Denver Law Review

Volume 78
Issue 2 *Tenth Circuit Surveys*

Article 6

January 2000

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THE ROOKER-FELDMAN DOCTRINE

A MERE SUPERFLUOUS NUANCE OR A VITAL CIVIL PROCEDURE DOCTRINE? AN ANALYSIS OF THE TENTH CIRCUIT'S DECISION IN *JOHNSON V. RODRIGUES*

INTRODUCTION

The Rooker-Feldman Doctrine ("Rooker-Feldman") has been, and continues to be, a tremendous source of confusion for courts and attorneys alike. Rooker-Feldman is often misapplied as an abstention or preclusion doctrine and courts exacerbate the problem by continually using the three doctrines interchangeably. One source of this confusion is that the United States Supreme Court ("Supreme Court") has not provided the Circuit Courts direction about how to apply the doctrine. In fact, the "Supreme Court has not held a case barred by Rooker-Feldman since 1983."[1] Therefore, there is little guidance on how to properly apply the doctrine and many federal courts have written confusing and contradictory opinions as a result. Although the application of Rooker-Feldman use has been problematic, courts us it frequently. In fact, the Tenth Circuit has already addressed four Rooker-Feldman cases in the year 2001.[2] This alone makes Rooker-Feldman an important civil procedure tool and one that must be clearly understood. In order to clarify the use of Rooker-Feldman, this article focuses on the Tenth Circuit's decision in *Johnson v. Rodrigues*.[3] In this case, the Tenth Circuit not only properly applied Rooker-Feldman, but signaled the likely manner in which many courts will utilize the doctrine in the future.

Part I will explain the origin and foundation of Rooker-Feldman, how Rooker-Feldman relates to abstention and preclusion theories, the controversy surrounding the doctrine including why some commentators think Rooker-Feldman should be overturned and abandoned, and how the Tenth Circuit has applied Rooker-Feldman in past decisions. Part II will discuss the scope of Rooker-Feldman in today's courts, focusing on the Tenth Circuit's decision in *Johnston v. Rodrigues* and the positions taken by other Circuit Courts. Finally, Part III will provide an analysis of what

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1. Suzanna Sherry, *Judicial Federalism in the Trenches: The Rooker-Feldman Doctrine in Action*, 74 Notre Dame L. Rev. 1085 (1999).

2. *See* Mehdipour v. Chapel, 2001 U.S. App. LEXIS 2680 (10th Cir. Feb. 22, 2001); Continental Cas. Co. v. Hempel, 2001 U.S. App. LEXIS 2757 (10th Cir. Feb. 22, 2001); Bisbee v. McCarty, 2001 U.S. App. LEXIS 1512 (10th Cir. Feb. 2, 2001); Read v. Klein, 2001 U.S. App. LEXIS 334 (10th Cir. Jan. 9, 2001).

3. 226 F.3d 1103 (10th Cir. 2000).

place the doctrine has in civil procedure and how the Tenth Circuit used the doctrine for its intended purpose in *Johnston v. Rodrigues*.[4]

I. BACKGROUND

There are three major legal doctrines or theories to keep a claim that has previously been litigated from being re-litigated. Those doctrines are abstention theories, preclusion theories, and Rooker-Feldman. While abstention and preclusion theories are familiar to courts and to litigation attorneys, Rooker-Feldman has been and continues to be confusing and troublesome. Rooker-Feldman appears to be, on the one hand "superfluous"[5] and on the other, "extremely significant."[6] In order to understand the application of Rooker-Feldman and where the doctrine may have a purpose in the legal system, one must understand the doctrine itself, and more importantly, how it fits with abstention and preclusion theories.

A. *Rooker-Feldman: A Doctrine Grounded in Jurisdiction Theories*

Rooker-Feldman, in its most simple terms, limits lower federal court's jurisdiction as an "appellate" court to cases that originated in the state courts.[7] Rooker-Feldman is a doctrine grounded in jurisdiction theories.[8] It is based on statutes passed by Congress that give appellate jurisdiction to the United States Supreme Court.[9] The Supreme Court has jurisdiction to hear "final judgments or decrees rendered by the highest court of a State in which a decision could be had . . . ."[10] This statute not only gives the Supreme Court jurisdictional rights, but it also denies the lower federal courts the ability to hear cases that arise in state courts.[11] Furthermore, Congress has enacted statutes that grant lower federal courts jurisdiction in other kinds of cases.[12] Since Congress has specified when the lower federal courts have jurisdiction, one may conclude that lower federal courts do not have jurisdiction over cases originating in

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4. *Johnston*, 226 F.3d 1103 (10th Cir. 2000).

5. *See* Barry Friedman & James E. Gaylord, *Rooker-Feldman, From the Ground Up*, 74 NOTRE DAME L. REV. 1129 (1999).

6. *Id.*

7. Edmonds v. Clarkson, 996 F. Supp. 541, 546 (E.D. Va. 1998).

8. *See* 18 C. WRIGHT, et al., FEDERAL PRACTICE AND PROCEDURE § 4469 (1981 & Supp. 2000) [hereinafter WRIGHT, MILLER & COOPER], David P. Currie, Res Judicata; *The Neglected Defense*, 45 U. CHI. L. REV. 317, 322 (1978); Gary Thompson, *The Rooker-Feldman Doctrine and the Subject Matter Jurisdiction of Federal District Courts*, 42 RUTGERS L. REV. 859, 912 (1990).

9. Thompson, *supra* note 8, at 860.

10. 28 U.S.C. §1257 (2000).

11. *Id.*

12. 28 U.S.C. § 1331 (2000) ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."); 28 U.S.C. § 1332(a) (2000) ("The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000 . . . and is between (1) citizens of different States.").

state court.[13] The Supreme Court noted in its 1988 term, "The Rooker-Feldman doctrine interprets 28 U.S.C. § 1257 as ordinarily barring direct review in the lower federal courts of a decision reached by the highest state court, for such authority is vested solely in this Court."[14] If allowed, ". . . [t]he effect of such a jurisdiction would be to displace almost the whole of state litigation into federal courts by making the final judgment in the state court the cause of action that kicks off a suit to undo that judgment in federal courts."[15]

This statutory construction leads to the most favored policy reason for Rooker-Feldman—"facilitat[ing] a state appellate process free from federal interference."[16] Rooker-Feldman restricts a litigant from accessing the lower federal courts, therefore, allowing the state courts to rule free from federal intervention. Therefore, "once the highest state court has taken some form of action, only the Supreme Court may hear an appeal."[17]

1. The Rooker Decision

Rooker-Feldman originated from two Supreme Court cases, decided sixty years apart. In *Rooker v. Fidelity Trust Co*,[18] decided in 1923, Rooker asked the Court to declare void a judgment by an Indiana Supreme Court because it was "rendered and affirmed in contravention of the contract clause of the Constitution of the United States and the due process of law and equal protection clauses of the Fourteenth Amendment."[19] Rooker argued before the Federal District Court that the Indiana Supreme Court applied their own state statute in conflict with the United States Constitution.[20] The District Court ruled that "the suit was not within its jurisdiction as defined by Congress" and they, therefore, dismissed the case.[21] Rooker appealed to the United States Supreme Court where the issue was whether a federal plaintiff could bring an action claiming constitutional error, in a state proceeding to which he was a party.[22] The Court affirmed the District Court's decree, holding that if the constitutional questions actually arose in the state case, it was the duty of the state court to decide them; and the state court's decision, whether

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13. Williamson B.C. Chang, *Rediscovering the Rooker-Feldman Doctrine: Section 1983, Res Judicata and the Federal Courts*, 31 HASTINGS L.J. 1337, 1349 (1980).

14. ASARCO, Inc. v. Kadish, 490 U.S. 605, 622 (1989).

15. Lynk v. LaPorte Superior Court No. 2, 789 F.2d 554, 563 (7th Cir. 1986).

16. Benjamin Smith, *Texaco Inc., v. Pennzoil Co.: Beyond a Crude Analysis of the Rooker-Feldman Doctrine's Preclusion of Federal Jurisdiction*, 41 U. MIAMI L. REV. 627, 629 (1987).

17. *Id.*

18. 263 U.S. 413 (1923).

19. *Rooker*, 263 U.S. at 415.

20. *Id.*

21. *Id.*

22. *Id.* at 414-15.

constitutional or not, was an exercise of appellate jurisdiction.[23] If the decision was unconstitutional, this fact does not make the state court's judgment void, but merely left the decision open for reversal or modification in a hearing by the United States Supreme Court.[24] The United States Supreme Court is the only court that can hear an appeal from a state's highest court, therefore, issues that arise in a state cause of action cannot be the subject of subsequent litigation in an original federal action, but may be heard only on direct appeal to the United States Supreme Court.[25] This holding became the Rooker Doctrine stating that, "lower federal courts lack appellate jurisdiction to review the judgments of state courts that have been affirmed by the highest court of the state."[26] The lower federal courts, following this decision, applied the Rooker Doctrine infrequently, often using the Rooker Doctrine in the same way they used doctrines of preclusion.[27]

2. The Feldman Decision

In 1983, the United States Supreme Court decided *District of Columbia Court of Appeals v. Feldman*,[28] which upheld the idea that Rooker was a doctrine grounded in jurisdiction theories.[29] Feldman was a member of both the Virginia and Maryland bars.[30] He tried to be admitted into the District of Columbia Bar under a lighter admission requirement allowing for members of bars in other states to be accepted without taking the bar exam.[31] The Bar Committee in District of Columbia denied Feldman's admission, because Feldman had not graduated from an accredited law school.[32] Feldman brought his claim in the District Court of the District of Columbia,[33] asking the Court to grant him admission or alternatively, allow him to take the bar exam.[34] After the District of Columbia District Court, and later, the District of Columbia Court of Appeals, the highest "state" court, denied his request, Feldman filed in federal court in the United States District Court. Feldman requested an in-

23. *Id.* at 415.
24. Rooker, 263 U.S. at 415.
25. *Id* at 416.
26. Thompson, *supra* note 8, 863.
27. For example, in Lavasek v. White, 339 F.2d 861 (1965), the Tenth Circuit found that plaintiffs claims were barred from federal court because they had been fully litigated in the state courts. *Id.* at 863. The Court upheld the District Court that found the claims barred by *res judicata*. *Id.* at 862. However, the Tenth Circuit found the claims were barred by the Rooker-Feldman doctrine, without explaining why they used the different doctrine. *Id.* at 863.
28. 460 U.S. 462 (1983).
29. Thompson, *supra* note 8, at 871.
30. *Feldman*, 460 U.S. at 465.
31. *Id.*
32. *Id.* at 466.
33. The District Court of the District of Columbia is the equivalent of a state court.
34. *Feldman*, 460 U.S. at 467.

junction that required the Bar Committee to either to grant him immediate admission to the District of Columbia Bar or to allow him to take the bar exam.[35] Therefore, the issue in Feldman was whether bar admission decisions made by the highest state court could be challenged on constitutional grounds in federal district court.[36] Feldman went beyond the scope of Rooker because the issue was whether Feldman may bring his constitutional questions in federal court, when these issues were intertwined with other issues raised in state court.

The Supreme Court held that lower federal courts have no jurisdiction to hear "challenges to state court decisions in particular cases arising out of judicial proceedings . . ."[37] or to decide questions "inextricably intertwined" with state court judgments.[38] In other words, Rooker-Feldman will bar parties from re-litigating in federal court, not only federal issues actually raised in state court proceedings, but also those inextricably intertwined issues that could have been raised there.[39]

This decision helped solve one of the unresolved questions left open in *Rooker*-- "whether the issues actually must have been raised or litigated in the state proceeding."[40] The Feldman court made it clear that a plaintiff cannot fail to bring a federal claim in state court in hopes to later bring that claim in federal court.[41] This ruling lead to a new layer of analysis to the Rooker test—one must decide if the claim is "inextricably intertwined" with the state court judgment.[42] By adding this additional inquiry, the Feldman court extended the Rooker doctrine from issues that were actually decided by the state court proceedings, to also include claims that were *not* litigated in the state court, and are inextricably intertwined with the merits of the state court. A claim that is inextricably intertwined has been defined as a claim that is so closely tied to another litigated claim, so that if a court were to rule on the second claim it would "effectively reverse the state court decision or void its ruling."[43] Likewise, a claim is not inextricably intertwined with a state court ruling "if the purpose of a federal action is 'separable from and collateral to' a state court judgment . . .. [T]he claim is not 'inextricably intertwined'

35. *Id.* at 468-69.

36. *Id.* at 463.

37. *Id.* at 486.

38. *Id.* at 483 n. 16.

39. Friedman, *supra* note 5, at 1135.

40. Friedman, *supra* note 5, at 1134.

41. *Feldman*, 460 U.S. at 484 n. 16 ("By failing to bring [his/her] claims in state court a plaintiff may forfeit [his/her] right to obtain review of the state court decision in any federal court.").

42. *Feldman*, 460 U.S. at 483 n. 16.

43. Fielder v. Credit Accept. Corp., 188 F.3d 1031, 1035 (8th Cir. 1999). The Tenth Circuit defines inextricably intertwined as, "[i]f adjudication of a claim in federal court would require the court to determine that a state court judgment was erroneously entered or was void, the claim is inextricably intertwined with the merits of the state court judgment." Lecates v. Barker, 2000 U.S. App. LEXIS 29306 at 6 (November 16, 2000).

merely because the action necessitates some consideration of the merits of the state court judgment."[44]

The resulting doctrine, arising from these two cases, asks the questions (1) has the claim or issue been litigated in a state court proceeding, and (2) is the claim or issue, although not raised in state court, "inextricably intertwined" with a state court judgment. If either of these two questions can be answered affirmatively, Rooker-Feldman will bar the suit at the District or Circuit Court level.

B. *A Comparison of Rooker-Feldman and Doctrines of Abstention and Preclusion*

The reason why many courts confuse Rooker-Feldman and abstention and preclusion theories is because all three doctrines are very similar in substance and procedural uses.[45] All three doctrines overlap one another and may often be used interchangeably. For example, the same policy reason for Rooker-Feldman, a state appellate process free from federal interference, may also be a reason for the use of abstention and preclusion theories. Abstention and preclusion doctrines keep claims and issues arising out of state court proceedings from being litigated in federal court.[46] Thus, they too help facilitate a state court process free from federal interference. However, there are a few fundamental differences between Rooker-Feldman and abstention and preclusion doctrines.

1. Abstention Theories Defined

One of the doctrines that Rooker-Feldman may overlap is abstention theories.[47] Abstention theories can be defined simply as a federal court's relinquishment of jurisdiction when necessary to avoid needless conflict with a state court's administration of its own affairs.[48] The abstention doctrine most closely related to Rooker-Feldman is Younger abstention.[49]

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44. Kiowa Indian Tribe of Okla. v. Hoover, 150 f3d.1163, 1170 (1998).

45. Wright, *supra* note 8, at 4469.1, "The "Rooker-Feldman" doctrine . . . establishes a nearly redundant limit on federal subject-matter jurisdiction. This doctrine is nearly redundant because most of the actions dismissed for want of jurisdiction also could be resolved by invoking the claim- or issue-preclusion consequences of state judgments. All of the desirable results achieved by the jurisdiction theory could be achieved by supplementing preclusion theory with familiar theories of abstention, comity and equitable restraint."

46. Abstention theories stop federal courts from hearing a case that is still pending in state court. *See* Younger v. Harris, 401 U.S. 37, 43 (1971). Preclusion theories prevent claims or issues that have already been litigated from being relitigated in another judicial proceeding. *See* Allen v. McCurry, 449 U.S. 90, 94 (1980).

47. *See* Thompson, *supra*, note 8, at 898.

48. Younger v. Harris, 401 U.S. 37 (1971).

49. This article will strictly address Younger abstention because it involves a federal court's decision not to interfere with an ongoing state court proceeding. However there are several other

The Younger abstention doctrine, arose out of the Supreme Court case, *Younger v. Harris*.[50] *Younger* involved a defendant who was indicted in a California state court for allegedly violating provisions of the California Criminal Syndicalism Act.[51] After he was indicted, Harris filed suit in federal court to enjoin the state court district attorney from proceeding with the prosecution because the California act violated his First and Fourteenth Amendment rights.[52] The lower federal court found that the California act violated his constitutional rights and enjoined the state court proceeding.[53] However, the Supreme Court reversed stating that the injunction violated "the national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances."[54] The Younger abstention doctrine, therefore, is a "federal court's decision not to interfere with an ongoing state criminal proceeding by issuing an injunction or granting declaratory relief."[55]

Although Younger abstention originally applied only in criminal cases, it has been expanded to preclude all cases where a party in an action may desire the federal court to interfere with an ongoing state proceeding.[56] Justice Powell described the scope of Younger abstention in *Pennzoil v. Texaco*[57] stating:

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types of abstention theories such as: (1) Burford abstention is a federal court's refusal to review a state court's decision in cases involving a complex regulatory scheme and sensitive areas of state concern. *See* Burford v. Sun Oil Co., 319 U.S. 315, 317-18 (1943); (2) Colorado River Abstention is a federal court's decision to abstain while there are relevant and parallel state-court proceedings under way. *See* Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817-18 (1976); (3) Pullman abstention is a federal court's decision to abstain in order to give the state courts an opportunity to settle an underlying state-law question whose resolution may avert the need to decide a federal constitutional question. *See* Railroad Comm'n v. Pullman Co., 312 U.S. 496, 499-500 (1941); and (4) Thibodaux abstention is a federal court's decision to abstain in order to allow state courts to decide difficult issues of public importance that, if decided by the federal court, could result in unnecessary friction between state and federal authorities. See Louisiana Power & Light Co. v. City of Thibodaux, 360 U.S. 25, 30 (1959).

50. *Younger*, 401 U.S. 37 (1971).

51. *Id.* at 38.

52. *Id.* at 39.

53. *Id.* at 40.

54. *Id.* at 41.

55. *See Younger*, 401 U.S. 37 (1971).

56. *See* Huffman v. Pursue, Ltd., 420 U.S. 592 (1975), where the court expanded *Younger* to apply to civil cases. *Id.* at 594. In this case, the court voided a federal injunction against enforcement of a state judgment that closed a theater as a nuisance for showing obscene films, which had not been adjudged obscene in prior hearings. *Id.* at 599. The court held that Younger principles applied although the state proceeding was civil in nature and a party must use the state appellate remedies before seeking a federal injunction unless one of the Younger exceptions applies. *Id.* at 609. The exceptions to Younger are (1) if the state proceeding is motivated by a desire to harass or is conducted in bad faith; (2)if the challenged statute is flagrantly violative of express constitutional prohibitions in every clause and paragraph thereof, or (3) if extraordinary circumstances exist. Phelps v. Hamilton, 59 F.3d 1058, 1063-64 (10th Cir. 1995).

57. *See* Pennzoil Co. v. Texaco, Inc., 481 U.S. 1 (1987).

> This concern mandates application of Younger abstention not only when the pending state proceedings are criminal, but also when certain civil proceedings are pending, if the State's interests in the proceeding are so important that exercise of the federal judicial power would disregard the comity between the States and the National Government.[58]

The broadening of Younger abstention to civil cases makes Rooker-Feldman's scope very similar to Younger abstention. This is because, in many cases, Rooker-Feldman plaintiffs are seeking to enjoin the state proceedings.[59]

2. Preclusion Theories Defined

Courts have used Rooker-Feldman interchangeably with two preclusion theories.[60] The most common preclusion doctrine, claim preclusion or *res judicata*, is defined as prohibiting the same parties from relitigating claims[61] that "were or could have been raised in a previous suit."[62]

The second preclusion theory, issue preclusion or collateral estoppel, requires a court to uphold an earlier decision by another court on issues[63] that were actually litigated.[64] There are two different types of issue preclusion, (1) between the same parties, and (2) between different parties. Issue preclusion between the same parties requires that the issue is the same as in the prior action, actually litigated, essential to the final judgment, and the party against whom the estoppel is enforced was fully represented in the action.[65] Issue preclusion between different parties may be either defensive collateral estoppel or offensive collateral estoppel. In defensive collateral estoppel, the plaintiff is estopped from litigating an issue that has already been litigated and a final judgment has been reached.[66] In offensive collateral estoppel, the defendant is estopped from

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58. *Pennzoil*, 481 U.S. at 10.

59. For example, in Morrow v. Winslow, 94 F.3d 1386, the defendants argued that Rooker-Feldman should bar the plaintiff's claims because he was seeking to enjoin a state court adoption proceeding. *Id.* at 1390. However, the court found that Younger abstentions should apply. *Id.*

60. Robinson v. Ariyoshi, 753 F.2d 1468, 1472 (9th Cir. 1985) ("We have read Rooker not as a jurisdictional barrier but as an application of res judicata"); Ellentuck v. Klein, 570 F.2d 414, 425 (2d Cir. 1978) (due process claims that were fully litigated barred by res judicata; Rooker cited as support).

61. Claims are defined as "all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of transactions, out of which the action arose." Restatement (Second) of Judgments § 24 (2000).

62. Allen v. McCurry, 449 U.S. 90, 94 (1980).

63. Issue is defined as material points in dispute and essential to the judgment. Restatement (Second) of Judgments § 27 (2000).

64. Tuteur Ass. v. Taubensee Steel & Wire Co., 861 F. Supp. 693, 696 (N. D. Ill. 1994).

65. *Tutuer*, 861 F. Supp. at 696.

66. Bernhard v. Bank of America, 122 P.2d 892, 895 (Cal. 1942).

litigating an issue that it lost to another plaintiff, and the new plaintiff wins the issue automatically. Offensive collateral estoppel requires all the same elements as defensive and that the plaintiffs could have been easily joined, the defendant had adequate incentive to defend the issue, it was not a prior inconsistent judgment, and the defendant was not deprived of a procedure advantage in the original action.[67]

Rooker-Feldman's scope is, again, very similar to preclusion theories. This is because, in many cases, Rooker-Feldman plaintiffs are raising claims in federal court that are very similar to those raised in the original state court proceeding. Therefore, courts could very easily apply preclusion theories, rather than Rooker-Feldman to bar a case.

3. Substantive Comparison of Rooker-Feldman and Abstention and Preclusion Theories

Many have confused Rooker-Feldman with abstention and preclusion theories in civil procedure because Rooker-Feldman appears to overlap the two theories. One commentator observes, "[t]his doctrine is nearly redundant because most of the actions dismissed for want of jurisdiction also could be resolved by invoking the claim- or issue- preclusion consequences of the state judgment."[68] In order to understand how Rooker-Feldman has been confused and may be redundant, a comparison of these theories will be discussed.

a. Rooker-Feldman and Abstention Theories

Courts have confused and mingled together Rooker-Feldman and abstention theories, because of their striking similarities.[69] Both doctrines can bar claims arising in state court from being heard in federal courts. Younger abstention bars claims in federal court that are pending in state court.[70] Rooker-Feldman bars claims that arose in state courts, or those that are inextricably intertwined with such claims.[71] An overlap occurs because all claims that are still pending in state court are inextricably intertwined with claims brought in federal court if the federal claims ask the federal court to make a decision regarding the pending state court claims. If a federal court were to rule on a claim that is still pending in

67. Parklane Hosiery Co. v. Shore, 439 U.S. 322, 329 (1979).

68. Wright, *supra* note 8, at § 4469.1.

69. For example in Johnson v. De Grandy even the Supreme Court seemed to label Rooker-Feldman as another type of abstention theory by stating, "the Federal Government's § 2 challenge deserved dismissal under this Court's Rooker-Feldman abstention doctrine . . . ." Johnson v. De Grandy, 512 U.S. 997, 1005 (1994). The Seventh Circuit recently stated their confusion of the distinction by stating that rather than attempting "a problematic application of the Rooker-Feldman doctrine," the court applied abstention principles and refused to issue an injunction to enjoin a pending state litigation on the grounds that principles of federalism and comity would be upset. Owens-Corning Fiberglas Corp. v. Moran, 959 F.2d 634, 635 (7th Cir. 1992).

70. *See* Younger v. Harris, 401 U.S. 37 (1971).

71. *Feldman*, 460 U.S. at 483 n. 16.

state court, the court would make the lower state court's ruling void. This is essentially the definition of inextricably intertwined.[72]

This similarity brings up the question, "If an injunction is permissible under Younger, should the Rooker doctrine cut in to prevent it? [Alternatively,] if an interference is prohibited by Younger . . . what need is there for Rooker?"[73] Rooker-Feldman, by barring a federal court's appellate review of a state court's proceeding, may be superfluous of Younger abstention when the case is still pending in the state court.

However, there is one fundamental substantive difference between Rooker-Feldman and abstention theories—Rooker-Feldman may continue to bar a suit when litigants are seeking relief from a final state court judgment.[74] In this respect, Rooker-Feldman has a purpose that goes beyond the scope of abstention. Abstention doctrines only stop a case when it is pending in state court, while Rooker-Feldman can bar a case that has reached its final judgment.[75] However, this clear distinction is substantially blurred by similarities between Rooker-Feldman and preclusion theories.

b. Rooker-Feldman and Preclusion Theories

The similarity between Rooker-Feldman and preclusion theories is, simply stated, that both doctrines provide a way for the federal court to refuse to hear a state claim that has reached a final judgment by a state court. Furthermore, both doctrines require an analysis of whether the state claims or issues were substantively similar to those bring brought in federal court. Conversely, the differences between preclusion theories and Rooker-Feldman are often very difficult to distinguish.

Essentially, the difference between Rooker-Feldman and issue preclusion is simply, that issue preclusion bars only those claims that have actually been litigated in another court proceeding, while Rooker-Feldman may bar claims that have not been litigated, but are inextricably

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72. The Tenth Circuit defines "inextricably intertwined" claims as "separate to and collateral to" the merits of the state court judgment. Kiowa Indian Tribe of Oklahoma v. Hoover, 150 F.3d 1163,1170 (1998).

73. H. HART & H. WESCHLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 1637 (3d ed. 1988).

74. Sherry, *supra* note 1, at 1092-93.

75. For example, the Tenth Circuit in Marrow v. Winslow, 94 F.3d 1386 (1996) asked parties to submit supplemental memoranda advising the court on two questions: "(1) if an adoption order has been entered in that proceeding, what are the positions of the parties as to whether dismissal of this federal suit should be ordered under the doctrine of [Rooker-Feldman]; and (2) if the state adoption proceeding is still pending, whether we should vacate and remand, directing abstention by the federal district court under the rationale of the [Younger doctrine]. *Id.* at 1389. This example clearly shows the court's recognition of the distinction between Rooker-Feldman and abstention theories.

intertwined with claims litigated in a previous decision.[76] Therefore, Rooker-Feldman, by barring issues that have not actually been litigated in a lower court proceeding but were intertwined with the issues litigated, has a purpose that extends beyond the scope of issue preclusion.

However, many commentators feel that the substantive difference between Rooker-Feldman and claim preclusion is more complex and Rooker-Feldman does not bar anything that claim preclusion would not also bar.[77] Consequently, many argue that Rooker-Feldman has the exact scope of claim preclusion.[78]

The Rooker-Feldman bar extends to claims that were not litigated but are inextricably intertwined with claims that have been litigated.[79] The claim is inextricably intertwined if, by ruling, the federal court would make the lower state court's ruling void.[80] However, claims barred by claim preclusion arise in the same way. Claim preclusion bars claims that have been litigated or are virtually identical to those claims that have been litigated.[81] This raises the question of whether there is ever a time when an inextricably intertwined claim arises that can void a state court judgment, and, at the same time, is not a claim that has risen out of the same series of connected transactions which claim preclusion would bar. Many feel that this would never occur.[82] However, there are two limited occasions that arise where Rooker-Feldman has a purpose that extends beyond the scope of claim preclusion.

One occasions arises when a claim is inextricably intertwined with another claim and therefore voids the lower state court's ruling, but the inextricably intertwined claim is not virtually identical to a claim that was raised in the lower state court proceeding. An example of this arises in the Tenth Circuit case, *Lecates v. Barker*.[83] Here the Court found that the Plaintiff's fraud claim was inextricably intertwined with the lower state court's default judgment.[84] Plaintiff's fraud claim was not virtually identical to any of the claims raised in the state court, dealing with attor-

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76. Wright, *supra* note 8, at § 4402.

77. Smith, *supra* note 16, at 655, stating "Inextricably intertwined claims will only result out of the same series of connected transactions . . . [which is barred by claim preclusion].

78. *Id.*

79. *Feldman*, 460 U.S. at 484 n. 16.

80. *Fielder*, 188 F.3d at 1035.

81. Wright, *supra* note 8, at § 4402.

82. For example, one commentator states, "[I]nextricably intertwined claims will only result out of the same series of connected transactions . . . [which is barred by claim preclusion.]" Smith, *supra* note 16, at 655. The only way a claim is inextricably intertwined with another is if it is so similar to the original claim that it would change the lower state court's ruling. However, since this claim is virtually identical to the original claim, claim preclusion would also bar it and there is no need for Rooker-Feldman. *Id.* Therefore, many argue Rooker-Feldman may never bar a claim that claim preclusion would not also bar.

83. 2000 U.S. App. LEXIS 29306 (2000).

84. *Lacates*, 2000 U.S. App. LEXIS at *6.

ney misconduct.[85] Therefore, claim preclusion would not bar the claim. However, the Court still found that if they ruled that the lower state court's ruling was based on fraud, this would be voiding the state court's decision. Therefore, the Tenth Circuit found that the suit was barred by Rooker-Feldman.[86] Because the two claims, fraud and attorney misconduct, were not virtually identical, claim preclusion could not be used, and only Rooker-Feldman could bar the fraud claim that was raised in the federal court.

Another occasion that Rooker-Feldman may fill a gap in preclusion doctrines involves the question of whether the Feldman court wanted to preclude jurisdiction "over separate claims that a litigant did not raise in state court and which are not inextricably intertwined with actually litigated state court claims, where that party procedurally could have presented the separate claim to the state trial court, but simply chose not to do so."[87] Therefore, if Rooker-Feldman forbids review of non-inextricably intertwined claims and all claims or issues that could have been raised in state court but were not, then Rooker-Feldman will extend beyond the scope of claim preclusion, which only precludes unlitigated issues if there is substantial connection between the original claim and the unlitigated issue.[88]

4. Procedural Differences Between Rooker-Feldman and Abstention and Preclusion Theories

In addition to substantive differences, there are procedural differences in uses and incidents between the use of Rooker-Feldman and abstention and preclusion theories. These procedural differences between Rooker-Feldman and abstention theories are the same as the differences between Rooker-Feldman and preclusion theories.

One difference arises because Rooker-Feldman is a doctrine grounded in jurisdiction theories, and therefore it can be raised by the federal court as a bar to jurisdiction, anytime during the litigation.[89] Parties cannot waive their right to bring Rooker-Feldman jurisdiction issues into court by not raising it as an affirmative defense.[90] Alternatively, doctrines of preclusion and abstention can be waived if the defendant does not plead it as an affirmative defense in the answer.[91] Courts have

85. *Id.* at *4.
86. *Id.* at *6.
87. Smith, *supra* note 16, at 655.
88. *Id.*
89. Wright, *supra* note 8, at § 4469.1.
90. *Id.*
91. The Supreme Court has stated that abstention can be waived in Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc., 477 U.S. 619, 626 (1986). However, the Tenth Circuit in Morrow v. Winslow, 94 F.3d 1386 (1996), stated, "we are convinced that we have properly raised

used Rooker-Feldman to raise the issue of jurisdiction *sua sponte* in many cases.[92]

Another difference is that "the preclusive effect a federal court will give to a state court judgment will vary because under U.S.C. § 1738 preclusion is governed by state rules."[93] Therefore, some worry that without Rooker-Feldman there will be no uniform application of preclusion rules. While Rooker-Feldman "provides for a limited and uniform federal law of preclusion in cases that varying state laws may not foreclose."[94]

However, some scholars feel that these differences between preclusion and abstention theories and Rooker-Feldman still do not provide Rooker-Feldman with a place in our legal system. For example, Wright, Miller, and Cooper, in *Federal Practice and Procedure* take the position that using the jurisdictional doctrine for cases that involve a form of direct attack on a state court judgment gives little reason for having a second doctrine.[95] The authors explain why:

> [T]he application of federal jurisdiction law rather than state preclusion law may weigh as much against Rooker-Feldman theory as for it—if state preclusion law permits a second action, and there is federal subject-matter jurisdiction apart from the Rooker-Feldman theory, it is not immediately clear that the Supreme Court's sole jurisdiction to review a state judgment impliedly defeats the explicit grant of district court jurisdiction. In the same vein, reliance on a jurisdictional theory may impede a desirable opportunity to decide an easy merits question rather than a complex preclusion-jurisdiction question.[96]

Likewise, the second reason for upholding Rooker-Feldman, uniform application, has also been thought to be contrary to our legal system. Some feel that applying Rooker-Feldman as a uniform rule without

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the abstention issue sua sponte." *Id.* at 1392. Although there is a debate on the issue of whether a court may raise abstention sua sponte, there is no debate that a court may raise Rooker-Feldman on its own. Therefore, for the purposes of this article, this remains a procedural difference between Rooker-Feldman and abstention theories.

92. Jurisdiction raised by the court:
"A challenge under the Rooker-Feldman doctrine is for lack of subject matter jurisdiction and may be raised at any time by either party or sue sponte by the court" Moccio v. N.Y. State Office of Court Admin., 95 F. 3d 195, 198 (1996); "[T]his court on its own motion may raise issue of subject matter jurisdiction." Ritter v. Ross, 992 f.2d 750, 752 (1993); "At the motions hearing, the district court appropriately sua sponte raised the Rooker-Feldman issue. . ." Jordahl v. Democratic Party of Va., 122 F.3d 192, 197 n.5 (1997); "A challenge to a federal court's subject matter jurisdiction under the Rooker-Feldman doctrine 'may be raised at any time by either party or sua sponte by the court.'" Doctor's Assocs. V. Distajo, 107 F.3d 126, 137 (1997).

93. Thompson, *supra*, note 8, at 912.

94. Currie, *supra* note 8, at 324.

95. WRIGHT, *supra* note 8, at § 4469.1.

96. *Id.* (citations omitted).

taking into consideration the preclusion rules of individual states contradicts the purpose of 28 U.S.C. § 1738 that "requires federal courts to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgments emerged."[97] A commentator asks, "If the federal court cannot give less deference to a state court judgment then the state rendering would give it, why should Rooker-Feldman be used in a way that would require the federal court to give it greater deference to a state court judgment than the state rendering would give it?"[98] Applying Rooker-Feldman uniformly would deny states the opportunity to decide "the preclusive effects of their own judgments."[99]

Finally, some scholars believe that Rooker-Feldman and claim preclusion overlap completely and that instead of there being two doctrines, claim preclusion and Rooker-Feldman, each having different "work," there is instead only one—a jurisdictional claim preclusion.[100] Professor Chang states, "if the law of the state rendering the judgment would require the application of claim preclusion, the federal court must apply bar and merger and dismiss the action even if the issue was not raised by the parties."[101]

Whether one believes that Rooker-Feldman is a complete overlap of abstention and preclusion theories or that Rooker-Feldman is adding an important part to the idea of federalism, the bottom line is that Rooker-Feldman is alive and well today and used extensively by the lower federal courts.

C. *Application of Rooker-Feldman in Early Tenth Circuit Decisions*

The Tenth Circuit has used Rooker-Feldman in many of its decisions. An analysis of their past decisions shows how the Court initially used the Rooker doctrine interchangeably with claim preclusion or *res judicata*. The Court then introduced the concept of "inextricably intertwined" claims in *Doe v. Pringle*,[102] cited by the United States Supreme Court in their *Feldman* decision. However, the Tenth Circuit has not always followed its approach advocated in *Doe*, but has both broadened and narrowed their definition of what claims that are "inextricably intertwined" with the state court claims.

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97. Thompson, *supra*, note 8, at 913, *citing* Kremer v. Chemical Constr. Corp., 456 U.S. 461, 466 (1982).

98. Thompson, *supra*, note 8, at 913.

99. *Id.*

100. Chang, *supra* note 13, at 1354-55.

101. Thompson, *supra*, note 8, at 912, *citing* Chang, *supra* note 12, at 1355.

102. 550 F.2d 596 (1976).

1. *Lavasek v. White*:[103] the Court's Application of the Rooker Doctrine

In *Lavasek*, the defendants were landowners that were sued in New Mexico state courts for a condemnation proceeding.[104] The State of New Mexico was converting Highway 66 into a controlled access highway.[105] The rights of the landowners were fully litigated in the New Mexico state courts, ending with a final decision by the New Mexico Supreme Court.[106] The state supreme court found that the landowners had "suffered no compensable injury for the loss of access or impaired visibility occasioned by the construction changes under the facts of the case."[107] The appellants filed in the United States District Court, claiming that they had been deprived of their constitutional rights under the Fifth and Fourteenth Amendments.[108] The District Court denied their claims finding them barred by *res judicata*.[109] The Tenth Circuit affirmed, however, it based its decision on the Rooker doctrine and not on *res judicata*.[110] The Court never explained why they did not use preclusion theories. Rather, it appears that because the parties were trying to raise federal constitutional issues in federal court that were based on a state court's decision, the Tenth Circuit used the Rooker doctrine instead of preclusion theories. However, the Court never stated that the District Court was wrong for using *res judicata*, but instead seemed to imply that Rooker and *res judicata* can be used interchangeably.

2. *Doe v. Pringle*:[111] the Introduction of Inextricably Intertwined Claims

Doe brought his claim into federal court after the Colorado Supreme Court dismissed his application to the Colorado Bar based on a prior felony conviction.[112] The Colorado Supreme Court found that based on Doe's prior record he could not be admitted even though he had passed the bar exam and the state Bar Committee found he was suited to practice law.[113] Doe filed suit in federal court claiming that his rights accorded by the Due Process Clause and Equal Protection of the Fourteenth Amendment had been violated.[114] The United States District Court dismissed his claim finding that there was a "subtle but fundamental dis-

103. 339 F.2d 861 (1965).
104. *Lavasek*, 339 F.2d at 862.
105. *Id.*
106. *Id.*
107. *Id.*
108. Lavasek v. White, 339 F.2d 861, 862 (1965).
109. *Id.*
110. *Id.* at 863.
111. 550 P.2d 596 (1976).
112. *Doe*, 550 P.2d at 579.
113. *Id.* at 597.
114. *Id.* at 597.

tinction between two types of claims which a . . . bar applicant . . . might bring to federal court: The first is a constitutional challenge to the state's general rules and regulations governing admission; the second is a claim based on constitutional or other grounds, that the state has unlawfully denied a particular applicant admission."[115] The District Court found that federal courts do not have jurisdiction to hear claims "where review of a state court's adjudication of a particular application is sought."[116] The Tenth Circuit adopted this reasoning and found that the constitutional challenges were "an attempt by Doe to seek review in inferior federal courts of the entire state proceedings . . . ."[117] The United States Supreme Court later adopted this language seven years later which gave birth to the Feldman part of the Rooker analysis: whether a claim is inextricably intertwined with a state court decision.[118]

3. *Facio v. Jones*:[119] the Broadening of the Definition of Inextricably Intertwined

Facio brought his action in federal court after the Utah State Court had entered a default judgment against him.[120] The Federal District Court found for Facio finding that "the Utah procedural requirement that a meritorious defense be presented before a default judgment could be set aside was unconstitutional . . .."[121] The Tenth Circuit overturned by finding that Facio was seeking two types of relief: (1) he wants the default judgment set aside; and (2) he wants the federal court to declare the Utah Rules of Civil Procedure unconstitutional.[122] The Court found that the first relief would require the federal court to reverse the Utah state court judgment, and therefore it was inextricably intertwined and barred by Rooker-Feldman.[123] The Court further found that the second relief was also barred because it was inextricably intertwined with the first relief.[124] The Court did not look to see whether the second claim was intertwined with a state claim, but rather found it was intertwined with the first claim for relief.[125] Therefore, this holding broadened the definition of inextricably intertwined claims to include not only those relating to state claims, but also claims inextricably intertwined with claims that are barred in state courts.

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115. *Id.*
116. *Id.*
117. *Doe*, 550 F.2d at 599.
118. *Feldman*, 460 U.S. at 483 n.16.
119. 929 F.2d 541 (1991).
120. *Facio*, 929 F.2d at 542.
121. *Id.* at 543.
122. *Id.*
123. *Id.*
124. *Id.* at 541, 543.
125. *Facio*, 929 F.2d at 543-44.

4. *Kiowa Indian Tribe of Okla. v. Hoover*:[126] Narrowing the Definition of Inextricably Intertwined

In *Kiowa*, Hoover sued the Kiowa Tribe ("Tribe") and six other defendants in state court for a breach of contract claim.[127] The Oklahoma Supreme Court held that the state courts do have jurisdiction over a Native American tribe when the contract was entered into outside of the "Indian Country."[128] Meanwhile, Aircraft Equipment Company (Aircraft Equipment) sued the Tribe for a breach of an assumption agreement. The Oklahoma Supreme Court also ruled that state court has jurisdiction over the claim. The Tribe then filed a § 1983 action in federal court. The Tribe claimed that Mr. Hoover and Aircraft Equipment, "by bringing breach of contract actions against the [Tribe] in Oklahoma state court, and the Judges, by exercising the action, deprived the Tribe of rights, privileges and immunities secured to the Tribe by the Constitution of the United States."[129] The federal district court dismissed the Tribe's suit, holding that Rooker-Feldman barred the claims.[130] The Tenth Circuit overturned and held that it should apply a narrow meaning of the definition of "inextricably intertwined" by finding that a claim is not inextricably intertwined if it is "separable from and collateral to" a state court judgment.[131] The Court found that because a court could rule on the § 1983 claim without disturbing the original state action, the District Court did have jurisdiction over the Tribe's claims.[132]

The Tenth Circuit's decision in *Kiowa*, reflects the Court's current analysis of Rooker-Feldman. The court, although once adopting a broad definition of "inextricably intertwined," has come to adopt a more narrow definition of the test—a claim is inextricably intertwined if it is not separable from and collateral to a state court judgment.[133] This analysis also reflects the United States Supreme Courts' interpretation of inextricably intertwined.[134]

II. THE PRESENT SCOPE OF ROOKER-FELDMAN

As mentioned previously, direct attacks to state court judgments have given lower courts many occasions to use Rooker-Feldman to block

126. 150 F.3d 1163 (1998).
127. *Kiowa*, 150 F.3d at 1166.
128. *Id.*
129. *Id.* at 1168.
130. *Id.*
131. *Id.* at 1170.
132. *Kiowa*, 150 F.3d at 1171.
133. *Id.* at 1170.
134. The United States Supreme Court's decision in Texaco, Inc. v. Pennzoil, 481 U.S. 1 (1987), found that Texaco's federal action was "separate from and collateral to" the merits of the state-court judgment, and therefore it was not barred by Rooker-Feldman. *Id.* at 21.

cases.[135] "Since 1990 alone, lower federal courts have used Rooker-Feldman to find jurisdiction lacking in more than five hundred cases."[136] However, many of these rulings have been inconsistent. For example, the Court wrote that the doctrine is merely a "jurisdictional recasting of preclusion questions."[137] The Fifth Circuit has merged the two doctrines, by stating that Rooker-Feldman does not bar an action "when that same action would be allowed in the state court of the rendering state."[138] Many courts also go back and forth between the jurisdictional principles of Rooker-Feldman, preclusion theories, and abstention theories, without explaining how they are all related.[139]

One issue that routinely troubles lower federal courts is whether Rooker-Feldman bars a suit when it is brought by nonparties. State judgments are sometimes collaterally attacked in federal court by someone who was not a party to the state suit. Under preclusion rules, the nonparty would rarely be barred, because these preclusion rules only bar those suits that involve the same parties or and the same issues.[140] However, the fact that the same issues that were brought in the state court may now be brought into a federal court by a nonparty troubles some lower federal courts, which further causes inconsistent decisions. The lower courts struggle with the issue of how to apply Rooker-Feldman to suits by nonparties.

A. *An Analysis of the Tenth Circuit Case* Johnson v. Rodrigues[141]

The Tenth Circuit has recently struggled with whether to use Rooker-Feldman to bar an action by a nonparty in federal court. In *Johnson v. Rodrigues*,[142] plaintiff Johnson, the biological father of a baby placed for adoption, sued the two defendants, Rodrigues, the mother, and Adoption Center of Choice, in federal court after a Utah state court granted the adoption of Johnson's daughter without allowing Johnson to join the proceedings and contest the adoption.[143]

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135. WRIGHT, *supra* note 8, at § 4469.1 lists the many occasions that it has been used: "to enjoin, to set aside and void, or to declare unlawful a state judgment. Jurisdiction also has been denied in actions to compel specific acts by a state court, such as continuance, entry of judgment, rehearing, or a new trial. A bankruptcy court order to release a prisoner also has run afoul by Rooker-Feldman. An action to compel restitution of the amount paid on a state judgment, for injury caused by the judgment, or for damages measured by the amount of the judgment, falls by the same reasoning (citations omitted).

136. Sherry, *supra* note 1, at 1088.

137. Cross-Sound Ferry Servs. v. ICC, 934 F.2d 327, 343 (D.C. Cir. 1991) (Thomas, J., dissenting).

138. Davis v. Bayless, 70 F.3d 367, 376 (5th Cir. 1995).

139. McKinnis v. Morgan, 972 F.2d 351 (7th Cir. 1992).

140. *See* Richards v. Jefferson County, 517 U.S. 793, 798 (1996).

141. 226 F.3d 1103 (10th Cir. 2000).

142. *Johnson*, 226 F.3d at 1103.

143. *Id.* at 1105.

Johnson and Rodrigues conceived a child in Arizona and Rodrigues later informed the father (Johnson) that she had an abortion.[144] Johnson later learned that Rodrigues did not have an abortion and that he may be the father of the daughter that Rodrigues had placed for adoption.[145] Using a Utah subpoena, Johnson obtained records that made him believe that there was a pending adoption in Utah for a child that may be his daughter.[146] Johnson called the other defendant, Adoption Center of Choice, and spoke with an employee about the adoption. The employee indicated that the father could do nothing about the pending adoption.[147]

Johnson argued in Federal District Court that the Utah statutes applied in this case violated his due process rights by refusing to allow his participation in the adoption proceeding and thus deprived him of his fundamental right to have a parent-child relationship. Johnson argued that the statute was unconstitutional because it did not require the mother to give the name of the father.[148] Johnson wanted the defendants, to produce the baby for DNA testing and return the baby to Johnson, if he was proven the biological father.[149]

The defendants moved for summary judgment.[150] The Federal District Court stated that it was going to dismiss the case because Johnson did not have subject matter jurisdiction.[151] The Court believed that Johnson may seek remedy only in the state court for his challenge to the Utah statute and not in the federal courts where "the relief sought is in the nature of appellate review [of the state court's decision]."[152] The federal district court stated that Johnson's claims were essentially seeking to undo the adoption decision of the Utah state court, and therefore his case "fits squarely within the parameters of the Rooker-Feldman doctrine which prohibits me, a federal district court, from reviewing the state court judgment."[153] The lower federal court did not recognize that Johnson was a nonparty to the original proceeding and was not allowed to bring his claim in the original suit.

The Tenth Circuit Court of Appeals reversed the federal district court's decision, finding that Rooker-Feldman did not bar the case in federal court.[154] The Court accepted Johnson's argument that he was not seeking appellate review of the state court's decision because he was not

144. *Id.* at 1106.
145. *Id.*
146. *Id.* at 1106.
147. *Johnson*, 226 F.3d at 1106.
148. *Id.* at 1107.
149. *Id.*
150. *Id.*
151. *Id.* at 1107.
152. *Johnson*, 226 F.3d at 1107.
153. *Id.*
154. *Id.* at 1108.

a party to the adoption proceeding in Utah.[155] The Court stated two main reasons why the district court erred: (1) because Johnson did not have the opportunity to litigate in federal court; and (2) Johnson was not asking the Federal District Court to overturn the state court decision.[156]

The Tenth Circuit held that if a plaintiff was not a party to the action in the state court proceeding, then Rooker-Feldman does not apply.[157] The Court continued by stating that Rooker-Feldman does not bar a federal action when the plaintiff lacked a reasonable opportunity to litigate claims in state court.[158] The Court did not apply a broad, general rule providing that any nonparty to the suit would not be barred from federal court by Rooker-Feldman; but rather the Court looked to the procedural nature of the case and limited its holding to just those parties who "lacked a reasonable opportunity to litigate" their claims in the state courts.[159]

The Tenth Circuit's second reason for overruling the Federal District Court is that Johnson's "discrete general challenge to the validity of the Utah adoption laws must be considered, thus distinguishing this case from one challenging the merits of a particular state court ruling."[160] The Court found that federal district courts have jurisdiction "over general challenges . . . which do not require review of a final state court judgment in a particular case."[161] This principle gives the Federal District Court jurisdiction because the court can decide Johnson's challenge to the Utah's adoption laws without reviewing a final state court judgment.[162] In other words, the two claims are not "inextricably intertwined." The Court finally relied on, *Doe v. Pringle*[163] which held, "a federal district court may exercise jurisdiction in relation to review of alleged federal constitutional due process or equal protection deprivations in the state's adoption and/or administration of general rules and regulations governing admission."[164] Thus, the Tenth Circuit found that it was error to dismiss Johnson's complaint, because his claim did not appeal a particular state court judgment.

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155. *Id.*
156. *Id.*
157. *Johnson*, 226 F.3d at 1108.
158. *Id.* at 1109.
159. *Id.* at 1110.
160. *Id.* at 1108.
161. *Feldman*, 460 U.S. at 486.
162. *Johnson*, 226 F.3d at 1108-09.
163. Doe v. Pringle, 550 F.2d at 596 (10th Cir. 1976).
164. *Id.* at 599.

B. *Other Circuit Court Decisions Regarding Rooker-Feldman and Non-Parties*

Other Circuit Courts have also addressed the issue decided by the Tenth Circuit: whether suits by nonparties are barred by Rooker-Feldman. The other Circuit Courts have rarely used Rooker-Feldman to bar a suit brought by a nonparty. However, the reasoning why a Circuit Court decided not to dismiss a case based on Rooker-Feldman has varied greatly. Reasoning has ranged from applying a broad, general rule, to a more fact specific analysis that looks at the nature of the case and its parties.

The Circuit Courts have so rarely applied Rooker-Feldman to bar suits brought by nonparties, that some Circuit Courts have adopted a broad, general rule that Rooker-Feldman does not apply to nonparties. However, this broad rule does not reflect the purpose of Rooker-Feldman and excludes the limited occasions when Rooker-Feldman has a use that extends beyond abstention and preclusion theories. Rooker-Feldman, as discussed above, may have a use beyond the other theories when a party does not seek to enjoin an ongoing state proceeding, but instead wants to "jump ship" and litigate in federal court. This purpose of Rooker-Feldman does not depend on the identity of the parties.[165] The purpose of Rooker-Feldman, rather, depends on the nature of the federal suit, and whether it is an "appellate" review of the state court judgment. Therefore, it would be incongruous to create a broad, general rule that excludes nonparty plaintiffs from the effects of Rooker-Feldman.[166] Furthermore, it is not against due process to require a nonparty plaintiff to intervene in a state court proceeding, as long as "that plaintiff had notice that the state suit might affect [his or her] interest."[167]

The Tenth Circuit, as discussed above, did not apply Rooker-Feldman to *Johnson v. Rodrigues*, involving nonparties.[168] However, the court did not base its decision on a broad rule against applying Rooker-Feldman to nonparties.[169] The Court, rather, looked to the issues underlying the federal claim to make the decision.[170]

1. The Eleventh and Ninth Circuit Decisions

The Eleventh and Ninth Circuit Courts, like the Tenth Circuit, have analyzed cases, where Rooker-Feldman's use was at issue, without making a broad, general rule. For example, the Eleventh Circuit in *Dale*

165. Sherry, *supra* note 1, at 1114.
166. *Id.*
167. *Id.*
168. *Johnson*, 226 F.3d at 1108.
169. *Id.* at 1110.
170. *Id.*

v. Moore,[171] held that, "the Rooker-Feldman doctrine applies as long as the party had a reasonable opportunity to raise his federal claims in the state court proceedings. If the party did not have a reasonable opportunity to raise the claim, then the federal claim was not inextricably intertwined with the state court's judgment."[172] In *Dale v. Moore*, the Eleventh Circuit precluded the federal district court's exercise of subject matter jurisdiction finding that the Plaintiff's "ADA claim is inextricably intertwined with the state's judicial proceedings relating to his bar admission."[173] The Court found that since the ADA claim would require the federal district court to review the facts of the Plaintiff's case, the claim is inextricably intertwined with the state court case.[174] Therefore, the Eleventh Circuit looked at the nature of the suit and resisted making a broad, over-encompassing rule.

Likewise, the Ninth Circuit's decision in *Marriott International, Inc. v. Mitsui Trust & Banking Co*[175] also barred a nonparty from relitigating a claim in federal court using Rooker-Feldman, without using an overbroad rule.[176] A district court, within the Ninth Circuit, applied Rooker-Feldman to bar a party who had been denied the right to intervene in a state court suit, on the ground that the state court's denial, itself, was a final judgment of the very claim the party was attempting to raise in federal court.[177] The district court, within the Ninth Circuit did not allow the case to proceed in federal court simply because the federal plaintiff was a nonparty to the state proceedings. Rather, the Court looked at the nature of the federal case and applied Rooker-Feldman to bar the case.

2. The Seventh, Third, and Fourth Circuit Decisions

The Seventh, Third, and Fourth Circuit Courts have a general rule barring the use of Rooker-Feldman to cases involving nonparties to the original state proceeding. Unlike the Tenth, Eleventh, and Ninth Circuit decisions, these three Circuit Courts do not look to see whether the plaintiff was given a reasonable opportunity to intervene in the state court's proceeding or at the nature of the federal suit, to determine if the federal court is acting in an "appellate" capacity.

For example, the Seventh Circuit in *Allen v. Allen*[178] relied squarely on a rule that prohibited applying Rooker-Feldman to nonparties. *Allen* involves a woman who gave birth to a child by a man who was not her

171. Dale v. Moore, 121 F.3d 624 (11th Cir. 1997).
172. *Id.* at 626.
173. *Id.* at 627.
174. *Id.* at 628.
175. 13 F. Supp. 2d 1059 (D. Haw. 1998).
176. *Marriott International, Inc.*, 13 F. Supp. 2d at 1059.
177. *Id.* at 1062-63.
178. 48 F.3d 259, 261 (7th Cir. 1995).

husband.[179] She later divorced her husband and the Court gave her now ex-husband, not the child's biological father, visitation rights.[180] The woman then married the biological father of her child.[181] The biological father sought an injunction in federal court against the enforcement of the state visitation order that allowed the woman's ex-husband to visit the child.[182] The Court may have applied Rooker-Feldman to bar the case, because the defendant, the biological father, had a reasonable opportunity to enjoin the state proceeding and the lower federal court would have been acting as an appellate court of the state court's ruling.[183] However, the Court did not use Rooker-Feldman, because the Court had a broad rule banning the use of Rooker-Feldman to cases involving nonparties. Rather the Court had to rely on the domestic relation exception to federal jurisdiction to bar the suit from federal court.[184]

The Third Circuit has also applied a broad, general rule banning the use of Rooker-Feldman to suits with nonparties. In *FOCUS v. Allegheny County Court of Common Pleas*,[185] the plaintiffs, a citizen's advocacy group, For Our Children's Ultimate Safety ("FOCUS") and two of FOCUS' members, challenged a gag order the state judge entered in a child custody case. The Plaintiffs wanted to talk to one of the parties in the case and could not. Subsequently, the Plaintiffs tried to intervene and challenge the gag order, claiming it violated their First Amendment rights.[186] The state court refused to hear FOCUS's motion to intervene.[187] The Plaintiffs then filed a U.S.C. § 1983 suit in a federal district court.[188] The Third Circuit ruled that the federal court had jurisdiction because Rooker-Feldman did not apply to cases with nonparties.[189] The Court did not need to apply a broad rule, which might not always be appropriate for suits by nonparties. Rather, the Court should have looked to whether the parties had the opportunity to litigate in state court or whether they were asking the federal district court to hold an "appellate" hearing of the state court's decision.

Finally, the Fourth Circuit also has not applied Rooker-Feldman in cases where the federal plaintiff was not a party to the original state action. In *Republic of Paraguay v. Allen*,[190] Paraguay and its ambassador to the United States filed suit in federal court, alleging that the State of Vir-

179. *Allen*, 48 F.3d at 260.
180. *Id.* at 260.
181. *Id.*
182. *Id.* at 260.
183. *Id.* at 261-62.
184. *Allen*, 48 F.3d at 261.
185. FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834 (3rd Cir. 1996).
186. *Id.* at 836.
187. *Id.*
188. *Id.* at 837.
189. *Id.* at 840.
190. 134 F.3d 622 (1998).

ginia had violated various treaties when it tried and convicted a Paraguayan national resident in the United States.[191] Instead of looking at the procedural posture of the case and deciding whether the Plaintiffs were asking the Court to be an "appellate" court, the Fourth Circuit court bared their action without regard to whether or not they had a reasonable opportunity to litigate in state court.[192]

III. ANALYSIS

Rooker-Feldman has caused substantial confusion and, as discussed above, many commentators feel that it is mostly redundant of other legal theories.[193] However, the Supreme Court has not abandoned the doctrine and the lower courts continue to use it to bar cases from federal jurisdiction. Consequently, it is vital for the lower courts to apply Rooker-Feldman correctly. The Tenth Circuit's decision in *Johnson v. Rodrigues*[194] reflects a movement by Circuit Courts towards establishing case law that will help guide legal scholars in understanding the correct purpose of the doctrine—one that looks at the nature of the federal suit and not the parties.

Courts should not adopt and apply a broad, over-encompassing rule that Rooker-Feldman should not be applied to nonparties, because this rule does not reflect the original intent of the doctrine. Courts using an all-encompassing rule confuse the already muddled purpose of Rooker-Feldman. The analysis for Rooker-Feldman only requires courts to look at whether the parties are asking the federal court to change or alter a final state court judgment. "A court that strays from this common sense conclusion will end up hopelessly confused—and will often find some other reason to avoid jurisdiction."[195]

For example, the Seventh Circuit's decision in *Allen v. Allen* appeared to confuse the application of its general rule that Rooker-Feldman is inapplicable to nonparties by not looking at the federal suit itself. In *Allen*, the suit is the type of case where most courts have applied Rooker-Feldman, because the federal plaintiff appears to be trying to undo the state court's decision.[196] The Court found that the father could have been a party to the state proceeding if he had followed the correct procedures for establishing paternity.[197] The Court further found that it would not be fair to let the father's failing to follow the correct procedures allow him to litigate in federal court, while someone who followed correct proce-

191. *Republic of Paraguay*, 134 F.3d at 624.
192. *Id.* at 627 n.4.
193. WRIGHT, *supra* note 8, at § 4469.1.
194. Johnson v. Rodrigues, 226 F.3d 1103 (10th Cir. 2000).
195. Sherry, *supra* note 1, at 1120.
196. *Allen*, 48 F.3d at 261.
197. *Id.*

dures could not.[198] Rather than find that the father was barred from federal court by Rooker-Feldman, the Court found instead that it was barred by the domestic relations exception.[199] Instead of looking at the nature of the federal case and using Rooker-Feldman to bar the case, the Court further muddled Rooker-Feldman by writing a attenuated decision that attempts only to justify its own reasoning.

Although some courts still apply an over-encompassing rule, most courts look at the nature of the suit and apply Rooker-Feldman accordingly. As discussed above, many courts first decide whether a plaintiff had the opportunity to litigate in state court or if the plaintiff is trying to change a state court's decision. The Tenth Circuit followed the original intent of Rooker-Feldman in *Johnson v. Rodrigues*. The Court looked at the nature of the federal case, and in doing so, the Court used Rooker-Feldman as to reach the result originally sought by the Supreme Court—to extend beyond the scope of abstention and preclusion theories. If all the Circuit Courts would follow the lead by the Tenth Circuit, Rooker-Feldman will likely become less confusing. Instead, Rooker-Feldman would become a worthwhile tool for litigators and courts to use to help preserve comity and the appropriate amount of federalism of our courts.

198. *Id.*
199. *Id.*

CONCLUSION

Whether Rooker-Feldman is an overlap of claim preclusion or a vital civil procedure doctrine, the Supreme Court has to date neither nullified it or abandoned it and the fact remains that Rooker-Feldman is alive and well today and used extensively by the lower federal courts. Although, Rooker-Feldman has a very limited purpose in our judicial system, it does have a purpose that extends beyond the scope of abstention and preclusion theories. Therefore, it is important that it Rooker-Feldman is clearly understood and properly used.

The Tenth Circuit's decision is a reflection of an analysis that shows the place that Rooker-Feldman may have in our federal jurisdiction. By focusing on the nature of the federal suit and not on the parties, the Tenth Circuit's analysis may help many to understand the real purpose of Rooker-Feldman. Many of the Circuit Courts are moving in the direction of the Tenth Circuit. If courts continue to do the proper analysis, and no longer blend principles of preclusion theories with Rooker-Feldman principles, Rooker-Feldman may no longer be a confusing doctrine, but one that is a useful tool in civil procedure.

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