No. 03-1696

In the

Supreme Court of the United States

EXXON MOBIL CORPORATION, *ET AL.*,
Petitioners,

v.

SAUDI BASIC INDUSTRIES CORPORATION,
Respondent.

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

BRIEF *AMICI CURIAE* OF DEFENDERS OF PROPERTY RIGHTS, NEW ENGLAND LEGAL FOUNDATION, OREGONIANS IN ACTION, SAVE OUR SHORELINE, AND SOUTHEASTERN LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Amici curiae will address the following question:

May the *Rooker-Feldman* doctrine, which bars lower federal courts from conducting de facto appellate review of decisions by state courts, be expansively interpreted to divest federal courts of jurisdiction to hear takings cases that have been ripened in state court in compliance with *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985)?

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Amici curiae submits this brief in support of petitioner.[1] *See* S. Ct. Rule 47.3. Both parties have

[1] No counsel for either party authored this brief *amici curiae*, either in whole or in part. Furthermore, no persons other than *amici curiae* contributed financially to the preparation of this brief.

consented to the filing of this brief.

INTERESTS OF AMICI CURIAE

Defenders of Property Rights is the only national legal defense foundation dedicated exclusively to protecting private property rights. Based in Washington, D.C., Defenders was founded as a non-profit, public interest legal foundation in 1991. Its mission is to protect vigorously those rights considered essential by the Framers of the Constitution, and to promote a better understanding of the relationship between private property rights and individual liberty.

Defenders of Property Rights engages in litigation across the country on behalf of its members and the public interest to prevent government incursion into protections guaranteed by the Bill of Rights. Since its inception, Defenders has participated in every major property rights case before the U.S. Supreme Court. *See, e.g., Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999); *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998);

Suitum v. Tahoe Regional Planning Agency, 520 U.S. 725 (1997); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Bennett v. Spear*, 520 U.S. 154 (1997); *Keene Corp. v. United States*, 508 U.S. 200 (1993); and *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

New England Legal Foundation is a non-profit, public interest law firm, incorporated in Massachusetts in 1977 and headquartered in Boston. Its membership consists of corporations, law firms, individuals, and others who believe in NELF's mission of promoting balanced economic growth for the United States and the New England region, protecting the free enterprise system, and defending economic rights. NELF's more than 130 members and supporters include a cross-section of large and small corporations from all parts of New England and the United States. NELF has regularly appeared in state and federal courts, as party or counsel, in cases raising issues of general economic significance to the New England and national business communities. *See, e.g., Green Tree Fin. Corp. v. Bazzle,* 539 U.S. 444 (2003); *EEOC v. Waffle House, Inc.,* 534 U.S. 279 (2002); *Palazzolo v. Rhode Island,* 533 U.S. 606 (2001); *Crosby v. National Foreign*

Trade Council, 530 U.S. 363 (2000); *Estados Unidos Mexicanos v. DeCoster,* 229 F.3d 332 (1st Cir. 2000); *Bessette v. Avco Fin. Servs.*, 230 F.3d 439 (1st Cir. 2000), *cert. denied,* 532 U.S. 1048 (2001).

Oregonians in Action is a non-profit organization devoted solely to fighting for property rights and against excessive land use regulations. It works for sensible, fair and flexible land-use regulations and to protect property rights. OIA's exclusive focus on land-use/property rights stems from its concerns about the harm and adverse impacts from land use regulations, not only with respect to landowners, but also to the economy and best interests of the public as well.

OIA works primarily in the legislative and regulatory arena, seeking needed reforms to existing land-use laws and regulations at the federal, state and local levels. However, OIA has also been active in pursuing judicial action, seeking greater awareness and understanding of the issues, involvement in the election of candidates for public office and involvement in ballot measures.

Save Our Shoreline is a grass-roots organization of over 2,000 property owners along Michigan's Great Lakes shoreline. Formed in 2001, SOS staunchly opposes assertions of government ownership and control over private property, including shorelands that have, since statehood, been considered by the bench, the bar, and the public, to be privately owned.

In its brief history, SOS has participated as *amicus curiae* before the U.S. Supreme Court in *Borden Ranch Partnership v. United States Army Corps of Engineers*, 536 U.S. 903 (2002) (contesting expansion of federal regulatory control over beaches via the Clean Water Act) and before the Michigan Court of Appeals in *Glass v. Goeckel*, 683 N.W.2d 719 (Mich. App. 2004) and its appeal to the Michigan Supreme Court, Docket No. 126409 (asserting private ownership to the water's edge, including exclusive use and trespass control).

Southeastern Legal Foundation is a public interest law firm, specializing in the practice of constitutional law. SLF was founded in 1976 for the purpose of engaging in litigation, education and public policy initiatives in support of free enterprise, individual

rights and the freedoms guaranteed by the United States Constitution.

SLF has participated as *amicus curiae* in cases throughout the United States involving constitutional and policy issues. *See, e.g., Lucas v. South Carolina Coastal Commission*, 505 U.S. 1003 (1992); *City of Richmond v. Croson*, 488 U.S. 469 (1989). In addition to its *amicus* work, SLF maintains an active litigation docket, focusing on constitutional issues of first impression, including *United States House of Representatives v. Department of Commerce*, 525 U.S. 316 (1999) (census enumeration); *McConnell v. FEC*, 540 U.S. 93 (2003) (political speech).

SUMMARY OF ARGUMENT

At issue in the case is the proper interpretation of the *Rooker-Feldman* doctrine, which applies when a losing party "seeks now [what] is nothing more than appellate review of the state court ruling in the lower federal courts." *Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194, 199 (4th Cir. 2000). The purpose of this brief *amici curiae* is to urge the Court to construe the *Rooker-Feldman* doctrine narrowly, so as not to divest federal courts of jurisdiction to hear federal constitutional takings cases that have been first

litigated in state courts in order to comply with this Court's state-court exhaustion requirement. *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 195 (1985) ("[I]f a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation.").

Although a narrow interpretation of the *Rooker-Felman* doctrine may have its place in legitimate federal preclusion jurisprudence and traditional notions of federalism, a mindlessly expansive interpretation, applied by many lower courts, combined with the *Williamson County* exhaustion requirement, places federal takings plaintiffs in an untenable Catch-22 position: file first in federal court and have their claim denied on ripeness grounds (*Williamson County*) or file first in state court and have their federal court claim dismissed on *Rooker-Feldman* grounds. *See generally* J. David Breemer, *Overcoming Williamson County's Troubling State Procedures Rule: How the England Reservation, Issue Preclusion Exceptions, and the Inadequacy Exception*

Open the Federal Courthouse Door to Ripe Takings Claims, 18 J. Land Use & Envtl. L. 209, 210-11 (2003) ("As commentators have long noted, the ripeness prongs established in Williamson County create powerful barriers to landowners seeking to have their takings claims heard on the merits in federal court. When combined with preclusion doctrines, the state procedures requirement is particularly pernicious. In many cases, it has been applied to close the federal courthouse door to attempts to vindicate federal rights under the Takings Clause, a situation that cannot be reconciled with the Court's opinion in Williamson County or with the well-established role of federal courts in enforcing federal constitutional law."); William M. Hof, *Trying to Halt the Procedural Merry-Go-Round: The Ripeness of Regulatory Takings Claims After Palazzolo v. Rhode Island*, 46 St. Louis U. L.J. 833, 855 n.118 (2002) ("[T]he second part of the Williamson County test, exhaustion of state compensation procedures, has also created problems. These problems deal with preclusion and landowners' inability to bring a claim in federal court after pursuing all available remedies on the state level, which often includes bringing an action in state court. . . .

Assuming that property owners must ripen their takings cases by litigating in state court first, federal courts are refusing to hear takings claims that were already litigated before state tribunals. Thus, the synergy between the preclusion doctrines and current ripeness rules is that owners are forced to litigate their constitutional takings claims in state court, without ever receiving a federal adjudication on the merits.").

Barring federal constitutional claims from review by a federal court could not have been intended by Congress when enacting Section 1983 to give plaintiffs a right to seek redress for such claims in federal court. *See* 42 U.S.C. § 1983. Yet, such is the combined result of the *Rooker-Feldman* Doctrine and the *Williamson County* state-court exhaustion doctrine. As one commentator noted:

> Either the Supreme Court meant something when it decided Williamson County, or it did not. If the latter is true, the Court was merely uttering meaningless rhetoric, with no more purpose than to stave off the day of intellectual reckoning. If, however, the Supreme Court meant what it repeatedly said, that a claim for just compensation for a regulatory taking of property is ripe for litigation on the merits in federal district court

> once a final, unfavorable regulatory decision has been issued by the state courts then it is incumbent on the lower federal courts to give meaning to that decision. They cannot, with any degree of intellectual honesty, apply by rote the general precepts of claim and issue preclusion without noting the destructive impact on those general rules of the core holding of Williamson County. . . . Whether by design or blunder, the Supreme Court justices created a system in which they instructed property owners with constitutional claims to litigate the same factual case twice: once, under state law in state court, and then, if they so chose, again in federal court under federal law. It is simply impermissible to say that when the Supreme Court did so, it meant to create a system in which property owners are deliberately duped into giving up their right to federal litigation of federal constitutional issues because they do their best to comply with Williamson County's clear holding.

Michael M. Berger, *Evolving Voices in Land Use Law: A Festchrift in Honor of Daniel R. Mandelker, Part II: Discussions on the National Level, Chapter 3: Takings Issues*, 3 Wash. U. J.L. & Pol'y 99, 131-32 (2000).

In order to avoid stripping federal courts of the

ability to hear claims resting on federal constitutional rights, some courts have held that the *Rooker-Feldman* doctrine is inapplicable to cases where the litigation in state court was necessitated under *Williamson County*. *See e.g., Agripost, Inc. v. Miami-Dade County*, 195 F.3d 1225 (11th Cir. 1999) (rejecting the applicability of the *Rooker-Feldman* doctrine in a takings case).

Similarly, in *England v. Louisiana Bd. of Medical Examiners*, 375 U.S. 411 (1964), this Court held that the federal court was not precluded from hearing a case where the federal court had abstained, and sent the case to the state court to decide. At the end of the state court litigation, the litigants returned to federal court only to be dismissed because "'the courts of Louisiana have passed on all issues raised, including the claims of deprivation under the Federal Constitution.'" *Id.* at 414 (citation omitted). This Court held that subsequent review by a federal court was not barred because the litigant was involuntarily in state court (as a result of abstention), and therefore his return to federal court would not be barred as an "appeal" of the state court decision. *Id.* at 415-19. This Court reasoned:

> [I]n cases where, but for the application of the abstention doctrine, the primary fact determination would have been by the District Court, a litigant may not be unwillingly deprived of that determination. The possibility of appellate review by this Court of a state court determination may not be substituted, against a party's wishes, for his right to litigate his federal claims fully in the federal courts.

Id. at 417.

Amici curiae urge this Court to likewise narrowly construe the *Rooker-Feldman* doctrine so that it does not apply or does not divest federal courts of jurisdiction to hear takings claims ripened under the *Williamson County* state court exhaustion requirement.

ARGUMENT

I. Application of the *Rooker-Feldman* Doctrine in Takings Cases Subject to the *Williamson County* State Exhaustion Ripeness Requirement Has the Unintended Consequence of Divesting Federal Courts of the Ability to Hear Federal Constitutional Takings Claims.

The *Rooker-Feldman* doctrine, named for *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of*

Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983), stands for the proposition that a party aggrieved by a state-court decision cannot appeal that decision to a district court, but must instead petition for a writ of certiorari from the United States Supreme Court.

As the Fourth Circuit has explained:

> [T]he Rooker-Feldman doctrine . . . rests on two basic propositions of federal jurisdiction. First, Congress has vested the authority to review state court judgments in the United States Supreme Court alone. The Rooker-Feldman doctrine thus "interprets 28 U.S.C. § 1257 as ordinarily barring direct review in the lower federal courts of a decision reached by the highest state court, for such authority is vested solely in [the Supreme] Court." Second, Congress has empowered the federal district courts to exercise only original jurisdiction.

Brown & Root, Inc. v. Breckenridge, 211 F.3d 194, 198-99 (4th Cir. 2000) (citations omitted); *see generally* Susan Bandes, *The Rooker-Feldman Doctrine: Evaluating Its Jurisdictional Status*, 74 Notre Dame L. Rev. 1175 (1999); Jack M. Beermann, *Comments on Rooker-Feldman or Let State Law Be Our Guide*, 74 Notre Dame L. Rev. 1209 (1999); Barry Friedman & James E. Gaylord, *Rooker-*

Feldman, from the Ground Up, 74 Notre Dame L. Rev. 1129 (1999).

In the typical case in which the *Rooker-Feldman* doctrine is applied, the federal plaintiff is a losing party in a state judicial proceeding and seeks an order from a federal court to reverse the state court's decision. This Court has broadly construed the *Rooker-Feldman* doctrine, holding that a federal claim may also be considered an appeal from a state court decision if the issues raised by the parties in federal court even if they are merely "'inextricably intertwined'" with the issues they litigated in state court. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (citation omitted).

Federal courts, as the Third Circuit did in this case, have even more expansively interpreted the *Rooker-Feldman* doctrine to apply to any federal case in which the parties are the same and the claims are similar. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 364 F.3d 102 (3d Cir. 2004).

Such expansive interpretations of the *Rooker-Feldman* doctrine have severe consequences when applied in a case where the plaintiff is seeking just compensation

for state action under the Fifth Amendment to the U.S. Constitution. *See, e.g., Johnson v. City of Shorewood,* 360 F.3d 810, 818-19 (8th Cir. 2004) ("To the extent the Johnsons' alleged constitutional injury stems from claims adjudicated in the prior state court judgment, the district court lacked jurisdiction under *Rooker-Feldman* because the Johnsons are essentially challenging the state judgment as inadequate and are 'asking the federal court for the same remedy requested in the state court action: just compensation.'") (citation omitted); *Anderson v. Charter Township of Ypsilanti*, 266 F.3d 487, 493 (6th Cir. 2001) (holding that district court had correctly applied Rooker-Feldman doctrine to dismiss plaintiff's taking claims); *Hill v. Town of Conway*, 193 F.3d 33, 40 (1st Cir. 1999) (holding that Rooker-Feldman doctrine deprived it of jurisdiction since state court had already determined that plaintiffs were not entitled to just compensation); *Ritter v. Ross*, 992 F.2d 750, 755 (7th Cir. 1993) (holding that Rooker-Feldman deprived court of jurisdiction over Section 1983 action for just compensation because plaintiffs were asking court to review state court foreclosure judgment).

In federal takings cases involving state action, although the claim is founded directly on the federal Constitution, unlike all other federal constitutional rights, a plaintiff in a Fifth Amendment takings case is required by this Court's decision in *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), to litigate his case first in state court, lose, and only then go to federal court for review.[2] *Id.* at 195 ("[I]f a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation."); *Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725, 734 n.8 (1997) ("Ordinarily, a plaintiff must seek compensation through state inverse condemnation proceedings before

[2] The *Williamson County* judicial exhaustion requirement reflects the fact that the Fifth Amendment's Just Compensation Clause, upon which a takings suit is based, "does not prohibit the taking of private property, but instead places a condition on the exercise of that power." *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles,* 482 U.S. 304, 314 (1987). It is designed "not to limit the governmental interference with property rights *per se*, but rather to secure *compensation* in the event of otherwise proper interference amounting to a taking." *Id.* at 315; *see also Preseault v. ICC*, 494 U.S. 1, 11 (1990).

initiating a takings suit in federal court unless the State does not provide adequate remedies for obtaining compensation.").

This process virtually begs a federal court to employ such preclusion doctrines as the *Rooker-Feldman* doctrine, because in any other context, a litigant who litigates in state court, loses, and then takes what appears to be the same claim to a federal court, appears, at best, to be trying for "two bites of the apple." Under *Williamson County*, however, this practice is deemed "ripening":

> Either the court must reconsider Williamson County, or the court must reconcile the concepts of claim and issue preclusion with Williamson County in a manner that preserves the state court ripening process while also preserving the aggrieved citizens' rights. This includes preserving federal court jurisdiction to determine the validity of their federal constitutional claims. By forcing property owners to proceed through a hopeless morass of state court procedures through this misapplication of the doctrine of res judicata, those plaintiffs will never see the inside of a federal courthouse.

Michael M. Berger, *Evolving Voices in Land Use Law: A Festchrift in Honor of Daniel R. Mandelker, Part II:*

Discussions on the National Level, Chapter 3: Takings Issues, 3 Wash. U. J.L. & Pol'y 99, 125-126 (2000).

II. The Better View, Adopted by Some Courts, Is To Harmonize the Two Doctrines, Thereby Allowing Takings Litigants Access To Federal Court Review of Their Federal Constitutional Takings Claims.

To avoid the unfairness that is caused when these two irreconcilable rules of law collide in the takings arena, a number of courts have found a way to harmonize the two disparate requirements. For example, a few Circuit Courts of Appeal have simply declined to apply the *Rooker-Feldman* doctrine in takings cases where the state court could not or did not reach the federal takings claim on its merits. In *Gulla v. North Strabane Township*, 146 F.3d 168 (3d Cir. 1998), the plaintiffs' suit in state court to invalidate a zoning decision was dismissed for lack of standing. The *Gulla* plaintiffs then filed their constitutional case in the federal court. Noting that a dismissal for lack of standing is not an adjudication on the merits, the Third Circuit concluded that the Gullas had the right to try those claims in federal court despite the *Rooker-Feldman* doctrine:

> In this case, we conclude that the Gullas are

> not precluded from bringing their federal claims because the state court could not and did not adjudicate the merits of their constitutional claims. Rather, the state court noted that the Gullas lacked standing to raise their constitutional claims in an appeal of the Board's subdivision decision. Since the Gullas could not obtain an adjudication of their claims in state court, they are not precluded from raising their constitutional claims in the federal forum.

Id. at 173 (citations omitted).

In *Agripost, Inc. v. Miami-Dade County*, 195 F.3d 1225 (11th Cir. 1999), the Eleventh Circuit rejected the applicability of the *Rooker-Feldman* doctrine in a case where the owner of a waste recycling facility first brought suit in state court challenging revocation of its operating permit and then, after losing, brought suit in federal district court for the taking of its business without just compensation. The just compensation issue was not and could not have been tried in the state court case, the court explained, because the claim for the denial of just compensation did not arise and, indeed, could not have arisen until after the permit was revoked and the property taken. Since no such proceeding had occurred, *Rooker-*

Feldman had no applicability to the case. *Id.* at 1232; *see also Santini v. Connecticut Hazardous Waste Management Service,* 342 F.3d 118, 121 (2d Cir. 2003) ("Because Santini did not raise, and could not have raised, his federal takings claim in the state court action, we conclude that the *Rooker Feldman* doctrine and res judicata do not apply."); *Centres, Inc. v. Town of Brookfield*, 148 F.3d 699, 703 (7th Cir. 1998) (rejecting *Rooker-Feldman* doctrine in case alleging inverse condemnation: "Centres does not allege an injury from the state court judgment itself; rather, it challenges the actions of the defendants. Thus, Centres seeks to ignore the state court judgment rather than to have the federal court sit as an appellate court and overrule the state court determination."); *Gooden v. Faulkner County Sheriff's Dep't*, 129 F.3d 121, 1997 WL 692993 at *1, 1 (8th Cir. Nov. 7, 1997) ("Upon de novo review, we disagree that Gooden's claim was barred by the Rooker-Feldman doctrine.").

Recently, in *DLX, Inc. v. Kentucky*, 381 F.3d 511 (6th Cir. 2004), the Sixth Circuit found the *Rooker-Feldman* doctrine inapplicable because the takings claim at issue had not been tried on its merits in the state court. In

DLX, a plaintiff who was denied a state permit to mine in an area designated as a National Natural Landmark sued the state under Section 1983 for a taking of its property without just compensation. Prior to filing suit in federal court, the plaintiff had sought relief in state court; its case was dismissed in the state trial court on ripeness grounds, but then reversed by an intermediate court of appeals. The Supreme Court of Kentucky upheld the dismissal based on the lack of exhaustion of administrative remedies. When the plaintiff brought suit in federal court, the state moved for dismissal under the *Rooker-Feldman* doctrine. The Sixth Circuit held that the *Rooker-Feldman* doctrine did not apply because an administrative exhaustion requirement is not a component of a federal takings claim and thus, the district court could have concluded that DLX had established a regulatory taking of its property under the Fifth Amendment and was entitled to relief without undermining any of the state court's conclusions. *Id.* at 517-18. The Sixth Circuit was disturbed, however, by what it viewed as a continuing conflict between the *Rooker-Feldman* doctrine and *Williamson County*'s requirements:

> If DLX had in fact been allowed in the state

> courts to reach the merits of its taking claim and then lost, it is likely that the formula adopted by this circuit as applied in our past cases would require *Rooker-Feldman* abstention, in evident tension with *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 195-97 (1985), which clearly contemplates that a takings plaintiff who loses her claim in state court will have a day in federal court. The catch-22 of the "*Williamson* trap" . . . with respect to res judicata is also evident with respect to the *Rooker-Feldman* doctrine. We do not need to confront these tensions in this case, however, and express no opinions as to the resolution of this conflict.

Id. at 518 n.3.

CONCLUSION

For all of these reasons, *amici curiae* urge this Court to construe the *Rooker-Feldman* doctrine in a way that does not divest federal courts of jurisdiction to hear Fifth Amendment takings claims that have been ripened in compliance with *Williamson County*.

Respectfully submitted,

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