No. _____

In The

Supreme Court of the United States

REED MCDONALD,

Petitioner,

v.

ARAPAHOE COUNTY, a quasimunicipal corporation and political subdivision of the State of Colorado,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The specific question presented is: Whether a party who was not, and has never been named as an underlying party to any court proceedings for/against petitioner can invoke *Rooker-Feldman* doctrine to dismiss litigation?

The wide-ranging question: Neither the granting nor the denial of a motion under Colorado's Rule 120 non-judicial proceeding shall constitute an appealable order or judgment as a matter of Colorado law. Thus, do Rule 120 non-judicial proceedings exhibit preclusion in federal courts?

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PETITION FOR A WRIT OF CERTIORARI

I, Reed Kirk McDonald, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The panel's opinion of the Court of Appeals is reported at 2018-1070. The opinion of the Colorado District Court is not reported.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on November 28, 2018. A petition for *en banc* rehearing was denied on January 7, 2019. App. 4. 12 U.S.C. § 1254(1) confers jurisdiction on this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1. The Court has consistently held that constitutional requirements of due process apply to garnishment and prejudgment attachment procedures whenever the State acts jointly with a creditor in securing the property in dispute.

The Equal Protection Clause of the Fourteenth Amendment provides "nor shall any State deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV § 1. The Court has consistently held a "person' no matter the circumstances, is due equal protections under all law of the United States.

The Supremacy Clause of the United States Constitution provides "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., Article VI, § 2.

TILA:

The Truth in Lending Act (TILA), Section 131(g) was amended on May 19, 2009, to include provisions requiring the assignee of a mortgage loan to notify a consumer borrower that there has been a Transfer of Mortgage. Section 131(g) requires the new owner or assignee of a mortgage loan, must notify the borrower in writing within 30 days after the mortgage loan is sold or otherwise transferred. This Transfer of Mortgage notification must include the following:

1. The assignee's identity, address and phone number;
2. The date of transfer;

3. Contact information for an agent or party having authority to act on behalf of the assignee;

4. The location or the place where transfer of ownership of the debt is recorded; and,

5. Any other relevant information regarding the assignee.

Any assignee that violates TILA's notice requirement is subject to civil penalties under Section 130(a) of TILA. Effective July 31, 2009, the maximum penalty increased from $2000.00 to $4000.00 that an individual consumer may recover for each TILA violation in connection with a closed-end loan secured by real property.

Violators of TILA are subject to civil liability under Section 130 of the TILA. A creditor failing to comply with TILA, Section 130 may be held liable for actual damages.

TILA's Section 108 provides that "a violation of any requirement imposed under TILA shall be deemed a violation of a requirement imposed under federal Fair-Trade Act [the FTC's Act], regardless of whether a person committing a violation otherwise comes under the FTC's jurisdiction. For willful or knowing violations, a person may be fined up to $5,000 and/or imprisoned for up to one year, in accordance with Section 112 of TILA.

RESPA:

RESPA 12 U.S.C. § 2605(e)(1)(B) provides if any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 5 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

Failure to respond to a qualified written request (QWR) under Real Estate Settlement Procedures Act (RESPA) is a violation of 12 U.S.C. § 2605(f).

RESPA 12 U.S.C. § 2605(b)(2)(A): (b) provides: Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person. In general Except as provided under subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not less than 15 days before the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

Failure to notify borrower regarding change of servicing is a violation of 12 U.S.C. § 2605(f).

IRC 860:

Real Estate Trusts formed under Federal law 26 U.S.C. § 860G(a)(3)(A)(i); and § 860G(a)(3)(A)(ii) can only purchase mortgage assets on the start-up date or

within 90 days after start-up day of the subject trust. In addition, real estate trusts are barred from purchasing disqualified mortgages as a matter of federal law 26 U.S.C. § 860D(a)(4).

Colorado law:

Colorado is a non-judicial foreclosure state; foreclosure is initiated by filing notice in the public trustee's office in the county where the real property resides. Colorado courts do not adjudicate disputes regarding real estate mortgages under Colorado's Rule of Civil Procedure (CRCP) Rule 120 non-judicial foreclosure proceedings.

Colorado Rule of Civil Procedure Rule 120(d)(4) nonjudicial foreclosure proceedings do not result in final judgment or a judgment at all. Nor is the decision of the state-court appealable. Thus, Rule 120 decisions do not exhibit preclusive or res judicata as a matter of Colorado law. Rule 120(d)(4) provides the following:

> "An order granting or denying a motion filed under this Rule shall not constitute an appealable order or final judgment. The granting of a motion authorizing a foreclosure shall be without prejudice to the right of any person aggrieved to seek injunctive or other relief in any court of competent jurisdiction, and the denial of any such motion shall be without prejudice to any other right or remedy of the moving party."

Colorado's Constitution, pursuant to Article II, Section 6 provides: *Equality of justice.* "Courts of justice

shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and right and justice should be administered without sale, denial or delay."

Colorado's Constitution, pursuant to Article II, Section 25 provides: *Due process of law*. "No person shall be deprived of life, liberty or property, without due process of law."

Colorado Rule of Civil Procedure Rule 121(c) provides: "The Colorado Rules of Civil Procedure and the following rule subject areas called "Practice Standards" are declared to be of statewide concern and shall preempt and control in their form and content over any differing local rule."

Colorado Rule of Civil Procedure 121 § 1-15(1)(b) provides: "The responding party shall have 21 days after the filing of the motion or such lesser or greater time as the court may allow in which to file a responsive brief."

Colorado Rule of Civil Procedure 121 § 1-15(8) provides: Duty to Confer. "Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel and any self-represented party shall confer with opposing counsel and any self-represented parties before filing a motion. The requirement of self-represented parties to confer and the requirement to confer with self-represented parties shall not apply to any incarcerated person, or any self-represented party as to whom the requirement is contrary to court order or statute, including, but not

limited to, any person as to whom contact would or precipitate a violation of a protection or restraining order. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel and any self-represented parties about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court shall be so advised in the motion. If no conference has occurred, the reason why, including all efforts to confer, shall be stated."

Colorado's Revised Statute ("CRS") § 13-40-112(1) provides: "Such summons may be served by personal service as in any civil action. A copy of the complaint must be served with the summons."

Colorado's Revised Statute ("CRS") § 13-40-112(2) provides: "If personal service cannot be had upon the defendant by a person qualified under the Colorado rules of civil procedure to serve process, after having made diligent effort to make such personal service, such person may make service by posting a copy of the summons and the complaint in some conspicuous place upon the premises." "In addition thereto, the plaintiff shall mail, no later than the next business day following the day on which he or she files the complaint, a copy of the summons, or, in the event that an alias summons is issued, a copy of the alias summons, and a copy of the complaint to the defendant at the premises by postage prepaid, first-class mail."

Colorado's Revised Statute ("CRS") § 13-40-117(2) provides: "Upon the court's taking such appeal,

all further proceedings in the case shall be stayed, and the appellate court shall thereafter issue all needful writs and process to carry out any judgment which may be rendered thereon in the appellate court."

Colorado's Revised Statute ("CRS") § 13-40-119 provides: "In all actions brought under any provision of this article in any court, the proceedings shall be governed by the rules of practice and the provisions of law concerning civil actions in such court, except as may be otherwise provided in this article."

New York law:

New York Estate Powers, and Trust Law (NY-EPTL) § 7-1.18 provides the following: "A lifetime trust shall be valid as to any assets therein to the extent the assets have been transferred to the trust. For purposes of this section, (a) transfer is not accomplished by recital of assignment, holding or receipt in the trust instrument, and (b) in the case of a trust of which the creator is the sole trustee, transfer shall mean in the case of assets capable of registration such as real estate, stocks, bonds, bank and brokerage accounts and the like, the recording of the deed or the completion of registration of the asset in the name of the trust or trustee, and in the case of other assets a written assignment describing the asset with particularity."

New York Estate Powers, and Trust Law (NY-EPTL) § 7-2.4 provides the following: "If the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of trustee

in contravention of the trust, except as authorized by this article and by any other provision of law, is void."

STATEMENT OF THE CASE

I. Brief Factual Background

The facts alleged and conceded establish, Arapahoe County, Colorado (Arapahoe County) violated Reed McDonalds (Mr. McDonald) rights secured under the First, Fifth and Fourteenth Amendment to the United States Constitution.

The circuits opinion is in willful disrespect of Colorado law and this Court's opinion. Colorado law provides CRCP Rule 120 non-judicial proceedings, do not result in judgment; are not appealable; and are without prejudice. Thus, *Rooker-Feldman* not applicable.

The panel misrepresented material facts of the case in their opinion. The panel incorrectly stated; Mr. McDonald did not post bond. McDonald posted bond of $7,000.00 on April 4, 2014.

In addition, the panel made the following misrepresentation in their opinion; "Mr. McDonald seeks to overturn the Rule 120 non-judicial proceedings."

Mr. McDonald does not seek to overturn the result of Arapahoe County's Rule 120 non-judicial proceeding. Instead, Mr. McDonald seeks damages from Arapahoe County's violation of his rights secured under

Constitution after the Colorado Rule 120 non-judicial foreclosure proceeding.

Defendant, Arapahoe County invoked *Rooker-Feldman* to dismiss Mr. McDonalds action. Arapahoe County, was not, and has never been an underlying party to any court proceedings against/for Mr. McDonald.

During Arapahoe County's Rule 120 non-judicial foreclosure proceeding, Citibank requested Forcible Entry and Detainer (FED) to eject Mr. McDonald; the FED action was approved. Thus, Mr. McDonald appealed Citibank's action. Subsequently, the Colorado Court of Appeals heard Mr. McDonalds appeal.

While the FED case was on appeal, Arapahoe County was without jurisdiction. More significantly, the FED case was stayed as a matter of Colorado law; CRS § 13-40-117(2) and Colorado Constitution.

During the appeal, Arapahoe County a court without jurisdiction engaged in *ex parte* communications with Citibank. Citibank filing motion for writ to eject Mr. McDonald and seize his assets.

Thereafter, Arapahoe County invited and accepted Citibank's *ex parte* communication in violation of Colorado law; Colorado's Rule of Civil Procedure; and the Constitution.

The Clerk of the Court from Arapahoe County without jurisdiction issued secret and concealed writ without Mr. McDonalds knowledge and without service of writ to Mr. McDonald.

A Clerk of Court holds no authority to issue writ ordering ejection of Mr. McDonald from his home and to seize Mr. McDonald's personal and business assets on site.

Thus, Mr. McDonald brought a civil action against Arapahoe County for violations of his rights secured under Constitution in federal court. That case was dismissed pursuant to the abstention doctrine *Rooker-Feldman*.

II. Relevant Proceedings Below

Action was filed in the District of Colorado because, asking another state-judge from the same district to rule against their friend, also a judge is impractical and results in a court without equity.

III. Additional Facts

Arapahoe County was never named in any lawsuit by Mr. McDonald prior to this case. The 10th Circuit's opinion that defendant Arapahoe County can utilize *Rooker-Feldman* at any time from any case to dismiss any litigation sets a dangerous precedent.

The 10th Circuit in 2018 decided *Rooker-Feldman* not applicable to results from Colorado's Rule 120 non-judicial foreclosure proceedings. *Mayotte v. U.S. Bank National Association*, 880 F.3d 1169 (10th Cir. 2018).

Clerks of their respective courts in Colorado are not considered state officers. *Trimble v. People*, 34 P.

981 (Colo. 1893); *The Colorado State Constitution* by Dale A. Oesterle, ISBN# 9780199778843; Section 2, Page 306.

CRCP Rule 120(d)(4) in part provides the following: "Neither the granting nor the denial of a motion under this Rule shall constitute an appealable order or judgment. The granting of any such motion shall be without prejudice to the right of any person aggrieved to seek injunctive or other relief in any court of competent jurisdiction, and the denial of any such motion shall be without prejudice to any right or remedy of the moving party."

ARGUMENT

I. The Panel Opinion is in willful contradiction of *Exxon Mobil v. Saudi Basic* and *Lance v. Dennis*.

The panel's opinion is in willful contradiction to *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 220, 283 (2005); *Lance v. Dennis*, 546 U.S. 459, 464 (2006); *Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986); *City of Canton v. Marris*, 489 U.S. 378 (1989); *Board of Commissioners of Bryan County v. Brown*, 520 U.S. 397 (1997); and *Los Angeles County v. Humphries*, 562 U.S. 29 (2010).

Federal precedent:

In *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982), the Court held that constitutional requirements of due process apply to garnishment and prejudgment attachment procedures whenever officers of the State act jointly with a creditor in securing the property in dispute.

The Court in *Saudi Basic* and *Lance* opined that it had evoked *Rooker-Feldman* only twice. This Court made crystal clear in the above cases; *Rooker-Feldman* is a limited use doctrine. Meanwhile, the circuit/district courts exhibit a more radical interpretation, inconsistent with this Court's opinion.

A recent study by the Yale Journal on Regulation shed light on the explosive growth and use of *Rooker-Feldman* by districts. The (2015) Yale analysis on the use of *Rooker-Feldman* establishes, districts/circuits hold totally different views on *Rooker-Feldman*'s use than this Court. Yale's factual analysis provides, nearly *ten times* more district cases were dismissed under *Rooker-Feldman* from 2010-2014 than 1997-2001. See Raphael Graybill, *The Rook That Would Be King: Rooker-Feldman Abstention Analysis After Saudi Basic*, 32 Yale J. on Reg. (2015). http://digitalcommons.law.yale.edu/yjreg/vol32/iss2/10.

This case arises after Citibank N.A. filed a non-judicial foreclosure proceeding against Mr. McDonald under Colorado's Rule 120 in Arapahoe County, Colorado. In the subject case under review by this Court,

Mr. McDonald did not seek to overturn the results of the Rule 120 proceeding.

The federal case:

Instead, Mr. McDonald filed a separate and independent action against Arapahoe County after its Clerk of Court violated Colorado's Constitution; Colorado's Rules of Civil Procedure, and violated Colorado Revised Statutes (CRS) § 13-40-117(2) and violated Mr. McDonalds rights secured under the Fourteenth Amendment to the United States Constitution. See U.S. Const. amend. XIV.

The 10th Circuit affirmed the district's dismissal under federal abstention doctrine *Rooker-Feldman*. District courts persist in widely applying this doctrine. Dismissals have exploded to an alarming rate in most recent years. Absent a new intervention by the Court, this trend is likely to continue.

Background:

During 2012, two national banks claimed independent and separate ownership of Mr. McDonalds mortgage, securing his real property, 6214 South Datura Street, Littleton, Colorado.

Faced with paying his mortgage twice, he requested via qualified written request (QWR) each bank prove ownership. Neither bank provided documentation of ownership or responded to his QWR. Failure to respond to QWR under the Real Estate Settlement Procedures Act (RESPA) is a violation of 12 U.S.C. § 2605(e)(1)(B).

Thereafter, Mr. McDonald met face-to-face with each bank, requesting documentation of ownership. Again, both banks refused to provide any proof of ownership.

Consequently, Mr. McDonald filed a civil action in Arapahoe County to determine true ownership of his mortgage.

During this same time Citibank N.A. claimed it purchased Mr. McDonalds alleged disqualified mortgage on April 6, 2012 for a New York real estate trust that closed forever on February 28, 2003. App. 39.

The United States Code, 26 U.S.C. § 860G(a)(3)(A)(i) and 26 U.S.C. § 860G(a)(3)(A)(ii) requires purchase of mortgage assets forming a federal real estate trust must be performed on start-up date or within 90 days after start-up-date of the given trust. The Code does not allow purchase of a mortgage asset 10 years after a real estate trust has closed. Thus, Citibank's alleged purchase of Mr. McDonald mortgage was void *ab initio*. See *Yvanova v. New Century Mortgage Corp.*, California Supreme Court Case No. S218973; Amicus Brief of the California Attorney General, Section II. "Homeowner may bring a cause of action for wrongful foreclosure on the basis that the assignment of debt is invalid." Case No. S218973.

Citibank's alleged purchase of Mr. McDonalds mortgage violates both the definitional & timing prerequisite under federal law, IRC § 860G(a)(3)(A)(i);

§ 860G(a)(3)(A)(ii). See *Once a Failed REMIC, Never a REMIC*; Cayman Financial Review 30 (2013).

In addition, Citibank's alleged purchase violates federal law 26 U.S.C. 860D(a)(4) because Citibank alleged Mr. McDonalds mortgage was disqualified at the time of purchase. Federal real estate trusts are barred from purchasing disqualified mortgage assets. See 26 U.S.C. § 860D(a)(4); *Once a Failed REMIC, Never a REMIC*; Cayman Financial Review 30 (2013).

CRCP Rule 120 non-judicial proceedings:

During Citibank's Rule 120 non-judicial foreclosure proceeding, Arapahoe County refused to require Citibank to prove ownership under either federal or New York law and dismissed Mr. McDonald's case seeking to determine ownership. Under Colorado law there are only two defenses in a Rule 120 non-judicial foreclosure proceeding:

(1) The money is not due, or

(2) The action is barred under the Service Member Civil Relief Act.

See Colorado's judicial notice; App. 42.

Colorado's Rule 120 is a non-judicial foreclosure process which does not adjudicate ownership, but rather only requires filing notice for foreclosure in a public trustee's office. Thereafter, the county only remarks on the possibility of ownership. Thus, Rule 120 proceedings are not adjudicated and as a matter of

Colorado law do not result in final judgment or any judgment at all. Thus, Rule 120 results do not exhibit preclusion/res judicata. Colorado Rules of Civil Procedures (CRCP) Rule 120(d)(4) provides in part the following:

> "*An order granting or denying a motion filed under this Rule shall not constitute an appealable order or final judgment.* The granting of a motion authorizing a foreclosure shall be without prejudice to the right of any person aggrieved to seek injunctive or other relief in any court of competent jurisdiction, and the denial of any such motion shall be without prejudice to any other right or remedy of the moving party."

In addition, Colorado's Rule 120 non-judicial proceedings bar discovery and the proceedings are non-adversarial, thus, the foreclosed party is unable to present a formal defense. See *Legislative History: CRCP Rule 120*; 8 Colorado Lawyer. 785 (1979).

In Mr. McDonalds case before Arapahoe County to determine ownership. Arapahoe County refused to uphold and enforce the following federal law; Truth in Lending Act (TILA), Section 131(g); Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2605(e)(1)(B); 12 U.S.C. § 2605(b)(2)(A); Tax Reform Act of 1986 (TRA) 26 U.S.C. § 860D(a)(4); 26 U.S.C. § 860G(a)(3)(A)(i); 26 U.S.C. § 860G(a)(3)(A)(ii); The Wall Street Reform and Consumer Protection Act (Dodd-Frank), Section 1463(a)(1)(A); (C); (D); (E).

In addition, the Arapahoe Court in its Rule 120 non-judicial foreclosure proceedings refused to uphold and enforce the governing law of Citibank's trust; New York Estate Powers and Trusts Law; § 7-1.18 and § 7-2.4.

Citibank's federal law breach:

Citibank, subject to (TILA), Section 131(g) during its alleged purchase of Mr. McDonalds mortgage on April 6, 2012. Citibank refused to comply with federal law, disclosing their alleged purchase to Mr. McDonald. Citibank, admitted during the Rule 120 non-judicial proceeding they did not disclose their alleged purchase to Mr. McDonald as required by Section 131(g).

Citibank subject to RESPA, 12 U.S.C. § 2605(e)(1)(B); during its alleged purchase of Mr. McDonalds mortgage. Citibank admitted during the Rule 120 non-judicial proceeding they did not respond to Mr. McDonald's QWR as required by federal law.

Citibank subject to RESPA, 12 U.S.C. § 2605(b)(2)(A): during its alleged purchase of Mr. McDonalds mortgage. Citibank admitted during the Rule 120 non-judicial proceeding they did not serve Mr. McDonald notice for change of servicer as required by federal law.

After Arapahoe County dismissed Mr. McDonalds case to determine ownership. Citibank filed *ex parte* for Forcible Entry & Detainer (FED) motion, requesting the county's help ejecting Mr. McDonald and seizing his personal and business assets on site at the property.

Arapahoe County granted Citibank's FED request, in willful contradiction to United States Constitution; RESPA; TILA; Wall Street Reform Consumer Protection Act; Tax Reform Act of 1986; New York Estates, Powers and Trusts law and Colorado law.

McDonald's FED appeal:

Thus, Mr. McDonald appealed Arapahoe County's FED decision. Subsequently, the Colorado Court of Appeals took his appeal. Thereafter, pursuant to Colorado law CRS § 13-40-117(2), Citibank's FED action was automatically stayed. § 13-40-117(2) statutory language is crystal clear and provides the following:

> *"Upon the court's taking such appeal, all further proceedings in the case shall be stayed,* and the appellate court shall thereafter issue all needful writs and process to carry out any judgment which may be rendered thereon in the appellate court."

To further insure against loss of his home, Mr. McDonald payed a cash bond of $7,000 confirming stay in the Arapahoe Court; a court without jurisdiction. App. 43.

While Citibank's FED case was before the Colorado Court of Appeals and stayed, the only court with jurisdiction to issue writ as a matter of Colorado law was either the Colorado Court of Appeals or the Colorado Supreme Court. See CRS § 13-40-117(2).

Citibank knowledgeable that Arapahoe County was a court without jurisdiction violated Colorado law;

Colorado Rules of Civil Procedure and Mr. McDonalds rights secured under Constitution by engaging in *ex parte* communications with Arapahoe County, asking the court without jurisdiction to issue writ.

Citibank's secret *ex parte* communication:

Citibank in a secret *ex parte* filing, engaged in motion practice to Arapahoe County, a court without jurisdiction. More importantly Citibank engaged in motion practice without conferring with opposing counsel (Mr. McDonald) to conceal its motion, a violation of Colorado's Rules of Civil Procedure (CRCP) CRCP 121(c) and CRCP 121 § 1-15(8). The above rules require movant (Citibank) to confer with opposing counsel (Mr. McDonald) prior to engaging in motion practice. As a result of Arapahoe County's and Citibank's secret acts and failure to act Mr. McDonald was completely unaware of Citibank's *ex parte* communications and motion for writ.

Citibank acknowledges, admits, and evidence in the record substantiates, Citibank violated Colorado's Rules of Civil Procedure, CRCP Rule 121(c); Rule 121 § 1-15(8); Colorado law, CRS § 13-40-117(2); and CRS § 13-40-119 by engaging in motion practice to a court without jurisdiction and without notice to Mr. McDonald. Thus, Arapahoe County under Color of law deprived Mr. McDonald of his rights secured under Constitution for due process; and equal protections under law.

Thereafter, Citibank and Arapahoe County intentionally refused to serve Mr. McDonald notice of the

Arapahoe County issued writ in violation of Colorado law CRS § 13-40-112(1) & (2) and the Constitution.

More importantly, Arapahoe County a court without jurisdiction, invited, accepted and granted Citibank's *ex parte* motion for writ ejecting Mr. McDonald and seizing his assets in violation of Colorado law CRS §§ 13-40-112(1) & (2); 13-40-117(2); 13-40-119; Colorado's Constitution – Article II, Section 25; and the 14th Amendment to the United States Constitution.

Finally, Citibank's motion for writ to eject Mr. McDonald seizing his assets was never adjudicated by an elected member of Arapahoe County's judiciary. Instead, Arapahoe County's Clerk of the Court issued the illegal writ within minutes of receiving Citibank's secret *ex parte* communication and motion, without adjudication and without Mr. McDonalds knowledge. The Arapahoe County issued writ, did not and does not contain an approval signature by a sitting judge.

Under Colorado law and Colorado's Constitution, Arapahoe County's Clerk of the Court is without authority to adjudicate motions for writ, let alone to engage in a secret *ex parte* proceeding with Citibank.

Arapahoe County's constitutional violation:

Succinctly, Citibank's filed *ex parte* for writ without conferring with opposing counsel (Mr. McDonald) to a court without jurisdiction (Arapahoe County) on January 5, 2017 at 11.27 a.m. App. 44.

Arapahoe County's Clerk of the Court ruled without authority and or adjudication on the subject writ; issuing the subject writ on January 5, 2017 at 1:06 p.m. App. 46. Just ninety-nine (99) minutes after receiving Citibank's secret and concealed *ex parte* motion for writ, Arapahoe County's Clerk of the Court without a judge's permission and without Mr. McDonalds knowledge issued writ. The issued writ is without signature of a Judge. App. 46.

This Court has consistently held, a judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. *Pennoyer v. Neff*, 95 U.S. 714, 732-733 (1878).

Due process requires the defendant be given adequate notice of the action, *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 313-314 (1950), and be subject to the personal jurisdiction of the court, *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

In the case under review, Arapahoe County does not contest their failure to serve notice of the writ to Mr. McDonald was inadequate and in violation of Colorado law CRS § 13-40-112(1) & (2) and Colorado's Constitution.

Arapahoe County does not contest they were without authority and or jurisdiction to issue writ causing Mr. McDonalds damages because the case was stayed while it was before the Colorado Court of Appeals.

Arapahoe County does not contest they violated Mr. McDonald due process rights by engaging in *ex parte* communications with Citibank; issuing a secret writ without notice to Mr. McDonald.

Arapahoe County does not contest the Clerk of the Court's issued writ does not contain a judge's signature.

Finally, Arapahoe County does not contest their Clerk of the Court who issued writ is without authority to issue writs in Arapahoe County or any county in Colorado.

Arapahoe County's Clerk of Court Malfeasance:

Arapahoe County's Clerk of the Court violated the following Colorado Rules of Civil Procedure: CRCP Rule 121(c) Colorado Supreme Court's "Practice Standards"; and CRCP 121 § 1-15(8) "Duty to Confer." Arapahoe County permitted Citibank to engage in an *ex parte* motion without conferring to a court without jurisdiction; and violated Mr. McDonald rights held under Colorado law and Constitution pursuant to 121 § 1-15(1)(b). Colorado's Rules of Civil Procedure allowing Mr. McDonald 21 days to respond to Citibank's *ex parte* motion for writ.

Mr. McDonald completely unaware of Citibank's *ex parte* motion for writ, and Arapahoe County's Clerk of the Court without jurisdiction to issue writ, none-theless issued said writ, and intentionally concealed that writ from Mr. McDonald. In addition, the issued writ

was not adjudicated or signed by a judge; a requirement of Colorado law.

More importantly, Citibank the movant, willfully with the intent to defraud Mr. McDonald, concealed Arapahoe County's writ from Mr. McDonald and refused to comply with Colorado disclosure law, CRS § 13-40-112(1) and (2).

CRS § 13-40-112(1) & (2) requires Citibank to personally serve writ upon Mr. McDonald and to provide a second service via mail of writ to Mr. McDonald. Neither, requirement of law was complied with by either Arapahoe County or Citibank.

Thus, its conceded, Arapahoe County denied Mr. McDonald his rights secured under the Fourteenth Amendment of the Constitution for due process and equal protections under law.

This Court has constantly held in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982) the constitutional requirements of due process apply to garnishment and prejudgment attachment procedures whenever the State acts jointly with a creditor in securing the property in dispute. In addition, this Court has consistently held:

> "a private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a [state actor] for purposes of the Fourteenth Amendment."

II. The Panel Opinion is in willful contradiction of Colorado law.

Colorado law provides that Rule 120 non-judicial foreclosure proceedings do not result in final judgment or any judgment at all. In addition, as a matter of Colorado law, Rule 120 non-judicial foreclosure proceedings are not appealable.

Rooker-Feldman bars federal actions to modify or set aside state-court final judgments only if the case was appealable, and only if the proceedings resulted in a final judgment.

Consequently, *Rooker-Feldman* does not bar actions under Colorado's Rule 120 non-judicial foreclosure proceedings that could result in relief that is inconsistent with the state court non-judicial proceedings.

For *Rooker-Feldman* to be applicable, the State's non-judicial proceedings must result in a final judgment and a path to appeal must be offered to the oppressed party. Neither option was available to Mr. McDonald in the Rule 120 non-judicial proceeding. Therefore, the district's dismissal under *Rooker-Feldman* is improper, inapplicable and in violation of the Constitution.

III. The Panel Opinion is in willful contradiction of Supreme Court precedent.

The Supreme Court in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 220, 283 (2005) was asked

the question; does the *Rooker-Feldman* doctrine bar a suit that was filed in federal district court before a state court ruled on the petitioner's related claims?"

The Court answered: "No." In a unanimous opinion, this Court held that the Third Circuit "misperceived the narrow ground occupied by *Rooker-Feldman*." That doctrine was confined to cases brought by state-court losers complaining of state-court judgments made before the federal district court proceedings began and inviting district court rejection of those judgments. Moreover, in cases of parallel state and federal litigation, *Rooker-Feldman* was not triggered simply by the entry of a state court judgment. Properly invoked concurrent jurisdiction did not vanish if a state court reached judgment on the same or a related question while the case remained before a federal district court. *Rooker-Feldman* did not otherwise override or supplant preclusion doctrine or add to the circumscribed doctrines allowing federal courts to dismiss proceedings in deference to state-court actions.

This Court in *Lance v. Dennis*, 546 U.S. 459, 464 (2006) was asked the question; does the *Rooker-Feldman* doctrine preclude plaintiffs from bringing suit in federal court when they are in privity with a party that lost in state court?

The Court answered: "No." In an 8-1 decision, the Court reversed the district. This Court held that "The *Rooker-Feldman* doctrine does not bar actions by nonparties to the earlier state-court judgment simply because [. . .] they could be considered in privity with a

party to the judgment." Since Lance was not a party to the state-court suit, and was in no position to appeal the Colorado Supreme Court's decision, the District Court had jurisdiction to hear the case.

The Court in *Monell v. Department of Social Services*, 436 U.S. 658 (1978) was asked: If sued in their official capacity, are local government officials and organizations such as a school board considered "persons" for the purpose of liability for back wages?

This Court answered; "Yes." In an 7-2 opinion the Court held that the legislative history of the Civil Rights Act of 1871, and specifically the Sherman Amendment, indicated that municipalities could be liable for the infringement of constitutional rights. Additionally, by 1871 there was a clear legislative and precedent-based history for municipal corporations – such as a school board – to be considered a "person" for the purpose of lawsuits and liability.

The Court in *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986) was asked: can a municipality be held liable even for a single decision that is improperly made?

The Court answered: "Yes." It is plain that municipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances. If the decision to adopt a particular course of action is directed by those who establish governmental policy, the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly.

The Court was asked in *City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989), is a municipality liable for failure to provide adequate training to an employee that resulted in a deprivation of constitutional rights?

The Court answered: "Yes." The Court held that municipalities may be liable for inadequate training of employees, but only when "the failure to train amounts to deliberate indifference" to the constitutional rights of the people with whom the employees will interact.

The Court was asked in *Los Angeles County v. Humphries*, 562 U.S. 29 (2010): are claims for declaratory relief against a local public entity subject to the requirement of *Monell* that the plaintiff must demonstrate that the constitutional violation was the result of the policy, custom, or practice attributable to the local public entity?

The Court in an 8-0 opinion reasoned the Court's ruling in *Monell* applies to claims against municipalities for prospective relief as well as to claims for damages.

IV. The Panel misrepresented material facts of the case.

The panel stated in their opinion; Mr. McDonald did not stay the FED case with bond. The facts of the case are incontrovertible; Mr. McDonald did pay cash bond of $7,000.00 staying the case in Arapahoe County on April 18, 2014. The cash bond question is moot, as the case was stayed pursuant to Colorado law CRS

§ 13-40-117(2) and Arapahoe County were without jurisdictions at the time to issue writ.

REASONS FOR GRANTING THE PETITION

This Court stands as a last option for upholding federal law and the Constitution.

It is undisputed that Arapahoe County was without jurisdiction over the subject case to issue writ.

It is undisputed, Arapahoe County's Clerk of Court has no authority to act as an elected judge.

It is undisputed, Arapahoe County secretly communicated with Citibank *ex parte* while the subject case was before the Colorado Court of Appeals without Mr. McDonald's knowledge.

It is undisputed, Arapahoe County's Clerk of the Court without jurisdiction issued writ to eject Mr. McDonald, therein, allowing Citibank to seize his personal and business assets without Mr. McDonald's knowledge.

It is undisputed that Arapahoe County while without jurisdiction concealed its illegal acts from the Colorado Appellate Court and Mr. McDonald.

It is undisputed that Arapahoe County's Clerk of Court is not a state employee.

The facts alleged and conceded establish Arapahoe County without hesitation violated Mr. McDonald

rights secured under Fourteenth Amendment to the United States Constitution.

The issue before this Court is that, federal district-courts do not like to hear cases against counties who violate a "persons" rights secured under Constitution.

Because districts do not like these cases, they convert non-judication proceedings into judicial proceedings so they can dismiss cases based upon what this Court has opined is an extremely limited use federal doctrine; *Rooker-Feldman*.

As this Court has adjudged, neither *Rooker* nor *Feldman* elaborated a rationale for a wide-reaching bar on the jurisdiction of lower federal courts. Cases since *Feldman* have tended to emphasize the narrowness of the *Rooker-Feldman*. *Rooker-Feldman* does not apply to parallel state and federal litigation. *Rooker-Feldman* has no application to judicial review of action made by a state agency. *Rooker-Feldman* does not bar actions by a nonparty to the earlier state suit, and this Court has never applied *Rooker-Feldman* to dismiss an action for want of jurisdiction.

Simply, as this Court has adjudged *Rooker-Feldman* did not bar the United States from bringing its own action in federal court because the United States "was not a party in the state court," and "was in no position to ask this Court to review the state court's judgment and has not directly attacked it in this proceeding."

Congress has directed federal courts to look principally to *state* law in deciding what effect to give state-court judgments. Incorporation 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.

Arapahoe County plainly was not an underlying party in state-court; Mr. McDonald was in no position to ask a state court to review Colorado's Rule 120 non-judicial proceeding because as a matter of Colorado law it is not allowed. Finally, Mr. McDonald did not directly attack the state proceeding in the district court.

Thus, this Court should and must overturn the circuit's opinion as this Court is tasked with upholding a person's rights secured under the 14th Amendment of the Constitution.

CONCLUSION

The circuits opinion converts a non-adversarial, non-judicial State proceeding, which as a matter of State law does not constitute an appealable order or judgment, into an adjudicated adversarial proceeding. Resulting in a violation of Mr. McDonald's rights secured under Constitution.

The circuit affirmed the district's dismissal of Mr. McDonald's case under *Rooker-Feldman*. The circuit and the district ruled in willful contravention to

Colorado law and opinions of this Court in *Exxon Mobil Corp. v. Saudi Basics, Supra* and *Lance v. Dennis, supra*.

In *Mayotte v. US Bank, Supra* the 10th Circuit ruled Mary Mayotte did not ask the court to set-aside the Colorado's Rule 120 non-judicial foreclosure proceedings and evaded determining if Colorado's non-judicial proceedings barring appeal exhibit preclusion.

The district ruled in willful contravention of its superior court, that Rule 120 non-judicial proceedings exhibit preclusion and dismissed Mr. McDonald's case.

Most troubling is the fact, the circuit court made misleading representations of material fact in their opinion incorrectly stating, Mr. McDonald did not pay bond staying the case. Mr. McDonald did provide bond of $7,000.00 staying the case in Arapahoe County. More importantly the circuits discussion regarding bond is moot, because the case was stayed as a matter of Colorado law CRS § 13-40-117(2).

During appeal, Arapahoe County, communicated *ex parte* with Citibank. At the time Arapahoe County was without jurisdiction because Citibank's FED case was before the Colorado Court of Appeals. As a matter of Colorado law CRS § 13-40-117(2) FED cases on appeal are automatically stayed. The language of § 13-40-117(2) is clear: "Upon the court's taking such appeal, all further proceedings in the case shall be stayed, and the appellate court shall thereafter issue all needful writs and process to carry out any judgment which may be rendered thereon in the appellate court."

As this Court has opined in *City of Canton, Ohio v. Harris, Supra,* municipalities are liable for inadequate training of employees. The Colorado Supreme Court holds clerks of their respective courts in Colorado are not considered state officers. *Trimble v. People*, 34 P. 981 (Colo. 1893); *The Colorado State Constitution* by Dale A. Oesterle, ISBN# 9780199778843; Section 2, Page 306.

It's self-evident that a clerk of any court clearly knows they are without authority to act as a duly elected judge. Furthermore, a clerk of any court recognizes they are barred from communicating *ex parte* with any party in a civil action.

None-the-less Arapahoe County's Clerk of Court invited, accepted and communicated *ex parte* with Citibank. After communicating *ex parte* with Citibank Arapahoe County issued writ within minutes ejecting Mr. McDonald therein seizing his assets, although Arapahoe County was without jurisdiction and or authority to do anything in the case while that case was before the Colorado Court of Appeals.

Because Colorado's Rule 120 non-judicial proceedings are not adversarial proceedings; do not allow discovery; do not result in a final judgment or any judgment at all; and do not allow appeal; they are not subject *Rooker-Feldman*.

The district's and circuit's dismissal of Mr. McDonald's complaint pursuant to *Rooker-Feldman* is improper and in willful contradiction of this Court's opinion.

Thus, the case should be reversed and remanded to the district for further proceedings subject to this Court's opinion.

Respectfully submitted,

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