

Jurisdiction, Abstention, and Finality: Articulating a Unique Role for the *Rooker-Feldman* Doctrine

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ABSTRACT

Federal courts frequently confuse the *Rooker-Feldman* doctrine with *Younger* abstention and preclusion law, often using these doctrines interchangeably to dismiss actions that would interfere with state court proceedings. For years, scholars argued that the Supreme Court should alleviate this confusion by abolishing the *Rooker-Feldman* doctrine altogether. The Court recently refused to do so, however. In *Exxon Mobil Corp. v. Saudi Basic Industries Corp.* and *Lance v. Dennis*, the Court reaffirmed *Rooker-Feldman*'s vitality and held that the doctrine plays a unique role, completely separate from abstention and preclusion rules. And yet these decisions leave a key question unanswered: Exactly how does *Rooker-Feldman* interact with *Younger* abstention and preclusion law? This Article explores the relationship between these three doctrines, and articulates two unique roles that *Rooker-Feldman* can play. First, *Rooker-Feldman* is the only doctrine that bars federal court claims complaining of injuries caused by final state court judgments. Second, in the context of civil actions and claims for monetary relief, *Rooker-Feldman* is the only doctrine that bars litigants from collaterally attacking non-final judgments.

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I. INTRODUCTION

In our federal system, state courts proceed independently of federal courts—the Framers of the Constitution “split the atom of sovereignty” by creating two court systems, “one state and one federal, each protected from incursion by the other.”¹ And yet, an inherent tension exists between these two systems. State and federal courts have concurrent jurisdiction over many claims, allowing litigants to bring actions in either forum.² As a result, a state court loser often is tempted to seek relief in federal court. These types of collateral attacks happen with alarming frequency,³ demonstrating that hope springs eternal for many litigants.⁴

¹ U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring). *But see* Mark R. Killenbeck, *The Physics of Federalism*, 51 U. KAN. L. REV. 1, 4 (2002) (analyzing Justice Kennedy’s metaphor and arguing that “it is simply wrong to characterize what transpired [at the Constitutional Convention] as an exercise in splitting atoms, either as a matter of science or political theory”).

² State courts can adjudicate federal law claims that would be within the federal question jurisdiction of the federal courts. *See* 28 U.S.C. § 1331 (2006); Tafflin v. Levitt, 493 U.S. 455, 458 (1990). Federal courts can adjudicate state law claims through diversity jurisdiction. *See id.* § 1332.

³ *See, e.g.*, Klautt v. Dooley, No. Civ. 10-4091-KES, 2010 WL 5391571 (D.S.D. Dec. 22, 2010); Gdowski v. Lant, No. 4:10CV3233, 2010 WL 5257010 (D. Neb. Dec. 15, 2010); Dempsey v. Clerk, Supreme Judicial Court, No. 10-12044-PBS, 2010 WL 5283290 (D. Mass. Dec. 15, 2010); Nali v. Oakland Cnty. Friend of Court, No. 10-14844, 2010 WL 5101041 (E.D. Mich. Dec. 9, 2010).

⁴ *See* Alexander Pope, *An Essay on Man*, in THE COMPLETE POETICAL WORKS OF ALEXANDER POPE 137, 139 (Henry W. Boynton ed., 1903) (“Hope springs eternal in the human breast”).

Because our system “could not function if state and federal courts were free to fight each other for control of a particular case,”⁵ several doctrines prohibit federal courts from interfering with state court actions. The *Rooker-Feldman* doctrine bars federal district courts from exercising appellate jurisdiction over state court judgments.⁶ *Younger* abstention requires dismissal of claims for injunctive or declaratory relief that would interfere with pending state court proceedings.⁷ Additionally, preclusion law rules protect the finality of judgments—claim preclusion bars parties from relitigating claims that were or could have been raised in a prior action,⁸ and issue preclusion prohibits relitigation of issues that were actually litigated and decided.⁹

Unfortunately, federal courts frequently confuse *Rooker-Feldman*, *Younger* abstention, and preclusion law, often using the doctrines interchangeably.¹⁰ Several scholars have argued that the Supreme Court should alleviate this confusion by abolishing *Rooker-Feldman*, allowing preclusion and abstention doctrines to stand alone.¹¹ They argue that *Rooker-Feldman* is superfluous—federal courts have no need for a doctrine that bars claims that also are prohibited under preclusion law or *Younger* abstention.¹² Indeed, some have suggested that

⁵ *Atl. Coast Line R.R. v. Bd. of Locomotive Eng'rs*, 398 U.S. 281, 286 (1970).

⁶ *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 415 (1923).

⁷ *See Younger v. Harris*, 401 U.S. 37, 41 (1971).

⁸ *See Allen v. McCurry*, 449 U.S. 90, 94 (1980).

⁹ *See* RESTATEMENT (SECOND) OF JUDGMENTS § 27 (1982).

¹⁰ Suzanna Sherry, *Judicial Federalism in the Trenches: The Rooker-Feldman Doctrine in Action*, 74 NOTRE DAME L. REV. 1086, 1088 (1999) (“[L]ower courts have struggled to define [*Rooker-Feldman*’s] relationship to other doctrines, especially *res judicata* (and, to a lesser extent, *Younger* abstention).”); Rachel Thomas Rowley, Tenth Circuit Survey, *The Rooker-Feldman Doctrine: A Mere Superfluous Nuance or a Vital Civil Procedure Doctrine? An Analysis of the Tenth Circuit’s Decision in Johnson v. Rodrigues*, 78 DENV. U. L. REV. 321, 321 (2000).

¹¹ *See, e.g.*, Barry Friedman & James E. Gaylor, *Rooker-Feldman, from the Ground Up*, 74 NOTRE DAME L. REV. 1129, 1133 (1999) (“The *Rooker-Feldman* doctrine should be abolished.”); Jack M. Beermann, Comment, *Comments on Rooker-Feldman or Let State Law Be Our Guide*, 74 NOTRE DAME L. REV. 1209, 1209 (1999) (“The *Rooker-Feldman* doctrine . . . lacks both a clear role and a clear justification.”); Gary Thompson, Note, *The Rooker-Feldman Doctrine and the Subject Matter Jurisdiction of Federal District Courts*, 42 RUTGERS L. REV. 859, 861 (1990) (“[T]he *Rooker-Feldman* doctrine is unnecessary and potentially harmful.”).

¹² *See* 18B CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 4469.1 (2d ed. 2002 & Supp. 2010) (stating that *Rooker-Feldman* “is nearly redundant because most of the actions dismissed for want of jurisdiction also could be resolved by invoking the claim- or issue-preclusion consequences of the state judgments”);

Rooker-Feldman might only be worth “the powder needed to blow it up.”¹³

The Supreme Court recently disagreed. In *Exxon Mobil Corp. v. Saudi Basic Industries Corp.* and *Lance v. Dennis*, the Court reaffirmed the vitality of the *Rooker-Feldman* doctrine.¹⁴ It also emphasized that “*Rooker-Feldman* is not simply preclusion by another name,”¹⁵ and “does not otherwise override or supplant” abstention doctrines.¹⁶ In other words, *Rooker-Feldman* plays a unique role, completely separate from preclusion and abstention.¹⁷

However, the Supreme Court has provided little guidance on how these doctrines interact, and lower federal courts continue to conflate *Rooker-Feldman* with preclusion¹⁸ and abstention.¹⁹ This confusion has far-reaching consequences for hundreds of litigants. During the last five years, more than 2,000 decisions have relied on various combinations of *Rooker-Feldman*, *Younger* abstention, and preclusion law.²⁰ Given how often courts invoke these doctrines, it is

Friedman & Gaylord, *supra* note 11, at 1129–30 (arguing that “[i]t is difficult to see what *Rooker-Feldman* contributes” in light of preclusion rules and *Younger* abstention).

¹³ Thomas D. Rowe, Jr., Foreword, *Rooker-Feldman: Worth Only the Power to Blow It Up?*, 74 NOTRE DAME L. REV. 1081, 1081 (1999) (internal quotation marks and citation omitted).

¹⁴ *Lance v. Dennis*, 546 U.S. 459, 463 (2006) (per curiam); *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005) (elaborating on the circumstances in which the *Rooker-Feldman* doctrine applies).

¹⁵ *Lance*, 546 U.S. at 466; *accord* *Skinner v. Switzer*, 131 S. Ct. 1289, 1298 n.11 (2011).

¹⁶ *Exxon Mobil*, 544 U.S. at 284.

¹⁷ See Allison B. Jones, Note, *The Rooker-Feldman Doctrine: What Does It Mean to Be Inextricably Intertwined?*, 56 DUKE L.J. 643, 656 (2006) (“The few scholars who find some value in the *Rooker-Feldman* doctrine perhaps have been vindicated by the *Exxon Mobil* decision, in which the Court demonstrated that it still perceived a niche for *Rooker-Feldman* not covered by any other existing doctrine.”).

¹⁸ See, e.g., *Velardo v. Fremont Inv. & Loan*, 298 F. App’x 890, 892 (11th Cir. 2008) (relying on prior circuit authority that conflates *Rooker-Feldman* with claim preclusion’s bar against “federal claims that were, or should have been, central to the state court decision”); *Dommissie v. Napolitano*, 474 F. Supp. 2d 1121, 1126 (D. Ariz. 2007) (erroneously concluding that “the *Rooker-Feldman* doctrine prevents the district courts from exercising jurisdiction over claims that were not presented to the state court, if they could have been raised but were not”).

¹⁹ Courts repeatedly refer to the “*Rooker-Feldman* abstention doctrine.” See, e.g., *Knutson v. City of Fargo*, 600 F.3d 992, 995 (8th Cir. 2010); *Anderson v. Wade*, 322 F. App’x 270, 271 (4th Cir. 2008); *Velardo*, 298 F. App’x at 892.

²⁰ A Westlaw search of all federal cases showed that 2,018 cases decided between January 1, 2006, and January 1, 2011, contained at least two of the following three groups of phrases: (1) “*Rooker Feldman*”; (2) “claim preclusion,” “issue preclusion,” “res judicata,” or “collateral estoppel”; and (3) “*Younger*” within 20 words of “abstain” or “abstention.”

somewhat surprising that scholars have not examined the relationship between *Rooker-Feldman*, *Younger* abstention, and preclusion law since the Court's *Exxon Mobil* decision, which significantly altered the framework for analyzing *Rooker-Feldman* issues.²¹

This Article seeks to bridge that gap, by exploring the interaction between jurisdiction, abstention, and finality in the federal courts and by articulating a unique role for the *Rooker-Feldman* doctrine. Part I analyzes *Rooker-Feldman*, with an emphasis on recent Supreme Court decisions. Although the Court has clarified that the doctrine applies only to claims "complaining of injuries caused by state-court judgments,"²² uncertainties remain. For example, it is unclear whether *Rooker-Feldman* applies to interlocutory state court orders, and whether the doctrine bars claims that are "inextricably intertwined" with a state court judgment.²³

Part II examines the circumstances in which federal courts must abstain under *Younger*. Generally, federal district courts must dismiss claims for injunctive or declaratory relief that would interfere with a pending state court criminal prosecution or an ongoing state court civil action involving "important state interests."²⁴ It remains unclear, however, whether *Younger* applies only to claims for equitable relief or also bars claims for monetary damages.

Part III analyzes interjurisdictional claim and issue preclusion. Because federal courts are required to give a state court judgment "the same effect that it would have in the courts of the State in which it was rendered,"²⁵ the preclusive effect of state court judgments varies, reflecting differences in state preclusion law. As the discussion shows, state courts disagree on many of the fundamental elements of claim and issue preclusion.

Part IV of this Article examines the interaction between the *Rooker-Feldman* doctrine, *Younger* abstention, and preclusion law. Each targets a distinct category of forbidden claims, and significant differences exist between these doctrines. As the analysis demon-

²¹ Before *Exxon Mobil*, a few scholars offered helpful observations on *Rooker-Feldman*'s interaction with abstention and preclusion law principles. See, e.g., Susan Bandes, *The Rooker-Feldman Doctrine: Evaluating Its Jurisdictional Status*, 74 NOTRE DAME L. REV. 1175, 1177-78 (1999); Sherry, *supra* note 10, at 1090-97; Adam McLain, Comment, *The Rooker-Feldman Doctrine: Toward a Workable Role*, 149 U. PA. L. REV. 1555, 1593-99 (2001); Rowley, *supra* note 10, at 329-34.

²² *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

²³ *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482-83 n.16 (1983); see *infra* Part II.C.

²⁴ *Moore v. Sims*, 442 U.S. 415, 423 (1979).

²⁵ *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 369 (1996).

strates, *Rooker-Feldman* will be unnecessary in some cases, but vitally important in others.

Finally, Part V of this Article articulates two unique roles for the *Rooker-Feldman* doctrine. First, *Rooker-Feldman* is the only doctrine that bars federal claims complaining of injuries caused by a final state court judgment. Second, in the context of civil actions and claims for monetary relief, *Rooker-Feldman* is the only doctrine that bars litigants from collaterally attacking non-final state court judgments. Thus, *Rooker-Feldman* fills an important niche among the doctrines available in federal court.

II. JURISDICTION: THE *ROOKER-FELDMAN* DOCTRINE

The *Rooker-Feldman* doctrine, which prohibits federal district courts from exercising appellate jurisdiction over state court judgments,²⁶ arises from two jurisdictional statutes²⁷ and two Supreme Court cases decided sixty years apart.²⁸ Statutes grant the United States Supreme Court jurisdiction to hear appeals from final state court judgments,²⁹ and grant federal district courts “original jurisdiction,” not appellate jurisdiction.³⁰ In *Rooker v. Fidelity Trust Co.* and *District of Columbia Court of Appeals v. Feldman*, the Supreme Court interpreted these statutes and held that federal district courts do not have appellate jurisdiction over state court judgments.³¹

After decades of confusion, the Supreme Court recently clarified the scope and proper application of the *Rooker-Feldman* doctrine in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*³² and *Lance v. Dennis*.³³ In those cases, the Court held that *Rooker-Feldman* is a narrow doctrine, confined 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.”³⁴

²⁶ See *Exxon Mobil*, 544 U.S. at 283–84.

²⁷ See 28 U.S.C. §§ 1257, 1331 (2006).

²⁸ See *Feldman*, 460 U.S. 462; *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923).

²⁹ 28 U.S.C. § 1257(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 . . .”).

³⁰ *Id.* § 1331 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”).

³¹ See discussion *infra* Part II.A.

³² 544 U.S. 280 (2005).

³³ 546 U.S. 459 (2006) (per curiam).

³⁴ *Exxon Mobil*, 544 U.S. at 284; see discussion *infra* Part II.B.

A. *The Supreme Court's Decisions in Rooker and Feldman*

The Supreme Court has used the *Rooker-Feldman* doctrine to bar jurisdiction only twice—once in *Rooker* and once in *Feldman*.³⁵ Any analysis of the doctrine should begin with a careful examination of the facts of those two cases, which “exhibit the limited circumstances” in which the doctrine applies.³⁶

In the *Rooker* case, Dora and William Rooker initially lost two rounds of litigation in Indiana state courts.³⁷ Not easily deterred, the Rookers filed an action in federal district court asking the court to declare the state court judgment “null and void” because it allegedly violated their federal due process and equal protection rights.³⁸ The district court dismissed the suit for lack of jurisdiction.³⁹ The Supreme Court affirmed the dismissal for two reasons.⁴⁰ First, under federal jurisdictional statutes, only the Supreme Court has appellate jurisdiction over final state court judgments.⁴¹ Second, the statutory jurisdiction of the federal district courts is “strictly original,” not appellate.⁴² As a result, the Court held that federal district courts do not have subject-matter jurisdiction to “reverse or modify” state court judgments.⁴³

Feldman extended this rule to cases in which the litigant’s appeal is not as transparent as it was in *Rooker*. In the *Feldman* case, the District of Columbia Court of Appeals denied Marc Feldman and Edward Hickey’s waiver applications from a bar admission rule.⁴⁴ Feld-

³⁵ See *Feldman*, 460 U.S. at 486–87; *Rooker*, 263 U.S. at 415–16.

³⁶ *Exxon Mobil*, 544 U.S. at 291.

³⁷ The Rookers had deeded real estate to Fidelity Trust Company in exchange for a loan they failed to repay. *Rooker v. Fid. Trust Co.*, 131 N.E. 769, 771–72 (Ind. 1921). In the first round of litigation, the Indiana Supreme Court held that this agreement created a trust. *Rooker v. Fid. Trust Co.*, 109 N.E. 766, 768–70 (Ind. 1915). In the second round of litigation, the trial court ruled that Fidelity had “faithfully performed its duties as trustee.” *Rooker*, 131 N.E. at 773. The Indiana Supreme Court affirmed the judgment. *Id.* at 776.

³⁸ *Rooker*, 263 U.S. at 414–15.

³⁹ *Id.* at 415.

⁴⁰ *Id.*

⁴¹ *Id.* 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 [state court judgments.]”); see also 28 U.S.C. § 1257 (2006).

⁴² *Rooker*, 263 U.S. at 416; see also 28 U.S.C. § 1331.

⁴³ *Rooker*, 263 U.S. at 416.

⁴⁴ *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 464–72 (1983). The rule in question required District of Columbia bar applicants to demonstrate that they graduated from an accredited law school. See *id.* at 464–65. Neither Feldman nor Hickey had done so. *Id.* at 465.

man and Hickey then filed suit in federal district court, arguing that the District of Columbia court's ruling violated their federal constitutional rights.⁴⁵ Although Feldman and Hickey refrained from styling their federal complaint as a blatant appeal, the Supreme Court nonetheless barred claims that were "inextricably intertwined" with the District of Columbia court's decision.⁴⁶

Thus, the *Rooker-Feldman* doctrine bars federal district courts from exercising jurisdiction over claims that seek to "reverse or modify" a state court judgment (as in *Rooker*), as well as claims that are "inextricably intertwined" with the judgment (as in *Feldman*).⁴⁷

B. *Requirements of a Narrow Doctrine: The Exxon Mobil Test*

For more than twenty years, the Supreme Court offered almost no guidance on *Rooker-Feldman*,⁴⁸ allowing federal courts "ample room to improvise."⁴⁹ The doctrine experienced "explosive growth" in the lower federal courts,⁵⁰ which viewed it as a convenient and powerful docket-clearing tool.⁵¹ During this time, however, courts applied *Rooker-Feldman* inconsistently, often confusing the doctrine with preclusion and abstention rules.⁵²

⁴⁵ *Id.* at 468–71.

⁴⁶ *Id.* at 486–87. The Supreme Court noted that the federal district court had jurisdiction over Feldman and Hickey's *general* challenges to the constitutionality of the bar admission rule because those claims did not require review of a judicial decision in a particular case. *Id.* at 487.

⁴⁷ *See, e.g.,* Rowley, *supra* note 10, at 325 ("By adding this additional inquiry, the *Feldman* court extended the *Rooker* doctrine from issues that were actually decided by the state court proceedings, to also include claims that were *not* litigated in the state court, and are inextricably intertwined with the merits of the state court." (emphasis added)).

⁴⁸ Between 1983 and 2005, only six Supreme Court decisions mentioned *Rooker-Feldman*, and none of them used the doctrine to bar jurisdiction. *See* Verizon Md. Inc. v. Pub. Serv. Comm'n of Md., 535 U.S. 635, 644 n.3 (2002); Johnson v. De Grandy, 512 U.S. 997, 1005–06 (1994); Howlett v. Rose, 496 U.S. 356, 369 n.16 (1990); Martin v. Wilks, 490 U.S. 755, 783 n.21 (1989) (Stevens, J., dissenting); ASARCO Inc. v. Kadish, 490 U.S. 605, 622 (1989); Pennzoil Co. v. Texaco Inc., 481 U.S. 1, 7–8 (1987); *id.* 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).

⁴⁹ Susan Bandes, *Judging, Politics, and Accountability: A Reply to Charles Geyh*, 56 CASE W. RES. L. REV. 947, 958 n.55 (2006).

⁵⁰ McLain, *supra* note 21, at 1573 (internal quotation marks omitted).

⁵¹ Bandes, *supra* note 21, at 1175.

⁵² *See, e.g.,* McLain, *supra* note 21, at 1573 ("[C]ourts are confused and consequently are misapplying the doctrine."); Thompson, *supra* note 11, at 880 ("Lower court interpretations of *Feldman* have been mixed.").

In 2005, the Supreme Court finally provided guidance on *Rooker-Feldman* in *Exxon Mobil*, which articulates the narrow circumstances in which the doctrine applies.⁵³ First, *Rooker-Feldman* is limited to “cases brought by state-court losers.”⁵⁴ Second, the doctrine applies only to claims “complaining of injuries caused by state-court judgments” and “inviting district court review and rejection of those judgments.”⁵⁵ Third, *Rooker-Feldman* only protects “state-court judgments rendered before the district court proceedings commenced.”⁵⁶

1. *Rooker-Feldman* Applies to Cases Brought by State Court Losers

Exxon Mobil unequivocally held that *Rooker-Feldman* is confined to cases brought by “state-court losers.”⁵⁷ This requirement should come as no surprise—the Supreme Court had hinted at this limitation more than ten years earlier.⁵⁸ Even after *Exxon Mobil*, however, lower federal courts infused preclusion law privity concepts into the *Rooker-Feldman* analysis and extended the doctrine to cases brought by individuals who had not been parties in the state court action.⁵⁹

In response, the Supreme Court issued a per curiam opinion in *Lance v. Dennis*, emphasizing that *Rooker-Feldman* applies only to actions filed by state court losers.⁶⁰ The Court held that the doctrine

⁵³ *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

⁵⁴ *Id.*; see *infra* Part II.B.1.

⁵⁵ *Exxon Mobil*, 544 U.S. at 284; see *infra* Part II.B.2.

⁵⁶ *Exxon Mobil*, 544 U.S. at 284; see *infra* Part II.B.3.

⁵⁷ *Exxon Mobil*, 544 U.S. at 284.

⁵⁸ See *Johnson v. De Grandy*, 512 U.S. 997, 1005–06 (1994) (characterizing *Rooker-Feldman* as a doctrine “under which a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment” and concluding that “the invocation of *Rooker/Feldman* is . . . inapt here, for unlike *Rooker* or *Feldman*, the United States was not a party in the state court”).

⁵⁹ See, e.g., *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 89–90 (2d Cir. 2005) (turning to preclusion law privity analysis to determine whether *Rooker-Feldman* barred an action filed by parties who had not been part of the state court action); *Lance v. Davidson*, 379 F. Supp. 2d 1117, 1125 (D. Colo. 2005) (same), *vacated sub nom. Lance v. Dennis*, 546 U.S. 459 (2006) (per curiam).

⁶⁰ 546 U.S. 459, 464. In *Lance*, the Colorado General Assembly intervened as a defendant in a state court action filed by Colorado’s attorney general, who challenged the Assembly’s congressional redistricting plan. *Id.* at 460. After the Colorado Supreme Court invalidated the plan, several Colorado citizens filed a separate action in federal district court, alleging that the state court decision violated federal law. *Id.* at 460–61. Although none of the federal plaintiffs had been parties to the state court proceedings, the federal district court held that the citizen-plaintiffs stood in privity with the General Assembly and barred the action under *Rooker-Feldman*. *Lance*, 379 F. Supp. 2d at 1123–27. On direct review, the Supreme Court vacated the judgment. *Lance*, 546 U.S. at 467.

“does not bar actions by nonparties simply because, for purposes of preclusion law, they could be considered in privity with a party to the judgment.”⁶¹ Although the Court was unwilling to foreclose the possibility that *Rooker-Feldman* might bar nonparty claims in exceptional circumstances,⁶² it nonetheless stressed that the doctrine “is not simply preclusion by another name.”⁶³ Thus, *Lance* re-affirmed that *Rooker-Feldman* generally does not bar federal claims by nonparties to the state court action.

2. *Rooker-Feldman* Applies if the Federal Action Complains of an Injury Caused by a State Court Judgment, and Seeks Review and Rejection of that Judgment

Exxon Mobil limits the *Rooker-Feldman* doctrine to “cases . . . complaining of injuries caused by state-court judgments . . . and inviting district court review and rejection of those judgments.”⁶⁴ This statement contains two separate but related inquiries. First, courts must examine “the source of the plaintiff’s injury”⁶⁵ in order to determine whether “the state-court judgment caused, actually and proximately, the injury for which the federal-court plaintiff seeks redress.”⁶⁶ If so, *Rooker-Feldman* bars the claim.⁶⁷ For example, the doctrine prevents a litigant from suing a state court judge in federal court for injuries

⁶¹ *Lance*, 546 U.S. at 466.

⁶² *See id.* at 466 n.2 (“[W]e need not address whether there are *any* circumstances, however limited, in which *Rooker-Feldman* may be applied against a party not named in an earlier state proceeding—*e.g.*, where an estate takes a *de facto* appeal in a district court of an earlier state decision involving the decedent.”).

⁶³ *Id.* at 466. The Court reasoned that “[i]ncorporation of preclusion principles into *Rooker-Feldman* risks turning that limited doctrine into a uniform *federal* rule governing the preclusive effect of state-court judgments, contrary to the Full Faith and Credit Act,” which requires “federal courts to look principally to *state* law in deciding what effect to give state-court judgments.” *Id.*

⁶⁴ *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

⁶⁵ *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010); *accord Kovacic v. Cuyahoga Cnty. Dep’t of Children & Family Servs.*, 606 F.3d 301, 309–10 (6th Cir. 2010). “A useful guidepost is the timing of the injury, that is, whether the injury complained of in federal court existed prior to the state-court proceedings and thus could not have been ‘caused by’ those proceedings.” *Great W. Mining*, 615 F.3d at 167.

⁶⁶ *Mo’s Express, LLC v. Sopkin*, 441 F.3d 1229, 1237 (10th Cir. 2006) (citation, internal quotation marks and emphasis omitted); *see also Green v. Mattingly*, 585 F.3d 97, 102 (2d Cir. 2009); *Skit Int’l, Ltd. v. DAC Techs. of Ark., Inc.*, 487 F.3d 1154, 1157 (8th Cir. 2007).

⁶⁷ *See, e.g., Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 87–88 (2d Cir. 2005) (providing illustrative examples).

caused by a state court judgment.⁶⁸ In contrast, the doctrine does *not* bar a litigant from filing claims that complain of injuries caused by a defendant or a third party, rather than a state court judgment.⁶⁹

Second, *Rooker-Feldman* applies only if the plaintiff's claim invites the district court to "review and reject" the state court judgment.⁷⁰ This criterion is met when a plaintiff blatantly requests reversal or nullification of a state court decision⁷¹ or requests relief that would "otherwise 'undo'" the state court remedy.⁷² However, the doctrine "does not prohibit federal district courts from exercising jurisdiction where the plaintiff's claim is merely a general challenge to the constitutionality of the state law applied in the state action,"⁷³ nor does it apply in other situations in which the federal district court does not need to directly reject a state court judgment.⁷⁴

⁶⁸ See, e.g., *Klaudt v. Dooley*, No. Civ. 10-4091-KES, 2010 WL 5391571 (D.S.D. Dec. 22, 2010); *Gdowski v. Lant*, No. 4:10CV3233, 2010 WL 5257010 (D. Neb. Dec. 15, 2010); *Dempsey v. Clerk*, Supreme Judicial Court, No. 10-12044-PBS, 2010 WL 5283290 (D. Mass. Dec. 15, 2010).

⁶⁹ See, e.g., *PJ ex rel. Jensen v. Wagner*, 603 F.3d 1182, 1194 (10th Cir. 2010); *Knutson v. City of Fargo*, 600 F.3d 992, 995-96 (8th Cir. 2010). Because some aggrieved state court litigants attempt to circumvent *Rooker-Feldman* through artful pleading, courts apply the doctrine to "federal suits that profess to complain of injury by a third party, but actually complain of injury produced by a state-court judgment and not simply ratified, acquiesced in, or left unpunished by it." *Great W. Mining*, 615 F.3d at 167 (internal quotation marks and citations omitted).

⁷⁰ *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

⁷¹ See, e.g., *Carmona v. Carmona*, 603 F.3d 1041, 1051 (9th Cir. 2010) (barring a claim that asked the federal district court to "order that the proceedings in Family Court in case number D181580 be dismissed with prejudice"); *Lawrence v. Welch*, 531 F.3d 364, 369 (6th Cir. 2008) (barring a claim that sought a declaration that the state decision "impermissibly impinges upon protected federal rights" (quoting Joint Appendix at 28, *Lawrence*, 531 F.3d 364 (6th Cir. 2008) (No. 07-1026)) (internal quotation marks omitted)).

⁷² *PJ ex rel. Jensen*, 603 F.3d at 1193 (quoting *Mo's Express, LLC v. Sopkin*, 441 F.3d 1229, 1238 (10th Cir. 2006)).

⁷³ *Carter v. Burns*, 524 F.3d 796, 798 (6th Cir. 2008) (quoting *Hood v. Keller*, 341 F.3d 593, 597 (6th Cir. 2003) (internal quotation marks omitted)).

⁷⁴ See, e.g., *Green v. Mattingly*, 585 F.3d 97, 102 (2d Cir. 2009) (citing *Exxon Mobil*, 544 U.S. at 293) (holding that *Rooker-Feldman* did not bar claims arising out of a state court order temporarily removing plaintiff's child from her custody because "[p]laintiff's child has been returned to her, and thus she plainly has not repaired to federal court to undo the Family Court judgment" (internal quotation marks and alterations omitted)).

3. *Rooker-Feldman* Protects State Court Judgments Rendered Before the Commencement of the Federal Action

Rooker-Feldman applies only when the state court rendered its decision before the commencement of the federal action.⁷⁵ The facts of *Exxon Mobil* illustrate this requirement: in that case, *Rooker-Feldman* did not apply because the state court issued its decision *after* the plaintiffs had already filed an action in federal district court.⁷⁶ Intuitively, this result makes sense—if the state court has not rendered a decision by the time the federal action is filed, then the federal action is not an appeal of a state court judgment, and *Rooker-Feldman* should play no role.

It remains unclear, however, which state court “judgments” trigger the protections of *Rooker-Feldman* after *Exxon Mobil*. Some circuits apply the doctrine only to final state court judgments.⁷⁷ In these circuits, the doctrine does not protect interlocutory orders,⁷⁸ nor does it apply to judgments that can be modified or appealed in state court.⁷⁹ Other circuits extend *Rooker-Feldman* to interlocutory orders and lower state court decisions.⁸⁰ This approach prevents federal court plaintiffs from collaterally attacking preliminary injunctions, stays, rulings on pretrial motions, and other non-final state court orders.⁸¹

⁷⁵ *Exxon Mobil*, 544 U.S. at 284.

⁷⁶ In *Exxon Mobil*, Saudi Basic Industries Corporation (SABIC) sued two ExxonMobil subsidiaries in Delaware state court. *Id.* at 289. ExxonMobil and its subsidiaries immediately countersued SABIC in federal district court. *Id.* Thus, from the beginning, there was parallel litigation in state and federal court. When the state court rendered its judgment nearly three years later, the Third Circuit dismissed the federal action under *Rooker-Feldman*. *Exxon Mobil v. Saudi Basic Indus. Corp.*, 364 F.3d 102, 104 (3d Cir. 2004). The Supreme Court reversed, holding that “[w]hen there is parallel state and federal litigation, *Rooker-Feldman* is not triggered simply by the entry of judgment in state court.” *Exxon Mobil*, 544 U.S. at 292.

⁷⁷ *E.g.*, *TruServ Corp. v. Flegles, Inc.*, 419 F.3d 584, 591 (7th Cir. 2005); *In re Meyerland Co.*, 960 F.2d 512, 516 (5th Cir. 1992); *see also* *Amos v. Glynn Cnty. Bd. of Tax Assessors*, 347 F.3d 1249, 1265 n.11 (11th Cir. 2003) (stating that *Rooker-Feldman* requires a “prior state court ruling [that] was a final or conclusive judgment on the merits”).

⁷⁸ *See, e.g.*, *TruServ*, 419 F.3d at 591.

⁷⁹ *E.g.*, *Nicholson v. Shafe*, 558 F.3d 1266, 1278 (11th Cir. 2009); *In re Hodges*, 350 B.R. 796, 801 (Bankr. N.D. Ill. 2006).

⁸⁰ *E.g.*, *Pieper v. Am. Arbitration Ass’n*, 336 F.3d 458, 462 (6th Cir. 2003); *Am. Reliable Ins. Co. v. Stillwell*, 336 F.3d 311, 320 (4th Cir. 2003); *Richardson v. D.C. Court of Appeals*, 83 F.3d 1513, 1515 (D.C. Cir. 1996).

⁸¹ *See, e.g.*, *Gilbert v. Ferry*, 401 F.3d 411, 418 (6th Cir. 2005) (holding that a federal plaintiff cannot challenge a state court’s denial of a motion for recusal); *Pieper*, 336 F.3d at 459, 464–65 (*Rooker-Feldman* bars federal court review of a state court order staying litigation); *Kenmen Eng’g v. City of Union*, 314 F.3d 468, 473–75 (10th

Several circuits recently have adopted an intermediate approach, in which *Rooker-Feldman* protects some state court interlocutory orders but not others.⁸² Relying on dicta from *Exxon Mobil*,⁸³ these courts apply the doctrine if the state court has rendered an order that is sufficiently “final” for Supreme Court review or if the parties have voluntarily ceased litigation in state court prior to the commencement of the federal action.⁸⁴

Thus, although courts agree that *Rooker-Feldman* protects final state court judgments rendered before the commencement of the federal action, the circuits are split as to whether the doctrine also protects state court interlocutory orders.

C. *It is Unclear What Role (if Any) Feldman’s “Inextricably Intertwined” Test Plays in the Rooker-Feldman Analysis*

Although *Exxon Mobil* and *Lance* clarify the scope of *Rooker-Feldman*, neither decision invokes *Feldman*’s “inextricably intertwined” test as part of the Court’s analysis.⁸⁵ As a result, it is unclear what role

Cir. 2002) (holding that a federal plaintiff cannot collaterally attack a state court order granting temporary and permanent injunctions), *abrogated by Exxon Mobil*, 544 U.S. 280.

⁸² See, e.g., *Guttman*, 446 F.3d at 1032 & n.2; *Dornheim v. Sholes*, 430 F.3d 919, 924 (8th Cir. 2005); *Mothershed v. Justices of the Supreme Court*, 410 F.3d 602, 604 n.1 (9th Cir. 2005); *Federación de Maestros de P.R. v. Junta de Relaciones del Trabajo de P.R.*, 410 F.3d 17, 23–25 (1st Cir. 2005).

⁸³ Courts adopting the intermediate approach point to the Supreme Court’s observation in *Exxon Mobil* that “the state proceedings [had] ended” in both *Rooker* and *Feldman*. *Federación*, 410 F.3d at 24 (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291 (2005) (internal quotation marks omitted)). And yet the plaintiff in *Exxon Mobil* filed its federal action “well before any judgment in state court,” final or interlocutory. *Exxon Mobil*, 544 U.S. at 293 (emphasis added). The final-versus-interlocutory distinction clearly was not at issue in that case.

⁸⁴ Specifically, courts adhering to the intermediate approach apply *Rooker-Feldman* in the following circumstances: (1) “when the highest state court in which review is available has affirmed the judgment below and nothing is left to be resolved”; (2) when “the state action has reached a point where neither party seeks further action”; or (3) when the state courts “have finally resolved all the federal questions in the litigation, but state law or purely factual questions (whether great or small) remain to be litigated.” *Federación*, 410 F.3d at 24–25.

⁸⁵ *Exxon Mobil* references the words “inextricably intertwined” only when summarizing the holding of *Feldman*. See *Exxon Mobil*, 544 U.S. at 286 & n.1, 291. *Lance* refers to the test only when summarizing the district court’s decision. See *Lance v. Dennis*, 546 U.S. 459, 462 (2006) (per curiam); see also Thomas D. Rowe, Jr. & Edward L. Baskauskas, “Inextricably Intertwined” Explicable at Last? *Rooker-Feldman Analysis After the Supreme Court’s Exxon Mobil Decision*, 2006 FED. CTS. L. REV. 1, 11 (2006) (“[T]he previously prominent ‘inextricably intertwined’ test did absolutely none of the work” [in *Exxon Mobil*].”).

the “inextricably intertwined” inquiry plays in the *Rooker-Feldman* analysis.⁸⁶

Lower federal courts apply a variety of inconsistent iterations of the “inextricably intertwined” test, almost all of which were developed before the *Exxon Mobil* and *Lance* decisions.⁸⁷ Some courts follow a broad approach and bar any claims that require a federal court to disagree with a state court’s prior determination on an issue.⁸⁸ Other courts follow a narrow approach originally adopted by the Seventh Circuit and refuse to apply *Rooker-Feldman* as long as the plaintiff advances “some independent claim,” even if that claim requires the federal court to disagree with a legal conclusion that the state court reached.⁸⁹ A few decisions continue to conflate *Rooker-Feldman* with claim preclusion, holding that claims are “inextricably intertwined” if they could have been raised in state court.⁹⁰

Many courts have relegated the “inextricably intertwined” inquiry to a secondary role or have discarded it altogether. Under the Ninth Circuit’s approach, courts must first conclude that the plaintiff’s federal action seeks relief from a state court judgment; only then can they decide which claims are “inextricably intertwined” with that judgment.⁹¹ And in the last few years an increasing number of circuits have concluded that the “inextricably intertwined” phrase has no independent meaning but “merely states a conclusion”—if claims

⁸⁶ By referring to the “inextricably intertwined” test without overruling or altering it, the Court appears to at least assume the legitimacy of the inquiry. See Jones, *supra* note 17, at 659–60.

⁸⁷ See *id.* at 660–74 (summarizing the various approaches to the “inextricably intertwined” test used by lower federal courts).

⁸⁸ See, e.g., *Parker v. Potter*, 368 F. App’x 945, 948 (11th Cir. 2010); *ADSA, Inc. v. Ohio*, 176 F. App’x 640, 643 (6th Cir. 2006); *Untracht v. Weimann*, 141 F. App’x 46, 48–49 (3d Cir. 2005). This approach originated in Justice Marshall’s concurrence in *Pennzoil Co. v. Texaco, Inc.* 481 U.S. 1, 25 (1987) (Marshall, J., concurring) (“[T]he federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.”).

⁸⁹ *GASH Assocs. v. Vill. of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993); accord *Todd v. Weltman, Weinberg & Reis Co., L.P.A.*, 434 F.3d 432, 436–37 (6th Cir. 2006).

⁹⁰ See, e.g., *Johnson v. Baker*, No. 08-11589, 2008 WL 4657823, at *1 (11th Cir. Oct. 20, 2008) (per curiam); *McMahon v. Wash. State Bank*, No. 05-C-122-S, 2005 WL 1648204, at *2 (W.D. Wis. July 13, 2005).

⁹¹ See *Noel v. Hall*, 341 F.3d 1148, 1158 (9th Cir. 2003); see also *Ignacio v. Judges of the U.S. Court of Appeals for the Ninth Circuit*, 453 F.3d 1160, 1165 (9th Cir. 2006).

meet *Exxon Mobil's* requirements, they are, “by definition, ‘inextricably intertwined’ with the state-court decision.”⁹²

To the extent that the “inextricably intertwined” test survived the Supreme Court’s recent decisions, the Seventh and Ninth Circuits appear to have the only viable approaches.⁹³ *Exxon Mobil's* statement that *Rooker-Feldman* does not apply as long as the federal action “presents some independent claim, albeit one that denies a legal conclusion that a state court has reached,”⁹⁴ suggests a narrow definition of “inextricably intertwined” and is flatly inconsistent with a broad interpretation of that phrase.⁹⁵ Moreover, after the Court’s emphasis in both *Exxon Mobil* and *Lance* that “*Rooker-Feldman* is not simply preclusion by another name,”⁹⁶ it is inappropriate to use rules from preclusion law when analyzing whether claims are “inextricably intertwined.”⁹⁷

In sum, *Rooker-Feldman* recognizes that federal district courts are courts of original jurisdiction, not appellate jurisdiction. The doctrine bars federal claims that seek to reverse or modify state court judgments, but it remains unclear whether it also bars “inextricably intertwined” claims as well. In any event, *Rooker-Feldman* applies only in “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceed-

⁹² *Davani v. Va. Dep’t of Transp.*, 434 F.3d 712, 719 (4th Cir. 2006); *accord* *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 170 (3d Cir. 2010); *E. Hill Synagogue v. City of Englewood*, 240 F. App’x 938, 941 n.1 (3d Cir. 2007); *McCormick v. Braverman*, 451 F.3d 382, 394–95 (6th Cir. 2006); *Bolden v. City of Topeka*, 441 F.3d 1129, 1143 (10th Cir. 2006); *States Res. Corp. v. Architectural Team, Inc.*, 433 F.3d 73, 79–80 (1st Cir. 2005); *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 86–87 (2d Cir. 2005).

⁹³ *Exxon Mobil* cited decisions applying the Seventh and Ninth Circuit “inextricably intertwined” tests, apparently with approval. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005) (citing *GASH*, 995 F.2d at 728; *Noel*, 341 F.3d at 1163–64).

⁹⁴ *Id.* (alterations, internal quotations, and citations omitted); *accord* *Skinner v. Switzer*, 131 S. Ct. 1289, 1297 (2011).

⁹⁵ *See* *Rowe & Baskauskas*, *supra* note 85, at 15 n.64 (arguing that, after *Exxon Mobil*, “federal courts should not apply the [inextricably intertwined] concept expansively”); *Jones*, *supra* note 17, at 676 (noting that the broad “Marshall approach to ‘inextricably intertwined’ does not appear to survive *Exxon Mobil*”).

⁹⁶ *Lance v. Dennis*, 546 U.S. 459, 466 (2006) (per curiam); *accord Exxon Mobil*, 544 U.S. at 284 (“*Rooker-Feldman* does not otherwise override or supplant preclusion doctrine . . .”).

⁹⁷ *See* *Rowe & Baskauskas*, *supra* note 85, at 17 (“What [lower federal courts] should avoid, as the recent follow-up *Lance* decision makes clear, is general resort to preclusion law even as an aid in determining applicability of *Rooker-Feldman*.”); *Jones*, *supra* note 17, at 675 (noting that after *Exxon Mobil*, “[i]t is clear that the res judicata approach is no longer a viable option”).

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ings commenced and inviting district court review and rejection of those judgments.”⁹⁸

III. ABSTENTION: THE *YOUNGER* DOCTRINE

In *Younger v. Harris*, the Supreme Court held that federal courts must abstain when a plaintiff requests injunctive relief that would interfere with a pending state court criminal prosecution.⁹⁹ In subsequent cases, the Court dramatically expanded the *Younger* doctrine.¹⁰⁰ In its modern form, the doctrine protects not only criminal proceedings, but also ongoing state court civil actions involving important state interests,¹⁰¹ as long as there is an adequate opportunity to raise constitutional claims.¹⁰² Some aspects of *Younger* abstention remain unclear, however. Most notably, courts disagree as to whether *Younger* is limited to claims for equitable relief or bars damages claims as well.¹⁰³

A. *The Supreme Court’s Decision in Younger v. Harris*

In the *Younger* case, the District Attorney for Los Angeles County prosecuted John Harris, Jr. in state court, under California’s Criminal Syndicalism Act.¹⁰⁴ Harris filed an action in federal district court requesting injunctive relief against the pending state criminal prosecution.¹⁰⁵ The district court invalidated the Criminal Syndicalism Act on First Amendment grounds and enjoined the state court proceedings.¹⁰⁶

The Supreme Court reversed and held that federal courts cannot enjoin pending state court criminal proceedings, absent excep-

⁹⁸ *Exxon Mobil*, 544 U.S. at 284.

⁹⁹ *Younger v. Harris*, 401 U.S. 37, 39–41 (1971); see also discussion *infra* Part III.A.

¹⁰⁰ See *infra* Part III.B.

¹⁰¹ *Moore v. Sims*, 442 U.S. 415, 423 (1979).

¹⁰² *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982).

¹⁰³ See *infra* Part III.C.

¹⁰⁴ *Younger*, 401 U.S. at 39–41. California’s Criminal Syndicalism Act defined “criminal syndicalism” as “any doctrine or precept advocating, teaching or aiding and abetting the commission of crime, sabotage . . . , or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change.” *Id.* at 38 n.1 (quoting CAL. PENAL CODE § 11400 (West 1971) (repealed 1991)).

¹⁰⁵ *Id.* at 38–39.

¹⁰⁶ *Id.* at 40.

tional circumstances.¹⁰⁷ Basing its decision on “primary sources” underlying the interaction between state and federal courts, the Court invoked notions of comity¹⁰⁸ and “Our Federalism”—“the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.”¹⁰⁹ The Court also relied on the basic principle that “courts of equity should not act . . . when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief.”¹¹⁰ Applying this rule, the Supreme Court held that the district court erred when it enjoined the state prosecution against Harris.¹¹¹

¹⁰⁷ *Id.* at 41. “[S]pecial circumstances” justifying a departure from this rule include repeated bad-faith prosecutions and enforcement of statutes that are “flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph.” *Id.* at 41, 53–54; see also Comment, *Limiting the Younger Doctrine: A Critique and Proposal*, 67 CALIF. L. REV. 1318, 1328–31 (1979) (discussing the exceptions to *Younger*). The *Younger* opinion cites *Dombrowski v. Pfister*, 380 U.S. 479 (1965), as an example of the type of harassment through bad-faith prosecutions that would justify an injunction against state proceedings. See *Younger*, 401 U.S. at 47–49; see also Owen M. Fiss, *Dombrowski*, 86 YALE L.J. 1103 (1977).

¹⁰⁸ *Younger*, 401 U.S. at 43–44. “Comity encompasses the notion that, based on judicial courtesy and deference, the courts of one jurisdiction will give credit and effect to the laws and judicial holdings of courts from another jurisdiction.” Mathew D. Staver, *The Abstention Doctrines: Balancing Comity with Federal Court Intervention*, 28 SETON HALL L. REV. 1102, 1115 n.84 (1998); see also David L. Shapiro, *Jurisdiction and Discretion*, 60 N.Y.U. L. REV. 543, 549–50, 581 (1985) (noting that *Younger* is “[t]he present-day heir” to a tradition in which “comity concerns . . . led English courts to refuse to enjoin proceedings in Scotland, even though Scottish and English courts are tribunals of the same sovereign”).

¹⁰⁹ *Younger*, 401 U.S. at 44. For historical background on the Supreme Court’s use of the phrase “Our Federalism” prior to *Younger*, see Aviam Soifer & H.C. Macgill, *The Younger Doctrine: Reconstructing Reconstruction*, 55 TEX. L. REV. 1141, 1165 n.124 (1977); see also Mary Brigid McManamon, *Felix Frankfurter: The Architect of “Our Federalism”*, 27 GA. L. REV. 697, 703–12 (1993) (discussing the evolution of the concept of “Our Federalism”).

¹¹⁰ *Younger*, 401 U.S. at 43–44. Interestingly, the Supreme Court did not base its decision on the Anti-Injunction Act, which provides that “[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” 28 U.S.C. § 2283 (2006). The Court’s reluctance to rely on this statute makes more sense in light of its subsequent decision in *Mitchum v. Foster*, in which the Court held that 42 U.S.C. § 1983 is an “expressly authorized” exception to the Anti-Injunction Act. 407 U.S. 225, 243 (1972). Thus, the Anti-Injunction Act did not bar Harris’s § 1983 claim.

¹¹¹ *Younger*, 401 U.S. at 49. After observing that Harris had an opportunity to raise his constitutional claims in the pending state court proceedings, the Court noted that “[t]here is no suggestion that this single prosecution against Harris is brought in bad faith or is only one of a series of repeated prosecutions to which he will be subjected.” *Id.*

Although commentators generally agree with *Younger's* equity rationale,¹¹² they have vigorously debated whether it was wise for the Court to rely on notions of comity and federalism.¹¹³ Paul Bator has defended the Court's rationale, arguing that "especially sensitive political nerves are likely to be touched if federal judges are free to enjoin—or to declare unconstitutional—state court enforcement proceedings."¹¹⁴ However, many scholars view *Younger's* reliance on comity and federalism as misguided. For example, John Gibbons has criticized *Younger's* "strident antinational tone,"¹¹⁵ and Aviam Soifer and H.C. Macgill have argued that the Supreme Court's notion of comity and federalism "reflects an obsessive concern with conflict between the state and national sovereigns," which "turns out in practice to be a mandate to federal courts to give way."¹¹⁶

Thus, *Younger* draws on principles of equity, comity, and federalism and prohibits federal district courts from enjoining ongoing state court criminal proceedings. The doctrine is a powerful forum-allocation device—it shifts federal constitutional claims to state

¹¹² Shapiro, *supra* note 108, at 579–80 ("[C]ourts and commentators generally agree that there may be powerful reasons to withhold injunctive relief when simpler and less intrusive remedies are at hand."). *But see* Soifer & Macgill, *supra* note 109, at 1143 (arguing that the rigidity of the *Younger* doctrine "has eliminated the discretionary balancing at the heart of equity").

¹¹³ The scholarship on this debate is voluminous. *See, e.g.*, Paul M. Bator, *The State Courts and Federal Constitutional Litigation*, 22 WM. & MARY L. REV. 605 (1981); Fiss, *supra* note 107; Barry Friedman, *A Revisionist Theory of Abstention*, 88 MICH. L. REV. 530 (1989); John J. Gibbons, *Our Federalism*, 12 SUFFOLK U. L. REV. 1087 (1978); Wayne McCormack, *Federalism and Section 1983: Limitations on Judicial Enforcement of Constitutional Claims*, 60 VA. L. REV. 250 (1974); Martin H. Redish, *The Doctrine of Younger v. Harris: Deference in Search of a Rationale*, 63 CORNELL L. REV. 463 (1978); S. Stephen Rosenfeld, *The Place of State Courts in the Era of Younger v. Harris*, 59 B.U. L. REV. 597 (1979); Jeffrey M. Shaman & Richard C. Turkington, *Huffman v. Pursue, Ltd.: The Federal Courthouse Door Closes Further*, 56 B.U. L. REV. 907 (1976); Soifer & Macgill, *supra* note 109; Ralph U. Whitten, *Federal Declaratory and Injunctive Interference with State Court Proceedings: The Supreme Court and the Limits of Judicial Discretion*, 53 N.C. L. REV. 591 (1975).

¹¹⁴ Bator, *supra* note 113, at 620. Bator further argued that "[i]f we want state judges to feel institutional responsibility for vindicating federal rights, it is counterproductive to be grudging in giving them the opportunity to do so Let us beware of breeding the very attitudes of cynicism and hostility which we fear." *Id.* at 625.

¹¹⁵ Gibbons, *supra* note 113, at 1105. Gibbons argued that the Supreme Court's conception of federalism disregards several notable historical events, including "the Civil War, the fourteenth amendment, the Civil Rights Acts, the federal jurisdictional grants of the Reconstruction era, and the civil rights legislation of the 1960's." *Id.* at 1104.

¹¹⁶ Soifer & Macgill, *supra* note 109, at 1185–86.

courts, even though federal courts would otherwise have jurisdiction.¹¹⁷

B. Clarification and Extension of the Younger Doctrine

In the years following the *Younger* decision, the Supreme Court extended the scope of abstention well beyond the facts of that case.¹¹⁸ As a result, *Younger* abstention now applies if three basic requirements are met.¹¹⁹ First, there must be an “ongoing state judicial proceeding” at the time the federal claim is filed.¹²⁰ Second, the state proceeding must “implicate important state interests.”¹²¹ Third, there must be “an adequate opportunity in the state proceedings to raise constitutional challenges.”¹²²

1. *Younger* Protects Pending State Court Proceedings

Federal courts are required to abstain under *Younger* only if there are “pending” state court proceedings at the time the federal action is filed.¹²³ As a general rule, *Younger* does not bar federal

¹¹⁷ See Barry Friedman, *Under the Law of Federal Jurisdiction: Allocating Cases Between Federal and State Courts*, 104 COLUM. L. REV. 1211, 1249 (2004) (noting that *Younger* “serves to allocate cases to state court consistent with the state’s enforcement interest, while simultaneously denying access to federal court, despite the existence of federal interests”).

¹¹⁸ See, e.g., Georgene M. Vairo, *Making Younger Civil: The Consequences of Federal Court Deference to State Court Proceedings: A Response to Professor Stravitz*, 58 FORDHAM L. REV. 173, 184 (1989) (“The Supreme Court has extended *Younger* dramatically to bar injunctions of civil proceedings which implicate important state interests when adequate relief is available in the state court. In addition, *Younger* has been applied to declaratory and other forms of relief.”).

¹¹⁹ *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982).

¹²⁰ See *infra* Part III.B.1.

¹²¹ See *infra* Part III.B.2.

¹²² See *infra* Part III.B.3.

¹²³ See *Steffel v. Thompson*, 415 U.S. 452, 462 (1974). A pending prosecution obviously exists if officials have filed formal charges or if there has been an indictment returned in state court. See, e.g., *Younger v. Harris*, 401 U.S. 37, 41 (1971) (“Appellee Harris has been indicted, and was actually being prosecuted by California . . . at the time this suit was filed.”). Some lower courts have also suggested that an arrest by state officials triggers *Younger* abstention. See *Rialto Theater Co. v. City of Wilmington*, 440 F.2d 1326, 1326–27 (3d Cir. 1971) (per curiam); *Eve Prods., Inc. v. Shannon*, 439 F.2d 1073, 1073–74 (8th Cir. 1971) (per curiam). But see *Agriesti v. MGM Grand Hotels, Inc.*, 53 F.3d 1000, 1001 (9th Cir. 1995) (holding that there were “no ongoing state judicial proceedings” for *Younger* purposes when plaintiffs filed their federal claim after being arrested).

courts from enjoining *future* criminal prosecutions,¹²⁴ nor does it prevent a federal court from granting declaratory relief in the absence of ongoing state court proceedings.¹²⁵

And yet, a litigant cannot stave off abstention merely by winning the race to the courthouse door. Even when the federal action is filed first, *Younger* nonetheless applies if a state court prosecution commences prior to “proceedings of substance on the merits” in the federal action.¹²⁶ For example, a federal district court must abstain if it has done nothing but deny a temporary restraining order at the time state proceedings begin.¹²⁷ Similarly, a federal district court’s consideration of abstention issues is not a proceeding of substance on the merits for purposes of *Younger*.¹²⁸ In contrast, a federal court’s grant of a preliminary injunction is sufficient to render *Younger* inapplicable.¹²⁹

State court proceedings remain “pending” for purposes of the *Younger* doctrine until the losing party exhausts all state appellate remedies.¹³⁰ The Supreme Court has reasoned that “[v]irtually all of the evils at which *Younger* is directed would inhere in federal intervention prior to completion of state appellate proceedings.”¹³¹ A party is not excused from this exhaustion requirement merely because there is little chance for success on appeal.¹³² Moreover, a state court

¹²⁴ *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 930 (1975); *see also Ex parte Young*, 209 U.S. 123, 155–56 (1908) (noting that a federal court in equity may enjoin “officers of the state . . . who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act”).

¹²⁵ *Steffel*, 415 U.S. at 462–63. As the Supreme Court has recognized, a contrary rule would “place the hapless plaintiff between the Scylla of intentionally flouting state law and the Charybdis of forgoing what he believes to be constitutionally protected activity in order to avoid becoming enmeshed in a criminal proceeding.” *Id.* at 462.

¹²⁶ *Hicks v. Miranda*, 422 U.S. 332, 349 (1975).

¹²⁷ *Id.* at 338–39, 349–50.

¹²⁸ *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 436–37 (1982).

¹²⁹ *See Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 238 (1984). These cases lead to an inescapable conclusion: state prosecutors can veto the federal forum if they immediately file charges after receiving notice that someone under investigation has brought an action in federal court. *See Fiss, supra* note 107, at 1135–36 (arguing that the *Younger* doctrine vests district attorneys with “a reverse removal power”).

¹³⁰ *See Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608 (1975).

¹³¹ *Id.* The Court later clarified that *Younger* requires exhaustion of state appellate remedies only when the federal claim is “designed to annul the results of a state trial,” not when the relief sought by the federal court plaintiff would be “wholly prospective,” merely “preclud[ing] further prosecution.” *Wooley v. Maynard*, 430 U.S. 705, 711 (1977).

¹³² *See Huffman*, 420 U.S. at 610.

loser cannot circumvent *Younger* by allowing the time for filing an appeal to elapse.¹³³

2. *Younger* Applies if the Pending State Court Proceeding Involves Important State Interests

Although *Younger* involved a pending state court *criminal* prosecution,¹³⁴ the Supreme Court has extended the holding of that case to a limited number of state court *civil* proceedings—namely, civil enforcement actions filed by state officials and private civil litigation implicating “important state interests.”¹³⁵

First, *Younger* protects civil enforcement actions filed by state officials.¹³⁶ For example, in *Huffman v. Pursue, Ltd.*, the Court used *Younger* to prohibit a federal district court from enjoining a government-initiated state court civil nuisance action.¹³⁷ Similarly, in *Trainor v. Hernandez*, the Court held that *Younger* barred federal courts from interfering with a civil fraud action filed by state officials.¹³⁸ Although the Court has refused to make “general pronouncements upon the applicability of *Younger* to all civil litigation,”¹³⁹ the doctrine undoubtedly applies to civil enforcement actions “brought by the State in its sovereign capacity.”¹⁴⁰

¹³³ *Id.* at 611. Scholars have criticized the implications of this exhaustion requirement. See, e.g., Soifer & Macgill, *supra* note 109, at 1200 (“The introduction in *Huffman* of a requirement for exhaustion of state appellate remedies did not eliminate the distinction between pending and non-pending proceedings, but it expanded the notion of pendency toward the point at which the distinction is insignificant.”).

¹³⁴ See *Younger v. Harris*, 401 U.S. 37, 41 (1971).

¹³⁵ See generally ERWIN CHEMERINSKY, FEDERAL JURISDICTION 832–57 (5th ed. 2007) (discussing the Court’s expansion of *Younger* to civil proceedings).

¹³⁶ See *Trainor v. Hernandez*, 431 U.S. 434, 444 (1977); RICHARD H. FALLON, JR. ET AL., HART & WECHSLER’S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 1122 (6th ed. 2009) (noting that *Trainor* appears to “extend *Younger* more broadly to encompass all civil enforcement actions brought by the state”).

¹³⁷ *Huffman*, 420 U.S. at 595–98, 604–05.

¹³⁸ *Trainor*, 431 U.S. at 435–36, 444.

¹³⁹ *Huffman*, 420 U.S. at 607.

¹⁴⁰ *Trainor*, 431 U.S. at 444. It is important to note that *Younger* abstention only protects civil *enforcement* actions brought by state officials. In contrast, “it has never been suggested that *Younger* requires abstention in deference to a state judicial proceeding reviewing legislative or executive action.” New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350, 368 (1989); see also FALLON, JR. ET AL., *supra* note 136, at 1123 (noting that *Younger* apparently “does not extend to challenges to completed legislative or executive actions that do not require, or have not yet led to, enforcement suits”).

Second, the Supreme Court has extended *Younger* to private state court civil actions when the litigation implicates “important state interests.”¹⁴¹ Such interests exist when civil proceedings “bear a close relationship to proceedings criminal in nature,”¹⁴² or when they are “necessary for the vindication of important state policies or for the functioning of the state judicial system.”¹⁴³ For example, in *Juidice v. Vail*, the Court held that *Younger* barred federal courts from enjoining state court contempt procedures in a civil action between private parties because “[t]he contempt power lies at the core of the administration of a State’s judicial system.”¹⁴⁴ Likewise, in *Pennzoil Co. v. Texaco Inc.*, the Court used *Younger* to prevent a federal district court from interfering with the execution of a state court judgment rendered in a private civil action, citing “the importance to the States of enforcing the orders and judgments of their courts.”¹⁴⁵ Because the state court proceedings in both cases involved important state interests, the federal courts were required to abstain under *Younger*.¹⁴⁶

3. *Younger* Applies Only if the State Court Proceedings Provide an Adequate Opportunity to Raise Constitutional Challenges

The Supreme Court also has emphasized that *Younger* applies only when the state court proceedings offer the parties an adequate opportunity to raise constitutional claims.¹⁴⁷ The *Younger* decision it-

¹⁴¹ *E.g.*, *Moore v. Sims*, 442 U.S. 415, 423 (1979) (noting that the “basic concern” underlying *Younger* “is also fully applicable to civil proceedings in which important state interests are involved”).

¹⁴² *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982).

¹⁴³ *Id.*; *see also New Orleans Pub. Serv.*, 491 U.S. at 368 (noting that *Younger* extends to “civil proceedings involving certain orders that are uniquely in furtherance of the state courts’ ability to perform their judicial functions”).

¹⁴⁴ 430 U.S. 327 (1977) (quoting *Huffman*, 420 U.S. at 604).

¹⁴⁵ 481 U.S. 1, 13–14 (1987).

¹⁴⁶ Some commentators have suggested that *Pennzoil* may extend *Younger* to all civil proceedings. *See, e.g.*, CHEMERINSKY, *supra* note 135, at 848. This does not appear to be the case. The *Pennzoil* Court explicitly refused to extend *Younger* to all civil actions. *Pennzoil*, 481 U.S. at 14 n.12 (“Our opinion does not hold that *Younger* abstention is always appropriate whenever a civil proceeding is pending in a state court. Rather, as in *Juidice*, we rely on the State’s interest in protecting the authority of the judicial system, so that its orders and judgments are not rendered nugatory.” (internal quotation marks and citation omitted)).

¹⁴⁷ *Middlesex Cnty. Ethics Comm.*, 457 U.S. at 432; *accord Moore v. Sims*, 442 U.S. 415, 432 (1979) (applying *Younger*, in part because “the appellees have not shown that state procedural law barred presentation of their claims”).

self mentioned this limitation on federal court abstention.¹⁴⁸ This requirement appears to presume the existence of parity, a concept that recognizes that “state courts are equal to federal courts in their ability and willingness to protect federal constitutional rights.”¹⁴⁹

Although the concept of parity has sparked a rigorous academic debate,¹⁵⁰ the Supreme Court has repeatedly assumed its veracity.¹⁵¹ As a result, federal courts considering abstention under the *Younger* doctrine employ a strong presumption that the ongoing state court proceedings provide an adequate opportunity to adjudicate federal claims.¹⁵² Even when a plaintiff does not raise her federal claims in state court, federal courts must “assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary.”¹⁵³

¹⁴⁸ *Younger v. Harris*, 401 U.S. 37, 45 (1971) (“The accused should first set up and rely upon his defense in the state courts, even though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection.” (quoting *Fenner v. Boykin*, 271 U.S. 240, 244 (1926)) (internal quotation marks omitted)).

¹⁴⁹ Erwin Chemerinsky, *Parity Reconsidered: Defining a Role for the Federal Judiciary*, 36 UCLA L. REV. 233, 233 n.1 (1988).

¹⁵⁰ Compare, e.g., Burt Neuborne, *The Myth of Parity*, 90 HARV. L. REV. 1105, 1121–28 (1977) (arguing that federal courts are superior to state courts), with William B. Rubenstein, *The Myth of Superiority*, 16 CONST. COMMENT. 599, 612–21 (1999) (rebutting Neuborne’s argument and arguing that state courts have yielded better results in the specific context of gay-rights claimants).

¹⁵¹ See, e.g., *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 149–50 (1988) (“[W]hen a state proceeding presents a federal issue, . . . the proper course is to seek resolution of that issue by the state court.”); *Deakins v. Monaghan*, 484 U.S. 193, 203 (1988) (rejecting the “assumption that the States cannot be trusted to enforce federal rights with adequate diligence” as “inappropriate” (citing *Stone v. Powell*, 428 U.S. 465, 493–94 n.35 (1976))).

¹⁵² See *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 15 (1987) (“We cannot assume that state judges will interpret ambiguities in state procedural law to bar presentation of federal claims.”); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 611 (1975) (“Appellee is in truth urging us to base a rule on the assumption that state judges will not be faithful to their constitutional responsibilities. This we refuse to do.”).

¹⁵³ *Pennzoil*, 481 U.S. at 15; see also *id.* at 16 n.16 (noting that a litigant “cannot escape *Younger* abstention by failing to assert its state remedies in a timely manner”). Martin Redish has criticized this approach, arguing that the Supreme Court is willing to conclude that a litigant did not have an opportunity to raise a federal claim in state court “only in those rare cases in which the entire state judicial process is glaringly inadequate.” Martin H. Redish, *Abstention, Separation of Powers, and the Limits of the Judicial Function*, 94 YALE L.J. 71, 108–09 (1984); see also Douglas Laycock, *Federal Interference with State Prosecutions: The Need for Prospective Relief*, 1977 SUP. CT. REV. 193, 194 (“[I]n many cases the criminal defense cannot provide an adequate remedy, because the criminal court cannot grant interlocutory, prospective, or class relief.”).

C. *Although Younger Bars Actions Seeking Injunctive or Declaratory Relief, it is Unclear Whether the Doctrine Applies to Claims for Damages*

Although the *Younger* case involved injunctive relief, the doctrine bars other equitable remedies as well. In *Samuels v. Mackell*, a decision rendered on the same day as *Younger*, the Supreme Court held that, absent “unusual circumstances,” federal courts cannot grant declaratory relief if doing so would interfere with pending state court prosecutions.¹⁵⁴ The Court noted that “a declaratory judgment issued while state proceedings are pending might serve as the basis for a subsequent injunction,” in which case it would “result in precisely the same interference with and disruption of state proceedings” underlying *Younger*’s rationale.¹⁵⁵

However, it remains unclear whether *Younger* also bars claims for monetary damages.¹⁵⁶ The Supreme Court has noted the existence of this issue several times without resolving it.¹⁵⁷ Most recently, the Supreme Court suggested in *Quackenbush v. Allstate Insurance Co.* that abstention doctrines may apply in civil actions for damages, but only to justify a stay rather than dismissal or remand of the action.¹⁵⁸ However, that case involved *Burford* abstention,¹⁵⁹ not *Younger* abstention, and the Court ultimately found it unnecessary to elaborate on the

¹⁵⁴ 401 U.S. 66, 73 (1971) (“[W]here an injunction would be impermissible under [*Younger*’s] principles, declaratory relief should ordinarily be denied as well.”). The Court admitted in *Samuels* that “[t]here may be unusual circumstances in which an injunction might be withheld because, despite a plaintiff’s strong claim for relief under the established standards, the injunctive remedy seemed particularly intrusive or offensive; in such a situation, a declaratory judgment might be appropriate.” *Id.* at 73.

¹⁵⁵ *Id.* at 72. Some jurists and scholars have questioned the Court’s reasoning in *Samuels*. See, e.g., Whitten, *supra* note 113, at 655 (arguing that the Court’s rationale in *Samuels* “flies squarely in the face of the intent of the draftsmen of the Declaratory Judgment Act as well as the Court’s prior decisions holding that the declaratory remedy is not to be administered in accord with traditional equity rules”).

¹⁵⁶ See, e.g., Sherry, *supra* note 10, at 1092 n.34 (“The Supreme Court has so far declined to decide whether a suit for monetary damages comes within the *Younger* doctrine.” (citing *Deakins v. Monaghan*, 484 U.S. 193, 202 (1988))).

¹⁵⁷ See *Deakins*, 484 U.S. at 202; *Tower v. Glover*, 467 U.S. 914, 923 (1984); *Juidice v. Vail*, 430 U.S. 327, 339 n.16 (1977).

¹⁵⁸ 517 U.S. 706, 721 (1996).

¹⁵⁹ *Burford* abstention, arising from the Supreme Court’s decision in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), applies in federal court cases when state law is unclear and “there is a need to defer to complex state administrative procedures.” CHEMERINSKY, *supra* note 135, at 802.

circumstances in which abstention doctrines might apply in civil actions for monetary damages.¹⁶⁰

Most circuits have extended *Younger* to claims for monetary damages,¹⁶¹ with the caveat that federal courts should stay such actions, instead of dismissing them outright.¹⁶² And yet some courts have held that *Younger* abstention does not apply when a federal litigant seeks monetary damages rather than equitable relief.¹⁶³ This split in authority does not appear to produce different results, however. Even when courts refuse to apply *Younger* to damages claims, they tend to stay those claims pending resolution of the state court action.¹⁶⁴ Nevertheless, an increasing number of federal courts are using *Younger* to bar damages claims.¹⁶⁵

¹⁶⁰ See *Quackenbush*, 517 U.S. at 731. Michael Gibson suggests that the Court's efforts to "finesse its way out of" this "major quandary" may be intentional. Michael T. Gibson, *Private Concurrent Litigation in Light of Younger, Pennzoil, and Colorado River*, 14 OKLA. CITY U. L. REV. 185, 233–34 (1989). On one hand, application of *Younger* to civil actions for monetary damages could dramatically restrict a federal court's ability to hear cases in which there are ongoing state court proceedings—the doctrine would suddenly apply to a large number of cases, regardless of whether they are "equitable or legal, criminal or civil." *Id.* at 234. On the other hand, if the Court explicitly confirms that the doctrine does not apply to civil actions for monetary damages, "adroit criminal defense lawyers quickly would learn to avoid *Younger* by adding a claim for legal relief to their federal court complaints." *Id.*

¹⁶¹ See, e.g., *Carroll v. City of Mount Clemens*, 139 F.3d 1072, 1076 (6th Cir. 1998); *Kyricopoulos v. Town of Orleans*, 967 F.2d 14, 15 n.1 (1st Cir. 1992); *Traverso v. Penn.*, 874 F.2d 209, 213 (4th Cir. 1989); *Doby v. Strength*, 758 F.2d 1405, 1406 (11th Cir. 1985) (per curiam). See generally E. Martin Estrada, *Pushing Doctrinal Limits: The Trend Toward Applying Younger Abstention to Claims for Monetary Damages and Raising Younger Abstention Sua Sponte on Appeal*, 81 N.D. L. REV. 475 (2005).

¹⁶² See, e.g., *Rossi v. Gemma*, 489 F.3d 26, 37–38 (1st Cir. 2007); *D.L. v. Unified Sch. Dist. No. 497*, 392 F.3d 1223, 1228 (10th Cir. 2004); *Yamaha Motor Corp., U.S.A. v. Stroud*, 179 F.3d 598, 603–04 (8th Cir. 1999); *Carroll*, 139 F.3d at 1076; *Simpson v. Rowan*, 73 F.3d 134, 138–39 (7th Cir. 1995). There is some variation among these courts as to the proper application of *Younger* to damages claims. For example, some circuits "have adopted rules that appear to require a stay, regardless of whether the specific relief is available in state court," while other circuits "make the decision to stay or dismiss contingent on considerations such as whether or not the relief is available in state court." *Gilbertson v. Albright*, 381 F.3d 965, 980 n.15 (9th Cir. 2004) (en banc).

¹⁶³ E.g., *Morpurgo v. Inc. Vill. of Sag Harbor*, 327 F. App'x 284, 285–86 (2d Cir. 2009); *Alexander v. Ieyoub*, 62 F.3d 709, 713 (5th Cir. 1995).

¹⁶⁴ E.g., *Kirschner v. Klemons*, 225 F.3d 227, 238 (2d Cir. 2000) ("[W]e have held that abstention and dismissal are inappropriate when damages are sought, . . . but that a stay of the action pending resolution of the state proceeding may be appropriate."); *Lewis v. Beddingfield*, 20 F.3d 123, 125 (5th Cir. 1994) (per curiam) (stating that *Younger* does not apply to damages claims, but staying the action nonetheless).

¹⁶⁵ See Estrada, *supra* note 161, at 475 (describing the "sweeping" expansion of *Younger* in the lower federal courts).

In sum, federal courts must abstain under *Younger* when pending state court proceedings implicate important state interests and must provide an adequate opportunity to raise constitutional challenges. In those circumstances, the doctrine prohibits claims for injunctive and declaratory relief. It remains unclear, however, whether *Younger* also bars damages claims that interfere with state court proceedings.

IV. FINALITY: CLAIM AND ISSUE PRECLUSION

The Full Faith and Credit Act provides that state court judicial proceedings “shall have the same full faith and credit in every court within the United States.”¹⁶⁶ The statute requires that federal courts give a state court judgment “the same effect that it would have in the courts of the State in which it was rendered”¹⁶⁷—federal courts cannot give greater or lesser preclusive effect than the law of the rendering state would allow.¹⁶⁸ Thus, unlike the application of the *Rooker-Feldman* and *Younger* abstention doctrines, the preclusive effect of state court judgments will vary state by state.¹⁶⁹

Courts resort to two preclusion doctrines—claim preclusion and issue preclusion. Both require a valid, final judgment on the merits.¹⁷⁰ Claim preclusion bars the same parties or their privies from relitigating claims that were or *could have been* raised in the prior action.¹⁷¹ In contrast, issue preclusion bars relitigation of issues that were *actually* litigated and decided, and essential to the prior judg-

¹⁶⁶ 28 U.S.C. § 1738 (2006).

¹⁶⁷ *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 369 (1996). *See generally* 18 JAMES WM. MOORE ET AL., *MOORE’S FEDERAL PRACTICE* § 133.30[1] (3d ed. 2008); 18B WRIGHT ET AL., *supra* note 12, § 4469.

¹⁶⁸ *E.g.*, *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) (“It has long been established that § 1738 does not allow federal courts to employ their own rules of res judicata in determining the effect of state judgments.”); *Haring v. Prosis*, 462 U.S. 306, 313 n.6 (1983) (“If the state courts would not give preclusive effect to the prior judgment, ‘the courts of the United States can accord it no greater efficacy.’” (quoting *Union & Planters’ Bank of Memphis v. Memphis*, 189 U.S. 71, 75 (1903))); *see also Matsushita*, 516 U.S. at 378; *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984); *Allen v. McCurry*, 449 U.S. 90, 96 (1980).

¹⁶⁹ *See* Howard M. Erichson, *Interjurisdictional Preclusion*, 96 MICH. L. REV. 945, 1012 n.335 (1998) (“Recent Supreme Court cases involving state-federal preclusion have emphasized that 28 U.S.C. § 1738 requires federal courts to apply the preclusion law of the state that rendered the judgment.” (citing *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 235–41 (1998); *Matsushita*, 516 U.S. at 373; *Marrese*, 470 U.S. 380; *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 466 (1982))).

¹⁷⁰ *See infra* Part IV.A.

¹⁷¹ *See infra* Part IV.B.

ment.¹⁷² Although there is much agreement across jurisdictions, state courts disagree on many of the fundamental elements of claim and issue preclusion. Most notably, state courts sharply disagree whether issue preclusion requires mutuality of parties.¹⁷³

A. *Preclusion Requires a Valid, Final Judgment on the Merits*

Claim and issue preclusion apply only if there is a valid, final judgment on the merits.¹⁷⁴ Judgments are “valid” if the rendering court had jurisdiction over the dispute and the parties.¹⁷⁵ A “final” judgment “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.”¹⁷⁶ An order is “on the merits” for purposes of preclusion when it “passes directly upon the substance of a particular claim before the court”¹⁷⁷ rather than disposing of the matter “on a procedural ground.”¹⁷⁸

Because preclusion doctrines apply only to final judgments, it is well settled that interlocutory orders have no preclusive effect.¹⁷⁹

¹⁷² See *infra* Part IV.C.

¹⁷³ See *infra* Part IV.D.

¹⁷⁴ See RESTATEMENT (SECOND) OF JUDGMENTS § 24(1) (1982). See generally RICHARD D. FREER, CIVIL PROCEDURE 536–42 (2d ed. 2009).

¹⁷⁵ E.g., Stephen B. Burbank, *Interjurisdictional Preclusion, Full Faith and Credit and Federal Common Law: A General Approach*, 71 CORNELL L. REV. 733, 764 (1986). However, “there appears to be a trend toward recognizing judgments as preclusive in some circumstances even if the [rendering court] lacked jurisdiction.” FREER, *supra* note 174, at 536 n.20.

¹⁷⁶ *Riley v. Kennedy*, 553 U.S. 406, 419 (2008) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)); see also RESTATEMENT (SECOND) OF JUDGMENTS § 13 cmt. b (1982) (“[A] judgment will ordinarily be considered final [for claim preclusion] if it is not tentative, provisional, or contingent and represents the completion of all steps in the adjudication of the claim by the court”); *id.* § 27 cmt. k (referencing § 13 of the *Restatement (Second) of Judgments* for the requirement of finality in the context of issue preclusion). But see *Christo v. Padgett*, 223 F.3d 1324, 1339 (11th Cir. 2000) (“It is widely recognized that the finality requirement is less stringent for issue preclusion than for claim preclusion.”).

¹⁷⁷ *Semtek Int’l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 501–02 (2001) (internal quotation marks and alterations omitted); see also 18 MOORE ET AL., *supra* note 167, § 131[3][a] (noting that a judgment is “on the merits” when “it is rendered upon consideration of the legal claim, as distinguished from consideration of an objection to subject-matter jurisdiction, personal jurisdiction, service of process, venue, or any other ground that does not go to the legal or factual sufficiency of the claim to relief”).

¹⁷⁸ JACK H. FRIEDENTHAL ET AL., CIVIL PROCEDURE 687 (4th ed. 2005).

¹⁷⁹ See, e.g., *Moran v. Svete*, 366 F. App’x 624, 628–29 (6th Cir. 2010); *Saizan v. Pointe Coupee Parish Sch. Bd.*, 49 So. 3d 559, 563 (La. Ct. App. 2010); *McMahon v. Geldersma*, 317 S.W.3d 700, 705 (Mo. Ct. App. 2010); *B & T Distribs., Inc. v. White*, 325 S.W.3d 786, 790 (Tex. App. 2010).

There is a split in authority, however, regarding the effect an appeal has on the finality of a judgment.¹⁸⁰ Most states follow the approach articulated by the *Restatement (Second) of Judgments* (“*Second Restatement*”)¹⁸¹ and give preclusive effect to a judgment regardless of whether an appeal is pending or could be filed.¹⁸² Nonetheless, several states refuse to give preclusive effect to a judgment that is subject to a pending appeal.¹⁸³

B. Claim Preclusion Bars the Same Parties or Their Privies from Relitigating Claims that Were or Could Have Been Raised in the Prior Action

The doctrine of claim preclusion, traditionally known as “res judicata,” recognizes that “a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.”¹⁸⁴ Such claims are “merged” into any judgment favorable to the plaintiff;¹⁸⁵ likewise, a judgment in favor of the defendant “bars” plaintiff from relitigating.¹⁸⁶

Beyond the necessity of a final judgment on the merits, there are a few other requirements for claim preclusion. First, claim preclusion applies only when the same parties to the prior action—or their

¹⁸⁰ Erichson, *supra* note 169, at 972–73.

¹⁸¹ RESTATEMENT (SECOND) OF JUDGMENTS § 13 cmt. f (1982) (“[A] judgment otherwise final remains so despite the taking of an appeal . . .”).

¹⁸² *E.g.*, Wyatt v. Wyatt, 65 P.3d 825, 831 (Alaska 2003); Patton v. Klein, 746 A.2d 866, 869 n.6 (D.C. 1999); Johnson v. Ward, 265 N.W.2d 746, 749 (Iowa 1978); Bartlett v. Pullen, 586 A.2d 1263, 1265 (Me. 1991); Campbell v. Lake Hallowell Homeowners Ass’n, 852 A.2d 1029, 1039–40 (Md. Ct. Spec. App. 2004); Baltrusch v. Baltrusch, 130 P.3d 1267, 1275 (Mont. 2006); Shaffer v. Smith, 673 A.2d 872, 874–75 (Pa. 1996); Scurlock Oil Co. v. Smithwick, 724 S.W.2d 1, 6 (Tex. 1986); State v. Harrison, 61 P.3d 1104, 1109–10 (Wash. 2003).

¹⁸³ *See, e.g.*, People *ex rel.* Gow v. Mitchell Bros.’ Santa Ana Theater, 161 Cal. Rptr. 562, 568 (Ct. App. 1980); Rantz v. Kaufman, 109 P.3d 132, 141 (Colo. 2005); Greene v. Transp. Ins. Co., 313 S.E.2d 761, 763–64 (Ga. Ct. App. 1984); Dupre v. Floyd, 825 So. 2d 1238, 1240–41 (La. Ct. App. 2002) (*per curiam*); Petition of Donovan, 623 A.2d 1322, 1324 (N.H. 1993); Benham v. Plotner, 795 P.2d 510, 512 (Okla. 1990); Creech v. Addington, 281 S.W.3d 363, 377–78 (Tenn. 2009); Faison v. Hudson, 417 S.E.2d 302, 305 (Va. 1992); Jordache Enters., Inc. v. Nat’l Union Fire Ins. Co. of Pittsburgh, 513 S.E.2d 692, 703 (W. Va. 1998).

¹⁸⁴ Allen v. McCurry, 449 U.S. 90, 94 (1980). *See generally* Edward W. Cleary, *Res Judicata Reexamined*, 57 YALE L.J. 339 (1948).

¹⁸⁵ RESTATEMENT (SECOND) OF JUDGMENTS § 18 & cmt. a (1982).

¹⁸⁶ *Id.* § 19.

privies—attempt to relitigate claims.¹⁸⁷ Although “privity is an amorphous concept that is difficult to define,”¹⁸⁸ it generally exists only when a nonparty has a significant and relevant legal relationship with a party, agrees to be bound by the court’s judgment, exercises control over the litigation, or other such circumstances are present.¹⁸⁹

Second, claim preclusion bars parties or their privies from relitigating the “same claim.”¹⁹⁰ Courts disagree on the meaning of this requirement.¹⁹¹ Most states apply a broad “transactional test,” under which claims are precluded if they arise from “any part of the transaction, or series of connected transactions” underlying claims in the prior action.¹⁹² Some states apply claim preclusion more narrowly, however, using various “same claim” tests.¹⁹³ For example, California state courts use the “primary rights” test,¹⁹⁴ under which “the claimant has a separate claim (and therefore can file a separate case) for each right violated by the defendant.”¹⁹⁵

Despite these differences, courts agree that claim preclusion “applies not only to claims actually litigated, but also to claims which

¹⁸⁷ *E.g.*, Nat’l Res. Def. Council v. U.S. Envtl. Prot. Agency, 437 F. Supp. 2d 1137, 1154 n.6 (C.D. Cal. 2006); Household Int’l, Inc. v. Westchester Fire Ins. Co., 286 F. Supp. 2d 369, 374 n.7 (D. Del. 2003); Penn v. Iowa State Bd. of Regents, 577 N.W.2d 393, 398 (Iowa 1998); N. States Power Co. v. Bugher, 525 N.W.2d 723, 728 (Wis. 1995).

¹⁸⁸ 18 MOORE ET AL., *supra* note 167, § 131.40[3][a]; *see also* FREER, *supra* note 174, at 566 (“‘Privity’ is a slippery word, encrusted with historical baggage.”).

¹⁸⁹ *See generally* Taylor v. Sturgell, 553 U.S. 880, 893–95 (2008); RESTATEMENT (SECOND) OF JUDGMENTS §§ 39–42 (1982); 18 MOORE ET AL., *supra* note 167, § 131.40.

¹⁹⁰ *E.g.*, Ross *ex rel.* Ross v. Bd. of Educ. of Twp. High Sch. Dist. 211, 486 F.3d 279, 283 (7th Cir. 2007); United States v. Oregon, 470 F.3d 809, 817 (9th Cir. 2006); Camus v. State Farm Mut. Auto. Ins. Co., 151 P.3d 678, 680 (Colo. App. 2006); Huffey v. Lea, 491 N.W.2d 518, 520 (Iowa 1992).

¹⁹¹ *See* Erichson, *supra* note 169, at 973–74.

¹⁹² RESTATEMENT (SECOND) OF JUDGMENTS § 24 (1982); *see, e.g.*, Fink v. Golenbock, 680 A.2d 1243, 1249–50 (Conn. 1996); Town of Ogunquit v. Cliff House & Motels, Inc., 759 A.2d 731, 735 (Me. 2000); Chavez v. City of Albuquerque, 952 P.2d 474, 479 (N.M. Ct. App. 1997).

¹⁹³ *See* Erichson, *supra* note 169, at 974.

¹⁹⁴ *See, e.g.*, Boeken v. Philip Morris USA, Inc., 230 P.3d 342, 348 (Cal. 2010).

¹⁹⁵ FREER, *supra* note 174, at 543. Howard Erichson provides an illustrative example of the differences between these “same claim” tests:

The classic example comparing the broad and narrow definition of a claim involves a plaintiff’s assertion of personal injury and property damage in separate lawsuits, usually following a motor vehicle accident. Under federal and majority law, the later suit is precluded because the claims arise out of the same transaction. A few states, however, treat personal injury and property damage as separate claims and thus allow their assertion in separate lawsuits.

Erichson, *supra* note 169, at 974.

could have been litigated during the first proceeding.”¹⁹⁶ This particular facet of claim preclusion gives the doctrine a potentially broad scope in many cases in which parties seek to relitigate claims.¹⁹⁷

C. *Issue Preclusion Bars Relitigation of Issues that Were Actually Litigated and Determined, and Essential to the Judgment in the Prior Action*

Issue preclusion, also known as “collateral estoppel,” generally stands for the proposition that “[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties.”¹⁹⁸ As this statement indicates, the requirements for issue preclusion differ somewhat from those of claim preclusion.

Most significantly, issue preclusion only prevents relitigation of the same issues that were “actually litigated” and “necessarily decided” in the prior action.¹⁹⁹ Courts generally consider similar factors when determining whether the lawsuits involve the “same” issues for purposes of issue preclusion.²⁰⁰ There is sharp disagreement, however, regarding the point at which issues have been “actually litigated.” For example, some states give default judgments issue preclusive effect in some circumstances,²⁰¹ while others do not.²⁰²

¹⁹⁶ *Moncrief v. Chase Manhattan Mortg. Corp.*, 275 F. App’x 149, 153 (3d Cir. 2008) (emphasis added); *accord* *Linn v. NationsBank*, 14 S.W.3d 500, 503 (Ark. 2000); *Topps v. State*, 865 So. 2d 1253, 1255 (Fla. 2004); *Andrus v. Nicholson*, 186 P.3d 630, 633 (Idaho 2008); *Longval v. Comm’r of Corr.*, 861 N.E.2d 760, 764–65 (Mass. 2007); *Hill v. Carroll Cnty.*, 17 So. 3d 1081, 1084 (Miss. 2009); *Bain v. Hofmann*, 993 A.2d 432, 434 (Vt. 2010).

¹⁹⁷ *See* Gene R. Shreve, *Preclusion and Federal Choice of Law*, 64 TEX. L. REV. 1209, 1212 (1986) (“Whether the entire claim . . . was *actually* put forward in the prior case is immaterial; what matters is whether it *could have been* put forward.”).

¹⁹⁸ RESTATEMENT (SECOND) OF JUDGMENTS § 27 (1982).

¹⁹⁹ *E.g.*, *Griswold v. City of Homer*, 34 P.3d 1280, 1283 (Alaska 2001); *Gonzalez v. Superior Court of Santa Clara Cnty.*, 115 Cal. Rptr. 3d 80, 84–85 (Ct. App. 2010); *Tonko v. Mallow*, 154 P.3d 397, 405 (Colo. 2007); *Robert v. O’Meara*, 813 N.Y.S.2d 736, 737 (App. Div. 2006).

²⁰⁰ Relevant factors include the relationship between claims, the overlap of factual evidence, arguments and legal rules, and whether pretrial preparations in the first action would “reasonably be expected to have embraced” the issue presented in the second action. RESTATEMENT (SECOND) OF JUDGMENTS § 27 cmt. c (1982).

²⁰¹ *See, e.g.*, *Gottlieb v. Kest*, 46 Cal. Rptr. 3d 7, 33–34 (Ct. App. 2006); *Jackson v. R.G. Whipple, Inc.*, 627 A.2d 374, 380 (Conn. 1993), *abrogated on other grounds by* *Macomber v. Travelers Prop. & Cas. Corp.*, 804 A.2d 180 (Conn. 2002); *TransDulles Ctr., Inc. v. Sharma*, 472 S.E.2d 274, 276 (Va. 1996).

²⁰² *See, e.g.*, *Wall v. Stinson*, 983 P.2d 736, 740 (Alaska 1999); *Circle K Corp. v. Indus. Comm’n of Ariz.*, 880 P.2d 642, 645 (Ariz. Ct. App. 1993); *Treglia v. MacDonald*,

Courts also disagree regarding the circumstances in which a decision on an issue is “essential to the judgment.”²⁰³ In particular, courts disagree on whether alternative findings and holdings meet the essentiality requirement.²⁰⁴ Some courts follow the approach of the *Second Restatement* and refuse to give preclusive effect to alternative holdings.²⁰⁵ Other courts, however, follow the earlier *Restatement (First) of Judgments* approach and treat alternative holdings as “essential to the judgment” for purposes of issue preclusion.²⁰⁶

Despite these disagreements, the requirements of issue preclusion highlight a significant difference between that doctrine and claim preclusion—“claim preclusion bars any claim that *could have been litigated*”; in contrast, “[i]ssue preclusion bars any claim based on facts that were *actually litigated*.”²⁰⁷

D. Courts Disagree Whether Issue Preclusion Requires Mutuality of Parties

As mentioned earlier, claim preclusion applies only to claims between the same parties to the prior action or their privies.²⁰⁸ Issue

717 N.E.2d 249, 253 (Mass. 1999); *In re Sandoval*, 232 P.3d 422, 424–25 (Nev. 2010); see also RESTATEMENT (SECOND) OF JUDGMENTS § 27 cmt. e (1982) (“In the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated.”).

²⁰³ To determine essentiality, courts generally ask whether a contrary finding on the issue in the first action would have affected the judgment. See FREER, *supra* note 174, at 561.

²⁰⁴ See, e.g., *id.* at 563; Erichson, *supra* note 169, at 969. See generally Jo Desha Lucas, *The Direct and Collateral Estoppel Effects of Alternative Holdings*, 50 U. CHI. L. REV. 701 (1983).

²⁰⁵ See, e.g., *Schultz v. Bos. Stanton*, 198 P.3d 1253, 1257–58 (Colo. App. 2008); *Dowling v. Finley Assocs., Inc.*, 727 A.2d 1245, 1252 (Conn. 1999); *Caprock Inv. Corp. v. Montgomery*, 321 S.W.3d 91, 97 (Tex. App. 2010); see also RESTATEMENT (SECOND) OF JUDGMENTS § 27 cmt. i (1982) (“If a judgment of a court of first instance is based on determinations of two issues, either of which standing independently would be sufficient to support the result, the judgment is not conclusive with respect to either issue standing alone.”).

²⁰⁶ See, e.g., *Magnus Elecs., Inc. v. La Republica Arg.*, 830 F.2d 1396, 1402 (7th Cir. 1987); *Gelb v. Royal Globe Ins. Co.*, 798 F.2d 38, 45 (2d Cir. 1986); *Tydings v. Greenfield, Stein & Senior, LLP*, 843 N.Y.S.2d 538, 540–41 (App. Div. 2007); see also RESTATEMENT (FIRST) OF JUDGMENTS § 68 cmt. n (1942) (“Where the judgment is based upon the matters litigated as alternative grounds, the judgment is determinative on both grounds, although either alone would have been sufficient to support the judgment.”).

²⁰⁷ David Gray Carlson, *The Res Judicata Worth of Illegal Bankruptcy Reorganization Plans*, 82 TEMP. L. REV. 351, 353 (2009) (emphasis added).

²⁰⁸ See, e.g., FRIEDENTHAL ET AL., *supra* note 178, at 723 (“When new parties are involved, the courts generally have ruled that the two actions do not constitute a single cause of action or claim and thus are not barred by res judicata.”).

preclusion traditionally adhered to the same requirement, under the rule of “mutuality.”²⁰⁹ Mutuality prohibits a litigant from “assert[ing] issue preclusion from a judgment unless she was bound by the same judgment—that is, unless she was a party or in privity with a party to the initial action.”²¹⁰

After the California Supreme Court rejected mutuality in its 1942 decision in *Bernhard v. Bank of America National Trust & Savings Ass'n*,²¹¹ courts started breaking away from that requirement, applying issue preclusion to situations in which a person bound by a judgment attempts to relitigate a previously decided issue against a “nonmutual” party—someone who had *not* been a litigant in the prior action.²¹² There are two situations in which a nonmutual party might want to invoke issue preclusion: (1) as a nonmutual *defendant*, to prevent a plaintiff bound by a prior judgment from relitigating an issue (“defensive” issue preclusion), or (2) as a nonmutual *plaintiff*, to prevent a defendant bound by a prior judgment from relitigating an issue (“offensive” issue preclusion).²¹³ The Supreme Court has condoned the use of both offensive and defensive nonmutual issue preclusion within the context of federal preclusion law.²¹⁴

²⁰⁹ See RESTATEMENT (FIRST) OF JUDGMENTS § 93 (1942); Tobias Barrington Wolff, *Preclusion in Class Action Litigation*, 105 COLUM. L. REV. 717, 781 n.196 (2005) (“Mutuality of parties was . . . a consistent and ubiquitous prerequisite for preclusion at common law.”).

²¹⁰ Erichson, *supra* note 169, at 965; accord Richard B. Kennelly, Jr., Note, *Precluding the Accused: Offensive Collateral Estoppel in Criminal Cases*, 80 VA. L. REV. 1379, 1380 n.5 (1994) (“In general, the doctrine of mutuality required that res judicata would operate only where both litigants (or their privies) were parties to the first suit.”); see also Wystan M. Ackerman, Note, *Precluding Defendants from Relitigating Sentencing Findings in Subsequent Civil Suits*, 101 COLUM. L. REV. 128, 131 (2001) (“The rationale behind the ‘mutuality’ rule, often criticized, was that nonmutual issue preclusion was unfair because the party seeking to assert preclusion would not have been bound if the other party had won on the issue in the previous suit.”); Note, *Exposing the Extortion Gap: An Economic Analysis of the Rules of Collateral Estoppel*, 105 HARV. L. REV. 1940, 1943–60 (1992) (applying an economic analysis to the mutuality debate).

²¹¹ 122 P.2d 892, 895 (Cal. 1942) (“No satisfactory rationalization has been advanced for the requirement of mutuality.”).

²¹² See generally Brainerd Currie, *Civil Procedure: The Tempest Brews*, 53 CALIF. L. REV. 25 (1965) (discussing *Bernhard*'s departure from the mutuality requirement with an appendix of similar decisions from other states).

²¹³ See, e.g., Erichson, *supra* note 169, at 951 n.22 (defining offensive and defensive nonmutual issue preclusion); Note, *Nonmutual Issue Preclusion Against States*, 109 HARV. L. REV. 792, 792 n.4 (1996) (same).

²¹⁴ *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322 (1979) (permitting offensive nonmutual issue preclusion); *Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313 (1971) (permitting defensive nonmutual issue preclusion).

State courts are split regarding the mutuality requirement.²¹⁵ Many states have abandoned mutuality altogether and allow both offensive and defensive nonmutual issue preclusion.²¹⁶ Some states permit defensive issue preclusion in certain contexts but do not allow offensive issue preclusion.²¹⁷ And several states still require mutuality and do not allow nonmutual issue preclusion.²¹⁸ Thus, application of the mutuality requirement varies greatly between states.²¹⁹

In sum, claim preclusion bars parties from relitigating claims that were or could have been raised in a prior action; issue preclusion prohibits relitigation of issues that were actually litigated and decided. Both require a valid, final judgment on the merits. As the preceding discussion illustrates, however, states disagree on the details of several of these requirements. As a result, the preclusive effect of state court judgments in federal courts varies, reflecting these differences in state preclusion law.

²¹⁵ See Erichson, *supra* note 169, at 965–69; E.H. Schopler, Annotation, *Mutuality of Estoppel as Prerequisite of Availability of Doctrine of Collateral Estoppel to a Stranger to the Judgment*, 31 A.L.R.3d 1044 (1970).

²¹⁶ See, e.g., *Briggs v. Newton*, 984 P.2d 1113, 1120 (Alaska 1999); *Riverdale Dev. Co. v. Ruffin Bldg. Sys., Inc.*, 146 S.W.3d 852, 855 (Ark. 2004); *Exotics Hawai'i-Kona, Inc. v. E.I. Dupont De Nemours & Co.*, 90 P.3d 250, 263 (Haw. 2004); *Preferred Am. Ins. v. Dulceak*, 706 N.E.2d 529, 532 (Ill. App. Ct. 1999); *Tofany v. NBS Imaging Sys., Inc.*, 616 N.E.2d 1034, 1038 (Ind. 1993); *Comes v. Microsoft Corp.*, 709 N.W.2d 114, 117–18 (Iowa 2006); *State Mut. Ins. Co. v. Bragg*, 589 A.2d 35, 37 (Me. 1991); *Rymer v. Estate of Sorrells*, 488 S.E.2d 838, 840 (N.C. Ct. App. 1997); *McPherson v. S.C. Dep't of Highways & Pub. Transp.*, 376 S.E.2d 780, 781–82 (S.C. Ct. App. 1989).

²¹⁷ See, e.g., *Campbell v. SZL Props., Ltd.*, 62 P.3d 966, 968 (Ariz. Ct. App. 2003); *Keywell & Rosenfeld v. Bithell*, 657 N.W.2d 759, 788 (Mich. Ct. App. 2002); *Goodson v. McDonough Power Equip., Inc.*, 443 N.E.2d 978, 987 (Ohio 1983); *Mullins v. State*, 294 S.W.3d 529, 539 n.9 (Tenn. 2009); see also *Adamson v. Hill*, 449 P.2d 536, 540 (Kan. 1969) (“[C]ourts are more inclined to permit use of the doctrine as a ‘shield’ by one not a party to the action, but not as a ‘sword’.”).

²¹⁸ See, e.g., *McCarty v. Johns-Manville Sales Corp.*, 502 F. Supp. 335, 338 (S.D. Miss. 1980) (applying Mississippi law); *E.L. Hamm & Assocs., Inc. v. Sparrow*, 306 B.R. 812, 826 (Bankr. E.D. Va. 2003) (applying Virginia law); *Leon C. Baker, P.C. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 821 So. 2d 158, 165 (Ala. 2001); *Ritch v. State*, 14 So. 3d 1104, 1107 (Fla. Dist. Ct. App. 2009); *Wickliffe v. Wickliffe Co.*, 489 S.E.2d 153, 156 (Ga. Ct. App. 1997); *Keith v. Schiefen-Stockham Ins. Agency*, 498 P.2d 265, 273 (Kan. 1972); *Lichon v. Am. Universal Ins. Co.*, 459 N.W.2d 288, 297–98 (Mich. 1990); *U.S. Cold Storage, Inc. v. City of Lumberton*, 576 S.E.2d 415, 417–18 (N.C. Ct. App. 2003).

²¹⁹ See Erichson, *supra* note 169, at 965 (“The most important split in preclusion law concerns mutuality.”).

V. DISTINGUISHING THE DOCTRINES

In *Exxon Mobil* and *Lance*, the Supreme Court “demonstrated that it still perceived a niche for *Rooker-Feldman* not covered by any other existing doctrine.”²²⁰ This affirmation of the vitality of *Rooker-Feldman* likely will put an end to the frequent attempts by judges and scholars to bury the doctrine.²²¹ Going forward, courts and commentators should shift their focus to two questions. First, exactly how does *Rooker-Feldman* interact with *Younger* abstention and preclusion law rules? Second, what unique role does *Rooker-Feldman* play in preventing federal court interference with state court litigation?

To answer these questions, we initially must tease out the subtle differences in the application of these doctrines.²²² The following discussion examines the most significant divergences. First, the applicability of *Rooker-Feldman*, *Younger* abstention, and preclusion law depends in large part on the status of the state court proceedings at the time the federal suit is filed.²²³ Second, these doctrines diverge in federal cases involving nonparties to the state court proceeding.²²⁴ Third, the doctrines apply differently in civil cases than they do in criminal cases.²²⁵ Finally, *Rooker-Feldman*, *Younger* abstention, and the preclusion law doctrines each bar a distinct category of federal court claims.²²⁶

²²⁰ Jones, *supra* note 17, at 656; *see also* *Lance v. Dennis*, 546 U.S. 459, 466 (2006) (per curiam) (“*Rooker-Feldman* is not simply preclusion by another name.”); *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (holding that *Rooker-Feldman* “does not otherwise override or supplant” abstention doctrines).

²²¹ That said, it appears that some of *Rooker-Feldman*’s detractors do not intend to withdraw quietly. *See* Samuel Bray, *Rooker Feldman (1923-2006)*, 9 GREEN BAG 2D 317, 317–18 (2006) (publishing a mock obituary for the *Rooker-Feldman* doctrine, announcing that “Mr. Feldman” had died on February 21, 2006—the date the Supreme Court rendered its decision in *Lance*—and tersely observing that “[i]t is hoped that he leaves no survivors”); *see also* *Lance*, 546 U.S. at 468 (Stevens, J., dissenting) (suggesting that the Court’s *Exxon Mobil* opinion had “finally interred the so-called *Rooker-Feldman* doctrine”).

²²² Of course, one difference is that *Rooker-Feldman* is jurisdictional, while the other doctrines are not. Rowley, *supra* note 10, at 332–33. This distinction certainly has important consequences. *See, e.g.*, Bades, *supra* note 21, at 1177–78. However, it does not assist us in articulating unique *roles* for each of these doctrines.

²²³ *See infra* Part V.A.

²²⁴ *See infra* Part V.B.

²²⁵ *See infra* Part V.C.

²²⁶ *See infra* Part V.D.

A. *Status of the State Court Proceedings at the Time the Federal Action is Filed*

The applicability of the *Rooker-Feldman* doctrine, *Younger* abstention, and preclusion law largely depends on the status of the state court proceedings when the federal court action is filed.²²⁷ The following chart lists four case scenarios that demonstrate how the status of state court proceedings affects the availability of these doctrines.²²⁸

*Status of State Court Proceedings at the Time of Filing:
Which Doctrine (if Any) Bars the Federal Court Claim?*

Scenario	<i>Rooker-Feldman</i>	<i>Younger</i> abstention	Preclusion
1. State court action pending; no trial court orders	Does not bar claim	Bars claim	Does not bar claim
2. State trial court interlocutory order; no final order	Might bar claim	Bars claim	Does not bar claim
3. State trial court final judgment; appeal pending	Probably bars claim	Bars Claim	Might bar claim
4. State appellate remedies exhausted	Bars claim	Does not bar claim	Bars claim

In the first scenario, the plaintiff files her federal action after the commencement of state court litigation, but before the state trial court issues any final or interlocutory decisions. *Younger* requires abstention because there is a “pending” state court proceeding.²²⁹ Neither *Rooker-Feldman* nor preclusion law, however, bars the federal action because there is no state court judgment.²³⁰

In the second scenario, the federal action is filed after the state trial court issues an interlocutory order, but before the court issues a final judgment. As in the last example, *Younger* applies because there

²²⁷ See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (holding that *Rooker-Feldman* applies only when the state court rendered its judgment “before the district court proceedings commenced”); *Steffel v. Thompson*, 415 U.S. 452, 460–61 (1974) (noting that *Younger* applies only when there are “pending” state court proceedings); RESTATEMENT (SECOND) OF JUDGMENTS § 13 (1982) (“The rules of res judicata are applicable only when a final judgment is rendered.”); *id.* § 27 & cmt. k (setting forth the requirement of a final judgment for issue preclusion).

²²⁸ These scenarios assume that the other requirements for *Rooker-Feldman*, *Younger* abstention, and preclusion are met—the only variable is the status of the state court proceedings at the time the federal action is filed.

²²⁹ See *Steffel*, 415 U.S. at 460–61.

²³⁰ See *Exxon Mobil*, 544 U.S. at 294 (refusing to apply *Rooker-Feldman* because plaintiff commenced its federal action “well before any judgment in state court”); RESTATEMENT (SECOND) OF JUDGMENTS §§ 13, 27 cmt. k (1982).

are proceedings pending in state court.²³¹ Preclusion does not bar the federal suit because interlocutory orders have no preclusive effect.²³² It is uncertain whether *Rooker-Feldman* deprives the federal court of jurisdiction in this situation. Some circuits use that doctrine to bar collateral attacks on interlocutory orders,²³³ while others do not.²³⁴

In the third scenario, an action is filed in federal court after the state trial court renders a final judgment, but before state courts decide an appeal of that judgment. *Younger* applies because state court proceedings remain “pending” until the exhaustion of state appellate remedies.²³⁵ Most federal courts apply *Rooker-Feldman* to lower state court decisions,²³⁶ although a few circuits do not.²³⁷ Preclusion may or may not apply, depending on whether the rendering state’s law gives preclusive effect to a judgment while an appeal is pending.²³⁸

Finally, in the fourth scenario, the plaintiff files a federal action after exhausting her appeals in state court. Both *Rooker-Feldman* and preclusion law apply because there is a final state court judgment.²³⁹

²³¹ See *Steffel*, 415 U.S. at 460–61.

²³² E.g., *Saizan v. Pointe Coupee Parish Sch. Bd.*, 49 So. 3d 559, 563 (La. Ct. App. 2010); *McMahon v. Geldersma*, 317 S.W.3d 700, 705 (Mo. Ct. App. 2010).

²³³ E.g., *Pieper v. Am. Arbitration Ass’n*, 336 F.3d 458, 462 (6th Cir. 2003); *Am. Reliable Ins. Co. v. Stillwell*, 336 F.3d 311, 320 (4th Cir. 2003).

²³⁴ E.g., *TruServ Corp. v. Flegles, Inc.*, 419 F.3d 584, 591 (7th Cir. 2005); *In re Meyerland Co.*, 960 F.2d 512, 516 (5th Cir. 1992).

²³⁵ See *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608 (1975).

²³⁶ E.g., *Pieper*, 336 F.3d at 462; *Richardson v. D.C. Court of Appeals*, 83 F.3d 1513, 1515 (D.C. Cir. 1996).

²³⁷ E.g., *Nicholson v. Shafe*, 558 F.3d 1266, 1278 (11th Cir. 2009); *In re Hodges*, 350 B.R. 796, 801 (Bankr. N.D. Ill. 2006).

²³⁸ Compare *Wyatt v. Wyatt*, 65 P.3d 825, 831 (Alaska 2003) (judgments have preclusive effect regardless of whether an appeal is pending), and *Campbell v. Lake Lowell Homeowners Ass’n*, 852 A.2d 1029, 1039–40 (Md. Ct. Spec. App. 2004) (same), with *Rantz v. Kaufman*, 109 P.3d 132, 141 (Colo. 2005) (judgments on appeal do not have preclusive effect), and *Creech v. Addington*, 281 S.W.3d 363, 377–78 (Tenn. 2009) (same).

²³⁹ See, e.g., *Federación de Maestros de P.R. v. Junta de Relaciones del Trabajo de P.R.*, 410 F.3d 17, 27 (1st Cir. 2005) (“[I]f a state court decision is final enough that the Supreme Court *does* have jurisdiction over a direct appeal, then it is final enough [under *Rooker-Feldman*] that a lower federal court *does not* have jurisdiction over a collateral attack on that decision.”); RESTATEMENT (SECOND) OF JUDGMENTS § 13 cmt. b (1982) (“[W]hen res judicata is in question a judgment will ordinarily be considered final in respect to a claim . . . if it is not tentative, provisional, or contingent and represents the completion of all steps in the adjudication of the claim by the court . . .”).

In contrast, *Younger* does not apply because there are no longer pending proceedings in state court.²⁴⁰

A few observations can be made based on a comparison of these scenarios. First, in some cases *Rooker-Feldman* “does no additional work.”²⁴¹ When the requirements of both *Younger* abstention and preclusion law are met, a combination of those two doctrines will bar a federal court action in all four scenarios, rendering *Rooker-Feldman* superfluous. For example, if state officials file a civil enforcement action in state court, *Younger* protects that proceeding from federal court interference until the exhaustion of state appellate remedies.²⁴² By that point, there is a final state court judgment that carries preclusive effect.²⁴³

Second, it would be a mistake to conclude that *Rooker-Feldman* is superfluous in *all* cases. To the contrary, there are situations in which *Rooker-Feldman* is the *only* doctrine that bars suit. The vast majority of state court civil cases are not entitled to protection under *Younger*.²⁴⁴ Several states do not give preclusive effect to judgments when an appeal is pending,²⁴⁵ and no state gives preclusive effect to an interlocutory order.²⁴⁶ Thus, *Rooker-Feldman* often is the only doctrine preventing aggrieved litigants from collaterally attacking a judgment in federal court while state court appeals are still pending. Additionally, to the extent *Rooker-Feldman* protects state court inter-

²⁴⁰ See *Huffman*, 420 U.S. at 608 (holding that a party “must exhaust his state appellate remedies before seeking relief in the District Court”).

²⁴¹ Friedman & Gaylord, *supra* note 11, at 1139 (“If another doctrine (such as preclusion or the *Younger* doctrine) would deprive the federal court of jurisdiction, *Rooker-Feldman* does no additional work.”).

²⁴² See *Huffman*, 420 U.S. at 608.

²⁴³ See RESTATEMENT (SECOND) OF JUDGMENTS § 13 cmt. b (1982).

²⁴⁴ *Younger* prevents federal court interference with private-party state court civil actions only when the litigation involves “important state interests,” meaning the civil suit bears “a close relationship to proceedings criminal in nature.” *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982). Not surprisingly, most civil actions filed in state courts do not implicate these types of interests. See CONFERENCE OF STATE COURT ADM’RS ET AL., EXAMINING THE WORK OF STATE COURTS: A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT 27, 31 (2007), available at http://www.ncsconline.org/d_research/csp/2006_files/EWSC-2007WholeDocument.pdf (noting that of the 16.6 million civil cases filed in state courts in 2005, 32 percent were contract cases, and 34 percent were small claims cases).

²⁴⁵ See, e.g., *Rantz v. Kaufman*, 109 P.3d 132, 141 (Colo. 2005); *Creech v. Addington*, 281 S.W.3d 363, 377–78 (Tenn. 2009).

²⁴⁶ See, e.g., *Saizan v. Pointe Coupee Parish Sch. Bd.*, 49 So. 3d 559, 563 (La. Ct. App. 2010); *McMahon v. Geldersma*, 317 S.W.3d 700, 705 (Mo. Ct. App. 2010).

locutory orders, it would be the only doctrine performing that function in most civil cases as well.

B. Applicability to Federal Court Cases Involving Nonparties to the State Court Proceedings

Another area in which *Rooker-Feldman*, *Younger* abstention, and preclusion law diverge is their applicability in federal court cases involving nonparties to the state court proceedings. *Rooker-Feldman* bars jurisdiction only when the federal court plaintiff was a party in the state court action; privity with a state court loser is not enough.²⁴⁷ Additionally, because the doctrine applies only to claims “complaining of injuries caused by state-court judgments,”²⁴⁸ the federal-court defendant frequently will be a nonparty to the state court action—for example, a state court judge sued in federal court by an aggrieved litigant.²⁴⁹

In comparison, courts usually refuse to abstain under *Younger* when the federal court plaintiff is not a party to proceedings pending in state court.²⁵⁰ *Younger*, however, is somewhat broader than *Rooker-Feldman* because it can apply to actions filed by nonparty plaintiffs when the plaintiff’s interests are “intertwined” with a pending state court prosecution.²⁵¹ Such circumstances are rare—*Younger* is not triggered merely by similar interests or common counsel.²⁵² Instead,

²⁴⁷ *Lance v. Dennis*, 546 U.S. 459, 466 (2006) (per curiam). *But see id.* at 466 n.2 (“[W]e need not address whether there are any circumstances, however limited, in which *Rooker-Feldman* may be applied against a party not named in an earlier state proceeding. . . .”); *see also* Friedman & Gaylord, *supra* note 11, at 1141 (suggesting that the application of *Rooker-Feldman* to plaintiffs who were not parties to state court proceedings “would run afoul of the minimal requirements of due process”).

²⁴⁸ *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

²⁴⁹ *E.g.*, *Klaudt v. Dooley*, No. Civ. 10-4091-KES, 2010 WL 5391571 (D.S.D. Dec. 22, 2010); *Gdowski v. Lant*, No. 4:10CV3233, 2010 WL 5257010 (D. Neb. Dec. 15, 2010).

²⁵⁰ *See, e.g.*, *Green v. City of Tucson*, 255 F.3d 1086, 1099 (9th Cir. 2001), *overruled on other grounds* by *Gilbertson v. Albright*, 381 F.3d 965, 968–69 (9th Cir. 2001) (en banc).

²⁵¹ *Hicks v. Miranda*, 422 U.S. 332, 345, 348 (1975) (holding that *Younger* barred theater owners from interfering with a pending state court prosecution against the theater’s employees, in part because the owners’ “interests and those of their employees were intertwined”). Some lower federal courts, however, have refused to apply *Younger* to suits filed by nonparties as a matter of course. *E.g.*, *Allen v. Allen*, 48 F.3d 259, 261 (7th Cir. 1995).

²⁵² *E.g.*, *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 928–29 (1975) (holding that *Younger* did not apply; although the federal court plaintiffs were “represented by common counsel” and had “similar business activities and problems” as the state court defendants, they were “unrelated in terms of ownership, control, and man-

abstention is appropriate only when the federal-court plaintiff's interests are "so intertwined with those of the state court party that direct interference with the state court proceeding is inevitable."²⁵³

The application of preclusion law to nonparties highlights significant differences with the other two doctrines. On the one hand, claim preclusion is broader than *Rooker-Feldman* and *Younger* because it can be invoked not only by state court litigants, but also those in privity with state court litigants.²⁵⁴ On the other hand, claim preclusion is narrower because it applies only if both the plaintiff and the defendant are in privity with parties to the state court action.²⁵⁵ Thus, unlike *Rooker-Feldman*, claim preclusion would not prevent an aggrieved litigant from attacking a state court judgment in federal court as long as the litigant sues the state court judge or other individuals who are not in privity with the state court parties.²⁵⁶

Likewise, issue preclusion is both broader and narrower than the other doctrines when applied to nonparties. Although neither *Rooker-Feldman* nor *Younger* applies when the federal court plaintiff is not a party to the state court proceedings, offensive nonmutual issue preclusion might nonetheless prevent relitigation of certain issues.²⁵⁷ If the state court judgment is rendered in a jurisdiction that requires mutuality, however, the judgment will carry no issue preclusive effect as long as the federal court plaintiff names different or additional parties.²⁵⁸

agement"); *Steffel v. Thompson*, 415 U.S. 452, 471 n.19 (1974) ("The pending prosecution of petitioner's handbilling companion does not affect petitioner's action for declaratory relief.").

²⁵³ *Green*, 255 F.3d at 1100; see also *Citizens for a Strong Ohio v. Marsh*, 123 F. App'x 630, 635 (6th Cir. 2005) (holding that *Younger* applies only when nonparties to the state action "seek to directly interfere" with the state court proceedings); *Spargo v. N.Y. State Comm'n on Judicial Conduct*, 351 F.3d 65, 84 (2d Cir. 2003) ("Because plaintiffs' claims are essentially derivative, this case presents one of the narrow circumstances in which *Younger* may properly extend to bar claims of third-parties who are not directly involved in the pending state action.").

²⁵⁴ E.g., *Penn v. Iowa State Bd. of Regents*, 577 N.W.2d 393, 398 (Iowa 1998); *N. States Power Co. v. Bugher*, 525 N.W.2d 723, 728 (Wis. 1995).

²⁵⁵ See FRIEDENTHAL ET AL., *supra* note 178, at 723 ("When new parties are involved, the courts generally have ruled that the two actions do not constitute a single cause of action or claim and thus are not barred by *res judicata*.").

²⁵⁶ *Sherry*, *supra* note 10, at 1095.

²⁵⁷ See, e.g., *Riverdale Dev. Co. v. Ruffin Bldg. Sys., Inc.*, 146 S.W.3d 852, 855 (Ark. 2004); *Exotics Hawai'i-Kona, Inc. v. E.I. Dupont De Nemours & Co.*, 90 P.3d 250, 263 (Haw. 2004); *Preferred Am. Ins. v. Dulceak*, 706 N.E.2d 529, 532 (Ill. App. Ct. 1999).

²⁵⁸ See *Sherry*, *supra* note 10, at 1093 ("[S]ince some states still adhere to mutuality requirements, the mere addition of new parties will prevent the full application of preclusion doctrines in some cases.").

C. *Applicability of the Doctrines in the Context of State Court Civil and Criminal Proceedings*

Application of *Rooker-Feldman*, *Younger* abstention, and preclusion law also differs depending on whether the state court proceedings are civil or criminal. Although *Rooker-Feldman* undoubtedly bars collateral attacks of state court judgments in civil cases,²⁵⁹ the protection it offers to criminal convictions is much more limited.²⁶⁰ Federal habeas corpus statutes authorize federal court review of certain state court criminal judgments,²⁶¹ significantly restricting *Rooker-Feldman*'s applicability in the criminal context.²⁶² Nevertheless, federal courts occasionally use the doctrine to bar non-habeas claims seeking review of state court criminal convictions.²⁶³

Unlike *Rooker-Feldman*, the primary purpose of *Younger* abstention is the prevention of federal court interference with state court criminal proceedings.²⁶⁴ Although the doctrine requires deference to some state court civil proceedings, it does so only when those cases are filed by state officials or involve important state interests (i.e., interests "necessary for the vindication of important state policies or for the functioning of the state judicial system. . . ."²⁶⁵). Despite the Supreme Court's expansion of *Younger*, most private-party actions in

²⁵⁹ Both *Rooker* and *Feldman* involved federal court claims seeking review and rejection of state court judgments in civil cases. See D.C. Court of Appeals v. Feldman, 460 U.S. 462, 475–76 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 416–17 (1923).

²⁶⁰ See Friedman & Gaylord, *supra* note 11, at 1152 ("*Rooker-Feldman* does no work in criminal defense cases.>").

²⁶¹ See 28 U.S.C. § 2254 (2006).

²⁶² See, e.g., *Gruntz v. Cnty. of L.A.*, 202 F.3d 1074, 1079 (9th Cir. 2000) (en banc) ("[F]ederal habeas-corpus law turns *Rooker-Feldman* on its head."); Sherry, *supra* note 10, at 1101 ("Petitions for habeas corpus are an explicit exception to *Rooker-Feldman*, so that lower federal courts *do* serve as courts of appeal for state court criminal convictions.>").

²⁶³ Invocation of *Rooker-Feldman* in the criminal context usually arises when a defendant is convicted of a crime in state court, and then files a claim under § 1983 in federal court. See, e.g., *Petrey v. Bartlett*, No. 09-118-WOB, 2009 WL 2760906, at *4–5 (E.D. Ky. Aug. 26, 2009); *Poole v. Kolomitz*, No. 09-cv-01741-BNB, 2008 WL 4829849, at *1–3 (D. Colo. Nov. 5, 2008).

²⁶⁴ See Richard H. Fallon, Jr., *The Ideologies of Federal Courts Law*, 74 VA. L. REV. 1141, 1171 (1988) (noting that *Younger* abstention was "[o]riginally limited in application to pending state criminal proceedings" before its expansion to civil enforcement actions).

²⁶⁵ *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).

state court presumably do not implicate important state interests and thus fail to trigger the doctrine's protection.²⁶⁶

To the extent that a state court criminal or civil proceeding produces a final judgment on the merits, that judgment is entitled to preclusive effect. Preclusion law is not limited to judgments in civil proceedings; a valid, final judgment in a criminal case also can have issue preclusive effect in a subsequent civil case.²⁶⁷ There are some limitations to the preclusive effect of criminal judgments, however.²⁶⁸ Most notably, acquittals in criminal proceedings do not carry preclusive effect in a civil lawsuit when the two proceedings use different burdens of proof.²⁶⁹

Regardless, the main observation that should be made at this point is that *Rooker-Feldman* applies more widely to collateral attacks of state court judgments in *civil* actions, while *Younger* primarily applies to federal actions that interfere with state court *criminal* proceedings. This represents a significant difference in the scope of these two doctrines.

D. *Types of Claims Barred by Each Doctrine*

Rooker-Feldman, *Younger*, and the preclusion law doctrines each bar a distinct category of federal court claims. The *Rooker-Feldman* doctrine applies to federal court claims “complaining of injuries caused by state-court judgments . . . and inviting district court review and rejection of those judgments.”²⁷⁰ The doctrine does not prevent litigants from filing claims complaining of injuries caused by a de-

²⁶⁶ See *supra* note 244; see also *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 368 (1989) (holding that *Younger* applies only to “state criminal prosecutions, to civil enforcement proceedings, and even to civil proceedings involving certain orders that are uniquely in furtherance of the state courts’ ability to perform their judicial functions” (citations omitted)); Paul J. Heald & Michael L. Wells, *Remedies for the Misappropriation of Intellectual Property by State and Municipal Governments Before and After Seminole Tribe: The Eleventh Amendment and Other Immunity Doctrines*, 55 WASH. & LEE L. REV. 849, 913 (1998) (“*Younger* is not a general principle that applies across a range of state proceedings. Instead, *Younger* is a narrow rule of deference . . .”).

²⁶⁷ See, e.g., *Emich Motors Corp. v. Gen. Motors Corp.*, 340 U.S. 558, 568–69 (1951); *Fireman’s Fund Ins. Co. v. Stites*, 258 F.3d 1016, 1021 (9th Cir. 2001); *Kowalski v. Gagne*, 914 F.2d 299, 302 (1st Cir. 1990).

²⁶⁸ See generally 18 MOORE ET AL., *supra* note 167, § 132.02[4][d].

²⁶⁹ See, e.g., *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 361–62 (1984); RESTATEMENT (SECOND) OF JUDGMENTS § 28(4) (1982).

²⁷⁰ *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

fendant or a third party,²⁷¹ and it does not prohibit general challenges to the constitutionality of state laws.²⁷² Moreover, the Supreme Court appears to have reigned in *Feldman*'s "inextricably intertwined" inquiry²⁷³—as long as the federal action "present[s] some independent claim," jurisdiction exists.²⁷⁴

Younger abstention bars federal suits that interfere with pending state court proceedings rather than claims seeking relief from a state court judgment.²⁷⁵ Although a limited amount of overlap may exist between *Rooker-Feldman* and *Younger* while cases are pending in state court,²⁷⁶ significant differences exist between the types of claims prohibited by each doctrine. Most importantly, *Rooker-Feldman* extends to claims for damages,²⁷⁷ while some circuits apply *Younger* only to claims seeking injunctive or declaratory relief.²⁷⁸

The circumstances in which preclusion law applies also are significantly different from those implicating *Rooker-Feldman* or *Younger*. Claim preclusion bars relitigation of claims that could have been liti-

²⁷¹ See, e.g., *PJ ex rel. Jensen v. Wagner*, 603 F.3d 1182, 1194 (10th Cir. 2010); *Knutson v. City of Fargo*, 600 F.3d 992, 995–96 (8th Cir. 2010).

²⁷² E.g., *Carter v. Burns*, 524 F.3d 796, 798 (6th Cir. 2008).

²⁷³ See *Rowe & Baskauskas*, *supra* note 85, at 3–4 ("[T]he 'inextricably intertwined' formulation, although not expressly repudiated or limited, appears to have been relegated to—at most—some secondary role and in any event [is] no longer . . . a general or threshold test.").

²⁷⁴ *Exxon Mobil*, 544 U.S. at 293 (citing *Noel v. Hall*, 341 F.3d 1148, 1163–64 (9th Cir. 2003)); *GASH Assocs. v. Vill. of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993)); *accord Skinner v. Switzer*, 131 S. Ct. 1289, 1297 (2011).

²⁷⁵ See *Samuels v. Mackell*, 401 U.S. 66, 73 (1971); *Younger v. Harris*, 401 U.S. 37, 41 (1971).

²⁷⁶ It is possible that both *Younger* and *Rooker-Feldman* bar federal claims seeking injunctive relief from a state court interlocutory order. See, e.g., *Pieper v. Am. Arbitration Ass'n*, 336 F.3d 458, 459, 464 (6th Cir. 2003) (holding that *Rooker-Feldman* barred a litigant's claim for injunctive relief following a state court interlocutory order); *Port Auth. Police Benevolent Ass'n v. Port Auth. of N.Y. & N.J. Police Dep't*, 973 F.2d 169, 172, 175–76 (3d Cir. 1992) (holding that *Younger* abstention barred a litigant's claim for relief from a series of state court interlocutory orders).

²⁷⁷ See, e.g., *Hunter v. Supreme Court of N.J.*, 951 F. Supp. 1161, 1174–75 (D.N.J. 1996); see also *Sherry*, *supra* note 10, at 1125–26 (arguing that, for purposes of *Rooker-Feldman*, "there should be no difference between federal suits seeking injunctive or declaratory relief and those seeking damages").

²⁷⁸ See, e.g., *Morpurgo v. Inc. Vill. of Sag Harbor*, 327 F. App'x 284, 285–86 (2d Cir. 2009) ("[A]pplication of the *Younger* doctrine is inappropriate where the litigant seeks money damages for an alleged violation of § 1983" (internal citations omitted)); *Alexander v. Ieyoub*, 62 F.3d 709, 713 (5th Cir. 1995) ("[T]he *Younger* abstention doctrine does not apply to a suit seeking only damages."). *But see* *Gilbertson v. Albright*, 381 F.3d 965, 978 n.13 (9th Cir. 2004) (en banc) (noting that most circuits apply *Younger* to damages claims).

gated in the prior suit;²⁷⁹ issue preclusion prevents relitigation of issues “actually litigated” and “necessarily decided.”²⁸⁰ In contrast, cases barred by *Rooker-Feldman* do not involve relitigation of state court claims or issues for a simple reason: a litigant cannot complain of injuries caused by a state court judgment before that judgment exists.²⁸¹ Moreover, *Younger*’s rule against interference with “pending” state court proceedings will rarely overlap with claim and issue preclusion, which both require a “final” judgment on the merits.²⁸² Thus, the type of claims barred by *Rooker-Feldman*, *Younger* abstention, and preclusion law are distinct and rarely overlap.

In sum, significant distinctions exist between these doctrines. Various scenarios involving the status of state court proceedings at the time of filing of the federal case show that *Rooker-Feldman* will be superfluous in some cases but vitally important in others. When the federal suit includes individuals who were nonparties to the state court action, the scope of preclusion law is broader than *Rooker-Feldman* and *Younger* in some jurisdictions but narrower in others. *Younger* abstention offers greater protection to state court criminal cases; in contrast, *Rooker-Feldman* more commonly arises in the context of civil actions. Perhaps most importantly, each doctrine targets a separate and distinct category of forbidden claims.

VI. ARTICULATING *ROOKER-FELDMAN*’S UNIQUE ROLE

With these differences in mind, it is possible to answer the key question left open by the Supreme Court’s recent decisions in *Exxon*

²⁷⁹ *Moncrief v. Chase Manhattan Mortg. Corp.*, 275 F. App’x 149, 153 (3d Cir. 2008); RESTATEMENT (SECOND) OF JUDGMENTS § 24 (1982).

²⁸⁰ *E.g.*, *Griswold v. City of Homer*, 34 P.3d 1280, 1283 (Alaska 2001) (quoting *Campion v. State*, 876 P.2d 1096, 1098 (Alaska 1994)); *Gonzalez v. Superior Court of Santa Clara Cnty. (Fireside Bank Cases)*, 115 Cal. Rptr. 3d 80, 84–85 (Ct. App. 2010).

²⁸¹ *See Sherry*, *supra* note 10, at 1093 (noting that preclusion law would not bar a federal court claim that “seeks to rectify the harm done by the state suit itself” because “the harm alleged in the federal suit does not arise from the same transaction as the original state suit”).

²⁸² *See Steffel v. Thompson*, 415 U.S. 452, 461–62 (1974); RESTATEMENT (SECOND) OF JUDGMENTS §§ 13 cmt. b, 27 cmt. k (1982). In rare cases, there may be overlap between preclusion law and *Younger* abstention. Many states give preclusive effect to judgments regardless of whether an appeal is pending. *E.g.*, *Wyatt v. Wyatt*, 65 P.3d 825, 831 (Alaska 2003); *Patton v. Klein*, 746 A.2d 866, 869 n.6 (D.C. 1999). Additionally, state court proceedings remain “pending” for purposes of *Younger* abstention until the state appellate process has run its course. *See Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608 (1975). Thus, both *Younger* and preclusion law may bar a federal court plaintiff from collaterally attacking a state court judgment while state appeals are pending.

Mobil and *Lance*. What unique role does *Rooker-Feldman* play in preventing federal court interference with state court litigation?

Based on the analysis above, there are two unique roles that the *Rooker-Feldman* doctrine can play. The first is somewhat obvious: *Rooker-Feldman* is the only doctrine that bars federal claims complaining of injuries caused by final state court judgments.²⁸³ The second is more subtle and would require some circuits to interpret the doctrine more broadly than they have in the past: only *Rooker-Feldman* bars collateral attacks on non-final state court judgments in civil cases lacking important state interests or where plaintiff seeks monetary relief.²⁸⁴ As the following discussion shows, it is unlikely that *Younger* abstention or preclusion law would bar such claims.

A. *Only Rooker-Feldman Bars Federal Claims Complaining of Injuries Caused by Final State Court Judgments*

The first situation in which *Rooker-Feldman* plays a unique role occurs when a state court loser exhausts her state appellate remedies²⁸⁵ and then files a claim in federal district court that complains of injuries caused by the state court judgment itself. This scenario undoubtedly meets the *Exxon Mobil* test, and thus, *Rooker-Feldman* would bar plaintiff's federal court action.²⁸⁶

Rooker-Feldman plays a vital role in these types of situations because neither *Younger* abstention nor preclusion law would bar plaintiff's federal action. First, *Younger* is inapplicable because there is no pending state court proceeding—plaintiff has exhausted her state appellate remedies.²⁸⁷ Second, preclusion law also is inapplicable. Plaintiff could not have raised her claim in the state court action because the claim complains of injuries caused by the state court judgment itself.²⁸⁸ For the same reason, the issues underlying plaintiff's

²⁸³ See *infra* Part VI.A.

²⁸⁴ See *infra* Part VI.B.

²⁸⁵ In terms of the status of state court proceedings at the time of filing, this situation resembles the fourth scenario discussed in Part V.A above.

²⁸⁶ See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (holding that *Rooker-Feldman* bars “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”).

²⁸⁷ See *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608 (1975).

²⁸⁸ See *Moncrief v. Chase Manhattan Mortg. Corp.*, 275 F. App'x 149, 152–53 (3d Cir. 2008); RESTATEMENT (SECOND) OF JUDGMENTS § 24 (1982).

claim could not have been “actually litigated” and “necessarily decided” in the state court action.²⁸⁹

If plaintiff files her federal action against a defendant who was not a party to the state court lawsuit (for example, the state court judge), there are additional reasons why preclusion law does not apply. The requirements of claim preclusion are not met because the second action is not between the same parties or their privies.²⁹⁰ Additionally, if the state court judgment was rendered in a jurisdiction that requires mutuality, issue preclusion would be inapplicable as well.²⁹¹

Even if this were the extent of *Rooker-Feldman*'s role, the doctrine would be both significant and necessary. Aggrieved litigants file federal court actions against state courts (and their judges) with surprising frequency.²⁹² Thus, *Rooker-Feldman* plays an important role by barring jurisdiction in these types of cases.

B. Only Rooker-Feldman Bars Collateral Attacks on Non-Final State Court Judgments in Civil Cases Lacking Important State Interests, or when a Plaintiff Seeks Monetary Relief

The second situation in which *Rooker-Feldman* plays a unique role occurs when a state court loser files a claim in federal district court complaining of injuries allegedly caused by either a state court interlocutory order or a final state court judgment for which an appeal is pending.²⁹³

Younger abstention will not bar plaintiff's federal claim as long as the state court judgment was rendered in private-party civil litigation

²⁸⁹ *E.g.*, *Griswold v. City of Homer*, 34 P.3d 1280, 1283 (Alaska 2001); *Gonzalez v. Superior Court of Santa Clara Cnty. (Fireside Bank Cases)*, 115 Cal. Rptr. 3d 80, 84–85 (Ct. App. 2010).

²⁹⁰ *See, e.g.*, *Penn v. Iowa State Bd. of Regents*, 577 N.W.2d 393, 398 (Iowa 1998); *N. States Power Co. v. Bugher*, 525 N.W.2d 723, 728 (Wis. 1995); *FRIEDENTHAL ET AL.*, *supra* note 178, at 723.

²⁹¹ *See, e.g.*, *Leon C. Baker, P.C. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 821 So. 2d 158, 165 (Ala. 2001); *Ritch v. State*, 14 So. 3d 1104, 1107 (Fla. Dist. Ct. App. 2009); *U.S. Cold Storage, Inc. v. City of Lumberton*, 576 S.E.2d 415, 417–18 (N.C. Ct. App. 2003).

²⁹² *See, e.g.*, *Klaudt v. Dooley*, No. Civ. 10-4091-KES, 2010 WL 5391571 (D.S.D. Dec. 22, 2010); *Dempsey v. Clerk, Supreme Judicial Court*, No. 10-12044-PBS, 2010 WL 5283290 (D. Mass. Dec. 15, 2010); *Gdowski v. Lant*, No. 4:10CV3233, 2010 WL 5257010 (D. Neb. Dec. 15, 2010); *Nali v. Oakland Cnty. Friend of Court*, No. 10-14844, 2010 WL 5101041 (E.D. Mich. Dec. 9, 2010).

²⁹³ In terms of the status of state court proceedings at the time of filing, this situation would fall in either the second or third scenarios discussed in Part V.A above.

that did not implicate important state interests.²⁹⁴ Alternatively, even if the federal claim complains of injuries caused by a state court judgment in a criminal prosecution or civil enforcement action, plaintiff may be able to circumvent *Younger* by filing a claim for monetary damages.²⁹⁵

Preclusion law is inapplicable if plaintiff's claim complains of injuries caused by a state court interlocutory order, which carries no preclusive effect.²⁹⁶ Alternatively, even if plaintiff's federal action complains of injuries caused by a final judgment, some states refuse to give the judgment preclusive effect as long as appeals are pending in state court.²⁹⁷ As a result, *Rooker-Feldman* could play a valuable role by protecting these judgments.

Application of *Rooker-Feldman* to these types of cases would require some circuits to interpret the doctrine more broadly. Most circuits use the doctrine to protect final judgments, even if appeals are pending in state court.²⁹⁸ But many circuits have held that *Rooker-Feldman* does not apply to state court interlocutory orders.²⁹⁹ The better rule is the approach used by circuits that extend the doctrine to all state court decisions, whether final or interlocutory in nature.³⁰⁰ Such an approach is more consistent with the rationale behind the *Rooker-Feldman* doctrine and has the added advantage of filling an im-

²⁹⁴ See *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).

²⁹⁵ See, e.g., *Morpurgo v. Inc. Vill. of Sag Harbor*, 327 F. App'x 284, 285–86 (2d Cir. 2009) (*Younger* abstention does not bar damages claims); *Alexander v. Ieyoub*, 62 F.3d 709, 713 (5th Cir. 1995) (same). But see *Gilbertson v. Albright*, 381 F.3d 965, 978 n.13 (9th Cir. 2004) (en banc) (noting that most circuits apply *Younger* to damages claims).

²⁹⁶ See, e.g., *Saizan v. Pointe Coupee Parish Sch. Bd.*, 49 So. 3d 559, 563–64 (La. Ct. App. 2010); *McMahon v. Geldersma*, 317 S.W.3d 700, 705 (Mo. Ct. App. 2010).

²⁹⁷ See, e.g., *Rantz v. Kaufman*, 109 P.3d 132, 141 (Colo. 2005) (judgments subject to appeal do not have preclusive effect); *Creech v. Addington*, 281 S.W.3d 363, 377–78 (Tenn. 2009) (same).

²⁹⁸ See *Pieper v. Am. Arbitration Ass'n*, 336 F.3d 458, 462 (6th Cir. 2003) (*Rooker-Feldman* applies to lower state court decisions); *Richardson v. D.C. Court of Appeals*, 83 F.3d 1513, 1515 (D.C. Cir. 1996) (same). But see *Nicholson v. Shafe*, 558 F.3d 1266, 1278–79 (11th Cir. 2009) (*Rooker-Feldman* does not protect judgments subject to appeals in state court); *In re Hodges*, 350 B.R. 796, 801 (Bankr. N.D. Ill. 2006) (same).

²⁹⁹ See, e.g., *TruServ Corp. v. Flegles, Inc.*, 419 F.3d 584, 591 (7th Cir. 2005); *In re Meyerland Co.*, 960 F.2d 512, 516 (5th Cir. 1992).

³⁰⁰ *Am. Reliable Ins. Co. v. Stillwell*, 336 F.3d 311, 320 (4th Cir. 2003); *Pieper*, 336 F.3d at 462; see also Dustin E. Buehler, *Revisiting Rooker-Feldman: Extending the Doctrine to State Court Interlocutory Orders*, 36 FLA. ST. U. L. REV. 373, 408–14 (2009).

portant niche left uncovered by *Younger* abstention and preclusion law.

VII. CONCLUSION

Clear distinctions exist between the *Rooker-Feldman* doctrine, *Younger* abstention, and preclusion law rules. Articulating these differences requires careful attention to the scope of each doctrine and, as is so often the case with rules that regulate the interaction between state and federal courts, the details are where the devil resides.

Given the unique scope of each of these doctrines, it is surprising that federal courts confuse them so frequently. Perhaps the reason for the confusion lies not in the difficulty of the concepts, but instead reflects the situation federal courts find themselves in when they invoke these doctrines. Most federal court judges likely have a fairly strong reaction to a claim that attacks a state court judgment or proceeding—they know *some* doctrine must bar the claim. The certainty of this answer may overshadow the subtleties of the doctrines. As a result, many courts inevitably use the wrong doctrine to achieve the right result.

These doctrines are precise tools. An appreciation for the differences between *Rooker-Feldman*, *Younger* abstention, and preclusion law hopefully will go a long way toward ensuring that each plays a necessary and distinct role in our federal courts.