RECORD NO. 17-1740

In The
United States Court of Appeals
For The Fourth Circuit

DAMIAN STINNIE, Individually, and on behalf of all others similarly situated; DEMETRICE MOORE, Individually, and on behalf of all others similarly situated; ROBERT TAYLOR, Individually, and on behalf of all others similarly situated; NEIL RUSSO, Individually, and on behalf of all others similarly situated,

Plaintiffs – Appellants,

v.

RICHARD D. HOLCOMB, in his official capacity as the Commissioner of the Virginia Department of Motor Vehicles,

Defendant – Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA AT CHARLOTTESVILLE

AMICUS CURIAE BRIEF OF THE INSTITUTE FOR JUSTICE IN SUPPORT OF PLAINTIFFS-APPELLANTS

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RULE

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INTEREST OF *AMICUS CURIAE*[1]

The Institute for Justice ("IJ") is a nonprofit, public-interest law firm committed to protecting individuals' constitutional rights, including their right to earn an honest living. The Virginia statute at issue in this case jeopardizes that right because it penalizes people of limited means by making it more difficult, if not impossible, for them to travel to their jobs. In essence, the law punishes drivers for being poor, and the punishment it inflicts makes those drivers even poorer. That is irrational and unconstitutional.

Unfortunately, the district court never reached the merits because it dismissed this case on several jurisdictional grounds, including the *Rooker-Feldman* doctrine. Federal district courts are an essential forum for vindicating federal constitutional rights against infringement by the states. This role is undermined by the overly aggressive application of doctrines like *Rooker-Feldman*, standing, the Eleventh Amendment, and abstention. The *Rooker-Feldman* doctrine is frequently raised as a

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[1] Pursuant to Fed. R. App. P. 29, both parties, through their respective counsel, have consented to the filing of this brief. Counsel for the parties did not author this brief in whole or in part. No person or entity other than *amicus* and its members made a monetary contribution to the preparation or submission of this brief.

defense in the lawsuits that IJ files. IJ submits this brief to assist this Court in correcting the trial court's misinterpretation of *Rooker-Feldman* and to ensure that plaintiffs like those in this case and those that IJ represents are able to access the federal courts to protect their constitutional rights.

SUMMARY OF THE ARGUMENT

Appellants filed this case in federal court, alleging that a Virginia statute is unconstitutional. Even though the Supreme Court and Fourth Circuit have repeatedly held that the *Rooker-Feldman* doctrine does not apply when a plaintiff challenges the validity of a statute, the court below concluded that because the revocation of Appellants' drivers' licenses was the result of a court order applying that Virginia statute, *Rooker-Feldman* bars their suit. That is not the law. *Rooker-Feldman* applies only when a federal plaintiff is attacking the merits of a state court's decision in a particular case. When, by contrast, a plaintiff challenges the validity of a statute or rule that the state court applied, then *Rooker-Feldman* has no place.

The *Rooker-Feldman* doctrine is also inapplicable because Appellants are raising a due process challenge to the sufficiency of the

very state proceeding that the court below held was the cause of their injury. In other words, the court held that plaintiffs must prove their right to due process in the same proceeding that they allege is defective. That defies both common sense and precedent. To be sure, a plaintiff cannot simply slap a due process label on an argument whose substance is that the state court's decision was wrong. But it is another matter when plaintiffs credibly allege that a state has violated their federal due process rights. That is what the Appellants here have done; they raised an independent claim to which *Rooker-Feldman* does not apply.

ARGUMENT

I. The *Rooker-Feldman* doctrine does not apply when a plaintiff is challenging the validity of a statute applied in state court, rather than the way a court applied a statute in a specific case.

The appellants have demonstrated that the *Rooker-Feldman* doctrine is inapplicable because the license suspensions at issue are not the result of judicial actions. Yet, even if they were wrong on that count, the doctrine would still be inapplicable because they are challenging the constitutionality of the underlying statute, rather than the way the court applied the statute in a specific case. When plaintiffs do "not challenge the adverse…[state court] decisions themselves" but instead

"target[] as unconstitutional the [state] statute they authoritatively construed," then *Rooker-Feldman* does not apply. *Skinner v. Switzer*, 562 U.S. 521, 532 (2011) ("[A] state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action.").

The *Feldman* case, from which the *Rooker-Feldman* doctrine derives its name, illustrates this point. *District of Columbia Court of Appeals v. Feldman* was a federal case brought by unsuccessful applicants to the District of Columbia bar. 460 U.S. 462 (1983).[2] The District of Columbia Court of Appeals had recently adopted a rule limiting bar admission to graduates of accredited law schools. *Id.* at 464–65. Two applicants who had not attended accredited law schools nevertheless petitioned for admission, requesting a waiver of the rule, and emphasizing their unique circumstances and qualifications. One of the applicants explicitly argued that the D.C. Court of Appeals had the "plenary power to regulate the licensing of attorneys…includ[ing] the discretion to waive the requirements of Rule 46 in a deserving case." *Id.*

[2] Actually, it was two separate but largely identical cases that were decided together (though not consolidated) by the D.C. Circuit, and then consolidated for review in the Supreme Court. 460 U.S. at 474 n.10.

at 467. The D.C. Court of Appeals denied the applicants' requests for waivers, and both applicants subsequently brought actions pursuant to 42 U.S.C. § 1983 in federal district court, arguing, *inter alia*, (1) that the bar admission rule was unconstitutional, and (2) that the D.C. Court of Appeals had violated their constitutional rights by failing to grant them waivers from the rule.

The Supreme Court distinguished between these two types of claims. On one hand, the claim that the D.C. Court of Appeals should have granted a waiver, based on the applicants' unique circumstances, was barred by the doctrine we now know as *Rooker-Feldman*:

> [I]t is clear that their allegations that the District of Columbia Court of Appeals acted arbitrarily and capriciously in denying their petitions for waiver and that the court acted unreasonably and discriminatorily in denying their petitions…required the District Court to review a final judicial decision of the highest court of a jurisdiction in a particular case.

460 U.S. at 486. In contrast, however, because "[t]he remaining allegations in the complaints…involve[d] a general attack on the constitutionality of" the bar admission rule, the Court held that the district court did "ha[ve] subject matter jurisdiction" over those claims and remanded for further proceedings. *Id.* at 487. So as long as a

plaintiff's challenge targets a statute or a rule, then *Rooker-Feldman* does not apply.

The court below acknowledged that "what this case boils down to and what [Plaintiffs] challenge as unconstitutional [is] Virginia Code § 46.2-395, entitled 'Suspension of license for failure or refusal to pay fines or costs.'" JA546. And the court treated that statute as a rule of decision applied by the state trial court. JA557. In other words, this case is not a challenge to the way a state court applied a rule in a particular case, but a challenge to the rule or statute that state courts must apply. That should have been the end of the *Rooker-Feldman* analysis.

Nevertheless, the district court, relying on *Jordahl v. Democratic Party of Virginia*, 122 F.3d 192 (4th Cir. 1997), concluded that as long as the plaintiffs' injury was the result of an order entered by a state court, then it was irrelevant that they were actually challenging the constitutionality of a statute. JA557–58. Yet, the district court's reliance on that case was misplaced, for two reasons. First, *Jordahl* actually reaffirmed the distinction, drawn in *Feldman*, "between actions seeking review of the state court decisions themselves and those cases

challenging the constitutionality of the process by which the state court decisions resulted." *Id.* at 202. The reason that the *Jordahl* court held that *Rooker-Feldman* applied was because what the plaintiff in that case was actually requesting was a declaration that the "state courts' decision [was] in error." *Id.* The court also emphasized that the plaintiff had *not* argued that the relevant statute was unconstitutional. *Id.* at 198–99. In the present case, that is precisely what the plaintiffs are arguing, and, moreover, there is no state court "decision" to attack. So *Jordahl* actually supports the appellants.

The second reason the district court's reliance on *Jordahl* was misplaced is that—even if *Jordahl* could be stretched to support the ruling below—the district court's understanding of *Rooker-Feldman* has now been repudiated by both the Supreme Court and the Fourth Circuit. (Indeed, many of the *Rooker-Feldman* cases from that era have been cast in doubt by subsequent decisions.)

First, in *Exxon Mobil Corp. v. Saudi Basic Industries*, the Supreme Court noted that "since *Feldman*, this Court has never applied *Rooker–Feldman* to dismiss an action for want of jurisdiction," 544 U.S. 280, 287 (2011). The Court went on to criticize the lower courts because:

> the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U.S.C. § 1738.

Id. at 283; *accord Lance v. Dennis*, 546 U.S. 459, 464 (2006) ("Neither *Rooker* nor *Feldman* elaborated a rationale for a wide-reaching bar on the jurisdiction of lower federal courts, and our cases since *Feldman* have tended to emphasize the narrowness of the *Rooker-Feldman* rule"). The *Exxon* court then specifically held that *Rooker-Feldman* is inapplicable when a federal plaintiff brings an "independent claim," even if prevailing on that claim could have the effect of undoing a state court judgment. *Exxon*, 544 U.S. at 293 ("Nor does § 1257 stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court."). An "independent claim" is easy to identify, as it targets something other than the merits of a state court's decision. In other words, if a plaintiff can plead a claim without "specifically" complaining about the actions of a court in a particular case, then *Rooker-Feldman* does not apply. *See Thana v. Bd. of License Comm'rs for Charles Cty.*,

Md., 827 F.3d 314, 320 (4th Cir. 2016) ("*Rooker-Feldman*…assesses only whether the process for appealing a state court judgment to the Supreme Court under 28 U.S.C. § 1257(a) has been sidetracked by an action filed in a district court *specifically* to review that state court judgment.") (emphasis in original). A federal defendant may possibly find recourse against such relitigation in the principles of preclusion, but that is a separate doctrine. *Id.*

The court below ignored the *Exxon* rule, instead taking cues from older cases and focusing extensively on whether the plaintiffs "could have" brought their federal claims in state court. JA560 ("'[T]here is no reason a defendant could not present in state court the very constitutional arguments pressed in this case."). That analysis confuses *Rooker-Feldman* with principles of preclusion and is no longer valid after *Exxon*. *See Skinner*, 562 U.S. at 533 n.11 (holding that it is irrelevant, for *Rooker-Feldman* purposes, whether plaintiff could have presented his constitutional arguments in state court); *Lance*, 546 U.S. at 466 ("The District Court erroneously conflated preclusion law with *Rooker–Feldman*."); *Thana*, 827 F.3d at, 319–20 ("[T]he Supreme Court

[has] corrected the [Fourth Circuit's] misunderstanding" that *Rooker-Feldman* is merely "preclusion by another name.").

If there were any lingering doubt about the matter, the Supreme Court dispelled it in *Skinner*. In that case, the Court held that *Rooker-Feldman* does not apply when a federal plaintiff challenges the constitutionality of a rule of decision that was applied against him in state court. *Skinner*, 562 U.S. at 532 ("Skinner does not challenge the adverse CCA decisions themselves; instead, he targets as unconstitutional the Texas statute they authoritatively construed. As the Court explained in *Feldman*, and reiterated in *Exxon*, a state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action.") (citations omitted); *see also Alvarez v. Attorney Gen. for Fla.*, 679 F.3d 1257, 1263 (11th Cir. 2012) ("*Skinner* stands for the unremarkable proposition that the existence of a state court judgment interpreting or relying upon a statute does not bar a federal court from entertaining an independent challenge to the constitutionality of that statute.").

In light of these more recent Supreme Court cases, the Fourth Circuit has acknowledged that its older cases, which had "given the

Rooker-Feldman doctrine an expansive reading," have limited precedential value. *Davani v. Va. Dep't of Transp.*, 434 F.3d 712, 717 (4th Cir. 2006); *accord Thana*, 827 F.3d at 321. In fact, just this year, this Court has rejected the application of *Rooker-Feldman* in a case substantively similar to this one, although that case is unreported. In a decision that discussed *Skinner* in detail, this Court held that *Rooker-Feldman* does not apply when a plaintiff "directs his attack at the constitutionality of…[a] statute" rather than "at the state court decisions that" applied the statute. *LaMar v. Ebert*, 682 F. App'x. 279, 287 (4th Cir. 2017). In so holding, this Court went so far as to cite *Jordahl* and contrast it with the Supreme Court's more recent approach in *Skinner*. *Id.* at 288. Nor is *LaMar* the only post-*Skinner* case in which this Court has recognized the crucial distinction between challenges to the validity of statutes and challenges to the way a state court applied a statute in a particular case. *See Casey v. Hurley*, 671 F. App'x 137, 138 (4th Cir. 2016) ("Casey did not claim that § 19.2–327.1 is itself invalid or that the state court construed the statute in such a way as to deny him procedural due process….To the extent Casey seeks review of the state court's adverse decisions, the district court lacked

jurisdiction to conduct such a review under the *Rooker-Feldman* doctrine."); *Muhammad v. Green*, 633 F. App'x 122, 123 (4th Cir.) (2016) ("[W]e note that Muhammad does not claim that § 19.2–270.4:1 is itself invalid. Rather, he contends that the state circuit court erroneously applied the statute in deciding his case. Lower federal courts lack jurisdiction over this claim under the *Rooker–Feldman* doctrine.").

This Court's decision in *Thana* bolsters the conclusion. In *Thana*, a local licensing board had revoked a restaurant owner's liquor license, and a state trial court affirmed the revocation. 827 F.3d at 316. The owner then filed a § 1983 suit in federal district court against the board, claiming that the revocation was in retaliation for protected speech, and therefore violated the First Amendment. The board argued that *Rooker-Feldman* barred the case because the injury was supposedly caused by the state court affirming the revocation. This Court, in its last reported decision about the *Rooker-Feldman* doctrine, disagreed. This Court offered several reasons for its conclusion, including, crucially, that the state proceeding offered only "limited and deferential review" with no possibility of damages. 827 F.3d at 321–22. Of course, the restaurant owner *could* have pressed his First Amendment claim in state court,

arguing that deferential review is inappropriate and that he was entitled to damages as a matter of federal law. But this Court made no such demand on the federal plaintiff. The significance of this Court's decision is that, at least as far as *Rooker-Feldman* is concerned, plaintiffs are not required to challenge the validity of state law, whether substantive or procedural, in state courts.

II. *Rooker-Feldman* also should not apply because plaintiffs here make a procedural due process argument.

When a federal plaintiff alleges that a state has denied her due process, it is illogical to suggest that she should have vindicated her rights using the very process that she is alleging is constitutionally defective. Yet that is precisely what the court below held.

A crucial part of Appellants' challenge was to the procedures by which their licenses were revoked. Although they allege that their substantive rights were violated when their licenses were revoked without regard for their ability to pay, they also alleged that their rights to procedural due process were violated because the revocation occurred without notice, opportunity for a hearing, or means to appeal, and, crucially, that the revocation occurred after the time to appeal the

underlying conviction had expired. JA56–58. In other words, whatever process led to plaintiffs' injuries was *ex parte*.

The district court suggested ways that the plaintiffs might have tried to press their constitutional arguments in the Virginia courts so as to prevent their licenses from being revoked. JA560–62. As Appellants' brief demonstrates, however, the district court's description of Virginia procedures was incorrect. But it would not matter if the district court had been right because *Rooker-Feldman* does not require federal plaintiffs to take heroic measures to press constitutional arguments before state courts. That concern animates other doctrines, such as abstention and preclusion. For *Rooker-Feldman* purposes, however, federal plaintiffs are entitled to take state procedures as they are written. If the procedure is inadequate, then they can file a federal lawsuit and allege as much. They need not ask a state court to use its own powers of judicial review to correct the procedural deficiency. *See Skinner*, 562 U.S. at 533 n.11 (rejecting as irrelevant the defendant's argument that plaintiff could have presented his argument about constitutionally defective procedures in the defective proceeding itself).

To be sure, some courts have rightly rejected procedural due process claims that are, in reality, nothing more than a repackaged attack on the reasoning of a state court decision. *See, e.g., Alvarez v. Attorney Gen. for Fla.*, 679 F.3d 1257, 1264 (11th Cir. 2012) ("[T]o the extent [Plaintiff] has alleged a violation of procedural due process because of the way the…state courts applied…procedures to the facts of his case, *Rooker-Feldman* barred the court from exercising subject-matter jurisdiction over the claim."); *Muhammad v. Green*, 633 F. App'x 122, 123 (4th Cir.) (2016) ("[H]e contends that the state circuit court erroneously applied the statute in deciding his case. Lower federal courts lack jurisdiction over this claim under the *Rooker–Feldman* doctrine"). A court does not deprive a plaintiff of due process when it makes a wrong decision. However, it does deprive a plaintiff of due process when a decision results from a process that is constitutionally defective. Thus where a plaintiff credibly alleges either (1) that the formal procedures were inadequate or (2) that the particular state proceeding had been subverted, for example, by corruption, then under the Fourteenth Amendment a federal forum should be available to vindicate the right to procedural due process.

Indeed, a due process claim that one has been injured by inadequate or defective procedures is another "independent claim," of the type to which the Supreme Court was referring in *Exxon*. 544 U.S. at 293. Unsurprisingly, courts have repeatedly recognized that *real* due process claims (as opposed to claims that in substance merely complain about state courts making a mistake) are not barred by *Rooker-Feldman*. *See Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 173 (3d Cir. 2010) (holding *Rooker-Feldman* inapplicable where plaintiff alleges "a conspiracy to reach a predetermined outcome in state court"); *Nesses v. Shepard*, 68 F.3d 1003, 1005 (7th Cir. 1995) (same, recognizing that "[o]therwise there would be no federal remedy for a violation of federal rights whenever the violator so far succeeded in corrupting the state judicial process as to obtain a favorable judgment[.]"). And even *Jordahl* recognized that "[a] distinction must be made between actions seeking review of the state court decisions themselves and those cases challenging the constitutionality of the process by which the state court decisions resulted." 122 F.3d at 202; *see also Casey v. Hurley*, 671 F. App'x 137, 138 (4th Cir. 2016) ("Casey did not claim that § 19.2–327.1 is itself invalid *or that the state court*

construed the statute in such a way as to deny him procedural due process.") (emphasis added).

This Court should recognize that procedural due process claims are exempt from *Rooker-Feldman* because if they are not, the right to receive due process would be severely circumscribed. Procedural rights are, almost by definition, only violated by courts. Granted, the executive branch can take action that violates procedural due process, but under most statutory schemes, courts are at least nominally available to review such actions, though their review is often highly deferential. In this case, of course, there was no "review" at all. Even taking the district court's view of the facts, the Virginia court was, at most, engaged in a ministerial act. If the mandatory issuance of a court order is enough to trigger *Rooker-Feldman*, as the court below held, then procedural due process would largely be outside of the scope of federal protection. That result would neuter one of the foundations of our constitutional order.

CONCLUSION

The District Court's *Rooker-Feldman* ruling should be reversed because it erroneously deprives plaintiffs of a federal forum for their claims and forces them to remain in the very system that violates their constitutional rights in the first instance. In reversing the court below, this Court should clarify, in a published opinion, (1) that *Rooker-Feldman* does not apply when plaintiffs are challenging the validity of a statute or rule, and (2) that *Rooker-Feldman* should not apply when plaintiffs have alleged a violation of procedural due process, so that plaintiffs in future cases are not wrongfully denied the protection of the federal courts.

Respectfully submitted, /s/ William R. Maurer

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Dated: August 16, 2017

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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