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The Fraud Exception to the *Rooker-Feldman* Doctrine: How It Almost Wasn't (and Probably Shouldn't Be)

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I. INTRODUCTION

The *Rooker-Feldman* doctrine is familiar to any practitioner or academic who regularly deals with federal-court jurisdiction. The basic idea is simple: the lower federal courts do not have jurisdiction to reverse or modify a state-court judgment.¹ Although this limitation was arguably implicit in the Judiciary Act of 1789,² it was not until 1923 that the United States Supreme Court made it an explicit part of federal court jurisprudence in *Rooker v. Fidelity Trust Co.*³ The Supreme Court revisited this limitation sixty years later in *D.C. Court of Appeals v. Feldman*,⁴ giving the doctrine the second half of its name. The lower federal courts took *Rooker* and *Feldman* and ran,⁵ declining to exercise jurisdiction over a great many cases, including some where the plaintiff's challenge, although arguably related to a state-court judgment, did not necessarily seek to have it reversed or modified. In 2005, the Supreme Court again revisited the

1. See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283-84 (2005).

2. Section 25 of the Judiciary Act of 1789, 1 Stat. 85. The current statutory basis for the *Rooker-Feldman* doctrine is 28 U.S.C. § 1257 (2006). See Susan Bandes, *The Rooker-Feldman Doctrine: Evaluating its Jurisdictional Status*, 74 NOTRE DAME L. REV. 1175, 1180 (1999) ("28 U.S.C. § 1257 grants the Supreme Court exclusive jurisdiction to review the judgments of the highest state courts. By inference, no other court, including a federal district court, has the power to do so.").

3. 263 U.S. 413 (1923).

4. 460 U.S. 462 (1983).

5. See Suzanna Sherry, *Judicial Federalism in the Trenches: The Rooker-Feldman Doctrine in Action*, 74 NOTRE DAME L. REV. 1085, 1087-90 (1999) (describing the *Rooker-Feldman* doctrine's "explosive growth in the lower courts. Since 1990 alone, lower federal courts have used *Rooker-Feldman* to find jurisdiction lacking in more than 500 cases."); see also Dustin E. Buehler, *Revisiting Rooker-Feldman: Extending the Doctrine to State Court Interlocutory Orders*, 36 FLA. ST. U. L. REV. 373, 378-91 (2009) (also describing *Rooker-Feldman*'s "explosive growth" in the lower federal courts).

Rooker-Feldman doctrine in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, reining in the lower courts' excessive jurisdictional declination and limiting the doctrine's application to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."⁶

At first glance, one would not think *Rooker-Feldman*, a jurisdictional doctrine, would be subject to a number of exceptions.⁷ After all, jurisdictional inquiries are as close to being absolute as one gets in the law; the district court either does or does not have subject matter jurisdiction. While principles of equity, fundamental fairness, and sound public policy have their place in the courtroom, they are not frequently raised to defend against a Rule 12(b)(1) motion to dismiss, and are even less frequently successful. A ready example is the amount in controversy necessary to plead diversity of citizenship. While there is not a great deal of difference between a plaintiff who pleads \$75,000 in damages and another who pleads \$75,001, this is a hard-and-fast jurisdictional line in the sand no matter how inequitable its application to a particular case might be.

And yet an exception to *Rooker-Feldman* of just such an equitable persuasion has taken root. A few courts—most especially the United States Court of Appeals for the Sixth Circuit⁸—have determined that *Rooker-Feldman* does not prevent the lower federal courts from reviewing state-court judgments that were allegedly procured through fraud. In other words, when a "state-court loser" complains that the winner owes his triumph not to sound legal principles—or even unsound ones—but to fraud, then the loser is not really complaining of an injury caused by a state-court judgment, but of an injury caused by the winner's chicanery. Or so the reasoning goes. This reasoning received an intellectual boost from *Exxon Mobil*, where the scope of what kinds of actions were "inextricably intertwined" with state-court judgments took a serious blow.⁹ In *Exxon Mobil*, the Court clarified that not all actions dealing with the "same or related question" resolved in state court are barred in federal court.¹⁰

6. *Exxon Mobil*, 544 U.S. at 284.

7. See Bandes, *supra* note 2, at 1185 ("The jurisdictional nature of the doctrine means that courts either find it highly inflexible, or are readily able to claim inflexibility when they desire to do so."); see also Thomas D. Rowe, Jr., *Rooker-Feldman: Worth Only the Powder to Blow it Up?*, 74 NOTRE DAME L. REV. 1081, 1082 (1999) ("[T]he jurisdictional nature of *Rooker-Feldman* makes the doctrine's bar unwaivable and subject to being raised by the court on its own motion.")

8. *In re Sun Valley Foods Co.*, 801 F.2d 186 (6th Cir. 1986).

9. *Exxon Mobil*, 544 U.S. at 291.

10. *Id.* at 292.

Instead, a district court must retain a case that presents an “independent claim” even if, along the way, the claimant challenges or denies some conclusion reached by the state court.¹¹

All of this is very well, but the courts applying a fraud exception to *Rooker-Feldman* have done so for decades, long before *Exxon Mobil*'s refinement, while those that reject the exception maintain their stubbornness in *Exxon Mobil*'s wake. Thus, we may assume that although *Exxon Mobil* has given the fraud exception added intellectual heft, the reasons for the exception's germination and continued survival lie elsewhere. But where? Perhaps in a masterful law review article on the subject or in a district court's brave bucking of jurisdictional convention in the name of equity and fair play? Neither, unfortunately. Rather, the fraud exception owes its existence, or at least a good part of it, to a mistake. We may assume, certainly, that it was an honest mistake, but a mistake nonetheless, and one that has had enormous consequences for comity, federalism, and the lower federal courts' exercise of what should be, at least in theory, limited jurisdiction.

This Article will not attempt to trace the entire history and application of the *Rooker-Feldman* doctrine; other commentators have more than adequately covered this general ground.¹² Rather, this Article assumes a much more pointed task: to expose and explore the mistake that led to the creation and proliferation of *Rooker-Feldman*'s fraud exception. Having done so, this Article will attempt to resolve the logically subsequent question: should the courts, once they recognize that the exception's genesis is a mistake, allow the exception to stand? In other words, has the fraud exception become such an indispensable part of *Rooker-Feldman* and federal-court jurisprudence that, regardless of the legitimacy of its origin, it must remain?

There are, to be sure, arguments in favor of the fraud exception. It is certainly repugnant to justice to allow a fraudster to walk into federal court with admittedly unclean hands and then brashly pronounce the court's impotence to remedy the situation. Others may argue *Rooker-Feldman* is similar enough to preclusion doctrines, such as *res judicata*, that the incorporation of a fraud exception is a logical evolution.¹³

11. *Id.* at 293 (quoting *GASH Assocs. v. Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993)).

12. See generally Buehler, *supra* note 5, at 378-91; Allison B. Jones, *The Rooker-Feldman Doctrine: What Does it Mean to Be Inextricably Intertwined?*, 56 DUKE L. J. 643, 644-60 (2006); Adam McLain, *The Rooker-Feldman Doctrine: Toward a Workable Role*, 149 U. PA. L. REV. 1555, 1560-76 (2001); Sherry, *supra* note 5, at 1087-90; Barry Friedman & James E. Gaylord, *Rooker-Feldman, From the Ground Up*, 74 NOTRE DAME L. REV. 1129, 1133-38 (1999).

13. See Buehler, *supra* note 5, at 376 (“Lower federal courts disagree on the doctrine’s

Conversely, nothing less than the very core of the judiciary, both state and federal, hangs in the balance.¹⁴ There are adequate mechanisms for challenging victorious villains in state court.¹⁵ Doing so in federal court, however, has several undesirable consequences. First, it deprives the state court of the opportunity to correct a wrong perpetrated not just on the state-court loser, but on the state court itself. Surely we have enough faith in our state-court systems to address and remedy situations in which the winner perpetrated fraud under the court's very nose. In other words, state courts deserve the opportunity for self-correction.

Second, a fraud exception often removes a case that was, at its inception, a matter of state law and makes it one of federal law. This consequence is especially significant in cases of quintessential state interest; a timely example is the recent trend of challenging state-court foreclosure judgments in federal court.¹⁶ There can be little doubt that a federal district court should not be the primary place to sort out the thorny issues arising under the fifty states' foreclosure laws or lenders' alleged fraud in pursuing foreclosure judgments. Taking these issues from state to federal court deprives the states of the opportunity to apply and further refine their

scope and proper application and often confuse it with preclusion doctrines, especially res judicata.”).

14. See Sherry, *supra* note 5, at 1100 (describing how *Rooker-Feldman* prevents cross-jurisdictional cases from “wreak[ing] havoc on our system of dual courts”).

15. See *infra* notes 163-196 and accompanying text.

16. Most courts have consistently applied *Rooker-Feldman* to these cases, rejecting plaintiffs' attempts to challenge state-court foreclosure judgments in federal court. While this is true across several jurisdictions, the following cases from the Eleventh and Seventh Circuits provide adequate illustration. See, e.g., *Parker v. Potter*, 368 F. App'x 945, 948 (11th Cir. 2010); *Stanley v. Hollingsworth*, 307 Fed. App'x 6, 8 (7th Cir. 2009); *Velardo v. Fremont Inv. & Loan*, 298 F. App'x 890, 892-93 (11th Cir. 2008); *Harper v. Chase Manhattan Bank*, 138 F. App'x 130, 133 (11th Cir. 2005); *Taylor v. Fannie Mae*, 374 F.3d 529, 534 (7th Cir. 2004); *GASH Assocs. v. Rosemont*, 995 F.2d 726, 727 (7th Cir. 1993); *Bryant v. Citimortgage*, No. 6:10-cv-1206-Orl-28KRS, 2010 U.S. Dist. LEXIS 92384, at *2 (M.D. Fla. Aug. 13, 2010); *J.P. Morgan Chase Bank v. Schneider*, No. 10 C 4856, 2010 U.S. Dist. LEXIS 79728, at *3 (N.D. Ill. Aug. 4, 2010); *Aboyade-Cole Bey v. BankAtlantic*, No. 6:09-cv-1572-Orl-31GJK, 2010 U.S. Dist. LEXIS 90188, at *5-6 (M.D. Fla. Aug. 2, 2010); *Moore v. Chase Home Fin., LLC*, No. 06 C 3202, 2007 U.S. Dist. LEXIS 27555, at *2 (N.D. Ill. Apr. 11, 2007); *Spencer v. Mortg. Acceptance Corp.*, No. 05 C 356, 2006 U.S. Dist. LEXIS 31668, at *13 (N.D. Ill. May 4, 2006); *Thompson v. Ameriquist Mortg. Co.*, No. 03 C 3256, 2003 U.S. Dist. LEXIS 14700, at *7 (N.D. Ill. Aug. 19, 2003); *Bounds v. Wells Fargo Bank Minn.*, No. 02 C 9010, 2003 U.S. Dist. LEXIS 10741, at *7 (N.D. Ill. June 24, 2003); *Smith v. Bank One*, No. 02 C 8204, 2002 U.S. Dist. LEXIS 22423, at *5 (N.D. Ill. Nov. 18, 2002); *Elysee v. Chi. Trust Co.*, No. 01 C 8839, 2001 U.S. Dist. LEXIS 20313, at *4 (N.D. Ill. Dec. 5, 2001).

With the right set of allegations, however, and in the right court, a *Rooker-Feldman* fraud exception could allow federal district courts to wade into this complex and currently controversial field of state law. This has, in fact, already happened. See *infra* notes 93-98 and accompanying text.

common law in these areas of quintessential state interest.

Lastly, there is a certain arrogance in the federal courts' retention of cases in which fraud has been perpetrated in state court, an assumption that state judiciaries are somehow inferior.¹⁷ If true, the vast majority of litigants in the United States—who upon entering the courthouse are not confronted by the bald eagle with its arrows and olive branch, but by the ladies Liberty and Justice, the goddess Athena and her great grizzly, or the lone star—are already doomed to a flawed and defective system. Choosing the part of optimism and faith in the state courts and, moreover, affirming the concepts of limited jurisdiction and federalism, this Article suggests the fraud exception to *Rooker-Feldman* hurts more than it helps, and that its time has come.

II. THE MISTAKE

A. *The Beginning*: *Resolute Insurance Co. v. North Carolina and Res Judicata*

In 1968, when *Rooker-Feldman* was just *Rooker* and its application was sporadic at best, the United States Court of Appeals for the Fourth Circuit decided a case called *Resolute Insurance Co. v. North Carolina*.¹⁸ The facts of *Resolute Insurance Co.* are these: In 1964, four residents of North Carolina were indicted, tried, and convicted for kidnapping.¹⁹ They appealed their convictions to the North Carolina Supreme Court and, as a part of their appeal, executed appearance bonds in which they promised to appear at all applicable terms of court.²⁰ Resolute Insurance Company (“Resolute”) acted as surety on three of the bonds.²¹ The North Carolina Supreme Court vacated the convictions, holding that the indictments were racially discriminatory.²² The court did not, however, dismiss the charges or discharge the defendants, instead allowing the Union County district attorney to re-indict the defendants with a reconvened, “unexceptional” grand jury, which the district attorney did.²³ As a result of the new

17. See Buehler, *supra* note 5, at 393 (“There are three fundamental principles behind *Rooker-Feldman*. First, the doctrine enforces constitutional separation of powers and the limited jurisdiction of federal courts. Second, *Rooker-Feldman* advances interest of federalism by protecting state court judgment. Third, the doctrine recognizes that state courts are fully competent to adjudicate federal claims.”).

18. 397 F.2d 586 (4th Cir. 1968).

19. *Id.* at 587.

20. *Id.* at 587-88.

21. *Id.*

22. *Id.* at 588.

23. *Id.*

indictments, the defendants were required to appear in court, but were not present when called out.²⁴ Because of their absence, the trial court ordered the defendants and Resolute to show cause why judgment on the appearance bonds should not be entered against them.²⁵

Resolute defended itself against application of the appearance bonds by arguing both that the North Carolina Supreme Court's ruling had cleared the defendants of guilt and that Resolute did not have notice of the new indictments.²⁶ The trial court rejected both arguments and entered judgment of forfeiture on the bonds against Resolute.²⁷ Resolute appealed to the North Carolina Supreme Court, but the court affirmed the trial court's judgment.²⁸ Resolute, living up to its name, attempted to appeal to the United States Supreme Court, but was denied certiorari.²⁹

Resolute then brought an action in federal district court attempting to prevent the sale of its securities in order to satisfy the bonds.³⁰ In what now seems like classic *Rooker-Feldman* language, the Fourth Circuit summed up Resolute's federal court action as "an attack both on the proceedings in Union County and on the decision of the North Carolina Supreme Court affirming the forfeiture."³¹ The court noted that *Rooker* prevented such an attack, stating:

Resolute pursued the proper appellate procedure by applying to the United States Supreme Court for certiorari. What it now seeks to accomplish is to have a federal district court act in an essentially appellate capacity and review a state court decision alleged to be erroneous. The District Courts of the United States are not authorized and do not assume to exercise any such power.³²

Contrary to this seemingly unambiguous citation to *Rooker* and its reasoning, and perhaps indicative of the initial confusion *Rooker* created in the lower courts, the Fourth Circuit did not hold that either it or the district court lacked jurisdiction. Instead, the court stated that the district court was properly vested with original jurisdiction under 28 U.S.C. § 1332 (diversity of citizenship), and decided it must "look to the pleadings to determine

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* at 589.

32. *Id.* (citing *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923)).

whether or not a justiciable controversy is presented.”³³ Ultimately, the court affirmed the district court’s dismissal based on res judicata, not *Rooker*, holding that Resolute’s argument in district court was “the essence of [its] contention throughout the state court litigation and in its petition for certiorari to the United States Supreme Court.”³⁴ Near the conclusion of its res judicata discussion, the Fourth Circuit made this seemingly superfluous and unnecessary statement: “While a federal court may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake, there is no basis in the instant case for such an attack.”³⁵ Because Resolute never argued against the application of res judicata based upon “fraud, deception, accident, or mistake,”³⁶ this isolated statement is the beginning and end of the Fourth Circuit’s discussion of the exception.

B. The Fraud Exception to Res Judicata

The Fourth Circuit was entirely correct that there can be an exception to res judicata based upon fraud, deception, accident, or mistake. The United States Supreme Court has stated for at least ninety years that only “in the absence of fraud or collusion” does a judgment from a court with jurisdiction operate as res judicata.³⁷ But because res judicata is a principle of both state and federal law, depending on the original court to render judgment,³⁸ it is not an exaggeration to say there are as many conceptions of res judicata as there are state and federal courts.³⁹ The exception mentioned by the Fourth Circuit in *Resolute Insurance Co.*—one for fraud, deception, accident, or mistake—is a classic example and is applied unevenly, if at all, by the various state and federal courts. Because this Article focuses on fraud, it will parse out and focus on that piece of the exception.

When a party challenges the preclusive effect of a previously obtained

33. *Id.*

34. *Id.*

35. *Id.* (referring to *Atchison, T. & S.F. Ry. v. Wells*, 265 U.S. 101 (1924); *Wells Fargo & Co. v. Taylor*, 254 U.S. 175 (1920); *Simon v. Southern Ry.*, 236 U.S. 115 (1915)).

36. *Id.*

37. *Riehle v. Margolies*, 279 U.S. 218, 225 (1929).

38. *See Allen v. McCurry*, 449 U.S. 90, 96 (1980) (“[T]hough the federal courts may look to the common law or to the policies supporting res judicata and collateral estoppel in assessing the preclusive effect of decisions of other federal courts, Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so.”).

39. *See Sherry*, *supra* note 5, at 1107 (“[R]es judicata law, despite its apparent simplicity, can be very difficult to apply. . . . [R]es judicata doctrines differ tremendously between jurisdictions.”).

judgment based upon the winner's fraud, courts often begin by asking what kind of fraud the loser alleges. A common distinction courts draw is between extrinsic and intrinsic fraud. The Florida Supreme Court, for example, defines extrinsic fraud as:

[T]he prevention of an unsuccessful party [from] presenting his case, by fraud or deception practiced by his adversary; keeping the opponent away from court; falsely promising a compromise; ignorance of the adversary about the existence of the suit or the acts of the plaintiff; fraudulent representation of a party without his consent and connivance in his defeat; and so on.⁴⁰

Extrinsic fraud, as its name implies, is fraud outside the workings of the case, fraud that stereotypically prevents a party from fully putting on her case or being heard by the court.⁴¹ Intrinsic fraud, on the other hand, is "fraudulent conduct that arises within a proceeding and pertains to the issues in the case that have been tried or could have been tried."⁴² This classic definition of intrinsic fraud encompasses things like false or perjured testimony,⁴³ false or misleading documents and affidavits,⁴⁴ or any other misrepresentations that do not prevent a party from making its own case.⁴⁵

But not all courts agree with or follow the extrinsic/intrinsic distinction. Some courts address fraud as an exception to *res judicata* without distinguishing whether the alleged fraud is extrinsic, intrinsic, or otherwise.⁴⁶ Other courts raise the extrinsic/intrinsic distinction, but

40. *Parker v. Parker*, 950 So. 2d 388, 391 (Fla. 2007) (quoting *Fair v. Tampa Electric Co.*, 27 So. 2d 514, 515 (Fla. 1946)).

41. *See Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 561 (7th Cir. 1999) (labeling allegation that the defense attorney told the plaintiff not to come to court as within the "classic definition" of extrinsic fraud); *see also Zelek v. Brosseau*, 136 A.2d 416, 421-22 (N.J. Super. 1957).

42. *Parker*, 950 So. 2d at 391.

43. *See, e.g., id.* at 391; *Falcon v. Faulkner*, 567 N.E.2d 686, 694 (Ill. App. Ct. 1991).

44. *DeClaire v. Yohanan*, 453 So. 2d 375, 380 (Fla. 1984), *superseded on other grounds by* FLA. R. CIV. P. 1.540(b), *as recognized in Lefler v. Lefler*, 776 So. 2d 319, 322 (Fla. Dist. Ct. App. 2001); *Puzio v. Puzio*, 155 A.2d 115, 121-23 (N.J. Super. 1959) (applying New York law).

45. *See Cummins, Inc. v. TAS Distrib. Co.*, 676 F. Supp. 2d 701, 716 (C.D. Ill. 2009) ("[The exception] does not apply if the other party was on notice that there could be a claim, as a party still has its own duty to make its own case. Only where there is no way that the party wishing to avoid *res judicata* could have realized that it had a claim will the . . . exception apply.").

46. *See, e.g., Thomas v. Metra Rail Serv.*, No. 966 C 8489, 1997 U.S. Dist. LEXIS 16027, at *9 n.2 (N.D. Ill. Oct. 6, 1997) ("The Court is mindful that a judgment obtained through fraud cannot act as a bar to a subsequent suit on the same cause of action—thus preventing the application of *res judicata*."); *Remer v. Interstate Bond Co.*, 173 N.E.2d 425, 430 (Ill. 1961) ("If the order was obtained by fraud, as petitioner alleges, elementary principles of law require that relief be granted.").

apparently ignore it out of an almost instinctual refusal to countenance any form of alleged fraud. For example, in *Powell v. American Bank & Trust Co.*,⁴⁷ the United States District Court for the Northern District of Indiana refused to apply res judicata to a case involving a proposed order “containing untrue factual assertions,” an allegation more in keeping with the definition of intrinsic fraud.⁴⁸ The court, out of laudable sentiment but perhaps slight infidelity to the extrinsic/intrinsic distinction it had just stated, reasoned:

To sanction the preclusion of the plaintiffs’ claim via res judicata under facts such as these would be to sanction the defrauding of any litigant by an opponent fast enough and shifty enough to get a state court order pertaining to the issues which the innocent litigant seeks to argue before a court. Surely res judicata was not created to protect such fraud upon the courts.⁴⁹

Finally, there are courts, such as the state courts of Ohio, that have taken internally inconsistent positions, both endorsing and rejecting a fraud exception to res judicata. For example, the Ohio Court of Appeals recently stated, “There is no exception to the doctrine of res judicata merely because a party claims fraud upon the court.”⁵⁰ That same court, however, has allowed plaintiffs to avoid the application of res judicata on at least three occasions, all involving allegations more in keeping with intrinsic than extrinsic fraud.⁵¹

The point of this digression into one of the more complicated exceptions to res judicata is two-fold. First and most simply, the exception cited in *Resolute Insurance Co.* and discussed herein is a res judicata exception, not a *Rooker-Feldman* exception. The Fourth Circuit clearly raised the exception within its discussion of res judicata, not *Rooker*, after

47. 640 F. Supp. 1568 (N.D. Ind. 1986).

48. *Id.* at 1573-74.

49. *Id.* at 1574.

50. Boardman Canfield Ctr., Inc. v. Baer, 2007 Ohio 2609, ¶18 (Ohio Ct. App. May 23, 2007). The term “fraud upon the court” is often used as a synonym for extrinsic fraud, i.e., fraud that disrupts the judicial process.

51. Biggs v. Balosky, 2002 Ohio 3859, ¶10 (Ohio Ct. App. July 31, 2002) (involving allegations of lies before the probate court to obtain a legitimation order); Parsons v. Denny’s Rest., Inc., No. CA-2828, 1991 Ohio App. LEXIS 3589, at *1 (Ohio Ct. App. July 23, 1991) (refusing to apply res judicata when the plaintiff alleged that Denny’s obtained a judgment by fraudulently representing the date in an employee handbook before the initial court); Rico’s Red Lion Pizza Parlors, Inc. v. Amusement World Inc., No. 7889, 1983 Ohio App. LEXIS 13218, at *12-13 (Ohio Ct. App. Feb. 23, 1983) (reversing summary judgment based upon res judicata because of alleged misrepresentations to the initial trial court).

determining that both it and the district court had original jurisdiction.⁵² Indeed, the paragraph within which the “fraud, deception, accident, or mistake” language appears begins by stating, “the dismissal was clearly proper on the ground of res judicata.”⁵³ Second, even within the confines of res judicata, there is no clear consensus on what constitutes the “fraud exception.” And because res judicata is both a state and federal doctrine, consensus is not likely to appear anytime soon.

C. *In re Sun Valley Foods Co. and the Incorporation of Res Judicata’s Fraud Exception into Rooker-Feldman*

Without one case from the United States Court of Appeals for the Sixth Circuit, this entire discussion of *Resolute Insurance Co.* and the Fourth Circuit’s reference to res judicata’s unpredictable fraud exception would have no application in a discussion of the *Rooker-Feldman* doctrine. That singular case is *In re Sun Valley Foods Co.*,⁵⁴ in which the Sixth Circuit did something interesting and, unfortunately, unexplained: it quoted *Resolute Insurance Co.*’s “fraud, deception, accident, or mistake” language, not as an exception to res judicata, but as an exception to the *Rooker-Feldman* doctrine.⁵⁵

But for this one point, *In re Sun Valley Foods Co.* is not a particularly interesting case. Sun Valley Foods Co. (“Sun Valley”) leased a warehouse from Detroit Marine Terminals, Inc. (“DMT”) and, over the course of nearly a year, tendered rent checks worth \$295,833.⁵⁶ DMT, however, did not cash the checks, contending Sun Valley had become the equitable owner of the warehouse.⁵⁷ In an antecedent action, a federal district court ruled that Sun Valley was not the equitable owner of the warehouse and that DMT was entitled to rent from Sun Valley.⁵⁸ After the ruling, Sun Valley sent new rent checks to DMT (the previous checks having expired), on the condition that DMT, in cashing the checks, abandon its contention that Sun Valley was the equitable owner of the warehouse.⁵⁹ DMT filed suit in Michigan state court, seeking back rent and possession of the warehouse without the imposition of Sun Valley’s proposed condition.⁶⁰ The state trial

52. *Resolute Ins. Co.*, 397 F.2d at 588-89.

53. *Id.* at 589.

54. 801 F.2d 186 (6th Cir. 1986).

55. *Id.* at 189.

56. *Id.* at 187.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

court granted DMT's motion for summary judgment, and the Michigan Court of Appeals affirmed, holding that there was no authority for Sun Valley's proposed condition.⁶¹ Sun Valley appealed to the Michigan Supreme Court, but the court denied Sun Valley's application for leave to appeal.⁶²

Ultimately, Sun Valley brought an action in federal district court, which it rather brazenly labeled "Verified Complaint for Declaratory and Equitable Relief Against a Void State Court Summary Judgment and Void State Court Writ."⁶³ Sun Valley argued that the Michigan Supreme Court's failure to grant its application for leave to appeal was a denial of due process and equal protection.⁶⁴ Both the label and subject matter of Sun Valley's action made it ripe for application of *Rooker-Feldman*. The district court dismissed Sun Valley's action, holding that "the Federal Court does not have the power to modify or to set aside a State Court Judgment."⁶⁵ Sun Valley appealed, and the Sixth Circuit affirmed the district court's ruling with this plain-vanilla statement of the *Rooker-Feldman* doctrine: "Review of final determinations in state judicial proceedings can be obtained only in the United States Supreme Court."⁶⁶

But then the court did something else. It could have ended its discussion of the *Rooker-Feldman* doctrine and, indeed, the entire case right there. But it went on to make this portentous pronouncement: "There is, however, an exception to the general rule that precludes a lower federal court from reviewing a state's judicial proceedings. A federal court 'may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake.'"⁶⁷ The Sixth Circuit's solitary citation for this "exception to the general rule" is *Resolute Insurance Co.*⁶⁸ Nowhere did the Sixth Circuit explain why it borrowed from what the Fourth Circuit explicitly designated a res judicata exception and incorporated that exception into the *Rooker-Feldman* doctrine.⁶⁹ Nor did the Sixth Circuit address the form or scope of the

61. *Id.* at 187-88.

62. *Id.* at 188.

63. *Id.* at 187.

64. *Id.* at 188.

65. *Id.* at 189.

66. *Id.*

67. *Id.* (quoting *Resolute Ins. Co. v. State of North Carolina*, 397 F.2d 586, 589 (4th Cir. 1968)).

68. *Id.*

69. One possible defense of the Sixth Circuit's silence on this point is its pronouncement, decades later, that the *Rooker-Feldman* doctrine is "a combination of the abstention and res judicata doctrines." *Wojcik v. City of Romulus*, 257 F.3d 600, 607 n.13 (6th Cir. 2001).

exception, or in any other way explain its contours. Instead, the language cited above is the sum total of the Sixth Circuit's creation of a fraud exception to the *Rooker-Feldman* doctrine. Ironically, the exception served no purpose in *In re Sun Valley Foods Co.*, as the court's very next statement was that there was no evidence of fraud, accident, or mistake in the case.⁷⁰

What *In re Sun Valley Foods Co.* did, then, was as significant as it was legally questionable. It took the "fraud, deception, accident, or mistake" language from *Resolute Insurance Co.*'s discussion of res judicata and, without explanation, incorporated it into *Rooker-Feldman*. While courts often analogize between similar doctrines and their exceptions, they usually provide some explanation for why they are doing so, especially if the issue is one of first impression. In such an explanation, the court could state its opinion as to why the doctrines are similar, why the analogy is apt, and why the proposed exception is able to cross from one doctrine to the other. One would especially expect such an explanation from a published opinion out of the Sixth Circuit. Because there is no such explanation in *In re Sun Valley Foods Co.*, one is left with the impression that the court was not aware that it was creating something new, something that prior to this opinion did not exist. Indeed, one is left with the impression that the court simply made a mistake.

Assuming this is true, one might argue there is little need to explain the incorporation of a res judicata exception into *Rooker-Feldman*. Unfortunately for such an argument, this statement regarding *Rooker-Feldman* as a "combination" between abstention and res judicata does not appear in Sixth Circuit case law until 1995. See *United States v. Owens*, 54 F.3d 271 (6th Cir. 1995). As such, it could not have been the court's basis for the exception in 1986. Furthermore, scholarly commentary has rejected this sort of conflation between *Rooker-Feldman* and res judicata as a misunderstanding of the two doctrines. See Sherry, *supra* note 5, at 1100 ("[R]es judicata and *Rooker-Feldman* each apply to a different set of circumstances, although sometimes those circumstances overlap. Courts and commentators who treat *Rooker-Feldman* as a jurisdictional version of res judicata, then, are wrong to conflate the two. And the error goes in both directions: equating the two doctrines sometimes deprives *Rooker-Feldman* of its full reach by applying it only when preclusion doctrines also apply, and sometimes extends the jurisdictional bite of *Rooker-Feldman* into situations that warrant instead only the affirmative defense of res judicata."); Beuhler, *supra* note 5, at 390 ("[T]he *Rooker-Feldman* analysis is completely separate from preclusion law . . ."); see also *Taylor v. Fannie Mae*, 374 F.3d 529, 535 (7th Cir. Ind. 2004) ("[T]he *Rooker-Feldman* doctrine [and] the doctrine of res judicata . . . are not coextensive.") (quoting *GASH Assocs. v. Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993)). Finally, the United States Supreme Court seems to have put this confusion between *Rooker-Feldman* and res judicata to rest, stating, "*Rooker-Feldman* is not simply preclusion by another name." *Lance v. Dennis*, 546 U.S. 459, 459 (2006).

70. 801 F.2d at 189.

D. *The Mistake's Proliferation*

1. Cases Explicitly Citing *In re Sun Valley Foods Co.* for the Exception

The district courts within the Sixth Circuit were the first to notice *In re Sun Valley Foods Co.*'s creation of an exception to *Rooker-Feldman* based upon fraud, deception, accident, or mistake.⁷¹ At first, the district courts noted the exception, but declined to apply it because the plaintiffs before them simply failed to allege any of the named circumstances.⁷² As time went on and plaintiffs became more aware of the *In re Sun Valley Foods Co.* exception, they began to argue against the application of *Rooker-Feldman* based upon the exception. In most of these cases, the district courts rejected plaintiffs' arguments, holding that plaintiffs were simply attempting to cloak an appeal of a state-court judgment with cursory fraud allegations.⁷³ Interestingly, some district courts attempted to provide scope to the exception, which the Sixth Circuit failed to provide in *In re Sun Valley Foods Co.* For example, one court incorporated the concept of extrinsic fraud, which, as already discussed,⁷⁴ is a threshold inquiry to the res judicata fraud exception in many jurisdictions.⁷⁵

In addition to its district courts, the Sixth Circuit itself has cited *In re Sun Valley Foods Co.* for the specific proposition that there is a fraud exception to the *Rooker-Feldman* doctrine. In *Keplinger v. Wilson*,⁷⁶

71. See *Burrows v. McEvoy*, No. 08-CV-11697, 2008 U.S. Dist. LEXIS 94499, at *16-17 (E.D. Mich. Nov. 12, 2008) (“[T]o the extent that the plaintiff claims that the state court judgment was procured by fraud or deception, the Court recognizes that this specific claim may fall outside the *Rooker-Feldman* abstention doctrine.”) (citation omitted); *Wozniak v. Corrigan*, No. 1:05 CV2259, 2006 U.S. Dist. LEXIS 28923, at *25 (N.D. Ohio May 12, 2006) (“As the Sixth Circuit noted in *Sun Valley*, there is an exception to the *Rooker-Feldman* doctrine in cases where the state court judgment is alleged to have been procured through fraud, deception, accident, or mistake.”); *Chapman v. Wilson*, No. 05-2332 Ma/V, 2006 U.S. Dist. LEXIS 29108, at *8 (W.D. Tenn. May 4, 2006); *Smith v. Oakland Cnty. Cir. Ct.*, 344 F. Supp. 2d 1030, 1058 (E.D. Mich. 2004); *Raddatz v. Beaubien*, 880 F. Supp. 500, 503 (E.D. Mich. 1995) (“As the Sixth Circuit noted in *Sun Valley*, there is an exception to the *Rooker/Feldman* doctrine in cases where the state court judgment is alleged to have been procured through fraud, deception, accident, or mistake.”); *Auto. Club of Mich. v. Stacey*, 750 F. Supp. 259, 264 (E.D. Mich. 1990); see also *In re Levy*, 250 B.R. 638, 644 (Bankr. W.D. Tenn. 2000).

72. See *Raddatz*, 880 F. Supp. at 503-04 (“In this case, however, plaintiff has presented no evidence that the decisions of the state court complained of resulted from any of these circumstances.”); *Auto. Club of Mich.*, 750 F. Supp. at 264 (“Plaintiffs have not alleged any fraud, deception, accident or mistake in the procuring of the state court judgment.”).

73. See *Burrows*, 2008 U.S. Dist. LEXIS 94499, at *17 (“[T]he plaintiff’s mere conclusory allegations of fraud in this regard are insufficient to withstand a motion to dismiss.”) (citations omitted); *Wozniak*, 2006 U.S. Dist. LEXIS 28923, at *25-26.

74. See *supra* notes 39-50 and accompanying text.

75. See *Chapman*, 2006 U.S. Dist. LEXIS 29108, at *9.

76. No. 93-3588, 1993 U.S. App. LEXIS 30538 (6th Cir. Nov. 22, 1993).

another case in which the court applied *Rooker-Feldman* to dismiss a case with no fraud allegations, the court stated, “this claim does not fall within the exception set forth in *Sun Valley Foods*, because the state court judgment was not procured by fraud.”⁷⁷ It is unclear from the opinion why the court felt it necessary to, once again, address an exception that the allegations clearly did not implicate. In another decision, the Sixth Circuit cited *In re Sun Valley Foods Co.* for the apparent proposition that, in the presence of fraud, deception, accident, mistake, or “other gross procedural error” a federal court may declare the judgments of a state court “void *ab initio*.”⁷⁸ Still other decisions from the Sixth Circuit recognize the exception, returning to *In re Sun Valley Foods Co.* for its authority.⁷⁹ And while plaintiffs are not often successful in evading *Rooker-Feldman*, it is not because the court declines to apply the exception, but because the plaintiffs’ fraud allegations are so wanting as to warrant dismissal on the merits.⁸⁰ While it may be tempting, in such cases, to shrug and say “no harm done,” the shallowness of this approach is evidenced by the fact that the court addressed the merits at all. When a federal district court addresses the merits of a state-court judgment, the purposes behind *Rooker-Feldman* have been frustrated.

The fraud exception created in *In re Sun Valley Foods Co.* has not remained within the Sixth Circuit, but has been cited with approval by several other courts.⁸¹ And plaintiffs have been more successful invoking the exception in some of these jurisdictions. In one interesting set of cases, the United States District Court for the Western District of Missouri recognized and applied the fraud exception from *In re Sun Valley Foods Co.*, only to be reversed on appeal by the Eighth Circuit.⁸² In *Fielder v. Credit Acceptance Corp.*, the plaintiffs lost breach of contract actions in the

77. *Id.* at *6.

78. *Twin City Fire Ins. Co. v. Adkins*, 400 F.3d 293, 301 (6th Cir. 2005).

79. *See Kafele v. Lerner, Sampson & Rothfuss, L.P.A.*, 161 F. App’x 487, 490 (6th Cir. 2005); *see also Catz v. Chalker*, 142 F.3d 279, 294-95 (6th Cir. 1998); *In re Singleton*, 230 B.R. 533 (B.A.P. 6th Cir. 1999).

80. *Kafele*, 161 F. App’x at 490-91 (“The *Rooker-Feldman* doctrine does not preclude federal courts from reviewing claims alleging that the state court judgment was procured by fraud, deception, accident or mistake In the case at hand, the plaintiffs raise dozens of claims that are lacking in both supportive factual allegations and directed legal arguments.”).

81. *See, e.g., Termarsch v. Michigan*, No. 8:09-CV-1829-T-17TGW, 2010 U.S. Dist. LEXIS 6070, at *8 (M.D. Fla. Jan. 7, 2010); *Goddard v. Citibank, NA*, No. 04-CV-5317(NGG)(LB), 2006 U.S. Dist. LEXIS 19651, at *18 (E.D.N.Y. Mar. 27, 2006); *Radiology Inst., Inc. v. Padilla Rodriguez*, 818 F. Supp. 477, 479 (D.P.R. 1993); *In re Glass*, 240 B.R. 782, 786-87 (Bankr. M.D. Fla. 1999).

82. *Fielder v. Credit Acceptance Corp.*, 10 F. Supp. 2d 1101, 1104 (W.D. Mo. 1998), *rev’d* 188 F.3d 1031 (8th Cir. 1999).

Missouri state courts and subsequently filed a class action in federal district court, not to challenge the judgments of liability, but the damages awarded.⁸³ Specifically, the plaintiffs alleged the defendant fraudulently charged excessive post-maturity interest and argued this allegation of fraud satisfied the fraud exception to *Rooker-Feldman*.⁸⁴ While noting that the Eighth Circuit had not established such a fraud exception to *Rooker-Feldman*, the district court agreed with the plaintiffs, citing *In re Sun Valley Foods Co.* and subsequent cases from the Sixth Circuit and stating that “the excessive post-maturity interest charges on the contracts could easily be attributed to accident or mistake and, conceivably, fraud or deception.”⁸⁵

On appeal, however, the Eighth Circuit reversed, stating that there were “multiple problems” with the district court’s use of the fraud exception to *Rooker-Feldman*.⁸⁶ The court stated that, in general, it had been “unwilling to create piecemeal exceptions to *Rooker-Feldman*.”⁸⁷ It also noted the complex issues that would need to be resolved if such an exception were created, including “whether it matters if the fraud was ‘extrinsic’ or ‘intrinsic.’”⁸⁸ Concluding that the issue of “whether a state court judgment should be subject to collateral attack or review is an issue best left to the state courts,” the court held that *Rooker-Feldman* deprived the district court of jurisdiction.⁸⁹

Interestingly, the Tenth Circuit is the only court to explicitly discuss the fact that the Sixth Circuit created a fraud exception to *Rooker-Feldman* by relying on a case addressing res judicata law.⁹⁰ The Tenth Circuit neither accepted nor rejected the exception created by *In re Sun Valley Foods Co.*, but stated in a footnote, “There is good reason to balk at such a step.”⁹¹ These reasons will be discussed in more detail below.⁹²

Another case arises out of the factual context previously mentioned: a federal plaintiff challenging its defeat in a state-court foreclosure judgment. In *Goddard v. Citibank*,⁹³ the United States District Court for the Eastern

83. *Id.* at 1103.

84. *Id.* at 1104 n.4.

85. *Id.* at 1104.

86. *Id.* at 1035.

87. *Id.* at 1035-36.

88. *Id.* at 1036.

89. *Id.*

90. *West v. Evergreen Highlands Ass’n*, 213 F. App’x 670, 674 (10th Cir. 2007) (noting that *In re Sun Valley Foods Co.* “quot[ed] a case addressing res judicata, not *Rooker-Feldman*”).

91. *Id.* at 674 n.3.

92. See *infra* notes 163-195 and accompanying text.

93. No. 04-CV-5317(NGG)(LB), 2006 U.S. Dist. LEXIS 19651 (E.D.N.Y. Mar. 27, 2006).

District of New York cited *In re Sun Valley Foods Co.*'s fraud exception as an example of how a plaintiff can state an "independent claim" under the Supreme Court's clarification in *Exxon Mobil*.⁹⁴ There, the defendant brought a successful foreclosure action in the state courts of New York.⁹⁵ The plaintiff then brought an action in federal court, alleging the foreclosure judgment was improperly entered and that she, as a result of the improper judgment, had suffered a battery of injuries including a stroke.⁹⁶ The court summed up the plaintiff's allegations as follows: "The gravamen of Plaintiff's claim is that [the defendants] . . . misrepresented the facts to the state court in the foreclosure proceeding, and that [the trial court's] acceptance of these misrepresentations . . . caused Plaintiff to suffer a stroke and violated her constitutional rights."⁹⁷ While the court declined under *Rooker-Feldman* to vacate the state-court judgment, it allowed the plaintiff to proceed in her action for monetary damages, holding that her claims for damages "are of the type held by the Court in *Exxon Mobil* to be independent from the state court judgment, because they allege *fraud in the procurement* of the judgment."⁹⁸ The court thus allowed a lawsuit to proceed in federal court when its central issue would be the legitimacy of the New York state court's foreclosure judgment. Furthermore, the central issues in the plaintiff's case were, without exception, issues of state law: the parties' rights under the mortgage, the application of New York's foreclosure laws, and state torts allegedly resulting from the state court's application of those laws.

Goddard v. Citibank demonstrates what a fraud exception to *Rooker-Feldman* really means. It means a state court can decide an issue of quintessential state interest—the validity of a mortgage and the lender's foreclosure process, both creatures of state law—and that a federal district court can then sit as a quasi-appellate court for that state court, reviewing the strength of the evidence presented to the state court and the soundness of the state court's legal reasoning and holding.

Other courts disagree with the approach taken in *Goddard v. Citibank*. In *Davis v. Countrywide Home Loans Inc.*, for example, the court acknowledged the plaintiffs' allegations that Countrywide "submitted fraudulent affidavits in state-court litigation that allowed it to prematurely obtain judgment."⁹⁹ Despite this allegation of fraud leading to the state-

94. *Id.* at *17.

95. *Id.* at *4.

96. *Id.* at *4-6.

97. *Id.* at *12.

98. *Id.* at *18.

99. *Davis v. Countrywide Home Loans, Inc.*, No. 1:10-cv-1303-JMS-DML, 2011 U.S.

court judgment, something the court in *Goddard v. Citibank* seized upon to avoid *Rooker-Feldman*, the court in *Davis v. Countrywide* summarized the plaintiffs' allegations as essentially "asking this Court to review the substance and timing of [the state-court] judgment."¹⁰⁰ The court refused to take up the plaintiffs' challenge and dismissed their case pursuant to *Rooker-Feldman* for lack of jurisdiction.¹⁰¹

The question, then, is how to reconcile these cases and their divergent approaches to *Rooker-Feldman* in the face of plaintiffs' allegations of fraud in the state courts. Did the district court in *Goddard v. Citibank* apply the law justly, heeding higher principles of fundamental fairness in order to protect a defrauded litigant from a shifty lender and a flawed state-court system? Or was the court in *Davis v. Countrywide* correct, applying the law evenly despite what it may perceive to be unpleasant circumstances? There may be a way to serve the interests of the allegedly defrauded state-court loser and, simultaneously, apply the law evenly in consideration of our nation's system of dual sovereignty.¹⁰²

Finally, it is worth noting that litigants, both plaintiffs and defendants, recognize and argue for or against the application of *In re Sun Valley Foods Co.*'s fraud exception in briefs at the highest levels, including briefs submitted to the United States Supreme Court.¹⁰³ When a defendant concedes the existence of the fraud exception, its only recourse is to argue that the plaintiffs' fraud allegations are "conclusory" and lack the requisite

Dist. LEXIS 22270, at *12 (S.D. Ind. Mar. 4, 2011).

100. *Id.*

101. *Id.*

102. See *infra* notes 157-162 and accompanying text.

103. See, e.g., Petition for a Writ of Certiorari at A15, *Stack v. Mason & Assocs.*, 552 U.S. 1142 (2007) (No. 07-612) ("There is an exception to the *Rooker-Feldman* doctrine where the state court judgment was 'procured through fraud, deception accident or mistake.'") (quoting *In re Sun Valley Foods Co.*, 801 F. 2d at 189); Brief for Petitioner at 10, *In re Hirschfeld*, 528 U.S. 1152 (2000) (No. 99-1222) ("There are exceptions to the *Rooker/Feldman* doctrine when the state court judgment was 'procured through fraud, deception, accident, or mistake.'") (quoting *In re Sun Valley Foods Co.*, 801 F.2d at 189); see also Defendants' Consolidated Opposition to Plaintiff's Motion to Deny Defendants' Motion to Dismiss & Reply to Plaintiff's Opposition to Defendants' Motion to Dismiss at 3, *Hunter v. U.S. Bank Nat'l Ass'n.*, 407 F. App'x 489 (2009) (No. 09-cv-1205) ("Plaintiff is correct that some jurisdictions hold that a state court judgment 'procured through fraud, deception, accident, or mistake' does not bear the same preclusive effect as an untainted judgment, [but] the exception is triggered only where such conduct 'deceived the Court into a wrong decree.'") (quoting *In re Sun Valley Foods Co.*, 801 F.2d at 189); Appellants' Final Brief on Appeal at 26, *Twin city Fire Ins. Co. v. Adkins*, 400 F.3d 293 (6th Cir. 2005) (No. 04-3204) ("A second exception was noted in *In re Sun Valley Foods Co.*, where this Court held that a federal court 'may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake.'") (quoting *Resolute Ins. Co. v. North Carolina*, 397 F.2d 586, 589 (4th Cir. 1968)).

“specific facts to support their allegations of fraud.”¹⁰⁴ In other words, the defendant is in the same position as any other party defending itself against a fraud claim, as if the *Rooker-Feldman* doctrine did not exist.

2. Recent Cases Inheriting the Intellectual Tradition from *In re Sun Valley Foods Co.*

Courts in several recent cases have noted the existence of a fraud exception to *Rooker-Feldman*, but without citing *In re Sun Valley Foods Co.* Many do so by stating that an attack on the winning party’s improper methods in obtaining a judgment is not really an attack on the judgment itself. These courts often look to *Exxon Mobil* for their support. For example, in *Pondexter v. Allegheny County Housing Authority*, the plaintiff alleged that the defendant “committed fraud in the state courts by misleading the court regarding the amount of rent he owed.”¹⁰⁵ The United States Court of Appeals for the Third Circuit held that, under *Exxon Mobil*’s recent restriction of the *Rooker-Feldman* doctrine, “this claim does not allege harm caused by a state court judgment, but instead challenges the manner in which the state court judgment was procured.”¹⁰⁶ The United States District Court for the District of New Jersey recently reached a similar holding in *Frame v. Lowe*, stating, “Fraud in the procurement of a judgment is an ‘independent claim’ that is not barred by *Rooker-Feldman*.”¹⁰⁷

The United States Court of Appeals for the Ninth Circuit has also developed a recent body of case law creating a fraud exception to *Rooker-Feldman*. The Ninth Circuit did not, however, take its first opportunity to do so. In *Suter v. Cury*, the plaintiffs argued for a fraud exception to *Rooker-Feldman*, but the court rejected the proposed exception, stating, “The proper court in which the [plaintiffs] should have asserted fraud in the procurement of the judgment against them is the Nevada court that rendered the judgment. Nevada provides litigants ample opportunity to set aside judgments procured by fraud upon the court.”¹⁰⁸ Two years later, a different panel of the Ninth Circuit reversed course in *Kougasian v. TMSL*,

104. Petition for a Writ of Certiorari at A15, *Stack v. Mason & Assocs.*, 552 U.S. 1142 (2007) (No. 07-612).

105. 329 F. App’x 347, 350 (3d Cir. 2009).

106. *Id.*

107. *Frame v. Lowe*, No. 09-2673 (RBK/AMD), 2010 U.S. Dist. LEXIS 10494, at *16 (D.N.J. Feb. 8, 2010).

108. 31 F. App’x 483, 484-85 (9th Cir. 2002).

*Inc.*¹⁰⁹ In that case, the court held that the plaintiff's assertions of extrinsic fraud in the procurement of the state-court judgment prevented *Rooker-Feldman*'s application.¹¹⁰ The court explained, "At first glance, a federal suit alleging a cause of action for extrinsic fraud on a state court might appear to come within the *Rooker-Feldman* doctrine. It is clear that in such a case the plaintiff is seeking to set aside a state court judgment."¹¹¹ The court went on, however, to state that "[a] plaintiff alleging extrinsic fraud . . . is not alleging a legal error by the state court; rather, he or she is alleging a wrongful act by the adverse party."¹¹² Thus, the court held *Rooker-Feldman* did not apply.¹¹³ In creating this exception, the Ninth Circuit relied on two sources: (1) California state law providing its courts with the equitable power to set aside judgments on grounds of fraud, mistake, or lack of jurisdiction;¹¹⁴ and (2) an 1878 Supreme Court case¹¹⁵ holding that, under Louisiana law, a judgment is a nullity if "obtained through fraud, bribery, forgery of documents, &c."¹¹⁶ Nowhere did the Ninth Circuit bridge the intellectual gap between a state court setting aside its own judgments—or the United States Supreme Court applying state law to nullify a state judgment—to a lower federal court applying an exception to a federal doctrine in order to review the merits of state-court judgments. Nor have the cases that followed from the Ninth Circuit done so.¹¹⁷

While such cases do not explicitly cite *In re Sun Valley Foods Co.*, there can be little doubt that they have inherited their intellectual framework from that case and the many cases to accept its fraud exception to *Rooker-Feldman*. This is especially true of cases from or within the Sixth Circuit, where the tradition is the strongest, or those relying on Sixth Circuit case law. For example, the court in *Frame v. Lowe* did not cite *In re Sun Valley Foods Co.*, but it did cite *McCormick v. Braverman*,¹¹⁸ a more recent Sixth

109. 359 F.3d 1136 (9th Cir. 2004).

110. *Id.* at 1140.

111. *Id.*

112. *Id.* at 1140-41.

113. *Id.* at 1141.

114. *Id.* at 1140 (citing *Zamora v. Clayborn Contracting Grp., Inc.*, 47 P.3d 1056, 1063 (Cal. 2002)); *see also Zamora*, 47 P.3d at 1063 (citing *In re Estate of Sankey*, 249 P. 517, 523 (Cal. 1926) ("[U]nder the law of this state a judgment or order may be set aside on the ground of fraud, mistake or lack of jurisdiction.")).

115. *Kougasian*, 359 F.3d at 1141 (citing *Barrow v. Hunton*, 99 U.S. 80 (1878)).

116. *Barrow*, 99 U.S. at 84.

117. *See Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855 (9th Cir. 2008); *see also Sample v. Monterey Cnty. Family & Children Servs.*, No. C09-01005 HRL, 2009 U.S. Dist. LEXIS 69260, at *10-11 (N.D. Cal. Aug. 7, 2009); *Garcia v. Cal. Dep't of Forestry & Fire Prot.*, No. CIV S-07-2770 GEB EFB PS, 2009 U.S. Dist. LEXIS 19229, at *19-21 (E.D. Cal. Mar. 12, 2009).

118. 451 F.3d 382, 392 (6th Cir. 2006) ("Plaintiff asserts *independent claims* that those state court judgments were procured by certain Defendants through fraud, misrepresentation, or

Circuit case, as support for a fraud exception to *Rooker-Feldman*.¹¹⁹ There are several of these modern Sixth Circuit cases that discuss a fraud exception to *Rooker-Feldman* without explicitly citing *In re Sun Valley Foods Co.*¹²⁰ It makes little sense to say that these modern Sixth Circuit cases regarding a fraud exception to *Rooker-Feldman* are unaffected by a twenty-five year-old case that both the Sixth Circuit and its district courts have cited favorably since its authorship. At the very least, the idea that there can be a fraud exception to *Rooker-Feldman* has been floating around for twenty-five years. It is only natural that, over such a long period of time, creative plaintiffs' lawyers have found other ways to support an already created and recognized exception.

III. WHY THE MISTAKE'S TIME HAS COME

A. *A Mixed Reception*

All of the foregoing may give the reader the impression that the fraud exception to *Rooker-Feldman* now enjoys broad acceptance. While this is true in some jurisdictions—particularly the Sixth and Ninth Circuits—it is not true in others. As discussed herein, the Second, Fifth, Seventh, and Eighth Circuits have rejected the exception. The Tenth Circuit, while not outright rejecting the exception, has expressed ambivalence as to its advisability.¹²¹ In addition, district courts from the Fourth, Tenth, and Eleventh Circuits have rejected the exception.

other improper means.”).

119. *Frame*, 2010 U.S. Dist. LEXIS 10494, at *16.

120. See, e.g., *Brown v. First Nationwide Mortg. Corp.*, 206 F. App'x 436, 440 (6th Cir. 2006) (“[Plaintiff’s] allegations of fraud in connection with the state court proceedings . . . did not constitute ‘complaints of injuries caused by the state court judgments,’ because they do not claim that the source of [plaintiff’s] alleged injury is the foreclosure decree itself.”) (quoting *McCormick*, 451 F.3d at 392); *Todd v. Weltman, Weinberg & Reis Co., L.P.A.*, 434 F.3d 432, 437 (6th Cir. 2006) (“Plaintiff here does not complain of injuries caused by this state court judgment, as the plaintiffs did in *Rooker* and *Feldman*. Instead, after the state court judgment, Plaintiff filed an independent federal claim that Plaintiff was injured by Defendant when he filed a false affidavit.”); see also *Whittiker v. Deutsche Bank Nat’l Trust Co.*, 605 F. Supp. 2d 914, 922 (N.D. Ohio 2009) (holding that the plaintiff alleged independent claims concerning “allegedly false information provided by defendants in the underlying foreclosure proceedings to obtain judgments, not the foreclosure judgments themselves”); *Moore v. Rees*, No. 06-CV-22-KKC, 2007 U.S. Dist. LEXIS 71240, at *10 (E.D. Ky. Sept. 25, 2007) (“[T]he *Rooker-Feldman* doctrine will not prevent a plaintiff from suing a participant in a prior state court proceeding for allegedly filing a false affidavit resulting in an adverse determination against the plaintiff.”).

121. See *supra* note 91 and accompanying text; *infra* notes 154-55 and accompanying text.

1. The Second Circuit

The Second Circuit has, on at least two occasions, rejected “a blanket fraud exception to *Rooker-Feldman*.”¹²² In doing so, the court rejected the argument that an attack on the winner’s fraudulent behavior is not an attack upon the state-court judgment itself.¹²³ These two opinions, however, predate *Exxon Mobil*, and their precedential value is questionable.¹²⁴ Nevertheless, district courts within the Second Circuit continue to cite to this authority in rejecting a fraud exception to *Rooker-Feldman*.¹²⁵ One cannot make assumptions about the entire circuit, however, as another district court has gone the other way.¹²⁶ Reflecting this confusion within the Second Circuit, one district court apparently threw up its hands and, after conducting the *Rooker-Feldman* analysis with mixed results because of alleged RICO violations surrounding the state-court judgment, went on to conduct an additional merits analysis.¹²⁷

2. The Fourth Circuit

While the Fourth Circuit has not explicitly addressed a fraud exception to *Rooker-Feldman*—an irony, considering that its opinion in *Resolute Insurance Co.* is the authority the Sixth Circuit cited for the exception—at least two of its district courts appear to have rejected the exception. In *Wise v. Toal*, the plaintiff brought an action in federal court complaining that certain state-court judgments had been obtained against him as a “result of fraud, duress, and misrepresentation and that his due

122. *Johnson v. Smithsonian Inst.*, 189 F.3d 180, 187 (2d Cir. 1999); *see also* *Kropelnicki v. Siegel*, 290 F.3d 118, 128 (2d Cir. 2002).

123. *Johnson*, 189 F.3d at 187 (distinguishing *Lawrence v. Cohn*, 932 F. Supp. 564 (S.D.N.Y. 1996)).

124. *See* *McLamb v. County of Suffolk*, 280 F. App’x 107, 108 (2d Cir. 2008).

125. *See* *Swiatkowski v. Citibank*, No. 10-CV-114 (JFB)(WDW), 2010 U.S. Dist. LEXIS 107317, at *35-39 (E.D.N.Y. Oct. 7, 2010) (“Were this Court to accept plaintiff’s arguments regarding defendants’ allegedly fraudulent actions, the Court’s ruling ‘would effectively declare the state court judgment fraudulently procured and thus void.’”) (quoting *Kropelnicki*, 290 F.3d at 129); *Done v. Wells Fargo Bank, N.A.*, No. CV 08-3040 (JFB)(ETB), 2009 U.S. Dist. LEXIS 84114, at *6-7 & n. 7 (E.D.N.Y. Aug. 7, 2009) (“‘Courts in this Circuit have consistently held that any attack on a judgment of foreclosure is clearly barred by the *Rooker-Feldman* doctrine’ Such actions are also dismissed even when based on fraud, as [the plaintiff] appears to loosely allege herein.”).

126. *Goddard*, 2006 U.S. Dist. LEXIS 19651, at *17-18 (holding that the plaintiffs’ action was “independent from the state court judgment, because [the plaintiffs] allege fraud in the procurement of the judgment”) (emphasis omitted); *see supra* notes 82-88 and accompanying text.

127. *Schuh v. Druckman & Sinel, L.L.P.*, 2008 U.S. Dist. LEXIS 15079, at *20-22 (S.D.N.Y. Feb. 29, 2008).

process and equal protection rights were violated.”¹²⁸ The court was unmoved by the plaintiff’s fraud allegations, stating, “Plaintiff, a state-court loser, essentially asks for the Court to review the state court’s adverse judgment. Under the *Rooker-Feldman* Doctrine, the Court does not have jurisdiction to engage in such a review.”¹²⁹ Similarly, in *Patterson v. AutoZone Auto Parts, Inc.*, the court cited authority rejecting a fraud exception to *Rooker-Feldman* and held that the plaintiff could have raised her fraud claims in state court.¹³⁰

3. The Fifth Circuit

The Fifth Circuit had the opportunity to address the fraud exception in *Williams v. Liberty Mutual Insurance Co.*, in which it called the plaintiff’s attempt to avoid *Rooker-Feldman* “unavailing.”¹³¹ In order to create a fraud exception, the court reasoned, it would “have to conclude that the Defendants engaged in a conspiracy to commit fraud by conceal[ment] . . . and that the state court judge erred in dismissing his claims.”¹³² Thus, while the court recognized that the plaintiff “feels aggrieved,” it concluded that he “already had his day in court and we do not have the constitutional nor statutory authority to allow him to re-litigate the same issues here.”¹³³ Even so, the court apparently felt compelled to hedge its bets, adding the following footnote on the merits of the plaintiff’s allegations: “Although [the plaintiff] asks us to recognize an exception to *Rooker-Feldman* based on fraud, we can not find fraud where there is only the plaintiff’s conclusory allegations and absolutely no evidence to support it.”¹³⁴ Thus, even courts which reject the exception sometimes feel compelled to comment on the merits of the case, something they would not normally do after negatively resolving a jurisdictional challenge.

Despite the Fifth Circuit’s clear language in *Williams v. Liberty Mutual Insurance Co.*, one of its district courts has gone in a different direction. In *Hampton v. Segura*, the plaintiff alleged the defendant procured a state-court judgment through the use of a “falsified transcript.”¹³⁵ The United States District Court for the Northern District of

128. *Wise v. Toal*, No. 6:09-00495-HFF-WMC, 2009 U.S. Dist. LEXIS 49848, at *3-4 (D.S.C. June 8, 2009).

129. *Id.* at *4.

130. No. 0:10-2438-MBS, 2011 U.S. Dist. LEXIS 10727, at *15-17 (D.S.C. Feb. 3, 2011).

131. No. 04-30768, 2005 U.S. App. LEXIS 5660, at *4 (5th Cir. Apr. 7, 2005).

132. *Id.* at *8.

133. *Id.*

134. *Id.* at *8 n.3.

135. No. 1:05CV329, 2007 U.S. Dist. LEXIS 48830, at * 4 (N.D. Miss. July 5, 2007).

Missouri declined to apply *Rooker-Feldman* based upon this allegation, reasoning:

[I]f federal courts were to apply the *Rooker-Feldman* doctrine under these circumstances, then this would seemingly permit court reporters to knowingly falsify transcripts with something approaching impunity. The court therefore concludes that the *Rooker-Feldman* doctrine is inapplicable here [T]o bar the instant action on procedural grounds would . . . be fundamentally unfair.¹³⁶

The decision in *Hampton* is a clear example of the dilemma courts must confront: may a jurisdictional doctrine be defeated by allegations that, in the court's opinion, make the doctrine's application "fundamentally unfair"? As discussed below, this Article provides a way for courts to resolve this dilemma.¹³⁷

4. The Seventh Circuit

The Seventh Circuit has addressed a fraud exception on several occasions and, despite some misunderstanding, has repeatedly rejected it. The clearest articulation of this rejection is in *Taylor v. Fannie Mae*, where the plaintiff alleged the defendant achieved a foreclosure judgment from the Indiana state courts through fraud.¹³⁸ The court first noted, "the relief granted when a claim of fraud on the court succeeds is that the party claiming fraud is relieved from the judgment, i.e., the judgment is set aside."¹³⁹ Because a prayer for such relief "is tantamount to a request to vacate the state court's judgment of foreclosure," the court held that it was barred by *Rooker-Feldman*.¹⁴⁰ Finally, the court reminded plaintiff that she faced "no barriers preventing her from bringing her claims in state court."¹⁴¹ While *Taylor v. Fannie Mae* is the clearest articulation of the Seventh Circuit's rejection of the exception, its holding is bolstered by other opinions from the court.¹⁴²

There has, however, been considerable confusion over the Seventh

136. *Id.* at *6.

137. *See infra* notes 157-161 and accompanying text.

138. 374 F.3d 529, 533 (7th Cir. 2004).

139. *Id.*

140. *Id.*

141. *Id.* at 535.

142. *See, e.g.,* Manley v. City of Chicago, 236 F.3d 392, 397 (7th Cir. 2001) (rejecting a *Rooker-Feldman* exception for due process claims based on "'new' evidence concealed during the state court proceedings"); Davis v. Allen Cnty. Office of Family & Children, No. 96-1953, 1997 U.S. App. LEXIS 10806, at *1-4 (7th Cir. May 6, 1997) (applying *Rooker-Feldman* even though the plaintiff alleged that the defendant procured a judgment through "falsified documents").

Circuit's position on a fraud exception to *Rooker-Feldman* because of its decision in *Long v. Shorebank Development Corp.*¹⁴³ In *Long*, the plaintiff alleged the defendant fraudulently procured an eviction order against her by, among other things, deceiving her into signing a consent judgment and telling her that she need not come to court.¹⁴⁴ While the court ultimately did not apply *Rooker-Feldman*, the defendant's behavior had nothing to do with the court's holding. In fact, the court stated, "It is not enough for Long to say that because she was kept away from the Circuit Court eviction proceeding by the defendants' chicanery, she was denied a reasonable opportunity to raise her claims before the Circuit Court."¹⁴⁵ Instead, the court concluded that, under Illinois law, the plaintiff would not have been allowed to introduce matters unrelated to the parties' disputed property rights into the eviction action and, given this quirk of Illinois law, the plaintiff's claims in federal court were not inextricably intertwined with the state court's decision.¹⁴⁶ Thus, while the court concluded that the plaintiff could not "rely on the deception of her opponents" to avoid *Rooker-Feldman*, it ultimately held that Illinois "state court procedures . . . prevented [her] from having a reasonable opportunity to raise certain claims during state proceedings."¹⁴⁷

Despite the clear distinction in the Seventh Circuit's ultimate holding in *Long*, other courts continue to misunderstand and misapply its language. The Third Circuit, for example, has cited *Long* for the proposition that *Rooker-Feldman* does not apply when a plaintiff challenges "the manner in which the state court judgment was procured."¹⁴⁸ Another court has gone so far as to cite *Long* in the *Rooker-Feldman* context for the proposition that a "judgment procured by fraud is void."¹⁴⁹ That court neglected to mention, however, that *Long* made that statement regarding Illinois res judicata law, not the *Rooker-Feldman* doctrine.¹⁵⁰

5. The Eighth Circuit

The Eight Circuit has stated that there are "multiple problems" with a

143. 182 F.3d 548 (7th Cir. 1999).

144. *Id.* at 552-53.

145. *Id.* at 558.

146. *Id.* at 559-60.

147. *Id.* at 559.

148. *See Pondexter v. Allegheny Cnty. Hous. Auth.*, 329 F. App'x 347, 350 (3d Cir. 2009).

149. *Neely v. Law Offices of Kevin J. Hermanek, P.C.*, 122 F. Supp. 2d 923, 925 (N.D. Ill. 2000).

150. *Long*, 182 F.3d at 560-61.

fraud exception to *Rooker-Feldman* and that it is “unwilling to create piecemeal exceptions to *Rooker-Feldman*.”¹⁵¹ It concluded *Rooker-Feldman* should be applied broadly because the issue of “whether a state court judgment should be subject to collateral attack or review is an issue best left to the state courts.”¹⁵² At least one district court within the Eighth Circuit has also declined the opportunity to adopt a fraud exception to *Rooker-Feldman*.¹⁵³

6. The Tenth Circuit

As discussed above, the Tenth Circuit has expressed doubt regarding a fraud exception to *Rooker-Feldman*, but has not explicitly rejected it.¹⁵⁴ At least two district courts within the Tenth Circuit have, however, rejected the exception.¹⁵⁵

7. The Eleventh Circuit

While the Eleventh Circuit does not appear to have addressed the issue, at least one district court within the circuit has refused to adopt a fraud exception to *Rooker-Feldman*.¹⁵⁶

151. *Fielder v. Credit Acceptance Corp.*, 188 F.3d 1031, 1035-36 (8th Cir. 1999), *overruled on other grounds by Exxon Mobil Corp. v. Allapattah Servs. Inc.* 545 U.S. 546, 560-61 (2005).

152. *Fielder*, 188 F.3d at 1035-36.

153. *United States v. Taylor*, No. 3-96-335 (RHK/FLN), 2001 U.S. Dist. LEXIS 17825, at *14-15 (D. Minn. Oct. 14, 2001).

154. *See supra* note 91 and accompanying text.

155. *See McCammon v. Bibler, Newman, & Reynolds, P.A.*, 515 F. Supp. 2d 1220, 1229-30 (D. Kan. 2007) (applying *Rooker-Feldman* to allegations that “the judgment was obtained through fraud or improper means such that it never should have been entered” because the “requested relief . . . would effectively ‘undo’ the state court judgment”); *Dickerson v. Bates*, 287 F. Supp. 2d 1251, 1254-55 (D. Kan. 2003) (applying *Rooker-Feldman* to allegations that the judgment was acquired “through fraud and improper means” because “it is impossible for the federal court to resolve such claims without calling into question the state court judgment and violating *Rooker-Feldman*”).

156. *See Grant v. Countrywide Home Loans, Inc.*, No. 1:08-CV-1547-RWS, 2009 U.S. Dist. LEXIS 51031, at *10-11 (N.D. Ga. May 20, 2009) (“Plaintiffs’ claims regarding misconduct in relation to the previous lawsuit are likewise barred by *Rooker-Feldman* because they are inextricably intertwined with [the state court’s] substantive rulings. . . . [T]he ‘fact that [a] plaintiff alleges that the state court judgment was procured by fraud does not remove his claims from the ambit of *Rooker-Feldman* [E]ven if the orders by the state court were wrongfully procured, as plaintiff alleges, the orders remain in full force and effect until they are reversed or modified by an appropriate state court.’ . . . Jurisdiction to review the rulings issued in the [state court] lawsuit lies exclusively with the Georgia Court of Appeals, the Georgia Supreme Court, and ultimately the United States Supreme Court.”) (quoting *Stanley v. Steady*, No. 1:05-cv-2057-WSD, 2006 U.S. Dist. LEXIS 48601, at *8 (N.D. Ga. July 18, 2006)).

B. *State Courts Already Have Adequate Procedures for Self-Correction*

1. A False Choice

When it balked at the application of a fraud exception to *Rooker-Feldman* in *West v. Evergreen Highlands Ass'n*, the Tenth Circuit observed, “State rules of procedure provide various means to attack a wrongfully obtained judgment.”¹⁵⁷ For this reason, the court provided the following caution: “Construing *Rooker-Feldman* to permit federal reconsideration and nullification of state judgments on grounds that could have been pursued in state court arguably allows under the rubric of collateral attack just another mechanism for lower federal court review unauthorized under [28 U.S.C.] § 1257.”¹⁵⁸

This statement from the Tenth Circuit provides the real answer to the dilemma this Article has posed: must the lower federal courts—as a clearly impassioned district court judge stated in *Hampton v. Segura*—apply *Rooker-Feldman* to dismiss a case rife with allegations of fraud and, in this way, perpetuate a “fundamentally unfair” system?¹⁵⁹ Fortunately, this dilemma turns out to be a false choice, presenting only two options: (1) allow the state-court winner to profit from his fraud, triumphing forever over the unfortunate state-court loser; or (2) adopt the fraud exception to *Rooker-Feldman*, reasoning (with some help from *Exxon Mobil*) that the state-court loser is really challenging his rival’s tactics, not the state-court judgment itself. There is, however, a third choice: (3) dismiss the action on jurisdictional grounds and, should the court deem it necessary, remind the plaintiff that she retains the ability to challenge the fraudulent judgment in state court.¹⁶⁰ This is exactly what the Seventh Circuit did in *Taylor v. Fannie Mae*; it dismissed the plaintiff’s case on jurisdictional grounds under *Rooker-Feldman*, but reminded the plaintiff that “no barriers prevent[ed] her from bringing her claims in state court”¹⁶¹ In fact, the court went so far as to “attempt to allay [the plaintiff’s] concern that her suit will be precluded on remand.”¹⁶² Such reminders are particularly appropriate where the plaintiff is pro se and might misunderstand the effect of a jurisdictional dismissal or remand and her options moving forward in

157. 213 F. App’x 670, 674 n.3 (10th Cir. 2007).

158. *Id.*

159. No. 1:05CV329, 2007 U.S. Dist. LEXIS 48830, at *6 (N.D. Miss. July 5, 2007).

160. This option should come as no surprise because a jurisdictional dismissal is, by its very nature, not a comment on the merits of the case, and is often succeeded by a filing in state court.

161. 374 F.3d 529, 535 (7th Cir. 2004).

162. *Id.*

state court.

2. Available State Court Procedures

a. Rule 60(b)

Most states have an analog to Federal Rule of Civil Procedure 60(b), and may even have the exact same rule. Federal Rule 60(b)(3) specifically grants courts the power to relieve a party from “a final judgment, order, or proceeding” for, among other things “fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party.”¹⁶³ In addition, federal courts retain the ability to set aside a judgment when it was the result of “fraud on the court.”¹⁶⁴ In Indiana, for example, Indiana Trial Rule 60(B) allows courts to relieve a party from “an entry of default, final order, or final judgment” for, among other things, “fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.”¹⁶⁵ The Indiana Supreme Court, applying this rule, has recognized “three ways of attacking a judgment on the basis of fraud: (1) a Trial Rule 60(B)(3) motion for intrinsic or extrinsic fraud; (2) an independent action for extrinsic fraud pursuant to Trial Rule 60(B); and (3) an independent action for fraud on the court pursuant to Trial Rule 60(B).”¹⁶⁶ The same or substantially the same language exists in rule 60(b) under the rules of Alabama,¹⁶⁷ Alaska,¹⁶⁸ Arkansas,¹⁶⁹ Colorado,¹⁷⁰ Delaware,¹⁷¹ Hawaii,¹⁷² Idaho,¹⁷³ Maine,¹⁷⁴ Massachusetts,¹⁷⁵ Mississippi,¹⁷⁶ Montana,¹⁷⁷ New Mexico,¹⁷⁸ North Carolina,¹⁷⁹ North Dakota,¹⁸⁰ Rhode Island,¹⁸¹ South Carolina,¹⁸² South

163. FED. R. CIV. P. 60(b).

164. FED. R. CIV. P. 60(d). This separate exception for fraud on the court remains a part of Rule 60(b) under many states’ rules of civil procedure.

165. IND. R. TRIAL P. 60(B).

166. *Stonger v. Sorrell*, 776 N.E.2d 353, 355 (Ind. 2002).

167. *Holt v. State*, 960 So. 2d 740, 742-43 n.4 (Ala. 2006).

168. *Conservatorship Estate of K.H. v. Cont’l Ins. Co.*, 73 P.3d 588, 595 (Alaska 2003).

169. *McGuire v. Smith*, 946 S.W.2d 717, 719 (Ark. Ct. App. 1997).

170. *Se. Colo. Water Conservancy Dist. v. Cache Creek Mining Trust*, 854 P.2d 167, 171 (Colo. 1993).

171. *Sammons v. Doctors for Emergency Servs., P.A.*, 913 A.2d 519, 542 (Del. 2006).

172. *Moyle v. Y & Y Hyup Shin, Corp.*, 191 P.3d 1062, 1079 (Haw. 2008).

173. *Suits v. Nix*, 117 P.3d 120, 123 (Idaho 2005).

174. *Ezell v. Lawless*, 2008 ME 139 ¶ 25, 955 A.2d 202, 208 (Me. 2008).

175. *Pina v. McGill Dev. Corp.*, 445 N.E.2d 1059, 1064 (Mass. 1983).

176. *Klein v. McIntyre*, 966 So. 2d 1252, 1257 (Miss. Ct. App. 2007).

177. *Roberts v. Nickey*, 43 P.3d 263, 265 (Mont. 2002).

178. *Cordova v. Larsen*, 94 P.3d 830, 833 (N.M. Ct. App. 2004).

179. *Textile Fabricators, Inc. v. C.R.C. Indus., Inc.*, 259 S.E.2d 570, 571-72 (N.C. Ct.

Dakota,¹⁸³ Utah,¹⁸⁴ Vermont,¹⁸⁵ West Virginia,¹⁸⁶ and Wyoming.¹⁸⁷

Other states have a substantially similar rule, even though the rule is not called Rule 60(b). In Florida, for example, Rule 1.540(b) has almost the exact same content as Rule 60(b), including the power to set aside a judgment because of fraud, misrepresentation, or other misconduct of an adverse party.¹⁸⁸ According to the Florida Supreme Court, a losing litigant may challenge a judgment procured by intrinsic fraud pursuant to Rule 1.540(b), while the loser may attack extrinsic fraud in an independent action.¹⁸⁹ Rule 5015(a) of New York's Civil Practice Law and Rules¹⁹⁰ and Section 806.07 of the Wisconsin Statutory Code¹⁹¹ provide similar relief.

b. Equitable or Inherent Power

Besides the states' versions of Rule 60(b), several states retain the equitable or inherent power to set aside judgments obtained in their courts through fraud. This is particularly relevant for those states that provide a time limitation for an action under rule 60(b). The Illinois Supreme Court, for example, has stated:

If proceedings regular in form are tainted with fraud or coercion, the court is not helpless to grant relief. The legislative policy favoring conclusiveness in the county court's determination does not displace the higher policy of the law which requires a remedy for every wrong. If the order was obtained by fraud, as petitioner alleges, elementary principles of law require that relief be granted.¹⁹²

The Court of Appeals of New York has made a similar statement, reserving its power to vacate a judgment whenever justice requires:

[T]he drafters of [New York rule 5015(a)] intended that courts retain and exercise their inherent discretionary power in

App. 1979).

180. Peterson v. Peterson, 555 N.W.2d 359, 362 (N.D. 1996).

181. McBurney v. Roszkowski, 875 A.2d 428, 439 n.9 (R.I. 2005).

182. Hagy v. Pruitt, 529 S.E.2d 714, 717 n.6 (S.C. 2000).

183. Hrachovec v. Kaarup, 516 N.W.2d 309, 312 (S.D. 1994).

184. Duran v. Labor Comm'n, 182 P.3d 931, 933 (Utah Ct. App. 2008).

185. Levinsky v. State, 503 A.2d 534, 536 (Vt. 1985) (*per curiam*).

186. Gerver v. Benavides, 530 S.E.2d 701, 705 n.2 (W. Va. 1999).

187. Carlson v. Carlson, 836 P.2d 297, 301 (Wyo. 1992).

188. FLA. R. CIV. P. 1.540(b).

189. Parker v. Parker, 950 So. 2d 388, 391-92 (Fla. 2007).

190. N.Y. C.P.L.R. 5015; *see also* Woodson v. Mendon Leasing Corp., 790 N.E.2d 1156, 1160 (N.Y. 2003).

191. WIS. STAT. § 806.07 (2010).

192. Remer v. Interstate Bond Co., 173 N.E.2d 425, 430 (Ill. 1961).

situations that warranted vacatur but which the drafters could not easily foresee.

In addition to the grounds set forth in section 5015(a), a court may vacate its own judgment for sufficient reason and in the interests of substantial justice.¹⁹³

The Supreme Court of California has come to much the same conclusion, stating, “[N]o California judgment is ever final because a judgment can always be modified or revised to correct clerical error or set aside for extrinsic fraud”¹⁹⁴

Even federal courts to ultimately accept the fraud exception to *Rooker-Feldman* have acknowledged that state courts retain these options for dealing with fraudulently obtained judgments. For example, when the Ninth Circuit initially rejected the fraud exception, it stated, “Nevada provides litigants ample opportunity to set aside judgments procured by fraud upon the court.”¹⁹⁵ It was only later, out of either dissatisfaction or unfamiliarity with its earlier pronouncement, that the Ninth Circuit provided for the exception it had previously rejected.¹⁹⁶

C. Courts Should Remember *Rooker-Feldman*’s Origin and Purposes

Given these ample state-court options for relieving victims of fraudulently procured judgments, there seems to be no good reason to jettison the *Rooker-Feldman* doctrine. First, the fraud exception is inconsistent with 28 U.S.C. § 1257, which provides only for Supreme Court jurisdiction over the state courts and never includes the words “unless the state-court decision was the result of fraud” or, for that matter, any other exception providing the lower federal courts with jurisdiction to review state-court judgments.¹⁹⁷ Second, the *Rooker-Feldman* doctrine enforces our faith in the state-court system’s ability to dispense justice. The United States Supreme Court long ago refused to declare state courts inadequate, even concerning issues of federal constitutional law.¹⁹⁸ We should take the

193. *Woodson v. Mendon Leasing Corp.*, 790 N.E.2d 1156, 1160 (N.Y. 2003).

194. *Manco Contracting Co. (W.L.L.) v. Bezdikian*, 195 P.3d 604, 617 (Cal. 2008).

195. *Suter v. Cury*, 31 F. App’x 483, 484-85 (9th Cir. 2002).

196. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136 (9th Cir. 2004).

197. 28 U.S.C. § 1257; *see also* Sherry, *supra* note 5, at 1100 (“[A]llowing a civil litigant a second bite at the trial court apple is inconsistent with the statutory scheme that seems to contemplate the Supreme Court as the only federal court permitted to review state court civil decisions.”).

198. *See* *Stone v. Powell*, 428 U.S. 465, 494 n.35 (1976) (“Despite differences in institutional environment and the unsympathetic attitude to federal constitutional claims of some state judges in years past, we are unwilling to assume that there now exists a general lack of appropriate sensitivity to constitutional rights in the trial and appellate courts of the several

High Court's lead and provide the states with a measure of trust often lacking. Third, when the central issues at play are those of state law, application of the *Rooker-Feldman* doctrine allows the states, not federal courts, to interpret and refine that law. In the currently relevant context of federal challenges to state foreclosure judgments, federal courts applying *Rooker-Feldman* ensure that the states have the opportunity to apply their own laws and, if necessary, resolve the areas in which their states' laws are either ambiguous or inadequate.¹⁹⁹ Fourth and finally, *Rooker-Feldman* remains a critical protector of federalism.²⁰⁰ In order for our dual-sovereignty system of state and federal courts to function as it was designed, state courts must retain the ability to legally decide their own destinies without interference from the lower federal courts.²⁰¹ While the states are ultimately beholden to the United States Supreme Court concerning issues of federal law, they should not be routinely reviewed and their competence questioned by federal district and circuit courts.²⁰²

IV. CONCLUSION

There is no need for the lower federal courts to anguish over a losing state-court litigant's plight when that litigant has been the victim of the winner's fraud. The states are well equipped, through their rules, statutory codes, and case law, to deal with these situations. If, as plaintiffs' allege, they truly have been defrauded in the state courts, those very state courts have the greatest motivation and ability to root out and correct the fraud. All the lower federal courts accomplish by putting aside *Rooker-Feldman* to exercise jurisdiction in these cases is to undermine the state-court system that is the backbone of this nation's judiciary. We should, therefore, have little compunction in putting forever to rest *In re Sun Valley Foods Co.*'s misguided and mistaken creation: the fraud exception to the *Rooker-Feldman* doctrine.

States.”).

199. See *supra* note 16 and accompanying text.

200. See Sherry, *supra* note 5, at 1101 (“[T]he Rooker-Feldman doctrine is first and foremost an integral part of judicial federalism.”); *id.* at 1114 (“Rooker-Feldman . . . is designed to keep the lower federal courts from reviewing state court judgments”); *id.* at 1121 (“As a doctrine of judicial federalism, [*Rooker-Feldman*] is designed to protect judicial acts: state court judgments.”).

201. See Buehler, *supra* note 5, at 398 (“[P]arity is an indispensable concept in our federal system”).

202. *Id.* at 397 (“Rooker-Feldman . . . preserves the delicate balance of judicial federalism by preventing lower federal courts from reviewing state court judgments.”).