sup> Other circuits, notably the Seventh<sup>19</sup> and Ninth,<sup>20</sup> had generally been less expansive. For its part, the Supreme Court had passed up chances to review some far-reaching and controversial applications of *Rooker-Feldman*,<sup>21</sup> so the cert grant in *Exxon Mobil* raised much anticipation in the hardy band of federal-jurisdiction wonks. The Court did not disappoint.

---

<sup>14</sup> See, e.g., *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003) (federal plaintiff sought order compelling state court to recall its decision); *United States v. Shepherd*, 23 F.3d 923, 924 (5th Cir. 1994) (action “to set aside and void” state-court judgment); *Facio v. Jones*, 929 F.2d 541, 543 (10th Cir. 1991) (describing federal-court plaintiff’s complaint as including a “request to vacate and to set aside” state-court default judgment).

<sup>15</sup> 28 U.S.C. § 1738 (2000); see *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 523 (1986) (“under the Full Faith and Credit Act [28 U.S.C. § 1738] a federal court must give the same preclusive effect to a state-court judgment as another court of that State would give.”).

<sup>16</sup> See *Moccio v. New York State Office of Court Admin.*, 95 F.3d 195, 199-200 (2d Cir. 1996) (“[W]here a federal plaintiff had an opportunity to litigate a claim in a state proceeding (as either the plaintiff or defendant in that proceeding), subsequent litigation of the claim will be barred under the *Rooker-Feldman* doctrine if it would be barred under the principles of preclusion.”).

<sup>17</sup> See *Kenmen Eng’g v. City of Union*, 314 F.3d 468, 478 (10th Cir. 2002) (“*Rooker-Feldman* bars any suit that seeks to disrupt or ‘undo’ a prior state-court judgment, regardless of whether the state-court proceeding afforded the federal-court plaintiff a full and fair opportunity to litigate her claims.”).

<sup>18</sup> See *Lemons v. St. Louis County*, 222 F.3d 488, 495 (8th Cir. 2000) (“*Rooker-Feldman* is based squarely on federal law and is concerned with federalism and the proper delineation of the power of the lower federal courts. Such courts are simply without authority to review most state court judgments—regardless of who might request them to do so.”), *cert. denied*, 531 U.S. 1183 (2001).

<sup>19</sup> See, e.g., *GASH Assocs. v. Village of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993) (if federal 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 and state law determines whether the defendant prevails under principles of preclusion”).

<sup>20</sup> See, e.g., *Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003) (“[W]here the federal plaintiff does not complain of a legal injury caused by a state court judgment, but rather of a legal injury caused by an adverse party, *Rooker-Feldman* does not bar jurisdiction.”).

<sup>21</sup> See *Lemons*, 222 F.3d at 488 (“*Rooker-Feldman* is based squarely on federal law and is concerned with federalism and the proper delineation of the power of the lower federal courts. Such courts are simply without authority to review most state court judgments—regardless of who might request them to do so.”), *cert. denied*, 531 U.S. 1183 (2001); *Kamilewicz v. Bank of Boston Corp.*, 92 F.3d 506 (7th Cir. 1996) (no jurisdiction over federal-court attack

### III. THE *EXXON MOBIL* LITIGATION AND OPINION

*Exxon Mobil* posed one of several questions concerning the scope of *Rooker-Feldman*—whether a state-court judgment rendered while a parallel federal action was pending could deprive a lower federal court of original jurisdiction that had been properly invoked. (If not, claim or issue preclusion might still make the federal-court plaintiff’s action unsuccessful, but on merits-based preclusion grounds rather than for lack of jurisdiction.) Saudi Basic Industries Corp., a majority government-owned Saudi Arabian corporation, sued two ExxonMobil<sup>22</sup> subsidiaries in Delaware state court for a declaratory judgment that certain disputed royalty charges were proper. Around two weeks later, ExxonMobil and the subsidiaries sued Saudi Basic as a foreign government entity<sup>23</sup> in the New Jersey federal district court to recover the alleged overcharges. The subsidiaries also counterclaimed in state court for the overcharges and eventually won a large judgment, which was on appeal to the Delaware Supreme Court at the time of the relevant proceedings in the Third Circuit.

That court had before it an interlocutory appeal of the district court’s ruling rejecting Saudi Basic’s claim of sovereign immunity. The Third Circuit panel sua sponte raised the question whether the state trial court’s judgment triggered *Rooker-Feldman*’s jurisdictional bar even though federal subject-matter jurisdiction initially had properly attached. Reading the doctrine broadly, the panel reasoned that if Saudi Basic won its pending state-court appeal, then ExxonMobil’s federal suit would be seeking to undo a state-court judgment—“the very situation contemplated by *Rooker-Feldman*’s ‘inextricably intertwined’ bar.”<sup>24</sup> Hence, the Third Circuit concluded, the lower federal courts had lost jurisdiction. The Supreme Court granted certiorari<sup>25</sup>

---

on state court’s approval of attorney fees in class-action settlement, brought by class members over whom state court arguably lacked jurisdiction), *cert. denied*, 520 U.S. 1204 (1997). The Supreme Court denied cert without published dissent even though five judges of the Seventh Circuit, including then-Chief Judge Posner and Judges Easterbrook and Diane Wood, had dissented vociferously from denial of rehearing. *See Kamilewicz v. Bank of Boston Corp.*, 100 F.3d 1348, 1349 (7th Cir. 1996) (Easterbrook, J., dissenting from denial of rehearing en banc).

<sup>22</sup> The company’s full name is Exxon Mobil Corporation, but it appears that the corporation uses “ExxonMobil” (no space between “Exxon” and “Mobil”) as a short-form reference to itself. *See* Exxon Mobil Corporation Home Page, <http://www.exxonmobil.com/corporate/> (last visited Oct. 16, 2005). The Supreme Court’s opinion often uses this short form to refer to the company, as does this Article. However, the style of the case as reported includes the full name of the corporation, with a space between “Exxon” and “Mobil.” We therefore retain the space when referring to the decision itself.

<sup>23</sup> Jurisdiction rested on 28 U.S.C. § 1330 (2000), which authorizes district-court original jurisdiction over actions against foreign states.

<sup>24</sup> *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 364 F.3d 102, 106 (3d Cir. 2004), *rev’d*, 544 U.S. 280 (2005).

<sup>25</sup> *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 543 U.S. 924 (2004).

in order “to resolve conflict among the Courts of Appeals over the scope of the *Rooker-Feldman* doctrine.”<sup>26</sup>

The Supreme Court reversed, in a unanimous opinion by Associate Justice Ruth Bader Ginsburg. The opinion proceeds in four parts: an unnumbered introduction, including a distillation of how the Court now views *Rooker-Feldman*; a descriptive part I summarizing *Rooker, Feldman*, and the few other Supreme Court cases dealing with the doctrine; an account in part II of the proceedings below; and a part III restating how the Court views the doctrine and applying its distillation to decide the case.

The introduction in several ways emphasizes that the Court regards *Rooker-Feldman* as properly confined to narrow application. Its first sentence notes that *Rooker* and *Feldman* are the only two cases in which the Court has “applied” the doctrine,<sup>27</sup> apparently in the sense of applying it to hold that lower federal courts lacked jurisdiction. The Court then introduces two themes it amplifies later, the existence of concurrent state- and federal-court jurisdiction and the significance of preclusion: “[T]he doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress’ conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U.S.C. § 1738.”<sup>28</sup>

As a negative example the Court cites a Second Circuit decision that construed “inextricably intertwined” as largely conflating preclusion and *Rooker-Feldman*. That court had said:

[The phrase] means, at a minimum, that where a federal plaintiff had an opportunity to litigate a claim in a state proceeding (as either the plaintiff or defendant in that proceeding), subsequent litigation of the claim will be barred under the *Rooker-Feldman* doctrine if it would be barred under the principles of preclusion.<sup>29</sup>

Continuing, the *Exxon Mobil* opinion notes the bases of the doctrine—that the Supreme Court is the only federal court with appellate jurisdiction over state-court judgments, and that the jurisdiction of the federal district courts is original, not appellate.<sup>30</sup> The Court then gives its first statement of the circumstances under which *Rooker-Feldman* applies to bar federal-court jurisdiction:

---

<sup>26</sup> *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.* 544 U.S. 280, 291 (2005). For a somewhat more detailed account of the proceedings below, see *id.* at 289-91.

<sup>27</sup> *Id.* at 283.

<sup>28</sup> *Id.*

<sup>29</sup> *Moccio v. New York State Office of Court Admin.*, 95 F.3d 195, 199-200 (2d Cir. 1996) (emphasis added) (cited with “See, e.g.,” signal immediately following quotation in text accompanying note 28 *supra*, 544 U.S. at 283).

<sup>30</sup> See *Exxon Mobil*, 544 U.S. at 283.

The *Rooker-Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases [1] brought by state-court losers [2] complaining of injuries caused by state-court judgments [3] rendered before the district court proceedings commenced and [4] 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.<sup>31</sup>

The introduction's concluding paragraph emphasizes "the narrow ground occupied by *Rooker-Feldman*"<sup>32</sup> before the opinion turns in part I to a longer description of the Court's cases dealing with the doctrine.

Aspects of *Exxon Mobil*'s part I that bear on the Court's interpretation of *Rooker-Feldman* are important for the elucidations we offer here. The opinion treats *Rooker* briefly as a relatively simple case involving a bald-faced attempt by parties who had lost in state court to have a federal district court declare the state-court judgment "null and void."<sup>33</sup> *Rooker* thus seems to exemplify the most basic and uncontroversial aspect of the *Rooker-Feldman* doctrine, i.e., telling state-court losers that the way to try to get a federal court to review an adverse decision on a federal-law matter is to seek direct review in the federal Supreme Court. If they try instead to bring what the Ninth Circuit has called "a forbidden de facto appeal"<sup>34</sup> in federal district court, *Rooker-Feldman* requires dismissal for lack of appellate jurisdiction in an original-jurisdiction-only federal court.

*Feldman*, as the *Exxon Mobil* opinion reflects, was not quite so cut-and-dried. Disappointed applicants for admission to the District of Columbia Bar who had not graduated from an ABA-approved law school had petitioned the D.C. Court of Appeals (the highest court of the District of Columbia, and for jurisdictional purposes the equivalent of a state supreme court<sup>35</sup>)

<sup>31</sup> *Id.* at 284 (bracketed numbers added). In the first paragraph of the opinion's concluding part III, the Court restates these characteristics in terms apparently identical in effect although not verbatim in phrasing. The opinion explains that the *Rooker-Feldman* doctrine applies in the "limited circumstances" illustrated by those two cases, in which: "[1] the losing party in state court [3] filed suit in federal court after the state proceedings ended, [2] complaining of an injury caused by the state-court judgment and [4] seeking review and rejection of that judgment." *Id.* at 291 (bracketed numbers, corresponding to those in quotation in text, added).

<sup>32</sup> *Id.* at 284.

<sup>33</sup> *Id.* (quoting *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 414 (1923)).

<sup>34</sup> *Noel v. Hall*, 341 F.3d 1148, 1158 (9th Cir. 2003). Full disclosure: this Article's co-author Rowe is brother-in-law of Ninth Circuit Judge William Fletcher, who wrote for the *Noel* panel. The Article, of course, in no way speaks for Judge Fletcher or his court.

<sup>35</sup> See 28 U.S.C. § 1257(b) (2000) ("For the purposes of this section, the term 'highest court of a State' includes the District of Columbia Court of Appeals.").



for waiver of a rule made by the court itself that required graduation from an ABA-approved law school. After the court denied their requests, the applicants brought several constitutional claims against it in the United States District Court for the District of Columbia. The *Feldman* Court viewed the challenges as going partly to the accreditation rule itself and partly to its application by the D.C. court. The latter challenges, the Court determined, were “inextricably intertwined” with action by the D.C. court in a judicial capacity and were thus outside the lower federal courts’ jurisdiction, whereas the challenges to the rule’s general validity were to action by the D.C. court in a non-judicial capacity and therefore could proceed in the district court.<sup>36</sup>

Two points are of major significance in *Exxon Mobil*’s discussion of *Feldman*: First, the Court reads *Feldman* in a way that puts “inextricably intertwined” in a non-threshold part of that case’s analysis. Second, the opinion mentions the “inextricably intertwined” test only in this descriptive part I and in so much of part II as recounts the decision under review, without saying anything positive or negative about what it thinks of the phrase—but using it not at all in the introduction and part III, where the Court states its view of *Rooker-Feldman* and decides the case.

To expand somewhat on these points: The *Exxon Mobil* Court reads part III-A of *Feldman* as having “held,” as to the judicial aspects of the D.C. court’s challenged action, that “the District Court lacked subject-matter jurisdiction over their complaints”<sup>37</sup>—a “determination” that “did not dispose of the entire case”<sup>38</sup> but that apparently, in the Court’s view, did dispose of some of it.<sup>39</sup> Moving on, the *Exxon Mobil* opinion mentions the *Feldman* Court’s use of the “inextricably intertwined” test in part III-B of that opinion as the basis for its having found no jurisdiction over the allegation that the D.C. court had acted arbitrarily in denying the petitions for waiver—in contrast to the facial challenges to the admission rule, which “do not require review of a judicial decision in a particular case.”<sup>40</sup> *Exxon Mobil* thus parks *Feldman*’s

---

<sup>36</sup> See *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486-87 (1983); *Exxon Mobil*, 544 U.S. at 285-87 (summarizing *Feldman*).

<sup>37</sup> *Exxon Mobil*, 544 U.S. at 285.

<sup>38</sup> *Id.* at 285.

<sup>39</sup> This reading of *Feldman* is questionable, because the *Feldman* Court went on to start part III-B by saying that it was “[a]pplying” the “standard” from part III-A to the plaintiffs’ complaints, and proceeded to deal with all aspects of their claims. See *Feldman*, 460 U.S. at 486-87; compare *id.* (dealing with five claims), with *id.* at 469 n.3 (summarizing complaint as making same five claims). However questionable it may thus be to read part III-A of *Feldman* as disposing of part of the case, the *Exxon Mobil* Court’s reading is plenty authoritative. What is significant for lower courts now is not the strength of our argument that the Court may have misread *Feldman* but that a unanimous Court has read it the way it has.

<sup>40</sup> *Exxon Mobil*, 544 U.S. at 286-87 (quoting *Feldman*, 460 U.S. at 487). The Court drops a footnote to mention a second appearance of the “inextricably intertwined” phrase in the *Feldman* opinion, where *Feldman* “explained that a district court could not entertain constitutional claims attacking a state-court judgment, even if the state court had not passed directly on those claims, when the constitutional attack was ‘inextricably intertwined’ with the state court’s judgment.” *Exxon Mobil*, 544 U.S. at 286 n.1 (quoting *Feldman*, 460 U.S. at 482 n.16). Again, the *Exxon*

use of “inextricably intertwined” in a non-threshold part of the disposition, a siting fully consistent with *Exxon Mobil*’s own disposition of the case before it without using “inextricably intertwined” as part of its analysis (as opposed to its description of other cases).

The remainder of *Exxon Mobil*’s part I briefly describes Supreme Court cases since *Feldman* that had declined to hold *Rooker-Feldman* applicable to bar lower-court jurisdiction. Part II recounts the proceedings below. Part III, which takes up under three pages in the *United States Reports*, restates the Court’s view of *Rooker-Feldman*,<sup>41</sup> makes observations on the role of other doctrines that can affect the exercise of federal jurisdiction, refers to two lower-court decisions with apparent approval, and applies its view of *Rooker-Feldman* to reverse the Third Circuit’s finding of no jurisdiction. The Court mentions the general tolerance of parallel state and federal litigation, observing that in such situations “the entry of judgment in state court” does not trigger *Rooker-Feldman*.<sup>42</sup> It adds briefly that comity or abstention doctrines may support stay or dismissal of federal proceedings in favor of state adjudication<sup>43</sup> and spends slightly more time pointing out that non-jurisdictional preclusion doctrines may apply when a state court has reached judgment in either parallel or previous litigation.<sup>44</sup> Significantly for federal jurisdiction if not for the ultimate success of federal-court plaintiffs, the Court adds that a district court is not barred

from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court. If a federal 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 and state law determines whether the defendant prevails under principles of preclusion.”<sup>45</sup>

The Court’s disposition of the case comes down to one paragraph, turning on the fact that ExxonMobil had not gone to federal court seeking to undo an already-rendered state-court judgment. The company exercised its right to initiate parallel federal litigation shortly after its adversary sued in state court. Thus, “*Rooker-Feldman* did not prevent the District Court from

---

*Mobil* Court’s use of the phrase comes in a purely descriptive mode. The third and last mention of “inextricably intertwined” in *Exxon Mobil* comes near the end of part II, where the Court quotes the Third Circuit’s decision it is reviewing and reversing—once more in a wholly descriptive manner. See *Exxon Mobil*, 544 U.S. at 291.

<sup>41</sup> See *supra* note 31.

<sup>42</sup> See *Exxon Mobil*, 544 U.S. at 292.

<sup>43</sup> See *id.* at 292.

<sup>44</sup> See *id.* at 293.

<sup>45</sup> *Id.* (quoting *GASH Assocs. v. Village of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993), and citing with “accord” *signal Noel v. Hall*, 341 F.3d 1148, 1163-64 (9th Cir. 2003)).

exercising jurisdiction when ExxonMobil filed the federal action, and it did not emerge to vanish jurisdiction after ExxonMobil prevailed in the Delaware courts.”<sup>46</sup> Nowhere in this operative part of the opinion does the Court invoke the “inextricably intertwined” test; instead, it directly applies its less formulaic distillation of circumstances in which *Rooker-Feldman* bars lower federal courts from exercising jurisdiction.<sup>47</sup>

#### IV. EXXON MOBIL’S LIGHT AND SHADOWS

*Exxon Mobil*’s holding is actually quite narrow: entry of a final judgment in state-court litigation does not oust properly attached original federal district-court jurisdiction over parallel litigation. It may, of course, have preclusive effects that can deny the federal-court plaintiff relief for nonjurisdictional reasons, and the federal court might properly decide that it should abstain even before the state judgment. Still, the Court’s approach seems to have several significant implications for other *Rooker-Feldman* issues.

##### A. THE NON-THRESHOLD NATURE OF THE “INEXTRICABLY INTERTWINED” INQUIRY

When we first read *Exxon Mobil*, it escaped us that the previously prominent “inextricably intertwined” test did absolutely none of the work in the case’s disposition. As described above, the opinion quotes the phrase three times, saying nothing positive or negative about it; and these appearances are all in descriptive rather than analytical or dispositive parts. What we now have in *Exxon Mobil*, therefore, is the most authoritative of examples that federal courts can, indeed apparently should, decide at least some *Rooker-Feldman* cases without making any real use of the “inextricably intertwined” concept. That alone is a significant change from the pre-*Exxon Mobil* approach of some (but by no means all) circuits, which had used “inextricably intertwined” as a general or threshold test for applying *Rooker-Feldman*.<sup>48</sup> In our view, anyone who now *starts* with the phrase in determining whether the doctrine applies either hasn’t read *Exxon Mobil* or hasn’t read it right.<sup>49</sup> Instead, it appears that the place to begin is the Court’s distillation of the limited circumstances in which the doctrine applies.<sup>50</sup> That formulation of *Rooker-Feldman* should be used to determine whether federal lower courts have jurisdiction, in

<sup>46</sup> *Exxon Mobil*, 544 U.S. at 293-94.

<sup>47</sup> See *supra* note 31 and accompanying text.

<sup>48</sup> See, e.g., *Tropf v. Fid. Nat’l Title Ins. Co.*, 289 F.3d 929, 937 (6th Cir. 2002) (“First, in order for the *Rooker-Feldman* doctrine to apply to a claim presented in federal district court, the issue before the Court must be [inextricably intertwined] with the claim asserted in the state court”); *Hill v. Town of Conway*, 193 F.3d 33, 39 (1st Cir. 1999) (“*Feldman* only forecloses district court jurisdiction of claims that are ‘inextricably intertwined’ with the claims adjudicated in a state court.”).

<sup>49</sup> See, e.g., *Ramos v. Nebraska*, 396 F. Supp. 2d 1053, 1061 (D. Neb. 2005) (citing *Exxon Mobil* and continuing, “The [*Rooker-Feldman*] doctrine . . . precludes federal district court jurisdiction over federal claims that are ‘inextricably intertwined’ with claims of the state court action.”).

<sup>50</sup> See *supra* note 31 and accompanying text.

whole or in part, instead of filtering the situation through the “inextricably intertwined” test or anything else. That is what the unanimous Supreme Court did in *Exxon Mobil*, and what the per curiam opinion in *Lance* did as well. Because that analysis disposed of the case—by holding *Rooker-Feldman* entirely inapplicable—the *Exxon Mobil* Court went no further and, appropriately, did not discuss what role “inextricably intertwined” may retain in *Rooker-Feldman* analysis.

That leaves litigants, courts, and academics to try to figure it out, at least until the next time the Supreme Court takes a *Rooker-Feldman* case that involves the role of “inextricably intertwined” (don’t hold your breath).<sup>51</sup> To be clear, we do not think it appropriate to conclude that the phrase can be entirely discarded; *Exxon Mobil* did not repudiate or expressly limit it, and *Feldman* used the term and remains good law at least as interpreted in *Exxon Mobil*.<sup>52</sup> But we do suggest that “inextricably intertwined” can come into play only in a case that may involve partial applicability of *Rooker-Feldman*.

In some instances, direct application of the *Exxon Mobil* Court’s formulation may lead—as it did in that case—to the conclusion that *Rooker-Feldman* is not applicable at all, despite some state-court adjudication. In such situations the federal court has no occasion to deal with “inextricably intertwined.” The court should move on to decide the possible preclusive effects of the state judgment and, if that does not dispose of the whole case, to the substantive merits. In other cases, such as those like *Rooker*, it may be clear that the federal court entirely lacks jurisdiction and can only dismiss. But, after *Exxon Mobil*, the lower court should proceed by applying that decision’s formulation without making any use of “inextricably intertwined.”

What remain are instances in which a federal court concludes that *Rooker-Feldman* applies to at least part of a case before it and must figure out how much of the remainder—if

---

<sup>51</sup> In its first and only *Rooker-Feldman* opinion since *Exxon Mobil*, the Court again disposed of the case before it—by holding *Rooker-Feldman* entirely inapplicable because the federal plaintiff had not been a party in state court—without having to consider the propriety of the district court’s use of the “inextricably intertwined” test as a requirement for application of *Rooker-Feldman*. See *Lance v. Dennis*, 126 S. Ct. 1198, 1200, 1202-03 (2006) (per curiam).

<sup>52</sup> The Second and Fourth Circuits have since suggested that “inextricably intertwined” may now be regarded as a phrase that has no independent content and serves only as a label for claims that are barred by the *Rooker-Feldman* doctrine. See *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 87 (2d Cir. 2005) (“[T]he phrase ‘inextricably intertwined’ has no independent content. It is simply a descriptive label attached to claims that meet the requirements outlined in *Exxon Mobil*.”); *Davani v. Va. Dep’t of Transp.*, 434 F.3d 712, 719 (4th Cir. 2006) (“Under *Exxon*, then, *Feldman*’s ‘inextricably intertwined’ language does not create an additional legal test for determining when claims challenging a state-court decision are barred, but merely states a conclusion: if the state-court loser seeks redress in the federal district court for the injury caused by the state-court decision, his federal claim is, by definition, ‘inextricably intertwined’ with the state-court decision, and is therefore outside of the jurisdiction of the federal district court.”) (citing *Hoblock*). That is a harmless enough view of the role that the phrase should now play, but it does not strike us as consistent with the *Exxon Mobil* Court’s description of *Feldman* and the post-threshold role that the Court appears to see “inextricably intertwined” as now playing. See *supra* text accompanying note 40.

any—is subject to the doctrine. That was the situation in the Supreme Court’s other major *Rooker-Feldman* decision, *Feldman* itself. *Exxon Mobil*’s discussion of *Feldman* can plausibly be read as implying that it is at this sorting stage that “inextricably intertwined” may, indeed perhaps should, come into play.<sup>53</sup> Along these lines, a leading Ninth Circuit case decided before *Exxon Mobil*, *Noel v. Hall*,<sup>54</sup> developed an approach to *Rooker-Feldman* that now appears consistent with *Exxon Mobil* and with the view advanced here. *Noel*’s discussion is worth quoting at some length:

A federal district court dealing with a suit that is, in part, a forbidden [by *Rooker-Feldman*] de facto appeal from a judicial decision of a state court must refuse to hear the forbidden appeal. As part of that refusal, it must also refuse to decide any issue raised in the suit that is “inextricably intertwined” with an issue resolved by the state court in its judicial decision.

The premise for the operation of the “inextricably intertwined” test in *Feldman* is that the federal plaintiff is seeking to bring a forbidden de facto appeal. The federal suit is not a forbidden de facto appeal because it is “inextricably intertwined” with something. Rather, it is simply a forbidden de facto appeal.<sup>55</sup> Only when there is already a forbidden de facto appeal does the “inextricably intertwined” test come into play: Once a federal plaintiff seeks to bring a forbidden de facto appeal, as in *Feldman*, that federal plaintiff may not seek to litigate an issue that is “inextricably intertwined” with the state court judicial decision from which the forbidden de facto appeal is brought.<sup>56</sup>

In this connection, in determining whether a case involves a forbidden de facto appeal, a federal court should focus on the relief sought and whether it would go to the state-court judgment itself, rather than to the issues raised<sup>57</sup>—which can, of course, be vital when issue preclu-

<sup>53</sup> See *supra* text accompanying note 40 (discussing *Exxon Mobil*’s treatment of “inextricably intertwined” in its reading of *Feldman*).

<sup>54</sup> 341 F.3d 1148 (9th Cir. 2003). The *Exxon Mobil* opinion cites *Noel* favorably, see 544 U.S. at 293, albeit for a part of the *Noel* opinion that deals with a different aspect of *Rooker-Feldman* from that discussed in the text that follows.

<sup>55</sup> The initial determination whether a forbidden de facto appeal is involved should presumably be made, after *Exxon Mobil*, by applying that case’s distillation of *Rooker-Feldman*. [Footnote by authors, not *Noel* court.]

<sup>56</sup> *Noel*, 341 F.3d at 1158.

<sup>57</sup> See, e.g., *Guttman v. Khalsa*, 401 F.3d 1170, 1174 (10th Cir. 2005) (“[W]hen determining whether the federal plaintiff asserts a legal injury by an adverse party or by a state-court judgment, we must look to the relief sought, not simply to the issues raised”), *vacated and remanded*, 126 S. Ct. 321 (2005); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 (9th Cir. 2003) (“[W]e cannot simply compare the issues involved in the state-court proceeding to those raised in the federal-court plaintiff’s complaint. . . . Rather, under *Rooker-Feldman*, we must pay close attention to the relief sought by the federal-court plaintiff.”) (quoting *Kenmen Eng’g v. City of Union*, 314 F.3d 468, 476 (10th Cir. 2002)).

sion may apply. Under *Exxon Mobil's* formulation, if the relief sought does not include the review and rejection of the state-court judgment, *Rooker-Feldman* does not apply,<sup>58</sup> and the court will have no need to inquire whether the issues raised are inextricably intertwined with the state-court judgment.

Cases of the sort described by *Noel* as involving proper applicability of the “inextricably intertwined” aspect of the *Rooker-Feldman* analysis may not be all that common, but they do arise. The Ninth Circuit opinion explains:

As a practical matter, the “inextricably intertwined” test of *Feldman* is likely to apply primarily in cases in which the state court both promulgates and applies the rule at issue—that is, to the category of cases in which the local court has acted in both a legislative and a judicial capacity—and in which the loser in state court later challenges in federal court both the rule and its application.<sup>59</sup>

Examples are bar-admission rules of the sort involved in *Feldman*, as well as litigation and attorney-discipline rules.<sup>60</sup> The “inextricably intertwined” test in such cases, of course, can end up pointing either way. In *Feldman* itself, *general* challenges to the constitutionality of the bar-admission requirement, i.e., objections to actions of the D.C. court in a legislative rather than judicial capacity that did not “require review of a judicial decision in a particular case,”<sup>61</sup> were not barred.

The Ninth Circuit in *Noel* cites a nice example of a contrasting case in which a challenge that was not itself a “forbidden de facto appeal”—but that was part of a case involving such an effort in other respects—failed the “inextricably intertwined” test. In *Facio v. Jones*,<sup>62</sup> a majority of a Tenth Circuit panel held that *Rooker-Feldman* not only directly barred an effort to get a federal district court to “set aside” a state-court judgment,<sup>63</sup> but also—now but only now using the “inextricably intertwined” test—a claim for declaratory relief (that the challenged state-court

---

<sup>58</sup> See *Exxon Mobil*, 544 U.S. at 284, 291 (“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 . . . and inviting district court review and rejection of those judgments. . . . In both [*Rooker* and *Feldman*], the losing party in state court filed suit in federal court . . . , complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment.”).

<sup>59</sup> *Noel*, 341 F.3d at 1158.

<sup>60</sup> See *id.*

<sup>61</sup> *Feldman*, 460 U.S. at 487.

<sup>62</sup> 929 F.2d 541 (10th Cir. 1991).

<sup>63</sup> See *id.* at 543.

rule relied on by the state court was invalid *as applied to reach that very judgment*).<sup>64</sup> In such cases, as a post-*Noel* Ninth Circuit opinion put it, “the ‘inextricably intertwined’ test ma[kes] good sense, for it prevent[s] the federal plaintiff] from making an end-run around the rule against de facto appeals.”<sup>65</sup>

<sup>64</sup> See *id.*; *Noel*, 341 F.3d at 1157 & n.7 (discussing *Facio* and emphasizing as-applied nature of request for declaratory relief); *accord*, *Willner v. Frey*, No. 1:05CV1315, 2006 WL 680997, at \*6 (E.D. Va. Mar. 15, 2006) (*Rooker-Feldman* bars federal action seeking injunction ordering state-court clerk to remove state court’s final order from county land records, as well as declaration that state statute is unconstitutional as applied; as-applied claim, even if not raised in state court, is “inextricably intertwined” with state-court judgment).

We have discussed so far only the possible place of “inextricably intertwined” in the structure of *Rooker-Feldman* analysis, not its content or breadth when applicable. It does, though, seem fair to infer from *Exxon Mobil* that federal courts should not apply the concept expansively. The Court has emphasized both the general narrowness of *Rooker-Feldman*, see, e.g., *Exxon Mobil*, 544 U.S. at 284 (speaking of “the narrow ground occupied by *Rooker-Feldman*”), and characteristics of cases when it *can* apply such as that the federal plaintiffs are “complaining of injuries caused by state-court judgments” and “inviting district court review and rejection of those judgments”). See *infra* note 96 (retrospectively criticizing broad Seventh Circuit panel ruling on these grounds).

A definition of “inextricably intertwined” that seems inappropriate after *Exxon Mobil* is one from Associate Justice Thurgood Marshall’s concurrence in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring in judgment). Justice Marshall’s statement that “a federal claim is inextricably intertwined . . . if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it,” *id.*, had proved mischievous, some lower courts having used it to support sweeping applications of *Rooker-Feldman*. See, e.g., *DLX, Inc. v. Kentucky*, 381 F.3d 511, 517 & n.1 (6th Cir. 2004) (based on Justice Marshall’s language, *Rooker-Feldman* requires “the dismissal of claims that involve an injury predating the state-court proceedings on the exclusive grounds that the issues that the federal court would have to decide are inextricably intertwined with the state-court decision, in that to allow relief would require the conclusion that the state court had wrongly decided the issues before it.”), *cert. denied*, 544 U.S. 961 (2005); *Lemons v. St. Louis County*, 222 F.3d 488, 492-93 (8th Cir. 2000) (“a corollary to the basic rule against reviewing judgments prohibits federal district courts from exercising jurisdiction over general constitutional claims that are ‘inextricably intertwined’ with specific claims already adjudicated in state court”); *id.* at 495 (holding nonparties subject to *Rooker-Feldman*), *cert. denied*, 531 U.S. 1183 (2001). See generally 18 JAMES WM. MOORE, ET AL., MOORE’S FEDERAL PRACTICE § 133.30[3][c][ii], at 133-30.5 (3d ed. 2006). *Exxon Mobil* cited the Marshall concurrence as a “But cf.” after a list of other Court cases refusing to find *Rooker-Feldman* applicable, without quoting his definition of “inextricably intertwined.” See 544 U.S. at 288. The context and manner of citation suggest some disapproval, and if we are any good at reading opinions the following statement later in *Exxon Mobil* puts a stake in the heart of the Marshall articulation: “Nor does § 1257 stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court.” 544 U.S. at 293. The Court then points out that the defendant may prevail under applicable state-law preclusion principles. See *id.* (quoting *GASH Assocs. v. Vill. of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993)).

<sup>65</sup> *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1142 (9th Cir. 2004).

The *Noel-Kougasian* approach may not be entirely free from difficulty. If the federal-court plaintiff in *Facio* had brought the as-applied declaratory-judgment claim on its own, it would have been no less “inextricably intertwined” with the state-court judgment for lack of another aspect of the federal-court case that amounted to a forbidden de facto appeal from that judgment. As the *Facio* court explained, however, in such an instance the as-applied claim, standing alone, ordinarily would be dismissed for lack of Article III standing if the federal plaintiff were not also seeking to set aside the judgment in which the rule was applied. See *Facio*, 929 F.2d at 543-44:

Unless Mr. *Facio*'s default judgment is upset, his only interest in Utah's default judgment procedures is prospective and hypothetical in nature. He cannot establish a sufficient interest in the future application of those procedures to him to establish a constitutional case or controversy.

Again, to be clear about what we are and are not claiming: *Exxon Mobil* does not endorse, and we do not suggest that its logic necessarily mandates, *Noel*'s approach to the role of "inextricably intertwined" in *Rooker-Feldman* analysis. But we do see this aspect of *Noel* as consistent with the *Exxon Mobil* Court's reading of *Feldman* and its overall analytical approach. We also see *Noel* as adopting an analysis that is sensible and understandable, appropriately retaining a role for "inextricably intertwined" while keeping that concept within reasonable bounds, thereby taking a valuable step toward curbing what some of us had viewed as metastases of *Rooker-Feldman* until *Exxon Mobil* advanced a positive restraining process.

## B. ROOKER-FELDMAN AND PRECLUSION

One of *Exxon Mobil*'s more significant effects should be to reduce what had been an uncertain and vexing degree of overlap between *Rooker-Feldman* and preclusion.<sup>66</sup> The Court was expressly critical of a Second Circuit opinion that had largely conflated *Rooker-Feldman* and preclusion.<sup>67</sup> After *Exxon Mobil*, federal courts should determine whether *Rooker-Feldman* deprives them of jurisdiction in whole or in part without thinking about preclusion at the threshold. They should apply the Court's formulations for the doctrine's applicability and, in a partial-bar case, perhaps the "inextricably intertwined" test as cabined by *Exxon Mobil*.<sup>68</sup>

What they should avoid, as the recent follow-up *Lance* decision makes clear, is general resort to preclusion law even as an aid in determining applicability of *Rooker-Feldman*.<sup>69</sup> If any

---

Because Mr. Facio's threshold ability to establish standing with regard to his claim for declaratory relief is dependent upon his ability to upset the default judgment against him, that presents a classic case of an inextricably intertwined relationship between the two requested types of relief.

*Rooker-Feldman*'s applicability, therefore, would not become an issue unless the federal plaintiff joined the as-applied declaratory-judgment claim with a de facto appeal from the underlying state-court judgment. Thus, in the case of a stand-alone as-applied challenge to a state rule, the "inextricably intertwined" inquiry still would not serve as a threshold test for applicability of *Rooker-Feldman*.

<sup>66</sup> See 18B CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 4469.1, at 159-60 (3d ed. 2002) (footnote omitted):

The well-developed doctrines of res judicata and full faith and credit, supplemented by abstention and comity, protect state interests as well as should be. Res judicata protects a judgment more than appeal; the limitations on res judicata—ordinarily drawn from the law of the forum state—permit much less reconsideration than occurs on direct appeal. Significant confusions and dangers are emerging as lower courts attempt to translate these doctrines into jurisdictional terms, without significant benefits. Rooker-Feldman theory should be pared back to the irreducible core.

<sup>67</sup> See *supra* note 29 and text accompanying notes 28-29.

<sup>68</sup> See *supra* note 64 and text accompanying notes 50-64.

<sup>69</sup> See *Lance v. Dennis*, 126 S. Ct. at 1202 (per curiam):



jurisdiction remains after the application of the purely federal *Rooker-Feldman* jurisdictional doctrine, the federal court may consider the applicability of the distinct and largely state-law doctrines of claim and issue preclusion that govern in federal courts under the full faith and credit statute.<sup>70</sup> As a result, *Rooker-Feldman* will be narrower than preclusion more often than had been the case in some federal courts before *Exxon Mobil*.<sup>71</sup>

### C. PLAINTIFF-DEFENDANT DISTINCTION

The Seventh Circuit has developed a rule of thumb that *Rooker-Feldman* is more likely to apply if the federal-court plaintiff was the defendant in state court, because then the plaintiff will usually be complaining about the effects of the state court's judgment. By contrast, the Seventh Circuit has explained, a federal-court plaintiff who was also the plaintiff in state court will more often be complaining about out-of-court action by the adversary against which the state courts refused to grant relief, in which case preclusion principles rather than *Rooker-Feldman* should guide the federal court.<sup>72</sup> This distinction is not absolute; indeed, both *Rooker* and *Feldman* applied the doctrine against federal-court plaintiffs who had also been relief-seekers in state court and who asked the federal courts to undo state judgments against them.<sup>73</sup>

The Seventh Circuit's rule of thumb may or may not survive *Exxon Mobil*. The Supreme Court's references to "state-court losers"<sup>74</sup> and "the losing party in state court"<sup>75</sup> are not side-specific. But *Exxon Mobil* also says that the state-court losers, when *Rooker-Feldman* applies, are "complaining of injuries caused by state-court judgments,"<sup>76</sup> the same factor upon which the

---

In determining whether privity existed [for purposes of whether *Rooker-Feldman* barred federal jurisdiction over an action by a nonparty to prior state-court adjudication], the [lower] court looked to cases concerning the preclusive effect that state courts are required to give federal-court judgments. [In so doing it] erroneously conflated preclusion law with *Rooker-Feldman*.

<sup>70</sup> 28 U.S.C. § 1738 (2000). Cf. *Lance*, 126 S. Ct. at 1202-03:

Congress has directed federal courts to look principally to *state* law in deciding what effect to give state-court judgments. Incorporation of preclusion principles into *Rooker-Feldman* risks turning that limited doctrine into a uniform *federal* rule governing the preclusive effect of state-court judgments, contrary to the Full Faith and Credit Act.

<sup>71</sup> If *Rooker-Feldman* bars federal lower-court review of interlocutory state-court decisions that would not have preclusive effect (as we think it should, see *infra* text accompanying notes 97-107), the doctrine can in those situations be broader than preclusion.

<sup>72</sup> See, e.g., *Garry v. Geils*, 82 F.3d 1362, 1365-68 (7th Cir. 1996).

<sup>73</sup> See *id.* at 1367-68 (discussing application of and exceptions to rule of thumb).

<sup>74</sup> *Exxon Mobil*, 544 U.S. at 284.

<sup>75</sup> *Id.* at 291.

<sup>76</sup> *Id.* at 284; see also *id.* at 291 ("complaining of an injury caused by the state-court judgment").

Seventh Circuit based its rule of thumb. So the Seventh Circuit's rule may still be helpful: apply *Rooker-Feldman* more often when the federal-court plaintiff was the state-court defendant, and apply preclusion more often when the federal-court plaintiff was the plaintiff in state court. Still, what seems important is to focus on the factors used by the Supreme Court, including whether it is the effects of a state-court judgment about which the federal plaintiff (whether plaintiff or defendant in state court) is complaining.

#### D. APPLICABILITY OF *ROOKER-FELDMAN* TO STATE-COURT NONPARTIES: *LANCE V. DENNIS*

*Exxon Mobil* by itself seemed to call into question the Eighth Circuit's application of *Rooker-Feldman* in *Lemons v. St. Louis County*<sup>77</sup> to those who were not parties to prior state-court litigation. The Court emphasized that the doctrine was limited to cases involving federal-court suits brought by "state-court losers"<sup>78</sup> and, as in both *Rooker* and *Feldman*, "the losing party in state court."<sup>79</sup> Most recently, the Court in *Lance v. Dennis*<sup>80</sup> has made clearer just how sharply it meant to limit the doctrine: a federal-court plaintiff not a party to prior state-court litigation is not to be held barred by *Rooker-Feldman* just because preclusion law would have found the federal plaintiff in privity with the state-court loser.<sup>81</sup> The history of the lower courts' use of *Rooker-Feldman* in this context illustrates how the doctrine had sometimes been extended "far beyond the contours of the *Rooker* and *Feldman* cases."<sup>82</sup>

In 1994, the Supreme Court held that *Rooker-Feldman* is inapplicable if the party against whom the doctrine is invoked was not a party to the underlying state-court proceeding.<sup>83</sup> Nevertheless, some lower courts went on to apply *Rooker-Feldman* to bar suits brought by nonparties to prior state-court litigation. In the most far-reaching example, the Eighth Circuit in *Lemons* applied *Rooker-Feldman* to bar a federal suit on the ground that the action was "inextricably intertwined" with and could undo a prior state-court judgment, even though the federal plaintiffs

---

<sup>77</sup> 222 F.3d 488, 495 (8th Cir. 2000), *cert. denied*, 531 U.S. 1183 (2001).

The Eighth Circuit's position was decidedly a minority view. *See, e.g.*, 18 JAMES WM. MOORE, ET AL., MOORE'S FEDERAL PRACTICE § 133.30[3][c], at 133-30.5 to -30.12 & n.36 (3d ed. 2006) (citing cases from five circuits in support of proposition that "it is axiomatic that nonparties in the state court action, with no ability to appeal the state court decision, cannot be bound by the *Rooker-Feldman* doctrine").

<sup>78</sup> *Exxon Mobil*, 544 U.S. at 284.

<sup>79</sup> *Id.* at 291.

<sup>80</sup> 126 S. Ct. 1198 (2006) (per curiam).

<sup>81</sup> *See id.* at 1202-03.

<sup>82</sup> *See Exxon Mobil*, 544 U.S. at 283, quoted in *Lance*, 126 S. Ct. at 1201.

<sup>83</sup> *See Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994) ("[T]he invocation of *Rooker/Feldman* is . . . inapt here, for unlike *Rooker* or *Feldman*, the United States was not a party in the state court. It was in no position to ask this Court to review the state court's judgment and has not directly attacked it in this proceeding.")

had not been parties in state court.<sup>84</sup> Other courts, such as the Tenth Circuit in *Kenmen Engineering v. City of Union*,<sup>85</sup> found *Rooker-Feldman* applicable against federal plaintiffs who had not been named parties in state court but who were in privity with parties to earlier state-court actions.<sup>86</sup>

Even after *Exxon Mobil*, with its insistence generally on narrow applicability of *Rooker-Feldman* and its particular reference to “state-court losers” and “the losing party in state court”—not to mention its cleaving between *Rooker-Feldman* and preclusion—some lower courts continued to look to privity principles from preclusion doctrine to extend *Rooker-Feldman* to bar federal-court actions by those who had not themselves been parties to prior state litigation. Thus, the Second Circuit in *Hoblock v. Albany County Board of Elections*<sup>87</sup> held that *Exxon Mobil* left room for courts to apply privity concepts developed under preclusion doctrines to determine whether federal plaintiffs, “despite not having appeared in state court, should nonetheless be considered state-court losers for *Rooker-Feldman* purposes.”<sup>88</sup> And a three-judge Colorado federal district court similarly used preclusion law to hold citizens in privity, and thus afool of *Rooker-Feldman*, because of prior government litigation on a matter of public concern.<sup>89</sup>

This time, the Supreme Court in *Lance* acted quickly to head off another round of *Rooker-Feldman* expansion, granting cert and summarily reversing the Colorado decision in a per curiam opinion. The history of the litigation in the state and lower federal courts seems not worth detailing; for our purposes what is important is that the *Lance* Court emphatically rejected the use of privity concepts borrowed from preclusion doctrines to expand the reach of *Rooker-Feldman*. Since the *Lance* plaintiffs were not parties to the underlying state-court litigation—they had not participated in the proceedings and were not in a “position to ask this Court to review the state court’s judgment”<sup>90</sup>—the Court held that the district court erred when it used privity principles to treat the federal plaintiffs as state-court losers:

---

<sup>84</sup> See *Lemons*, 222 F.3d at 495.

<sup>85</sup> 314 F.3d 468 (10th Cir. 2002).

<sup>86</sup> See *id.* at 481 (officer of and joint venturers with named state-court party); see also *Amaya v. Pitner*, 130 Fed. Appx. 25, 26-27 (7th Cir. 2005) (successor in title).

<sup>87</sup> 422 F.3d 77 (2d Cir. 2005).

<sup>88</sup> *Id.* at 89; see *id.* at 90 (“While we recognize that claim and issue preclusion are distinct from the *Rooker-Feldman* doctrine, we believe that federal case law governing the application of preclusion doctrines to nonparties should guide the analogous inquiry in the *Rooker-Feldman* context.”)

<sup>89</sup> See *Lance v. Davidson*, 379 F. Supp. 2d 1117, 1125 (D. Colo. 2005) (“In determining when privity exists for *Rooker-Feldman* purposes, it is helpful to look to cases dealing with privity in the context of issue and claim preclusion . . . . We believe that the principle . . . that the outcome of the government’s litigation over a matter of public concern binds its citizens . . . should apply . . . in the *Rooker-Feldman* context.”), *rev’d sub nom. Lance v. Dennis*, 126 S. Ct. 1198 (2006) (per curiam).

<sup>90</sup> *Lance*, 126 S. Ct. at 1202 (quoting *De Grandy*, 512 U.S. at 1006).

The District Court erroneously conflated preclusion law with *Rooker-Feldman*. Whatever the impact of privity principles on preclusion rules, *Rooker-Feldman* is not simply preclusion by another name. The doctrine applies only in “limited circumstances,” where a party in effect seeks to take an appeal of an unfavorable state-court decision to a lower federal court. The *Rooker-Feldman* doctrine does not bar actions by nonparties to the earlier state-court judgment simply because, for purposes of preclusion law, they could be considered in privity with a party to the judgment.<sup>91</sup>

The Court went on to explain that incorporating federal preclusion principles<sup>92</sup> into *Rooker-Feldman* would risk “turning that limited doctrine into a uniform *federal* rule governing the preclusive effect of state-court judgments, contrary to the Full Faith and Credit Act,”<sup>93</sup> which requires federal courts to look to *state* law in deciding what effect to give state-court judgments.

*Lance* expressly left open the question whether there might be some limited circumstances under which *Rooker-Feldman* could be applied against a party not named in an earlier state-court proceeding (for example, when a decedent’s “estate takes a *de facto* appeal in a district court of an earlier state-court decision involving the decedent”<sup>94</sup>). However, after *Lance* it is clear that *Exxon Mobil*’s limitation of *Rooker-Feldman* to suits brought by state-court losers forecloses the broad “privity” analysis used by the *Kenmen* and *Hoblock* courts. And it is difficult to see how *Lemons*’s use of “inextricably intertwined” analysis<sup>95</sup> to apply *Rooker-Feldman* to nonparties in state court can survive *Exxon Mobil* and *Lance*.<sup>96</sup>

<sup>91</sup> *Lance*, 126 S. Ct. at 1202 (citation and footnote omitted) (quoting *Exxon Mobil*, 544 U.S. at 291).

<sup>92</sup> The district court in *Lance*, like the Second Circuit in *Hoblock*, looked to cases concerning the preclusive effect that state courts are required to give federal-court judgments. See *Lance*, 126 S. Ct. at 1200; *Hoblock v. Albany Bd. of Elections*, 422 F.3d 77, 89-90 (2d Cir. 2005).

<sup>93</sup> *Lance*, 126 S. Ct. at 1203 (emphasis in original); see 28 U.S.C. § 1738 (2000).

<sup>94</sup> *Lance*, 126 S. Ct. at 1202 n.2.

<sup>95</sup> See *Lemons*, 222 F.3d at 495-96.

<sup>96</sup> To be sure, those who had not been parties to prior state-court adjudication—even if not subject to *Rooker-Feldman* or preclusion—might still be subject to the precedential effect of a state court’s rulings, particularly if state-law issues decided by the state courts remained relevant in the federal litigation.

Unnamed members of a class that lost, or failed to win as much as the members would have liked, in state court could also be “state-court losers” for purposes of *Rooker-Feldman*. Cf., e.g., *Devlin v. Scardelletti*, 536 U.S. 1, 10 (2002) (unnamed class members who timely object to settlement may be treated as “parties” for purposes of appeal); *Wershba v. Apple Computer, Inc.*, 110 Cal. Rptr. 2d 145, 154 (Cal. Ct. App. 2001) (unnamed class members who appear at final fairness hearing and object to proposed settlement have standing to appeal). Thus, one premise of the Seventh Circuit’s controversial decision in *Kamilewicz v. Bank of Boston Corp.*, 92 F.3d 506, 510 (7th Cir. 1996) (no jurisdiction over federal-court attack on state court’s approval of attorney fees in class-action settlement, brought by class members over whom state court arguably lacked jurisdiction), *cert. denied*, 520 U.S. 1204 (1997), seems sound: the federal-court plaintiffs, as supposed “winners” in a state-court class settlement that

## E. APPLICABILITY TO INTERLOCUTORY AND INTERMEDIATE STATE-COURT RULINGS

Federal courts have been somewhat divided about whether *Rooker-Feldman* can bar lower federal-court jurisdiction when a state court has made an interlocutory ruling, such as granting a preliminary injunction. The majority position has been to apply the doctrine, albeit with some strong opposing views.<sup>97</sup> Different passages in *Exxon Mobil* might be read to support either view, but we suggest that the issue is better approached by reasoning from basic principles—and concluding that *Rooker-Feldman* can apply—than by parsing the Supreme Court’s indeterminate discussion.

Language bearing on whether *Rooker-Feldman* might apply to interlocutory state-court rulings appears in two places in the *Exxon-Mobil* opinion. We view these two statements as meant to be identical in effect even though they differ slightly in expression.<sup>98</sup> In the first, the Court speaks of “state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced.”<sup>99</sup> A state-court “judgment” might be construed to include the likes of a grant of a preliminary injunction, which could be viewed as a non-final judgment; that interpretation would bar a federal district court from entertaining a later-commenced action that sought to undo the state court’s preliminary injunction. But the Court’s second articulation describes the *Rooker-Feldman* doctrine as involving situations in which the state-court loser “filed suit in federal court after the state proceedings ended.”<sup>100</sup> Read

---

left them out of pocket because of an attorney-fee award exceeding their recovery, could be viewed as parties to the state litigation if it properly included them. But the *Exxon Mobil* Court’s emphasis on certain factors—such as complaint about “an injury caused by the state-court judgment” and an effort to seek “review and rejection of that judgment,” 544 U.S. at 291—cast doubt on the Seventh Circuit’s extension of *Rooker-Feldman* to aspects of the *Kamilewicz* complaint such as a claim for malpractice against the class’s lawyers. See *Kamilewicz v. Bank of Boston Corp.*, 100 F.3d 1348, 1351-52 (7th Cir. 1996) (Easterbrook, J., dissenting from denial of rehearing en banc), cert. denied, 520 U.S. 1204 (1997). Regarding such claims as “inextricably intertwined” with the state-court class settlement, *Kamilewicz*, 92 F.3d at 511 (panel opinion), seems too much of a stretch after *Exxon Mobil*’s emphasis on *Rooker-Feldman*’s specific characteristics and general narrowness. (Co-author Rowe was a frustrated signer of a cert petition in *Kamilewicz*. See Brief of Amici Curiae Law Teachers in Support of Petition & Motion for Leave to Appeal, 1997 WL 33561346, at \*2, *Kamilewicz v. Bank of Boston Corp.*, 520 U.S. 1204 (1997) (No. 96-1184).)

<sup>97</sup> See *Pieper v. American Arbitration Ass’n*, 336 F.3d 458, 460-65 (6th Cir. 2003) (collecting cases both ways), cert. denied, 540 U.S. 1182 (2004).

<sup>98</sup> See *supra* note 31 and accompanying text (quoting the *Exxon Mobil* Court’s two general formulations of when *Rooker-Feldman* applies).

<sup>99</sup> *Exxon Mobil*, 544 U.S. at 284.

<sup>100</sup> *Id.* at 291.

literally, that language could be regarded as saying that *Rooker-Feldman* bars federal-court challenges only to final state-court judgments.<sup>101</sup>

Arguing from these kinds of fine linguistic differences, in an opinion in which the Court was not focusing on the final-versus-interlocutory distinction, does not seem to us to be a fruitful exercise. It makes sense instead to start from a foundational principle undergirding *Rooker-Feldman*: the only federal court to which Congress has given any statutory authority to review state-court judgments<sup>102</sup> is the Supreme Court.<sup>103</sup> That principle supports the applicability of *Rooker-Feldman* to interlocutory and final state-court judgments alike.<sup>104</sup> Indeed, it would be an

---

<sup>101</sup> For an intermediate position construing *Exxon Mobil*'s "after the state proceedings ended" to include situations in which state proceedings continue but "have finally resolved all federal questions in the litigation," so that *Rooker-Feldman* could still apply despite the lack of a final state-court judgment, see *Federacion de Maestros v. Junta de Relaciones del Trabajo*, 410 F.3d 17, 25 (1st Cir. 2005); *accord*, *Guttman v. Khalsa*, No. 03-2244, 2006 WL 1017636, at \*3 (10th Cir. Apr. 19, 2006) ("Under *Exxon Mobil*, *Rooker-Feldman* applies only to suits filed after state proceedings are final.") (footnote citing and quoting *Federacion de Maestros* omitted). To the extent that view might permit lower federal-court review of, say, a state court's decision on a preliminary injunction with federal-law issues involved, we question this limit on *Rooker-Feldman* in light of the Court's not entirely consistent language and the argument from basic principle advanced in the text that immediately follows. Of course *Exxon Mobil* generally allows the filing of parallel federal-court actions while state-court litigation is pending. What we question is jurisdiction to entertain efforts seeking relief against interlocutory orders already entered by state courts.

<sup>102</sup> Habeas corpus aside, see *supra* note 13 and accompanying text. It may also be that federal bankruptcy courts can set aside state judgments in some circumstances. See 18 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* § 133.30[3][b], at 133-28 & n.20.5 (3d ed. 2006); *Sasson v. Sokoloff (In re Sasson)*, 424 F.3d 864, 871 (9th Cir. 2005); *Bozich v. Mattschull (In re Chinin U.S.A., Inc.)*, 327 B.R. 325, 335-36 (N.D. Ill. 2005) (alternative holding). We see nothing in *Exxon Mobil*, aside from its cagey observation that Congressional power to "empower district courts to oversee certain state court judgments" has been exercised "most notably" with habeas for state prisoners, 544 U.S. at 292 n.8, that sheds any light on whether some lower federal courts' special treatment of bankruptcy for *Rooker-Feldman* purposes may be appropriate. And the vague "most notably" reservation, although more open than possible alternatives such as "only" or "solely," is too meager a ground on which to base any reasoning about what the Court might do when facing a bankruptcy court's voiding of a state-court decision.

<sup>103</sup> See, e.g., *Exxon Mobil*, 544 U.S. at 292 (quoting *Verizon Maryland, Inc. v. Public Serv. Comm'n*, 535 U.S. 635, 644 n.3 ("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 [the Supreme] Court, see [28 U.S.C.] § 1257(a).")).

<sup>104</sup> *But see* *RegScan, Inc. v. Brewer*, No. Civ. A. 04-6043, 2005 WL 874662 (E.D. Pa. Apr. 13, 2005) (finding no *Rooker-Feldman-Exxon Mobil* bar to jurisdiction when state court, before filing of federal action, had denied leave to amend complaint on possibly substantive grounds in still-pending state-court litigation). We are not persuaded.

We should add, though, that even if we are correct that *Rooker-Feldman* applies to interlocutory as well as final state-court rulings, we are aware of no decisions (and we've looked) that hold the doctrine to bar federal injunctions against state proceedings when such an injunction would be appropriate under the necessary-in-aid-of-jurisdiction or protecting-or-effectuating-judgments exceptions to the Anti-Injunction Statute, 28 U.S.C. § 2283 (2000). As the Ninth Circuit has put it, if an argument that such a federal order "amounted to direct federal district court review of a state court decision . . . were to succeed, it would be impossible for a federal court to enjoin a state court proceeding, despite satisfying an exception to the Anti-Injunction Act . . ." *United States v. Alpine Land & Reservoir Co.*, 174 F.3d 1007, 1015-16 (9th Cir. 1999).

odd review structure if the lower federal courts had some form of de facto appellate jurisdiction over interlocutory state-court rulings under a narrow construction of *Rooker-Feldman* while the Supreme Court was statutorily limited to reviewing final judgments of the highest state court in which a judgment could be had.<sup>105</sup> The principle that only the Supreme Court has any statutory appellate jurisdiction over state courts also supports *Rooker-Feldman*'s applicability to judgments of lower state courts.<sup>106</sup> In short, although we see *Exxon Mobil* as appropriately narrowing the applicability of *Rooker-Feldman* in significant respects, we also think it important not to overread the decision.<sup>107</sup>

## F. WHEN THE FEDERAL PLAINTIFF DID NOT RAISE A CLAIM IN STATE COURT

A final point on which the lower federal courts have been somewhat divided is whether *Rooker-Feldman* bars jurisdiction as to federal claims that the federal-court plaintiff did not raise in state court, either by choice or for lack of opportunity.<sup>108</sup> *Exxon Mobil* strikes us as largely resolving these matters against *Rooker-Feldman*'s applicability. If the doctrine poses no jurisdictional bar "simply because a party attempts to litigate in federal court a matter previously litigated in state court,"<sup>109</sup> it is hard to see how it would do so when the matter had *not* been litigated in state court. Preclusion principles may of course apply—either claim preclusion, as from the splitting of related claims when the federal-court plaintiff had an opportunity to raise a claim in state court and failed to do so, or issue preclusion when the state court resolved a point relevant to an unprecluded federal claim.

---

<sup>105</sup> See *supra* note 12 (quoting 28 U.S.C. § 1257(a) (2000)); *Pieper*, 336 F.3d at 464 ("We believe that it is untenable that the Supreme Court's lack of jurisdiction over interlocutory appeals or appeals from lower state courts somehow opens up the possibility of review in the lower federal courts."). But see WRIGHT ET AL., *supra* note 66, § 4469.1, at 147 ("It seems particularly questionable to bar federal-question jurisdiction if the courts of other states, and indeed other courts of the same state, would have jurisdiction to entertain the same federal question.").

<sup>106</sup> See 18 MOORE'S FEDERAL PRACTICE § 133.30[3][c][I], at 133-30.3 to -30.4 & nn.34.1-34.2 (3d ed. 2006).

<sup>107</sup> One district-court opinion regards "the Court's stated desire to rein in expansive interpretations of *Rooker-Feldman*" as "leaving its application to non-final orders in doubt." *Soad Wattar Living Trust of 1992 v. Jenner & Block, P.C.*, No. 04 C 6390, 2005 WL 1651191, at \*3 (N.D. Ill. July 1, 2005). For the reasons given in the text, we do not think that *Exxon Mobil*'s general effort to narrow the doctrine should lead courts to apply it more narrowly in all respects.

<sup>108</sup> Compare *Kenmen Eng'g v. City of Union*, 314 F.3d 468, 478-79 (10th Cir. 2002) (*Rooker-Feldman* applies even if state court did not provide full and fair opportunity to litigate claim), and *Goodman ex rel. Goodman v. Sipos*, 259 F.3d 1327, 1332-33 (11th Cir. 2001) (*Rooker-Feldman* bars all federal claims that were or should have been central to state-court decision, even if those claims seek form of relief that might not have been available from state court), with *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 558-60 (7th Cir. 1999) (*Rooker-Feldman* does not apply to issue "if the plaintiff did not have a reasonable opportunity to raise the issue in state court proceedings"); *Powell v. Powell*, 80 F.3d 464, 466-67 (11th Cir. 1996) (*Rooker-Feldman* does not apply to claims that litigant had no reasonable opportunity to raise in state court); and *Getty v. Reed*, 547 F.2d 971, 976 (6th Cir. 1977) (*Rooker* applies only to claims actually raised and voluntarily litigated in state court).

<sup>109</sup> *Exxon Mobil*, 544 U.S. at 293.

At the very least, *Exxon Mobil* should make *Rooker-Feldman* inapplicable when the federal-court plaintiff had no full and fair opportunity to litigate its federal claim in state court, as lower federal courts before and since *Exxon Mobil* have held.<sup>110</sup> Perhaps only in the narrow situation exemplified by the Tenth Circuit's *Facio* decision<sup>111</sup>—when the state court was both rule-maker and rule-applier, and a federal-court plaintiff (already partially barred by *Rooker-Feldman* from challenging the state court's adjudication) presented a federal claim that was “inextricably intertwined” with the state ruling—would *Rooker-Feldman* bar jurisdiction over a federal claim not ruled on by the state court.<sup>112</sup> But it now seems that broader applications of *Rooker-Feldman*—as opposed to preclusion—against federal-court plaintiffs should apparently be viewed as relics of the bad old days, excessively conflating the two types of doctrine, before *Exxon Mobil* largely sorted them out.

## V. CONCLUSION

What had seemed to be serious over-extensions of *Rooker-Feldman* by some (not all) lower federal courts had led a few observers to question whether the doctrine was worth even the powder to blow it up.<sup>113</sup> Whether anyone thinks after *Exxon Mobil* that the doctrine should be discarded lock, stock, and barrel we do not know.<sup>114</sup> We would not be disturbed if the Supreme

<sup>110</sup> See, e.g., last three cases cited in note 108 *supra*; *Cervantes v. City of Harvey*, 373 F. Supp. 2d 815, 820 (N.D. Ill. 2005) (“*Exxon Mobil* reiterated the ‘independent claim’ exception to the *Rooker-Feldman* doctrine. . . . However, a claim is considered ‘independent’ only when there was no ‘reasonable opportunity’ to raise the claim in the state court proceeding.”). So restricting the independent-claim exception does not seem to be a necessary reading of *Exxon Mobil*, given the Court’s narrow view of *Rooker-Feldman*. If applicable state law does not preclude voluntarily omitted claims—although it very often will do so—it is not clear why a restricted *Rooker-Feldman* doctrine should keep federal courts from exercising jurisdiction over them.

<sup>111</sup> See *supra* text accompanying notes 62-64.

<sup>112</sup> A Fourth Circuit opinion views *Exxon Mobil* more broadly, saying that “[t]he ‘inextricably intertwined’ prong of the [*Rooker-Feldman*] doctrine bars a claim that was not actually decided by the state court but where success on the federal claim depends upon a determination that the state court wrongly decided the issues before it.” *Washington v. Wilmore*, 407 F.3d 274, 279 (4th Cir. 2005) (quoting *Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194, 198 (4th Cir. 2000)). This view seems irreconcilable with the *Exxon Mobil* Court’s favorable quotation of a Seventh Circuit opinion:

If a federal 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 and state law determines whether the defendant prevails under principles of preclusion.”

*Exxon Mobil*, 544 U.S. at 293 (quoting *GASH Assocs. v. Village of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993)).

<sup>113</sup> See the title of the symposium foreword by Rowe, *supra* note 3; *id.* at 1081 n.\* (crediting turn of phrase to Prof. David Shapiro).

<sup>114</sup> Justice Stevens’s dissent in *Lance v. Dennis* might be read as indicating that he believes *Rooker-Feldman* has already been discarded: “Last term, in [*Exxon Mobil*], the Court finally interred the so-called ‘*Rooker-Feldman* doctrine.’ And today, the Court quite properly disapproves of the District Court’s resuscitation of a doctrine that



Court instructed the lower federal courts to quit using the “inextricably intertwined” phrase in this context and just to apply the *Exxon Mobil* formulation across the board. But we cannot say that we think lower federal courts would now be justified in doing so themselves on the strength of *Exxon Mobil*.<sup>115</sup> In any event it seems to make sense, given the present statutory structure of district courts’ original and the Supreme Court’s appellate jurisdiction, for the federal trial courts to dismiss de facto appeals from state courts for want of jurisdiction. As caged and refined by *Exxon Mobil*, the *Rooker-Feldman* doctrine—we hope—should be able to enforce that limit without the exuberant overgrowth that had sprung from the doctrine’s modest roots.

---

has produced nothing but mischief for 23 years.” *Lance*, 126 S. Ct. at 1203-04 (Stevens, J., dissenting) (citation omitted). However, Justice Stevens—who had been the sole dissenter in *Feldman*, see 460 U.S. at 488-90—joined the unanimous *Exxon Mobil* opinion that expressly recognized *Rooker-Feldman* as an extant, albeit narrow, doctrine. See *Exxon Mobil*, 544 U.S. at 284 (“The *Rooker-Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name”).

Also, Justice Stevens’s dissent in *Lance* was not based on a disagreement with the per curiam majority’s characterization or application of *Rooker-Feldman*: “My disagreement with the majority arises not from what it actually decides, but from what it fails to address. Even though the District Court mistakenly believed it had no jurisdiction to hear the matter, its judgment dismissing the cause with prejudice was correct and should be affirmed.” See *Lance*, 126 S. Ct. at 1204 (Stevens, J., dissenting). Rather, he agreed with the *Lance* majority’s holding that *Rooker-Feldman* was inapplicable, but dissented because he thought the Court should have applied state preclusion law to affirm the lower court’s judgment of dismissal. See *id.* Therefore, we believe Justice Stevens’s characterization of the *Rooker-Feldman* doctrine as “interred” is best understood as a hyperbolic (even playful?) reference to *Exxon Mobil*’s narrowing of the lower courts’ unwarranted expansions of the doctrine.

<sup>115</sup> See *supra* text in paragraph following note 50.