No. 03-1696

IN THE

Supreme Court of the United States

EXXON MOBIL CORPORATION, EXXON CHEMICAL ARABIA, INC., AND MOBIL YANBU PETROCHEMICAL COMPANY, INC.,
Petitioners,

v.

SAUDI BASIC INDUSTRIES CORPORATION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals For the Third Circuit

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PETITIONERS' BRIEF

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QUESTION PRESENTED

May the *Rooker-Feldman* doctrine, which bars federal district courts from conducting de facto appellate review of decisions by state courts, be expanded to incorporate preclusion principles and divest federal courts of jurisdiction solely because a pending state-court proceeding presents identical issues, notwithstanding the long-established system of dual federal and state jurisdiction?

PARTIES TO PROCEEDINGS BELOW AND CORPORATE DISCLOSURE STATEMENT

Petitioner Exxon Mobil Corporation has no parent corporations, and no publicly held corporation holds ten percent or more of its stock. Petitioner Exxon Chemical Arabia, Inc. is wholly owned by Exxon Overseas Corporation, which is wholly owned by Exxon Mobil Corporation. Petitioner Mobil Yanbu Petrochemical Company, Inc. is wholly owned by Mobil Petroleum Company Inc., which is wholly owned by Mobil International Petroleum Corporation, which is wholly owned by Mobil Corporation, which is wholly owned by Exxon Mobil Corporation.

Respondent Saudi Basic Industries Corporation (SABIC) is a Saudi Arabian corporation that is owned seventy percent by the Kingdom of Saudi Arabia and thirty percent by private investors. No publicly held corporation holds ten percent or more of its stock.

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PETITIONERS' BRIEF

Petitioners request the Court to reverse the judgment of the United States Court of Appeals for the Third Circuit.

CITATION OF OPINIONS AND ORDERS

The court of appeals's opinion, Pet. App. 1a, is reported at 364 F.3d 102 (CA3 2004). The opinion of the district court, Pet. App. 11a, is reported at 194 F.Supp.2d 378 (D.N.J. 2002).

BASIS FOR JURISDICTION

The Third Circuit delivered its judgment and opinion on March 24, 2004. Petitioners invoke the Court's jurisdiction under 28 U.S.C. §1254. Petitioners timely filed their petition for writ of certiorari on June 22, 2004.

STATUTES INVOLVED

28 U.S.C. §1257 provides:

"(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term 'highest court of a State' includes the District of Columbia Court of Appeals."

28 U.S.C. §1738 provides:

"The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

STATEMENT OF THE CASE

The *Rooker-Feldman* doctrine creates a narrow and limited exception to the congressionally mandated structure of dual federal and state jurisdiction, and its sole role is to prohibit federal district courts from conducting de facto appellate review of state-court decisions. The Court should reject the Third Circuit's approach to *Rooker-Feldman*, which conflates the doctrine with ordinary preclusion principles and effectively nullifies concurrent federal jurisdiction over claims pending in parallel state litigation. The court of appeals dismissed ExxonMobil's claims under *Rooker-Feldman* even though (1) ExxonMobil has never attacked the Delaware state-court decision, a multi-million dollar trial-court judgment in ExxonMobil's favor; (2) there is no indication that ExxonMobil will ever use the federal proceeding to attack SABIC's still-pending appeal in the Delaware Supreme Court; and (3) claim preclusion is a waivable affirmative defense, not an outright bar to federal subject matter jurisdiction.

A. Factual Background

ExxonMobil's claims against SABIC arise from SABIC's conduct with regard to two joint ventures formed between SABIC and subsidiaries of ExxonMobil in 1980. SABIC and Mobil Yanbu Petrochemical Co. (Yanbu) formed a 50/50 joint venture, Yanbu Petrochemical Co., or Yanpet. Pet. App. 12a. In the same year, SABIC and Exxon Chemical Arabia, Inc. (ECAI) also formed a 50/50 partnership, Al-Jubail Petrochemical Co., or Kemya. Pet. App. 12a-13a. An overarching principle of the governing joint venture agreements was that the partners were not to profit at the joint ventures' expense, *see* Pet. App. 3a-4a, and one provision common to both joint venture agreements required the partners to pass through, at their actual cost, any technology procured for the benefit of the joint ventures. *See* Pet. App. 15a, 79a.

Nevertheless, when SABIC procured rights to the Unipol® process, a polyethylene manufacturing method licensed by Union Carbide Corporation, it secretly added a substantial mark-up to the sublicense fees it then charged to both Yanpet and Kemya. Pet. App. 3a, 15a. ExxonMobil first discovered the mark-up in 2000.

B. The Parallel Litigation in Federal and State Courts

In October 1998, SABIC filed a lawsuit (NJ-I) against ExxonMobil in New Jersey federal court claiming that Kemya was entitled to ownership of a certain patent related to an improvement to the Unipol® process. After learning that SABIC had overcharged Kemya for the Unipol® sublicense, ExxonMobil asserted the affirmative defenses of "unclean hands" and setoff. Pet. App. 12a. ExxonMobil later filed an action against SABIC in the New Jersey federal district court (NJ-II), seeking damages for SABIC's overcharges. Pet. App. 3a, 15a. The district court consolidated NJ-I and NJ-II. Pet. App. 12a, 76a. In the federal district court, SABIC moved for dismissal of NJ-II under the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §1602 *et seq*. Pet. App. 43a. Notably, SABIC never raised *Rooker-Feldman* as a basis for dismissal.[1] The district court denied SABIC's motion, Pet. App. 55a, and SABIC filed an interlocutory appeal to the Third Circuit. Pet. App. 3a.

In July 2000, one day after a failed mediation in NJ-I between the parties, and just before ExxonMobil filed NJ-II, SABIC filed suit against Yanbu and ECAI in Delaware state court seeking a declaratory judgment that its overcharging for the Unipol® sublicenses did not give rise to any liability. Pet.

[1] Indeed, at oral argument in the court of appeals, SABIC conceded that *Rooker-Feldman* does not apply in the circumstances of this case. JA 24-25.

App. 11a, 79a.[2] Yanbu and ECAI asserted counterclaims in the Delaware Superior Court for damages in tort and contract for SABIC's conduct in overcharging the joint ventures. Pet. App. 3a, 80a. While the federal appeal was pending, the parties agreed to proceed to trial in the Delaware forum selected by SABIC. *See* Pet. App. 86a (the Delaware trial court's conclusion that SABIC had "engaged in preemptive forum shopping" by filing its declaratory judgment action in Delaware and "in doing so, selected the forum in which it desired to have the overcharge issue decided"). After a two-week trial in March 2003, a Delaware jury returned a verdict finding that SABIC had overcharged the joint ventures in violation of the joint venture agreements and that SABIC had committed the Saudi-law tort of *ghasb* (usurpation), entitling ExxonMobil to compensatory damages that included the overcharges and disgorgement of the actual profits earned by SABIC from those overcharges. *See* Pet. App. 4a. The jury awarded, and the Delaware Superior Court entered judgment for, more than $416 million in damages to ExxonMobil. Pet. App. 4a. SABIC appealed the judgment, and the appeal remains pending in the Delaware Supreme Court. SABIC's Delaware appeal relies heavily on procedural arguments, especially assertions that ExxonMobil's claims were barred by the Delaware statute of limitations.

Concurrent with its Third Circuit appeal brief, ExxonMobil moved the court to stay the federal appeal pending the outcome of the Delaware posttrial and appellate proceedings, and the court granted the stay. JA 9-10. On November 12, 2003, although the Delaware proceedings were still pending, the court granted SABIC's motion to lift the stay and set the case for argument and submission. JA 11, 13. The day before oral argument, the court instructed the parties to be prepared to address the application of *Rooker-Feldman*. The

[2] The court of appeals incorrectly stated that SABIC's Delaware action was filed in September 2000. Pet. App. 3a.

court's questions at oral argument focused primarily on *Rooker-Feldman*, and the court requested post-argument letter briefs addressing the issue. JA 19-26, 33-35, 44-45, 47.

C. The Third Circuit's Application of *Rooker-Feldman*

In deciding SABIC's interlocutory appeal, the Third Circuit did not reach the FSIA question before it, but instead concluded that the *Rooker-Feldman* doctrine required dismissal of ExxonMobil's claims against SABIC in the federal action. Pet. App. 3a; *see also* Pet. App. 5a. The court of appeals first found that it had appellate jurisdiction, under the collateral-order doctrine, to review the district court's denial of SABIC's motion to dismiss on foreign sovereign immunity grounds. Pet. App. 4a-5a. Next, however, noting its "continuing obligation to *sua sponte* raise the issue of subject matter jurisdiction when it is in question," the court turned its attention to the *Rooker-Feldman* doctrine. Pet. App. 5a.

The court asserted that "a claim is barred by *Rooker-Feldman* under two circumstances: first, if the claim was 'actually litigated' in state court prior to the filing of the federal action or, second, if the claim is 'inextricably intertwined with [the] state adjudication.'" Pet. App. 5a (quoting *Desi's Pizza, Inc.* v. *City of Wilkes-Barre*, 321 F.3d 411, 419 (CA3 2003)) (alteration in original). Finding that "there is no dispute that ExxonMobil's claims are identical to the claims on which the Delaware Superior Court reached a final judgment," the court reasoned that this case "presents the 'paradigm situation in which *Rooker-Feldman* precludes a federal district court from proceeding.'" Pet. App. 6a (quoting *E.B.* v. *Verniero*, 119 F.3d 1077, 1090-91 (CA3 1997)).

The court of appeals did not expressly discuss state preclusion law, although its focus on whether ExxonMobil's claims had been "actually litigated" in the Delaware trial

court closely mirrors Delaware res judicata principles. *See, e.g.*, *Cassidy* v. *Cassidy*, 689 A.2d 1182, 1185 (Del. 1997). And, in a lengthy paragraph addressing ExxonMobil's argument that *Rooker-Feldman* could not, in any event, bar an entity that was not a party to the Delaware case, the court of appeals noted that *Rooker-Feldman* "has a close affinity to the principles embodied in the legal concepts of claim and issue preclusion." Pet. App. 7a. Concluding that ExxonMobil's claims had been "actually litigated" in the Delaware trial court, the court held that this circumstance was sufficient to "trigger *Rooker-Feldman*," Pet. App. 6a-7a, and asserted that it "need not analyze whether, under the alternative prong of the *Rooker-Feldman* doctrine, [the claims] were 'inextricably intertwined with a previous state court adjudication.'" Pet. App. 8a (quoting *Parkview Assocs. P'ship* v. *City of Lebanon*, 225 F.3d 321, 327 (CA3 2000)).

Nevertheless, the court proceeded to note its opinion that this case "presents an equally clear application of the 'inextricably intertwined' circumstance." *Id.* Speculating that SABIC's pending Delaware appeal might theoretically result in a judgment adverse to ExxonMobil, the court reasoned "[i]f that were to happen, ExxonMobil's federal action would squarely be seeking to invalidate a final judgment of the state court." Pet. App. 8a.[3]

[3] In fact, even an adverse decision by the Delaware Supreme Court would not necessarily bar relitigation of ExxonMobil's claims under applicable preclusion principles. For example, as SABIC conceded in the Delaware Supreme Court, a reversal based on the Delaware statute of limitations—the primary argument SABIC has asserted on appeal—would not preclude ExxonMobil from litigating its substantive claims in another forum. *See* SABIC Reply, Case No. 493, 2003 in the Delaware Supreme Court at 6. Similarly, SABIC's challenges to the Delaware trial court's evidentiary rulings would, if successful, require another trial, not preclude one.

The court of appeals concluded that *Rooker-Feldman* bars ExxonMobil's claims in the federal district court "[b]ecause ExxonMobil's federal claims were identical to the claims in which the Delaware Superior Court reached a final judgment." *Id.* Accordingly, it remanded the case with instructions for the district court to dismiss for lack of subject matter jurisdiction. *Id.*

ExxonMobil petitioned the Court for a writ of certiorari to review the Third Circuit's judgment. The Court granted certiorari on October 12, 2004.

SUMMARY OF THE ARGUMENT

Misconstruing *Rooker-Feldman* as a panacea for all the tensions and inefficiencies in a structure that permits parallel state and federal jurisdiction over many identical or overlapping claims, the Third Circuit applied the doctrine in a manner that effectively eviscerates concurrent jurisdiction and supplants state preclusion law with a federal common law of res judicata. Properly understood, the *Rooker-Feldman* doctrine articulates the narrow jurisdictional principle that the subject matter jurisdiction bestowed by Congress on the lower federal courts does not include jurisdiction to review state-court decisions. Because ExxonMobil's claims in the federal district court do not challenge a state-court judgment, *Rooker-Feldman* has no application to this case.

Federal courts have a virtually unflagging obligation to exercise the jurisdiction entrusted to them by Congress, and it is not uncommon in our dual system for a federal district court to have concurrent subject matter jurisdiction with at least one state court. When concurrent jurisdiction exists, nonjurisdictional abstention and prudential doctrines may, in appropriate cases, mitigate tensions inherent in a system that permits parallel litigation of overlapping or identical claims in federal and state courts. Because those doctrines represent exceptions to a federal court's general duty to exercise its

jurisdiction, they are applied narrowly and only after careful consideration of whether they apply.

When concurrent jurisdiction exists, and when abstention or prudential dismissal of a federal action is found to be inappropriate after careful consideration of the relevant factors, parallel claims may proceed to judgment in state and federal courts. If the state court reaches judgment first, preclusion principles determine the effect of the state-court judgment in the federal action. Under congressional mandate and this Court's precedent, a federal court must make a preclusion determination in accordance with the preclusion law of the State that rendered the judgment at issue.

Rooker-Feldman is neither a broad exception to federal-state concurrent jurisdiction over parallel claims nor a mechanism for supplanting consideration of state-law preclusion principles with a federal common law of res judicata. The *Rooker-Feldman* doctrine derives from the congressional allocation of exclusive federal appellate jurisdiction over state-court judgments to this Court. Articulating the necessary inferences from that statutory structure, the *Rooker-Feldman* doctrine provides that a federal district court has no jurisdiction to entertain what is in substance a de facto appellate challenge to a state-court judgment, even if styled by the federal plaintiff as an "original" action. A federal claim is barred if it is "inextricably intertwined" with such a de facto appeal so that granting the relief requested by the federal plaintiff would necessarily require nullifying the state court's judgment.

Rooker-Feldman does not jurisdictionally bar a federal action simply because identical claims were previously litigated in state court, especially when—as in this case—the federal plaintiff prevailed on the merits in the only state-court adjudication that has previously been made. Nor can *Rooker-Feldman* properly bar a federal plaintiff's claims based on speculation that the federal plaintiff might, in the future,

attempt to challenge an adverse judgment that a state court might, in the future, render.

In this case, the court of appeals made two fundamental errors. First, it erroneously confused *Rooker-Feldman* with general preclusion principles and held that *Rooker-Feldman* was triggered simply because ExxonMobil's claims against SABIC had been "actually litigated" in the Delaware trial court, even though ExxonMobil's federal action is fully consistent with the Delaware judgment in ExxonMobil's favor. Second, misconstruing *Feldman*'s "inextricably intertwined" test, the court of appeals speculated that the Delaware Supreme Court might render a judgment adverse to ExxonMobil and—without any way of knowing the grounds on which the pending Delaware Supreme Court judgment might be based—reasoned that ExxonMobil's substantive claims against SABIC will necessarily be "inextricably intertwined" with the Delaware court's hypothetical future judgment.

The Third Circuit's reformulation of *Rooker-Feldman* has broad, negative implications for the dual federal-state jurisdictional structure. Consistently applied, the Third Circuit's approach to *Rooker-Feldman* would eviscerate concurrent jurisdiction. Because it relies on speculation that a federal plaintiff might attempt to challenge a judgment that a state court might render, the Third Circuit's version of *Rooker-Feldman* compels dismissal of a federal plaintiff's claims whenever identical claims are also pending in state court. Moreover, by conflating *Rooker-Feldman* with res judicata, the Third Circuit's approach elevates the waivable, affirmative defense of preclusion to jurisdictional status. And, at least as to claims that have already been actually litigated in state court, the Third Circuit's *Rooker-Feldman* approach circumvents consideration of state preclusion law, in contravention of congressional mandate as interpreted by this Court.

ARGUMENT

I. THE *ROOKER-FELDMAN* DOCTRINE FORBIDS DE FACTO APPEALS, NOT CONCURRENT FEDERAL-STATE JURISDICTION.

The court of appeals applied the *Rooker-Feldman* doctrine in an expansive and aggressive manner that divested the federal district court of subject matter jurisdiction simply because parallel claims had been previously litigated in a state trial court and were pending on appeal. In this case, SABIC challenged the federal district court's subject matter jurisdiction under the FSIA—a challenge that the district court rejected and the court of appeals did not reach. The court of appeals thus articulated no reason other than *Rooker-Feldman* to deprive the district court of subject matter jurisdiction. But *Rooker-Feldman*, properly understood, cannot deprive the district court of its concurrent jurisdiction over ExxonMobil's claims.

A. FEDERAL COURTS ARE ORDINARILY OBLIGED TO EXERCISE JURISDICTION, EVEN WHEN CONCURRENT WITH STATE-COURT JURISDICTION.

Congress has defined the original subject matter jurisdiction of the federal district courts. *E.g.*, 28 U.S.C. §§1330, 1331, 1332, 1333. It is not uncommon in our dual system for the jurisdiction of a federal court to be concurrent with that of at least one state court. *See, e.g.*, *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 928 (1975) ("[O]n occasion there will be duplicating and overlapping adjudication of cases which are sufficiently similar in content, time, and location to justify being heard before a single judge had they arisen within a unitary system."). And "the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *McClellan* v. *Carland*, 217 U.S. 268, 282 (1910); *accord, e.g.*, *Atl. Coast Line R.R. Co.* v. *Bhd. of Locomotive Eng'rs*, 398 U.S. 281,

295 (1970) ("[T]he state and federal courts had concurrent jurisdiction in this case, and neither court was free to prevent either party from simultaneously pursuing claims in both courts.").

The federal courts' exercise of the concurrent jurisdiction Congress has entrusted to them is the general rule, subject only to narrow exceptions, like abstention. *See Moses H. Cone Mem'l Hosp*. v. *Mercury Constr. Corp.*, 460 U.S. 1, 14 (1983) ("Abstention from the exercise of federal jurisdiction is the exception, not the rule."); *Colo. River Water Conservation Dist*. v. *United States*, 424 U.S. 800, 813 (1976) (same). *Colorado River* summarized three forms of the abstention doctrine, none of which applies to this case: "Abstention is appropriate 'in cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law.'" *Colo. River*, 424 U.S., at 814 (quoting *County of Allegheny* v. *Frank Mashuda Co.*, 360 U.S. 185, 189 (1959), and citing, *inter alia*, *R.R. Comm'n of Tex.* v. *Pullman Co.*, 312 U.S. 496 (1941)). "Abstention is also appropriate where there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar." *Id.* (citing *La. Power & Light Co*. v. *City of Thibodaux*, 360 U.S. 25 (1959), and *Burford* v. *Sun Oil Co.*, 319 U.S. 315 (1943)). "Finally, abstention is appropriate where, absent bad faith, harassment, or a patently invalid state statute, federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings." *Id.*, at 816 (citing *Younger* v. *Harris*, 401 U.S. 37 (1971)). Because the federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them," *id*., at 817, "the circumstances permitting the dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration are considerably more limited than the circumstances appropriate for abstention." *Id.*, at 817-18; *see*

Moses H. Cone, 460 U.S., at 16 ("[T]he decision whether to dismiss a federal action . . . does not rest on a mechanical checklist, but on a careful balancing of the important factors as they apply in a given case, with the balance heavily weighted in favor of the exercise of jurisdiction.").

The Court has recognized that "inefficient simultaneous litigation in state and federal courts on the same issue" is "one of the costs of our dual court system." *Parsons Steel, Inc.* v. *First Ala. Bank*, 474 U.S. 518, 524-25 (1986). "[T]he possibility of a race to judgment is inherent in a system of dual sovereigns and, in the absence of 'exceptional' circumstances, that possibility alone is insufficient to overcome the weighty interest in the federal courts exercising their jurisdiction over cases properly before them." *Green* v. *City of Tucson*, 255 F.3d 1086, 1097 (CA9 2001) (en banc) (internal citation omitted) (citing *Colo. River*, 424 U.S., at 818), *overruled in part on other grounds*, *Gilbertson* v. *Albright*, 381 F.3d 965 (CA9 2004). When the state court wins the "race to judgment," and the federal district court has subject matter jurisdiction over the federal plaintiff's substantive claims, interjurisdictional preclusion principles govern the question whether the federal action is permitted or is, instead, an attempt at relitigation precluded by the res judicata effect of the state-court adjudication. *See, e.g.*, *Matsushita Elec. Indus. Co.* v. *Epstein*, 516 U.S. 367, 373 (1996). Under the Full Faith and Credit Act, 28 U.S.C. §1738, "[f]ederal courts may not 'employ their own rules . . . in determining the effect of state judgments,' but must 'accept the rules chosen by the State from which the judgment is taken.'" *Id.* (quoting *Kremer* v. *Chem. Constr. Corp.*, 456 U.S. 461, 481-82 (1982)).

B. THE *ROOKER-FELDMAN* DOCTRINE PROHIBITS ONLY DE FACTO APPEALS FROM STATE-COURT JUDICIAL DECISIONS.

Properly understood, *Rooker-Feldman* is neither a sweeping exception to the general rule requiring federal courts to exercise their jurisdiction nor the elevation of ordinary preclusion principles to jurisdictional status. Rather, *Rooker-Feldman* is an articulation of the narrow jurisdictional principle that Congress has not granted federal district courts subject matter jurisdiction to review decisions previously made by state courts. The *Rooker-Feldman* doctrine derives from two cases the Court decided sixty years apart, *Rooker* v. *Fid. Trust Co.*, 263 U.S. 413 (1923), and *D.C. Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983). The essence of the doctrine is that federal district courts "do not have jurisdiction . . . over challenges to state court decisions in particular cases arising out of judicial proceedings." *Feldman*, 460 U.S., at 486.

The plaintiffs in *Rooker* filed "a bill in equity to have a judgment of a circuit court in Indiana, which was affirmed by the Supreme Court of the State, declared null and void, and to obtain other relief dependent on that outcome." *Rooker*, 263 U.S., at 414. Entertaining the Rookers' suit to reverse or modify the Indiana Supreme Court's judgment would have been "an exercise of appellate jurisdiction" beyond the federal district court's reach because "[t]he jurisdiction possessed by the District Courts is strictly original." *Id.*, at 416. Thus, although no statute expressly declares that federal district courts are without jurisdiction to review state-court decisions, *Rooker* derived that rule by negative inference from the predecessors to 28 U.S.C. §1331 ("The district courts shall have *original jurisdiction* of all civil actions arising under the Constitution, laws, or treaties of the United States." (emphasis added)) and §1257 ("Final judgments or decrees rendered by the highest court of a State in which a

decision could be had, may be reviewed by the Supreme Court."). "Reduced to its essence, *Rooker* held that when a losing plaintiff in state court brings a suit in federal district court asserting as legal wrongs the allegedly erroneous legal rulings of the state court and seeks to vacate or set aside the judgment of that court, the federal suit is a forbidden de facto appeal." *Noel* v. *Hall*, 341 F.3d 1148, 1156 (CA9 2003). As *Atl. Coast Line* succinctly put it, "lower federal courts possess no power whatever to sit in direct review of state court decisions." 398 U.S., at 296.

Whereas *Rooker* articulated the principle that federal district courts lack subject matter jurisdiction to review direct attacks on state-court judgments, *Feldman* expounded on the rule announced in *Rooker*, articulating the test for when a purportedly independent federal suit is in fact a forbidden challenge to a state judgment. The two plaintiffs in *Feldman* had each, in separate proceedings, petitioned the District of Columbia Court of Appeals (which has the same status as a state supreme court, 28 U.S.C. §1257(b)) to waive a requirement for admission to the D.C. bar in their particular cases. *Feldman*, 460 U.S., at 465-69, 471-72. After the D.C. Court of Appeals denied both petitions, the plaintiffs filed (separate) suits in federal district court, each alleging that the D.C. court's denial of his waiver petition violated federal constitutional and statutory rights. *Id.*, at 469, 472-73. The district court dismissed those claims for lack of jurisdiction, and the U.S. Court of Appeals for the District of Columbia reversed, holding that the federal district court cases did not seek appellate review of a final judgment of a state court. *Id.*, at 474. The Court in *Feldman* distinguished between the plaintiffs' attack on the District of Columbia Court of Appeals's denial of their petitions for waiver, which were jurisdictionally barred, *id.*, at 486-87, and "[t]he remaining allegations in the complaints" alleging "a general attack on the constitutionality" of the rule, *id.*, at 487, which were not. *Id.*, at 483-84 n.16. *Feldman*'s holding that the general

constitutional claims were not jurisdictionally barred did not, however, prevent the district court from applying preclusion law to determine if those claims were barred by res judicata. *Id.*, at 487-88 & n.19.

"Since *Feldman*, the Supreme Court has provided [the lower courts] with little guidance in determining which claims are 'inextricably intertwined' with a prior state court judgment and which are not." *Moccio* v. *N.Y. State Office of Court Admin.*, 95 F.3d 195, 198 (CA2 1996). *Rooker* and *Feldman* remain the only two cases in which the Court has applied the doctrine to find that lower courts lacked jurisdiction. Since *Feldman*, the Court has addressed the doctrine briefly in a few cases. *See Verizon Md. Inc.* v. *Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 644 n.3 (2002) (noting that *Rooker-Feldman* "has no application to judicial review of executive action, including determinations made by a state administrative agency"); *Johnson* v. *De Grandy*, 512 U.S. 997, 1005-06 (1994) (describing *Rooker-Feldman* as the doctrine "under which a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights"); *Howlett* v. *Rose*, 496 U.S. 356, 370 (1990) (describing *Rooker-Feldman* as "the rule that a federal district court cannot entertain an original action alleging that a state court violated the Constitution by giving effect to an unconstitutional state statute"); *ASARCO Inc.* v. *Kadish*, 490 U.S. 605, 622-23 (1989) (observing that the appeal from the Arizona Supreme Court would have been barred by *Rooker-Feldman* if it had instead been brought originally in a federal suit); *Pennzoil Co.* v. *Texaco, Inc.*, 481 U.S. 1, 7, 10 (1987) (requiring abstention under *Younger*,

instead of applying *Rooker-Feldman*, in §1983 challenge to ongoing state civil proceedings).[4]

Although this Court has never equated *Rooker-Feldman* with general res judicata principles, some courts of appeals have largely elided the two concepts. *See, e.g.*, *Cruz* v. *Melecio*, 204 F.3d 14, 21 n.5 (CA1 2000) ("Only a state court adjudication that itself has preclusive effect can bring the *Rooker-Feldman* doctrine into play."); *Doctor's Assocs., Inc.* v. *Distajo*, 107 F.3d 126, 137 (CA2 1997) ("[T]he *Rooker-Feldman* doctrine 'at a minimum' is coextensive with preclusion principles." (quoting *Moccio*, 95 F.3d, at 199-200)); *Moccio*, 95 F.3d, at 200 ("[W]e decide whether the *Rooker-Feldman* doctrine applies to Moccio's claims by turning to preclusion principles."). Other courts have struggled to articulate the distinction between the two doctrines. *See, e.g.*, *Ingalls* v. *Erlewine* (*In re Erlewine*), 349 F.3d 205, 210 n.4 (CA5 2003) ("Our analysis here should not be taken to imply that the *Rooker-Feldman* doctrine is simply coextensive with traditional preclusion doctrine." (citing 18B CHARLES ALAN WRIGHT, *ET AL.*, FEDERAL PRACTICE & PROCEDURE §4469.1 (2d ed. 2002) (describing the subtle differences between the two bodies of law)); *Noel*, 341 F.3d, at 1162-63 (collecting cases expressing confusion about *Rooker-Feldman* and preclusion); *Hutcherson* v. *Lauderdale County*, 326 F.3d 747, 755 (CA6 2003) ("The two doctrines 'are not coextensive.'"); *see also Kamilewicz* v. *Bank of Boston Corp.*, 100 F.3d 1348, 1350 (CA7 1996) (Easter-

[4] In *Pennzoil*, four concurring opinions expressly agreed that *Rooker-Feldman* did not bar the constitutional claims in that case, which did not attack the state court's judgment itself. *Pennzoil*, 481 U.S., at 18 (Scalia, J., concurring); *id.*, at 21 (Brennan, J., concurring); *id.*, at 28 (Blackmun, J., concurring); *id.*, at 31 n.3 (Stevens, J., concurring). Justice Marshall disagreed because, in his view, "determination of Texaco's claim for an injunction *necessarily* involved some review of the merits of its state appeal." *Id.*, at 26 (Marshall, J., concurring) (finding that *Rooker-Feldman* would apply).

brook, J., dissenting from denial of rehearing en banc) ("[A] judgment that is not entitled to full faith and credit does not acquire extra force via the *Rooker-Feldman* doctrine."); *compare Merrill Lynch Bus. Fin. Servs., Inc.* v. *Nudell*, 363 F.3d 1072, 1075 (CA10 2004) ("[W]e apply the *Rooker-Feldman* doctrine in a slightly broader fashion" than those circuits in which "the *Rooker-Feldman* doctrine is coextensive with preclusion doctrine."), *with Kenmen Eng'g* v. *City of Union*, 314 F.3d 468, 476 (CA10 2002) ("Rather than prohibiting the relitigation of issues and claims (the province of the preclusion doctrines), *Rooker-Feldman* protects state-court judgments from impermissible appellate review by lower federal courts.").

There is, in fact, almost certainly overlap—that is, some actions that are jurisdictionally barred by *Rooker-Feldman* would also be barred by preclusion doctrine, if jurisdiction existed for the federal court to apply preclusion. *See, e.g.*, *Am. Reliable Ins. Co.* v. *Stillwell*, 336 F.3d 311, 318 (CA4 2003). Indeed, a frequent scholarly criticism of *Rooker-Feldman* as applied by the lower courts is that the doctrine, in many cases, seems redundant with preclusion. *See* Barry Friedman & James E. Gaylord, Rooker-Feldman, *from the Ground Up*, 74 NOTRE DAME L. REV. 1129, 1142 (1999); Suzanna Sherry, *Judicial Federalism in the Trenches: The* Rooker-Feldman *Doctrine in Action*, 74 NOTRE DAME L. REV. 1085, 1089 (1999). But, as *Feldman* itself makes clear, the doctrines are not simply coextensive, and the lower courts that have held otherwise are in error. Certain claims that may be barred by the affirmative defense of res judicata under state-law preclusion principles are plainly not jurisdictionally barred by *Rooker-Feldman*. *See Feldman*, 460 U.S., at 487-88 & n.19 (expressly reserving to the district court the question whether certain claims that were not barred by *Rooker-Feldman* were nevertheless barred by res judicata); *contra, e.g.*, *Moccio*, 95 F.3d, at 200 ("[S]ubsequent litigation of the claim will be barred under the *Rooker-Feldman*

doctrine if it would be barred under the principles of preclusion."). For example:

> "A sues B (a private employer) in state court for wrongful discharge. A loses. A then sues B on the same claim in federal court. . . . *Rooker-Feldman* has no relevance because it is simply A trying to get two bites at the apple, suing twice over the same conduct but not trying to attack or appeal the judgment in the earlier case." Jack M. Beermann, *Comments on* Rooker-Feldman *or Let State Law Be Our Guide*, 74 NOTRE DAME L. REV. 1209, 1214 (1999).

Preclusion principles might bar the second suit, but the *Rooker-Feldman* doctrine would not. *See Feldman*, 460 U.S., at 487-88 & n.19. *Rooker-Feldman* jurisdictionally bars federal claims only when they seek de facto review of the state court's prior adjudication. *See id.*, at 486-87.

II. THE COURT OF APPEALS MISAPPLIED *ROOKER-FELDMAN* TO EXXONMOBIL'S CLAIMS, WHICH DO NOT ATTACK A STATE-COURT JUDGMENT.

Because ExxonMobil's suit in federal court does not contest—in any way, shape, or form—the Delaware trial court's judgment, *Rooker-Feldman* is simply inapplicable. That should have been the beginning and the end of the court of appeals's *Rooker-Feldman* inquiry.

A. THE COURT OF APPEALS ERRONEOUSLY CONFLATED *ROOKER-FELDMAN* WITH ORDINARY PRECLUSION PRINCIPLES BASED SOLELY ON THE IDENTITY OF CLAIMS IN THE STATE AND FEDERAL PROCEEDINGS.

The court of appeals began its erroneous analysis by demonstrating a fundamental misunderstanding of the standard articulated in *Feldman*. The court stated that "a claim is

barred by *Rooker-Feldman* under two circumstances: first, if the claim was 'actually litigated' in state court prior to the filing of the federal action or, second, if the claim is 'inextricably intertwined with [the] state adjudication.'" Pet. App. 5a (quoting *Desi's Pizza*, 321 F.3d, at 419) (alteration in original). In fact, *Rooker-Feldman* properly applies in only *one* circumstance—when the federal plaintiff *challenges* the substance of a previous state-court decision, regardless whether that challenge involves claims that were "actually litigated" previously or claims that are merely "inextricably intertwined" with the previous adjudication. *See Noel*, 341 F.3d, at 1158 ("Only when there is already a forbidden de facto appeal in federal court does the 'inextricably intertwined' test come into play."). The "inextricably intertwined" test is not, as the court of appeals characterized it, "an alternative prong of the *Rooker-Feldman* doctrine." Pet. App. 8a. *Rooker-Feldman* has only one "prong"—prohibiting de facto federal appeals of state-court judgments. "In determining the applicability of the *Rooker-Feldman* doctrine, federal courts 'cannot simply compare the *issues* involved in the state-court proceeding to those raised in the federal-court plaintiff's complaint,' but instead 'must pay close attention to the *relief* sought by the federal-court plaintiff.'" *Hood* v. *Keller*, 341 F.3d 593, 597 (CA6 2003) (quoting *Bianchi* v. *Rylaarsdam*, 334 F.3d 895, 900 (CA9 2003)); *Kenmen*, 314 F.3d, at 476.

Feldman does not expand the doctrine announced in *Rooker* to cover an additional category of cases. It merely clarifies that the jurisdictional bar encompasses claims that are, in substance, de facto appeals of state-court judgments even when federal plaintiffs are less forthright about their intention to nullify a state judgment than the Rookers were in their direct attack on the Indiana Supreme Court's judgment. "The premise for the operation of the 'inextricably intertwined' test in *Feldman* is that the federal plaintiff is seeking

to bring a forbidden de facto appeal." *Noel*, 341 F.3d, at 1158. If a federal suit is, in substance, an appeal of a state-court judgment, a federal district court lacks subject matter jurisdiction because Congress has granted appellate jurisdiction over state-court judgments to this Court only. *See Feldman*, 460 U.S., at 476.

The court of appeals's inapt focus on the assertion that the Delaware trial court had "actually litigated" issues identical to those raised in ExxonMobil's claims in the federal suit diverted its attention from the real question at the core of a *Rooker-Feldman* inquiry—whether the *relief* sought by ExxonMobil in its federal suit is the nullification of a state-court decision previously made. *Compare* Pet. App. 8a (applying *Rooker-Feldman* simply "[b]ecause ExxonMobil's federal claims were identical to the claims in which the Delaware Superior Court reached a final judgment") *with, e.g., GASH Assocs.* v. *Vill. of Rosemont*, 995 F.2d 726, 728 (CA7 1993) ("The *Rooker-Feldman* doctrine asks: is the federal plaintiff seeking to set aside a state judgment, or does he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party?").

After parallel claims have been "actually litigated" in a state court, preclusion principles provide the appropriate basis for determining whether the federal action may proceed. *See* 28 U.S.C. §1738; *Matsushita*, 516 U.S., at 369; Beermann, *supra*, at 1231 ("[I]t is a fact of life in our system that two cases on the same occurrence may race to judgment, with preclusion rules barring the slower claim but only after the faster claim came to judgment."). The Court has made clear, in decisions both before and since *Feldman*, that 28 U.S.C. §1738 requires federal district courts to give a state-court judgment the same—not more and not less—preclusive effect that judgment would have under the preclusion law of the State in which it was rendered. *See Matsushita*, 516 U.S., at

369; *Parsons Steel*, 474 U.S., at 523; *Migra* v. *Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 82-85 (1984); *Kremer*, 456 U.S., at 466; *Allen* v. *McCurry*, 449 U.S. 90, 96 (1980).

When it is appropriate to apply general preclusion principles, the relevant twofold inquiry is whether issues were or could have been actually litigated and whether the parties before the court that is being asked to apply the affirmative preclusion defense had a full and fair opportunity to litigate those issues. *See, e.g.*, *Garry* v. *Geils*, 82 F.3d 1362, 1367 n.8 (CA7 1996); *E.B.R. Corp.* v. *PSL Air Lease Corp.*, 313 A.2d 893, 894 (Del. 1973). When a court is applying res judicata law to issues that were actually litigated in a prior adjudication, there is no question that a party is attempting "to redetermine issues previously resolved." *Montana* v. *United States*, 440 U.S. 147, 154 (1979); *see Homola* v. *McNamara*, 59 F.3d 647, 650 (CA7 1995) ("A plaintiff who loses and tries again encounters the law of preclusion. The second complaint shows that the plaintiff wants to ignore rather than upset the judgment of the state tribunal.").

There was no dispute that ExxonMobil's claims against SABIC in the federal action are generally the same as the claims that were actually litigated to final judgment in ExxonMobil's favor—in the Delaware forum chosen by SABIC, *see, e.g.*, Pet. App. App. 86a. Applying Delaware preclusion law—as the district court would be required to do if the issue were properly before it, *see Matsushita*, 516 U.S., at 369; *Feldman*, 460 U.S., at 487-88—would likely preclude *SABIC* from maintaining a position inconsistent with the Delaware trial court's judgment against it. *See E.B.R. Corp.*, 313 A.2d, at 894 ("Under Delaware law a judgment in one cause of action is conclusive in a subsequent and different cause of action as to a question of fact actually litigated by the parties and determined in the first action."). Indeed, SABIC has expressly conceded the preclusive effect of the Delaware trial court's judgment against it on the merits of

ExxonMobil's claims. SABIC BIO 13; *see Montana*, 440 U.S., at 153 (noting that res judicata and collateral estoppel "preclude parties from *contesting* matters that they have had a full and fair opportunity to litigate" (emphasis added)). But the preclusive effect of the Delaware judgment was not properly before the court of appeals. SABIC appealed the district court's denial of its motion to dismiss on jurisdictional FSIA grounds under the narrow collateral-order exception to the prohibition on interlocutory appeals. Pet. App. 4a-5a. The court of appeals had no jurisdiction to consider preclusion issues that were never raised and never incorporated into a final judgment of the district court. *See Digital Equip. Corp.* v. *Desktop Direct*, 511 U.S. 863, 876 (1994) (citing *In re Corrugated Container Antitrust Litig.*, 694 F.2d 1041 (CA5 1983), for the proposition that a district court's rejection of a party's res judicata claim is not immediately appealable under the collateral-order exception).

By contrast, when *Rooker-Feldman* is invoked, the only relevant inquiry is whether the relief sought in the federal court would undo the state-court judgment—regardless whether the precise issues raised in the federal suit were actually litigated. *See Feldman*, 460 U.S., at 484 n.16 ("[T]he fact that we may not have jurisdiction to review a final state-court judgment because of a petitioner's failure to raise his constitutional claims in state court does not mean that a United States district court should have jurisdiction over the claims."). Under *Feldman*, the relevant question is whether the relief sought by the federal plaintiff is actually challenging a prior adjudication. *See Feldman*, 460 U.S., at 483-84 (considering "[t]he difference between seeking review in a federal district court of a state court's final judgment in a bar admission matter and challenging the validity of a state bar admission rule"); *Noel*, 341 F.3d, at 1163 ("It is a forbidden de facto appeal under *Rooker-Feldman* when the plaintiff in federal district court complains of a legal wrong

allegedly committed by the state court, and seeks relief from the judgment of that court.").

The Third Circuit's injection of an actually-litigated inquiry into the analysis puts *Rooker-Feldman* into direct conflict with the Court's interpretation of §1738 by circumventing any consideration of state preclusion law. The Third Circuit's conclusion that *Rooker-Feldman*'s jurisdictional bar applies whenever identical claims have been actually litigated to final judgment in a state trial court necessarily forecloses any consideration of whether state preclusion principles would bar relitigation of those issues, replacing that consideration—apparently—with a federal common law of preclusion. *See* Pet. App. 7a (noting "a close affinity" between *Rooker-Feldman* and "the principles embodied in the legal concepts of claim and issue preclusion" but not acknowledging any obligation to refer to Delaware preclusion principles in deciding to dismiss this case); Friedman & Gaylord, *supra*, at 1139 & n.57; *cf. Migra*, 465 U.S., at 81 ("In the absence of federal law modifying the operation of §1738, the preclusive effect in federal court of [a] state-court judgment is determined by [state] law.").

Under the Third Circuit's approach, it is possible for a federal court applying *Rooker-Feldman* to give a state-court judgment greater preclusive effect than it would have under the law of the rendering State, especially in states in which a trial-court judgment that is pending on appeal does not have preclusive effect. *See, e.g.*, *People ex rel. Gow* v. *Mitchell Bros. Santa Ana Theater*, 161 Cal. Rptr. 562, 568 (Cal. Ct. App. 1980). Moreover, elevating preclusion principles to jurisdictional status gives them greater force than they properly enjoy. In contrast to a lack of subject matter jurisdiction, which can be raised at any time and can never be waived, res judicata is an affirmative defense that can be waived by a failure to raise it. *See* FED. R. CIV. P. 12(h)(3); *Arizona* v. *California*, 530 U.S. 392, 412 (2000) (noting that a

court's raising of a preclusion defense sua sponte "*might* be appropriate in *special circumstances*" (emphasis added)); *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998) (explaining the inflexibility of jurisdiction and a court's obligation to raise the issue in all circumstances); *Garry* 82 F.3d, at 1365 ("Where *Rooker-Feldman* applies, lower federal courts have no power to address other affirmative defenses, including res judicata.").

As this case dramatically illustrates, elevating preclusion principles to jurisdictional status renders preclusion an offensive sword that a court can raise sua sponte with little justification other than as a docket-clearing measure. Indeed, by characterizing the inquiry as an application of *Rooker-Feldman*, the court of appeals applied preclusion principles against ExxonMobil despite SABIC's initial concession that *Rooker-Feldman* did not apply, *see* JA 24-25, and despite the fact that res judicata has never been raised in the district court and was not properly before the court of appeals in SABIC's interlocutory appeal brought on sovereign immunity grounds. *See Digital Equip. Corp.*, 511 U.S., at 876.

B. The Court of Appeals Preemptively Applied *Rooker-Feldman* Based on Speculation About the Pending Delaware Appeal.

After an ultimately superfluous excursion into whether identical claims were "actually litigated" or "inextricably intertwined," the court of appeals attempted to justify its preemptive application of *Rooker-Feldman* with the speculation that ExxonMobil might attempt, in the future, to contest an adverse judgment that the Delaware Supreme Court might or might not make in the pending appeal. But the fact that the federal-court claims were pending concurrently with the state-court claims before either case went to trial conclusively demonstrates that both sets of claims merely sought concurrent and independent relief from

SABIC's misconduct, not relief from a then nonexistent state-court judgment. The entry of a subsequent state-court judgment could not change the underlying nature of the federal claims and retroactively invoke *Rooker-Feldman*. The fact that the state-court judgment was favorable to ExxonMobil only further demonstrates the impossibility of applying *Rooker-Feldman* in these circumstances.

In the court of appeals, SABIC initially conceded that the *Rooker-Feldman* doctrine is inapposite to this case because ExxonMobil is not presently seeking review of any state-court judgment. *See* JA 24-25 (SABIC's counsel explaining, at oral argument, that this "case would not present directly a *Rooker-Feldman* problem in its current posture" and "Exxon/Mobil isn't asking [the federal district] court to review anything at this point. *If* it asks that court to do anything that reviews a judgment of the Delaware court, then *that* would be, in our view, what triggers the *Rooker-Feldman* problem." (emphasis added)). In its post-argument letter brief to the court of appeals, SABIC took a different tack. Although still acknowledging that "at this moment in time, ExxonMobil is not asking a federal court to review (and potentially reverse) the Delaware judgment," SABIC nevertheless urged the court of appeals to overlook the elemental fact that ExxonMobil's federal suit does not contest any state-court judgment, characterizing it as a "slight wrinkle" that "does not preclude immediate application of the *Rooker-Feldman* doctrine." JA 62.

But, far from being simply a "temporal wrinkle," *id.*, the fact that ExxonMobil is not asking the federal district court to review a state-court judgment entirely removes this case from the *Rooker-Feldman* realm. *See Johnson*, 512 U.S., at 1005-06 (explaining that under *Rooker-Feldman*, "a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state

judgment itself violates the loser's federal rights"); *GASH*, 995 F.2d, at 729 ("Because [plaintiff] complains about the judgment entered by a state court, the district court lacked jurisdiction."). *Rooker-Feldman* is inapposite when the federal plaintiff is not challenging the existing state-court decision, and speculation about what might happen to the state-court judgment on appeal only strengthens the conclusion that the federal claims, as they presently exist, do not challenge the state-court decision. *See Am. Reliable Ins. Co.*, 336 F.3d, at 320 (explaining that, for *Rooker-Feldman* to apply, "[i]t is sufficient that a state court *render a decision* resolving an issue that is the basis for the federal action" (emphasis added)). Indeed, expanding *Rooker-Feldman* to require dismissal of federal actions based on speculation about the possible outcome of a pending state proceeding creates a sweeping exception to "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them," *Colo. River*, 424 U.S., at 817, that rends the very fabric of concurrent federal and state jurisdiction.

The court of appeals apparently accepted SABIC's assertion that "[i]f the *Rooker-Feldman* doctrine bars a lower federal court from exercising jurisdiction where the *effect* would be direct review of a state-court decision . . . , surely it bars ExxonMobil from maintaining a suit for the *sole and express purpose* of obtaining review of a state-court decision if and when that decision becomes adverse to ExxonMobil." JA 62; *see* Pet. App. 8a (opining that, if SABIC prevails in its Delaware appeal, "ExxonMobil's federal action would squarely be seeking to invalidate a final judgment of the state court, the very situation contemplated by *Rooker-Feldman*'s 'inextricably intertwined' bar"). But that syllogism is both a logical non sequitur and a question-begging, factually inaccurate characterization of this case. ExxonMobil has not sought—and never said it would seek—"review of a state-court decision." ExxonMobil's actions in each court system seek substantive redress for the injury caused by SABIC's

conduct; neither alleges injury caused by any state-court decision. *See Hutcherson*, 326 F.3d, at 755 ("If the injury alleged is distinct from that judgment, i.e., the party maintains an injury apart from the loss in state court and not 'inextricably intertwined' with the state judgment, . . . res judicata may apply, but *Rooker-Feldman* does not.") (citation omitted); *Noel*, 341 F.3d, at 1164-65 (stating that *Rooker-Feldman* applies only when "the injury of which [the federal plaintiff] complains was caused *by* the [state-court] judgment" itself rather than an out-of-court "injury that the state court failed to remedy"); *GASH*, 995 F.2d, at 729 (same); *see also* Beermann, *supra*, at 1214 ("[T]he *Rooker-Feldman* doctrine has no application when the complaint in federal court is about conduct outside of the state court, because it is inaccurate to characterize such a claim as an appeal from the state court's judgment.").

C. The Court of Appeals's Expansive Interpretation of *Rooker-Feldman* Destroys Traditional Concepts of Concurrent Jurisdiction.

"[S]imultaneous state and federal litigation of overlapping, and even identical, issues is an important feature of our federal system." *Noel*, 341 F.3d, at 1165 (citing *Parsons Steel*, 474 U.S., at 524-25; *Doran*, 422 U.S., at 928, and *Atl. Coast Line*, 398 U.S., at 295). The Court should reject the Third Circuit's application of the *Rooker-Feldman* doctrine because it destroys time-honored notions of concurrent state and federal jurisdiction. *See id.* (reversing a dismissal under *Feldman*'s "inextricably intertwined" test that was premised on the conclusion that the plaintiffs' "very similar, perhaps identical" claims "could have been raised in the parties' [pending state-court] litigation, or were already specifically addressed in that litigation"); *accord Vulcan Chem. Techs., Inc.* v. *Barker*, 297 F.3d 332, 338 n.2 (CA4 2002) ("It would be a novel application of the already beleaguered *Rooker-Feldman* doctrine to divest a federal court of subject matter

jurisdiction simply because a parallel case was later filed in State court seeking to decide the same question.").

The Third Circuit's reasoning that the presence of identical claims in pending federal and state proceedings necessarily means that the claims in the federal action will be "inextricably intertwined" with whatever judgment the state court eventually renders applies equally whether or not the claims have already been "actually litigated" in a state court. For example, in this case, the same rationale would have barred ExxonMobil's federal suit before the Delaware trial court rendered a judgment because it would permit the federal district court to rely on speculation that the trial-court judgment might be adverse to ExxonMobil and ExxonMobil might attempt to contest it in the federal court. If *Rooker-Feldman* could be properly applied to bar ExxonMobil's federal action because ExxonMobil might attempt to challenge a judgment the Delaware Supreme Court might make, there is no principled reason not to apply the jurisdictional bar to any suit in which a federal plaintiff might theoretically attempt to challenge a judgment that a state trial court might make on identical claims. That result cannot be squared with the well-established principle that "our dual system of federal and state governments allows parallel actions to proceed to judgment until one becomes preclusive of the other." *Vulcan*, 297 F.3d, at 340; *see Noel*, 341 F.3d, at 1165 ("We have never held that when there are simultaneous suits in state and federal court, in which related or 'inextricably intertwined' claims are being litigated, the federal suit must be dismissed under *Rooker-Feldman*.").

The Court has never suggested that *Rooker-Feldman* was intended to nullify the unique duality that characterizes the Nation's judicial system. *See Atl. Coast Line*, 398 U.S., at 295-96 (noting both that "lower federal courts possess no power whatever to sit in direct review of state court decisions" and that "the state and federal courts had concurrent

jurisdiction in this case, and neither court was free to prevent either party from simultaneously pursuing claims in both courts"). Indeed, such a construction would tear the *Rooker-Feldman* doctrine from its roots as an articulation of the statutorily defined jurisdictional structure of the federal courts by divesting federal district courts of part of the original jurisdiction Congress has entrusted to them. *See* 28 U.S.C. §§1330, 1331, 1332, 1333; *Quackenbush* v. *Allstate Ins. Co.*, 517 U.S. 706, 716 (1996) ("[F]ederal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress."); *cf. Feldman*, 460 U.S., at 476 (citing 28 U.S.C. §1257 in support of *Rooker*'s jurisdictional rule); *Rooker*, 263 U.S., at 416 ("*Under the legislation of Congress*, no court of the United States other than this Court could entertain a proceeding to reverse or modify the judgment for errors of that character." (emphasis added)). Nonjurisdictional protections appropriately address federalism and comity concerns that may arise in cases other than those in which the federal plaintiff is attempting a de facto appeal of a state-court decision previously made. *See Colo. River*, 424 U.S., at 814-18; *Noel*, 341 F.3d, at 1164 ("If there is simultaneously pending federal and state court litigation between the two parties dealing with the same or related issues, the federal district court in some circumstances may abstain or stay proceedings; or if there has been state court litigation that has already gone to judgment, the federal suit may be claim-precluded under [28 U.S.C.] § 1738.").[5]

"[It] was never a doctrine of equity that a federal court should exercise its judicial discretion to dismiss a suit merely because a State court could entertain it." *Colo. River*, 424 U.S., at 813-14 (quoting *Ala. Pub. Serv. Comm'n* v. *S. Ry. Co.*, 341 U.S. 341, 361 (1951) (Frankfurter, J., concurring)) (alteration in original). But, in appropriate cases, abstention

[5] It is worth noting that SABIC sought unsuccessfully to invoke *Colorado River* abstention. Pet. App. 67a-73a.

doctrines counsel—and sometimes require—a federal district court that has jurisdiction to stay its hand pending the outcome of ongoing state litigation. *See id.*, at 813-20. The Court has explained that abstention and prudential dismissals rest, respectively, on "considerations of proper constitutional adjudication and regard for federal-state relations which govern in situations involving the contemporaneous exercise of concurrent jurisdictions, either by federal courts or by state and federal courts" and "on considerations of wise judicial administration." *Id.*, at 817 (internal quotation marks and brackets omitted). Applying the jurisdictional *Rooker-Feldman* doctrine while the relevant state proceeding is pending—as the Third Circuit has done in this case—replaces careful consideration of those factors with a blunt instrument that preemptively (and wrongly) assumes the federal suit will ineluctably transmute into a de facto appeal of the antici pated state decision. *Cf. Noel*, 341 F.3d, at 1160 ("These federalism-based abstention and comity doctrines are complex and subtle, ensuring that a decision by a federal court to proceed, abstain, or stay in the face of parallel state court litigation will be made only after considering a number of case- and doctrine-specific factors."); Susan Bandes, *The* Rooker-Feldman *Doctrine: Evaluating Its Jurisdictional Status*, 74 NOTRE DAME L. REV. 1175, 1186-87, 1204 (1999) (criticizing the lack of analysis that accompanies many dismissals under *Rooker-Feldman* because of the doctrine's status as a jurisdictional "trump card").

CONCLUSION

For these reasons, the Court should reverse the court of appeals's judgment and order ExxonMobil's claims to be reinstated.

Respectfully submitted,

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