

SUPREME COURT OF THE UNITED STATES
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WILLIAM K. SUTER
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AREA CODE 202
479-3011

March 24, 2006

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAR 28 2006

GREGORY C. LANGHAM
CLERK

United States District Court
for the District of Colorado
1929 Stout Street, Room C-145
United States Courthouse
Denver, Colorado 80294

Re: **Keith Lance, et al.**
v. Gigi Dennis, Colorado Secretary of State
No. 05-555 (Your docket No. 03-cv-02453-ZLW-CBS)

Dear Clerk:

Enclosed please find a certified copy of the judgment and a copy of the *Per Curiam* opinion of this Court in the above-entitled case.

Kindly acknowledge receipt on the attached copy of this letter.

Sincerely,

WILLIAM K. SUTER, Clerk

By 

Elizabeth Brown
Judgments/Mandates Clerk

Enc.

cc: Michael A. Carvin, Esq.
Monica M. Marquez, Esq.

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Mr. Michael A. Carvin
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001

**Re: Keith Lance, et al.
v. Gigi Dennis, Colorado Secretary of State
No. 05-555**

Dear Mr. Carvin:

A certified copy of the judgment of this Court in the above-entitled case was mailed to the Clerk of the United States Court District Court for the District of Colorado today.

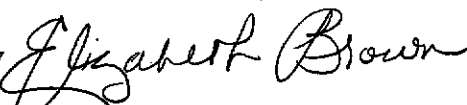
The appellants are given recovery of costs in this Court as follows:

Clerk's costs: \$300.00

This amount may be collected from opposing counsel or parties.

Sincerely,

WILLIAM K. SUTER, Clerk

By 

Elizabeth Brown
Judgments/Mandates Clerk

cc: Monica M. Marquez, Esq.
Clerk, USDC for the District of Colorado
(Your docket No. 03-cv-02453-ZLW-CBS)

Supreme Court of the United States

No.

05-555

KEITH LANCE, ET AL.,

Appellants

v.

GIGI DENNIS, COLORADO SECRETARY OF STATE

ON APPEAL from the United States District Court for the District of Colorado.

THIS CAUSE having been submitted on the statement as to jurisdiction and the motion to affirm.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that jurisdiction is noted. The judgment of the above court is vacated with costs, and the case is remanded to the United States District Court for the District of Colorado for further proceedings consistent with the opinion of this Court.

IT IS FURTHER ORDERED that the appellants Keith Lance, et al., recover from Gigi Dennis, Colorado Secretary of State Three Hundred Dollars (\$300.00) for costs herein expended.

February 21, 2006

Clerk's costs: \$300.00

A True copy WILLIAM K. SUTER

Test:

Clerk of the Supreme Court of the United States

By

Cindy Rapp

Deputy

Cite as: 546 U. S. ____ (2006)

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Per Curiam

SUPREME COURT OF THE UNITED STATES

**KEITH LANCE, ET AL., APPELLANTS v. GIGI DENNIS,
COLORADO SECRETARY OF STATE**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLORADO**

No. 05-555. Decided February 21, 2006

PER CURIAM.

The *Rooker-Feldman* doctrine prevents the lower federal courts from exercising jurisdiction over cases brought by “state-court losers” challenging “state-court judgments rendered before the district court proceedings commenced.” *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U. S. 280, 284 (2005). In this case, the District Court dismissed plaintiffs’ suit on the ground that they were in privity with a state-court loser. We hold that the *Rooker-Feldman* doctrine does not bar plaintiffs from proceeding, and vacate the District Court’s judgment.

I

This is the latest of several rounds of litigation involving the State of Colorado’s congressional redistricting after the 2000 census, under which the State gained a seat in the House of Representatives. *Lance v. Davidson*, 379 F. Supp. 2d 1117, 1121 (2005). The first round began in May 2001. When the Colorado General Assembly failed to pass a redistricting plan for the 2002 congressional elections by the close of its regular session, a group of Colorado voters asked the state courts to create a plan. The courts agreed, drawing a new map reflecting the additional district. See *Beauprez v. Avalos*, 42 P. 3d 642 (Colo. 2002) (en banc). The 2002 elections were held using this court-ordered plan.

The General Assembly passed its own redistricting plan in the spring of 2003, prompting further litigation—this

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Per Curiam

Article V, §44, of the Colorado Constitution, as interpreted by the Colorado Supreme Court, violated the Elections Clause of Article I, §4, of the U. S. Constitution (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof”), and the First Amendment’s Petition Clause (“Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances”). The defendants filed a motion to dismiss, arguing that the *Rooker-Feldman* doctrine and Colorado preclusion law barred any attack on the Colorado Supreme Court’s judgment in *Salazar* and that the plaintiffs had failed to state a valid Petition Clause claim.

The three-judge District Court ruled that under the *Rooker-Feldman* doctrine, it had no jurisdiction to hear the Elections Clause claim. 379 F. Supp. 2d, at 1127. The *Rooker-Feldman* doctrine, the court explained, includes three requirements: (1) “the party against whom the doctrine is invoked must have actually been a party to the prior state-court judgment or have been in privity with such a party”; (2) “the claim raised in the federal suit must have been actually raised or inextricably intertwined with the state-court judgment”; and (3) “the federal claim must not be parallel to the state-court claim.” 379 F. Supp. 2d, at 1124. The District Court found the first requirement satisfied on the ground that the citizen plaintiffs were in privity with the Colorado General Assembly—a losing party in *Salazar*. Relying on our decisions in *Washington v. Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U. S. 658 (1979), and *Tacoma v. Taxpayers of Tacoma*, 357 U. S. 320 (1958), the court stated that “when a state government litigates a matter of public concern,

plan in this litigation and to allow the state attorney general to represent her. 379 F. Supp. 2d 1117, 1122, n. 3 (Colo. 2005).

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Per Curiam

failed to obtain review in this Court, filed an action in federal district court challenging the constitutionality of the state-court judgment. We viewed the action as tantamount to an appeal of the Indiana Supreme Court decision, over which only this Court had jurisdiction, and said that the “aggrieved litigant cannot be permitted to do indirectly what he no longer can do directly.” 263 U. S., at 416. *Feldman*, decided 60 years later, concerned slightly different circumstances, with similar results. The plaintiffs there had been refused admission to the District of Columbia bar by the District of Columbia Court of Appeals, and sought review of these decisions in federal district court. Our decision held that to the extent plaintiffs challenged the Court of Appeals decisions themselves—as opposed to the bar admission rules promulgated nonjudicially by the Court of Appeals—their sole avenue of review was with this Court. 460 U. S., at 476.

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. See *Exxon Mobil*, 544 U. S., at 292 (*Rooker-Feldman* does not apply to parallel state and federal litigation); *Verizon Md. Inc. v. Public Serv. Comm’n of Md.*, 535 U. S. 635, 644, n. 3 (2002) (*Rooker-Feldman* “has no application to judicial review of executive action, including determinations made by a state administrative agency”); *Johnson v. De Grandy*, 512 U. S. 997, 1005–1006 (1994) (*Rooker-Feldman* does not bar actions by a nonparty to the earlier state suit). Indeed, during that period, “this Court has never applied *Rooker-Feldman* to dismiss an action for want of jurisdiction.” *Exxon Mobil*, *supra*, at 287.

In *Exxon Mobil*, decided last Term, we warned that the lower courts have at times extended *Rooker-Feldman* “far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress’ conferral of federal-court jurisdiction

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Per Curiam

party to a judgment has no right to appeal therefrom”).

Although the District Court recognized the “general rule” that “*Rooker-Feldman* may not be invoked against a federal-court plaintiff who was not actually a party to the prior state-court judgment,” 379 F. Supp. 2d, at 1123, it nevertheless followed Tenth Circuit precedent in allowing application of *Rooker-Feldman* against parties who were in privity with a party to the earlier state-court action. 379 F. Supp. 2d, at 1123 (citing *Kenmen Eng. v. Union*, 314 F. 3d 468, 481 (2002)). In determining whether privity existed, the court looked to cases concerning the preclusive effect that state courts are required to give federal-court judgments. 379 F. Supp. 2d, at 1125 (citing *Washington*, 443 U. S., at 693, n. 32; *Taxpayers of Tacoma*, 357 U. S., at 340–341). It concluded that—for *Rooker-Feldman* as well as preclusion purposes—“the outcome of the government’s litigation over a matter of public concern binds its citizens.” 379 F. Supp. 2d, at 1125.

The District Court erroneously conflated preclusion law with *Rooker-Feldman*. Whatever the impact of privity principles on preclusion rules, *Rooker-Feldman* is not simply preclusion by another name. The doctrine applies only in “limited circumstances,” *Exxon Mobil, supra*, at 291, where a party in effect seeks to take an appeal of an unfavorable state-court decision to a lower federal court. The *Rooker-Feldman* doctrine does not bar actions by nonparties to the earlier state-court judgment simply because, for purposes of preclusion law, they could be considered in privity with a party to the judgment.²

A more expansive *Rooker-Feldman* rule would tend to

²In holding that *Rooker-Feldman* does not bar plaintiffs here from proceeding, we 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.

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GINSBURG, J., concurring

SUPREME COURT OF THE UNITED STATES

**KEITH LANCE, ET AL., APPELLANTS v. GIGI DENNIS,
COLORADO SECRETARY OF STATE**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLORADO**

No. 05-555. Decided February 21, 2006

JUSTICE GINSBURG, with whom JUSTICE SOUTER joins,
concurring.

I agree in full with the Court's correction of the District Court's *Rooker-Feldman* error, and therefore join the Court's opinion. Although JUSTICE STEVENS has persuasively urged that issue preclusion warrants affirmance, see *post*, at 2-3 (dissenting opinion), that question of Colorado law seems to me best left for full airing and decision on remand.

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STEVENS, J., dissenting

SUPREME COURT OF THE UNITED STATES

**KEITH LANCE, ET AL., APPELLANTS v. GIGI DENNIS,
COLORADO SECRETARY OF STATE**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
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No. 05-555. Decided February 21, 2006

JUSTICE STEVENS, dissenting.

Rooker and *Feldman* are strange bedfellows. *Rooker*, a unanimous, three-page opinion written by Justice Van Devanter in 1923, correctly applied the simple legal proposition that only this Court may exercise appellate jurisdiction over state-court judgments. See *Rooker v. Fidelity Trust Co.*, 263 U. S. 413, 416. *Feldman*, a nonunanimous, 25-page opinion written by Justice Brennan in 1983, was incorrectly decided and generated a plethora of confusion and debate among scholars and judges.* See *District*

*See, e.g., Comment, Collateral Estoppel and the *Rooker-Feldman* Doctrine: The Problematic Effect These Preclusion and Jurisdictional Principles Have on Bankruptcy Law, 21 Emory Bankr. Dev. J. 579 (2005); Comment, The *Rooker-Feldman* Doctrine: Toward a Workable Role, 149 U. Pa. L. Rev. 1555 (2001); Proctor, Wirth, & Spencer, *Rooker-Feldman* and the Jurisdictional Quandary, 2 Fla. Coastal L. J. 113 (2000); 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 Denver U. L. Rev. 321 (2000); Symposium, The *Rooker-Feldman* Doctrine, 74 Notre Dame L. Rev. 1081 (1999); Pfander, An Intermediate Solution to State Sovereign Immunity: Federal Appellate Court Review of State-Court Judgments After *Seminole Tribe*, 46 UCLA L. Rev. 161 (1998); Recent Case, Ninth Circuit Ignores Principles of Federalism and the *Rooker-Feldman* Doctrine: *Bates v. Jones*, 131 F. 3d 843 (9th Cir. 1997) (en banc), 21 Harv. J. L. & Pub. Pol'y 881 (1998); Schmucker, Possible Applications of the *Rooker-Feldman* Doctrine to State Agency Decisions: The Seventh Circuit's Decision in *Van Harken v. City of Chicago*, 17 J. Nat. Assn. Admin. L. Judges 333 (1997); Casenote, *Texaco, Inc. v. Pennzoil Co.*: Beyond a Crude Analysis of the *Rooker-*

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STEVENS, J., dissenting

and a public official "charged with ministerial and executive duties in connection" with the issuance of the bonds who already brought such a suit); *Atchison, T. & S. F. R. Co. v. Board of County Comm'rs of County of Fremont*, 95 Colo. 435, 441, 37 P. 2d 761, 764 (1934) (en banc) (explaining that taxpayers are in privity with a political division of the State or its official representative if the case involves "a matter of general interest to all the people"). Thus, all of the requirements under Colorado law for issue preclusion have been met, and appellants' Elections Clause claim should therefore be dismissed. See generally 28 U. S. C. §1738; *Michaelson v. Michaelson*, 884 P. 2d 695, 700-701 (Colo. 1994) (setting forth requirements for issue preclusion under Colorado law).

Appellants' spurious Petition Clause claim was also properly dismissed by the District Court. See 379 F. Supp. 2d, at 1130-1132. Nothing in the Colorado Constitution prevents appellants from petitioning the Colorado General Assembly with their grievances, *id.*, at 1131; nothing in the United States Constitution guarantees that such a petition will be effective, *Smith v. Highway Employees*, 441 U. S. 463, 465 (1979) (*per curiam*); see also *Minnesota State Bd. for Community Colleges v. Knight*, 465 U. S. 271, 285 (1984). Moreover, as the District Court recognized, appellants' interpretation of the Petition Clause would lead to absurd results. See 379 F. Supp. 2d, at 1131-1132. As such, appellants' Petition Clause claim was correctly dismissed because it fails to state a claim upon which relief may be granted. See generally Fed. Rule Civ. Proc. 12(b)(6).

For the foregoing reasons I respectfully dissent.