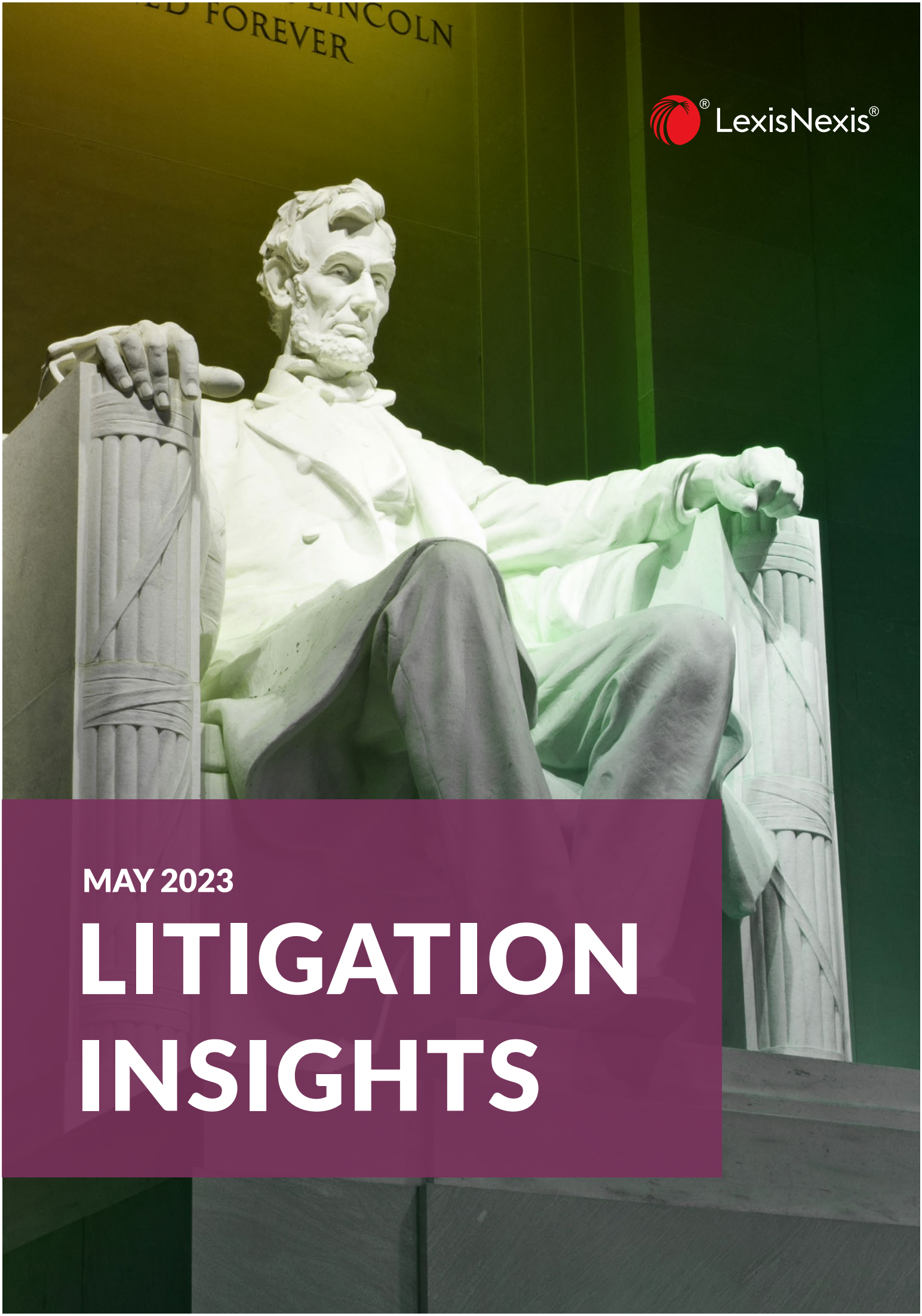

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LITIGATION INSIGHTS

MOORE'S FEDERAL PRACTICE—TOP THREE HIGHLIGHTS

The following three summaries are this month's Editor's Top Picks from the dozens of decisions added to Moore's Federal Practice and Procedure.

ARBITRATION

Federal Arbitration Act

Chamber of Com. of the U.S. v. Bonta

62 F.4th 473, 2023 U.S. App. LEXIS 3586 (9th Cir. Feb. 15, 2023)

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The Ninth Circuit has held that the Federal Arbitration Act preempts a California law that penalizes an employer for requiring an employee or applicant to agree to arbitrate certain claims as a condition of employment, even though the state law does not prevent enforcement of such an agreement.

INTERSYSTEM PRECLUSION

***Rooker-Feldman* Doctrine**

Hadzi-Tanovic v. Johnson

62 F.4th 394, 2023 U.S. App. LEXIS 6034 (7th Cir. Mar. 14, 2023)

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The Seventh Circuit, overruling its precedent, holds that allegations of state-court corruption are not sufficient to avoid the *Rooker-Feldman* doctrine's bar on district-court review of state-court decisions.

SERVICE AND FILING OF DOCUMENTS

Extension of Time

Rodriguez v. Hirshberg Acceptance Corp.

62 F.4th 270, 2023 U.S. App. LEXIS 6006 (6th Cir. Mar. 14, 2023)

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The Sixth Circuit holds that failing to show excusable neglect under Civil Rule 6(b)(1) to extend a time period to file documents with the court is not an independent ground for a final judgment or other case-dispositive order; instead, the court must invoke an alternative rule or its inherent authority to support that disposition.

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By Meghan Atwood, Esq.
LexisNexis Solutions Consultant on Federal Government Team

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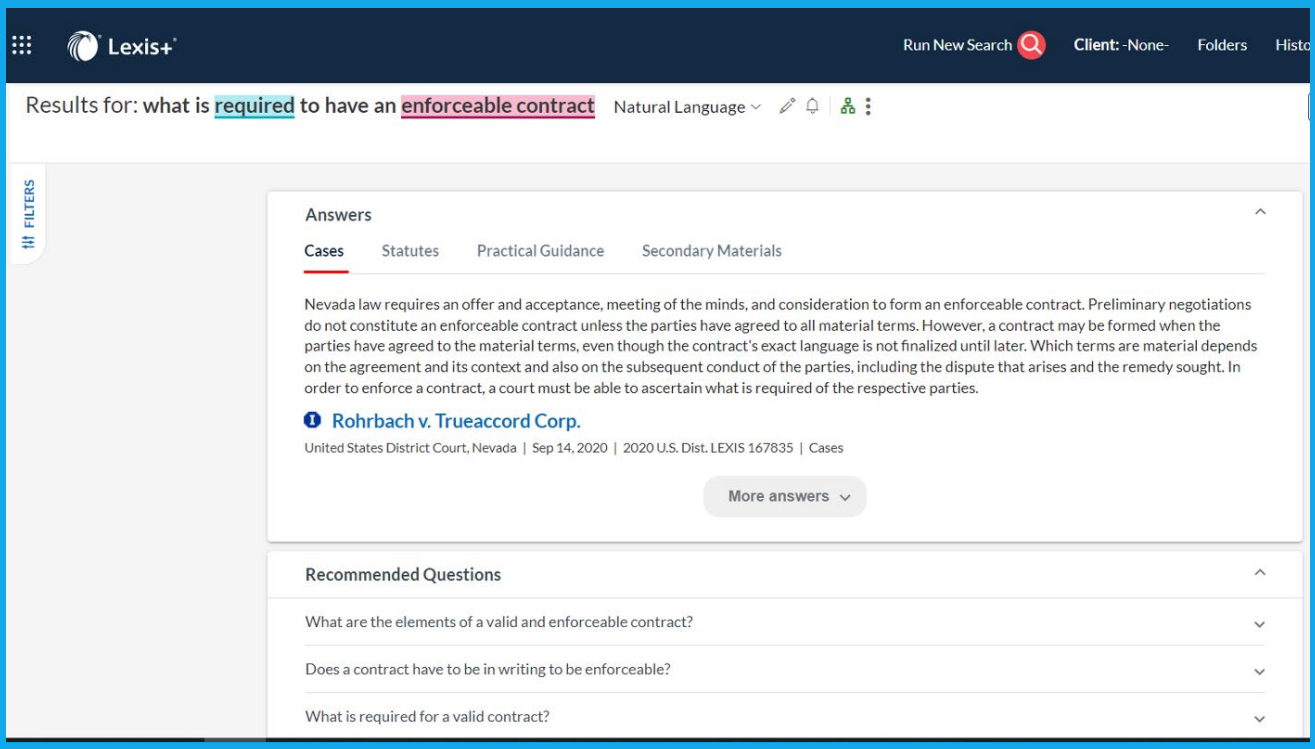

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ARBITRATION

Federal Arbitration Act

Chamber of Com. of the U.S. v. Bonta

62 F.4th 473, 2023 U.S. App. LEXIS 3586 (9th Cir. Feb. 15, 2023)

The Ninth Circuit has held that the Federal Arbitration Act preempts a California law that penalizes an employer for requiring an employee or applicant to agree to arbitrate certain claims as a condition of employment, even though the state law does not prevent enforcement of such an agreement.

California Assembly Bill 51. California enacted Assembly Bill 51 (AB 51) to protect employees from what it called "forced arbitration" by making it an unlawful employment practice and a misdemeanor for an employer to require an existing employee or an applicant for employment to consent to arbitrate specified claims as a condition of employment, or to discriminate against an employee or applicant for refusing such consent [see Cal. Lab. Code §§ 432.6(a), (b), 433; Cal. Gov't Code § 12953]. But AB 51 criminalizes only contract formation; it expressly provides that an arbitration agreement executed in violation of its provisions is enforceable [see Cal. Lab. Code § 432.6(f)]. The California legislature took this approach to avoid conflict with Supreme Court precedent holding that a state rule that discriminates against arbitration is preempted by the Federal Arbitration Act (FAA) [see 9 U.S.C. § 1 et seq.]. The question for the Ninth Circuit panel in this case was whether the FAA preempts a state rule that discriminates against the formation of an arbitration agreement, even if that agreement is ultimately enforceable. In a 2-1 decision, the panel held that such a rule is preempted by the FAA.

FAA Preemption of State Laws That Discriminate Against Arbitration. The Ninth Circuit began its analysis by observing that the FAA does not expressly preempt state law, nor does it reflect a congressional intent to occupy the entire field of arbitration [*see* Volt Info. Scis. Inc. v. Bd. of Trs. of Leland Stanford Junior Univ., 489 U.S. 468, 477, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989)]. But even if Congress has not occupied the field, state law is preempted to the extent of any conflict with a federal statute [see Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 372, 120 S. Ct. 2288, 147 L. Ed. 2d 352 (2000)].

The court of appeals explained that in considering the preemptive scope of the FAA, the Supreme Court has decided cases involving state laws or rules that single out executed arbitration agreements and prevent the enforcement of such agreements according to their terms [*see, e.g.*, DIRECTV v. Imburgia, 577 U.S. 47, 49, 136 S. Ct. 463, 193 L. Ed. 2d 365 (2015); AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 344, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011)]. The Court has held that such state laws and rules are preempted by section 2 of the FAA, which provides that "an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract . . ." [9 U.S.C. § 2]. Based on the purpose of the FAA and the language of section 2, the Court has established an "equal-treatment principle," which requires courts to place arbitration agreements on equal footing with all other contracts. Under this principle, a court may invalidate an arbitration agreement based on generally applicable contract defenses, like fraud or unconscionability, but not on legal rules that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue [Kindred Nursing Ctrs. Ltd. P'ship v. Clark, 581 U.S. 246, 251–252, 137 S. Ct. 1421, 197 L. Ed. 2d 806 (2017)].

Even if a state law is purportedly generally applicable, the FAA preempts the law if it interferes with fundamental attributes of arbitration [*see* AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 343–344, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011)], or has a disproportionate impact on arbitration [see Mortensen v. Bresnan Communs., LLC, 722 F.3d 1151, 1159 (9th Cir. 2013)]. A state rule interferes with arbitration if it discriminates against arbitration on its face or if it covertly accomplishes the same objective by disfavoring contracts that have the defining features of arbitration agreements [*see* Kindred Nursing Ctrs. Ltd. P'ship v. Clark, 581 U.S. 246, 251–252, 137 S. Ct. 1421, 197 L. Ed. 2d 806 (2017)]. Examples of state rules that disfavor the defining features of arbitration include a rule prohibiting an agreement that waives the right to a class action or the right to a jury trial, or any other of

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the myriad "devices and formulas" used to declare arbitration against public policy [*see* AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 342, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011)].

The court of appeals in this case noted that the Supreme Court has made clear that the FAA's preemptive scope is not limited to state rules affecting the enforceability of arbitration agreements, but also extends to state rules that discriminate against the formation of arbitration agreements. In one recent case, for example, the Court held that the FAA preempted a state law that barred an attorney-in-fact from entering into an arbitration agreement unless specifically authorized to waive the principal's rights of access to courts and to trial by jury [*see, e.g.*, Kindred Nursing Ctrs. Ltd. P'ship v. Clark, 581 U.S. 246, 251–257, 137 S. Ct. 1421, 197 L. Ed. 2d 806 (2017)]. The Ninth Circuit panel in this case acknowledged that the Supreme Court's decisions concerning the FAA's preemptive scope were rendered in the context of attempts to enforce executed arbitration agreements. However, the court of appeals found the Court's rationale for invalidating state rules that burden the formation of arbitration agreements is equally applicable to a state rule that, like AB 51, discriminates against the formation of an arbitration agreement but does not make an improperly formed arbitration agreement unenforceable.

The court of appeals noted that the First and Fourth Circuits have similarly concluded that FAA preemption extends not just to state rules that discriminate against enforcement of arbitration agreements, but also to those that discriminate against the formation of arbitration agreements [see Saturn Distrib. Corp. v. Williams, 905 F.2d 719, 724 (4th Cir. 1990) (rejecting argument that FAA preemption does not extend to laws that prohibit or regulate formation of arbitration agreements, because such restriction would defeat Congress's equal-treatment principle); Sec. Indus. Ass'n v. Connolly, 883 F.2d 1114, 1123–1124 (1st Cir. 1989) (FAA preempted state regulations that prohibited securities firms from requiring clients to agree to arbitration as nonnegotiable condition precedent to account relationships)].

Application of FAA Preemption in Present Case. In this action brought by a collection of trade associations and business groups against state officials, the Ninth Circuit affirmed the district court's grant of a preliminary injunction against enforcement of AB 51. On appeal, the defendants challenged only the district court's finding that the plaintiffs had established a likelihood of success on the merits (the most important factor in determining whether to grant preliminary injunctive relief). And the plaintiffs' likelihood of success depended on whether they could establish that the FAA preempted AB 51.

Applying its understanding of the preemptive scope of the FAA, the appellate panel found that although AB 51 does not expressly bar arbitration agreements, it does discriminate against the formation of arbitration agreements. AB 51 prevents an employer from entering into a contract that includes nonnegotiable terms requiring an employee to waive "any right, forum, or procedure" for a violation of any provision of state employment law, including "the right to file and pursue a civil action" [Cal. Lab. Code §§ 432.6(a)]. Because a person who agrees to arbitrate disputes must necessarily waive the right to bring civil actions regarding those disputes in any other forum, this provision means that AB 51 burdens the defining feature of arbitration agreements.

The appellate panel reasoned that AB 51's deterrence of an employer's willingness to enter into an arbitration agreement is antithetical to the FAA's liberal federal policy favoring arbitration agreements [*see* Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983)]. Therefore, AB 51's penalty-based scheme to inhibit arbitration agreements before they are formed violates the equal-treatment principle inherent in the FAA and evinces the hostility toward arbitration that the FAA was enacted to overcome.

Conclusion and Disposition. The panel concluded that because the FAA's purpose is to further Congress's policy of encouraging arbitration, and AB 51 stands as an obstacle to that purpose, AB 51 is preempted. Accordingly, the district court did not abuse its discretion in granting a preliminary injunction against enforcement of AB 51, and the court of appeals affirmed that order.

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- **Dissent**. Circuit Judge Lucero dissented. He emphasized that unlike state rules the Supreme Court had struck down as preempted by the FAA, AB 51 does not invalidate any arbitration agreement. Rather, AB 51 regulates conduct preceding arbitration agreements, to ensure that arbitration agreements are entered on fair terms. He opined that "[i]n enacting AB 51, California maintains respect for federal preemption over arbitration agreements while appropriately addressing state concerns with unfair employment negotiations."

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INTERSYSTEM PRECLUSION

Rooker-Feldman Doctrine

Hadzi-Tanovic v. Johnson

62 F.4th 394, 2023 U.S. App. LEXIS 6034 (7th Cir. Mar. 14, 2023)

The Seventh Circuit, overruling its precedent, holds that allegations of state-court corruption are not sufficient to avoid the *Rooker-Feldman* doctrine's bar on district-court review of state-court decisions.

Background. This case arose from a child-custody dispute between the plaintiff and her former husband in an Illinois state court. After the state court issued an order requiring that the plaintiff's parenting time with her children be supervised, she filed this action in federal court against her ex-husband, the children's guardian ad litem, and the state-court judge. The complaint alleged claims under 42 U.S.C. §§ 1983 and 1985, alleging that the defendants had conspired to violate the plaintiff's and her children's rights to family association and the plaintiff's right to a fair and unbiased trier of fact. The district court dismissed the complaint on abstention grounds, and the plaintiff appealed.

In a 2-1 decision, a panel of the Seventh Circuit affirmed the dismissal, concluding that the Rooker-Feldman doctrine deprived lower federal courts of jurisdiction over this case.

***Rooker-Feldman* Doctrine.** The *Rooker-Feldman* doctrine embodies the principle that lower federal courts lack jurisdiction over claims seeking review of state-court judgments [see District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923)]. The doctrine rests on inferences from the federal courts' statutory jurisdictional structure. Under 28 U.S.C. § 1257, the Supreme Court is the only federal court with general statutory jurisdiction to review state-court judgments; by contrast, federal district courts' jurisdiction is original, not appellate [see 28 U.S.C. §§ 1331, 1332, 1334]. The Seventh Circuit panel in this case pointed out that no matter how wrong a state court's judgment may be under federal law, the *Rooker-Feldman* doctrine acknowledges that only the U.S. Supreme Court has jurisdiction to review it [see Sykes v. Cook Cnty. Cir. Ct. Prob. Div., 837 F.3d 736, 741–742 (7th Cir. 2016) ("Lower federal courts are not vested with appellate authority over state courts.")].

The *Rooker-Feldman* doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments" [Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005)]. The Seventh Circuit has held that the doctrine is limited to federal claims that directly challenge state-court judgments or are "inextricably intertwined" with them [*see* Andrade v. City of Hammond, 9 F.4th 947, 950 (7th Cir. 2021)]. The appellate panel in this case noted that a plaintiff's federal claims are inextricably intertwined with a state-court judgment if the plaintiff alleges an injury caused by the state-court judgment [*see* Sykes v. Cook Cnty. Cir. Ct. Prob. Div., 837 F.3d 736, 742 (7th Cir. 2016)]. "Put another way, we ask whether the district court is essentially being called upon to review the state court decision" (internal quotation marks omitted). If not, and the plaintiff's alleged injury is independent of the judgment, then the *Rooker-Feldman* doctrine does not bar lower-federal-court jurisdiction. Finally, the doctrine applies only if the federal plaintiff had a reasonable opportunity to raise the federal issue in state-court proceedings [Jakupovic v. Curran, 850 F.3d 898, 902 (7th Cir. 2017)].

The Seventh Circuit's analysis in this case focused on (1) whether the state court's custody order qualified under *Rooker-Feldman* as a final judgment entered before commencement of the federal action, and (2) whether the plaintiff's claim that the defendants had corrupted the state court involved an injury that was independent of the state-court judgment so as to render *Rooker-Feldman* inapplicable.

State Court's Custody Order Was Final for Rooker-Feldman Purposes. The Seventh Circuit found that the state-court judgment in this case had been "rendered before the district court proceedings commenced," so that the federal plaintiff was a "state-court loser" for R*ooker-Feldman* purposes. After the state trial court entered its order requiring that the plaintiff's parenting time be supervised, the plaintiff filed a notice of appeal, but the state appellate court dismissed her appeal for want of prosecution on January 13, 2020. The trial court's order was therefore final well before the plaintiff filed the present federal lawsuit on June 12, 2020.

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The Seventh Circuit also found that the finality of the state court's order was not undermined by the state court's continuing management of child-custody issues between the plaintiff and her former husband. The appellate panel noted that state law determines the finality of a state judicial decision [*see* Mehta v. Att'y Registration & Disciplinary Comm'n, 681 F.3d 885, 887 (7th Cir. 2012)]. Under applicable state law, the trial court's order in this case was final and appealable [*see* Ill. Sup. Ct. R. 304(b)(6) (permitting appeal from "custody or allocation of parental responsibilities judgment or modification of such judgment" entered pursuant to state's marriage and dissolution law)]. The order was therefore final for *Rooker-Feldman* purposes even though the state court could modify the order in the future.

The Seventh Circuit also rejected a contention that the plaintiff's motion asking the state court to vacate its order meant that the order was nonfinal for *Rooker-Feldman* purposes. The motion, which remained pending when the Seventh Circuit issued its decision in this case, was filed after the state's attorney-discipline commission brought charges against the children's guardian ad litem. The motion was brought under a state statute authorizing courts, under certain conditions, to grant relief from final judgments and orders [see 735 Ill. Comp. Stat. 5/2-1401]. However, the state's courts treat a motion for such relief as commencing a new and separate cause of action [*see* Price v. Philip Morris, Inc., 43 N.E.3d 53, 60 (Ill. 2015)]. Since the plaintiff's motion to vacate the state court's order was a collateral attack and not a direct appeal, the Seventh Circuit concluded that it did not alter the finality of the order for purposes of the *Rooker-Feldman* doctrine.

- **Claimed Deprivation of Familial Association Arose From State-Court Judgment.** The Seventh Circuit next considered whether the plaintiff had alleged an injury that was independent of the state court's judgment so as to avoid the application of the *Rooker-Feldman* doctrine. Her complaint identified two injuries: (1) the deprivation of her and her children's right to familial association, and (2) the deprivation of her right to a fair and unbiased trier of fact. The court of appeals found that neither claimed injury was independent of the state-court judgment.

  The court of appeals easily concluded that the alleged loss of familial association was not independent of the state court's judgment. The complaint traced the plaintiff's claimed injury directly to the state court's order, alleging that "[b]y this June 13, 2018 ruling, [the plaintiff] suffered severe damages from the loss of her parenting time that caused her to lose the companionship, love and affection of her three minor children and the three minor children lost their right to be raised by their mother in a normal family home."

  The appellate panel explained that when, as in this case, a plaintiff's injury is "effectuated" by the state-court judgment, the *Rooker-Feldman* doctrine deprives lower federal courts of jurisdiction. To find that the state court's order deprived the plaintiff and her children of their constitutional right to familial association, a federal court would have to find that the state court erred in applying state family law, and that is what *Rooker-Feldman* forbids [*see* Swartz v. Heartland Equine Rescue, 940 F.3d 387, 391 (7th Cir. 2019)].

- **Alleged Corruption of State Court Does Not Avoid Application of *Rooker-Feldman*.** The Seventh Circuit panel then turned to the more difficult question whether the alleged corruption of the state court resulted in an injury to the plaintiff that was independent of the state court's judgment. The panel concluded that the alleged corruption did not cause an independent injury and thus did not prevent application of *Rooker-Feldman*.

  The plaintiff contended that she was injured when the defendants "corruptly conspired" to interfere with her right to a fair and impartial trier of fact. She alleged that the state trial judge's rulings showed "outrageous, unconstitutional, intentional bias." For example, she complained that the judge gave her ex-husband an unfair advantage by scheduling immediate hearings for motions filed by him but scheduled hearings far into the future on motions filed by the plaintiff. She also criticized the judge's alleged refusal to consider evidence she offered. In support of her claim that the defendants conspired together to corrupt the proceedings, she alleged that unlawful extrajudicial and ex parte communications took place between the children's guardian ad litem and the judge.

  The plaintiff argued that, because she claimed to have been injured by the defendants' corruption of the-state court proceedings, her injury was independent of the state court's judgment for purposes of *Rooker-Feldman*. The Seventh Circuit panel remarked that this theory would open a large loophole in the *Rooker-Feldman* doctrine, and it has not been endorsed by the Supreme Court. However, the court of appeals acknowledged that its precedents provided support for the plaintiff's theory. But in this case the court of appeals explicitly overruled those cases to the extent they had recognized a "corruption exception" to the *Rooker-Feldman* doctrine.

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In a trio of cases beginning with *Nesses v. Shepard*, the Seventh Circuit held *Rooker-Feldman* inapplicable when a plaintiff alleges that the defendant "so far succeeded in corrupting the state judicial process as to obtain a favorable judgment" [*see* Nesses v. Shepard, 68 F.3d 1003, 1005 (7th Cir. 1995) (finding *Rooker-Feldman* inapplicable but affirming dismissal of federal suit on grounds of claim preclusion and immunity of judicial defendants); Loubser v. Thacker, 440 F.3d 439, 441–443 (7th Cir. 2006) (affirming dismissal of judicial defendants on immunity grounds, but reversing *Rooker-Feldman* dismissal of other defendants); Parker v. Lyons, 757 F.3d 701, 705–706 (7th Cir. 2014) (finding *Rooker-Feldman* inapplicable but affirming dismissal of federal suit on grounds of prosecutorial immunity and Eleventh Amendment immunity)]. More recently, the Seventh Circuit limited the Nesses "corruption exception" to cases in which the plaintiffs "allege that a widespread conspiracy undermined the entirety of the state-court proceedings" [*see* Bauer v. Koester, 951 F.3d 863, 866–867 (7th Cir. 2020) (although plaintiffs alleged corruption in state court, *Rooker-Feldman* still blocked their federal suit, because unlike in Nesses, they had not alleged widespread conspiracy undermining entirety of state-court proceedings, but merely challenged decisions of state court)].

In the present case, the Seventh Circuit reconsidered the corruption exception and concluded that Nesses and its progeny were incorrect in allowing allegations of state-court corruption to defeat application of the *Rooker-Feldman* doctrine.

- **Corruption Exception Not Supported by Supreme Court's Articulation of *Rooker-Feldman*.** In discarding the corruption exception, the Seventh Circuit first noted that there is no support for the exception in the Supreme Court's formulation of the *Rooker-Feldman* doctrine. As described above, an injury is not independent for purposes of *Rooker-Feldman* if it is "ef-fectuated" by the state court judgment or if the plaintiff's claim essentially requires the federal court to review the state court's decision. And when a plaintiff claims to be injured by judicial bias or corruption in state-court proceedings, both of those grounds for the doctrine can apply.

  The Seventh Circuit panel pointed out that even assuming the state trial judge in this case had been biased against the plaintiff, she was not harmed by that bias until the judge entered the order mandating that her parenting time be supervised. "Because her alleged injury was 'effectuated' by the state court judgment, *Rooker-Feldman* should still block her federal suit."

  The appellate panel emphasized that it was expressing no view on the merits of the allega-tions of bias and corruption. But, the panel explained, the only way a federal court could determine the merits of those allegations would be to review the state court's handling of the case, substantively and procedurally. That is, only if there were factual, legal, or proce-dural errors would the federal court have to consider whether the errors were the product of corruption. Yet *Rooker-Feldman* is supposed to prohibit lower federal courts from engag-ing in what amounts to appellate review of state court decisions in this manner. And the court of appeals noted that the essence of the *Rooker-Feldman* doctrine is that no matter how wrong a state-court judgment may be under federal law, lower federal courts do not have jurisdiction to review it [*see* Rooker v. Fidelity Trust Co., 263 U.S. 413, 415–416, 44 S. Ct. 149, 68 L. Ed. 362 (1923) (even if state court incorrectly decided constitutional is-sues, "no court of the United States other than this Court could entertain a proceeding to reverse or modify the judgment for errors of that character")].

- **Little or No Effect on Outcome of Cases.** The Seventh Circuit panel observed that overruling the corruption exception would not change the ultimate result of cases in which corruption of state-court proceedings is alleged, since such claims "would almost certainly founder on other grounds," such as claim preclusion, judicial immunity, and Eleventh Amendment sovereign immunity. "We have found no cases in this circuit in which a federal court actually undertook a merits review of a state court divorce proceeding."

  Because federal courts rarely, if ever, reach the merits of state-court-corruption claims, the court of appeals decided to discard the exception altogether, rather than try to preserve a limited version of it. The court also said that even a limited version of the exception would require federal courts to review and evaluate state-court judgments, a task that is inconsistent with the foundation of the *Rooker-Feldman* doctrine.

- **Limits of Seventh Circuit's Holding.** The Seventh Circuit panel noted two significant limits of its holding in this case. First, the court was not overruling its precedents holding that Rooker-Feldman is inapplicable when plaintiffs seek damages for injuries caused not by state-court corruption but by the fraudulent conduct of state-court opponents [see, e.g., Johnson v. Pushpin Holdings, LLC, 748 F.3d 769, 773 (7th Cir. 2014) (Rooker-Feldman does not bar federal

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suit seeking damages for fraud or other unlawful conduct that misled state court into issuing judgment adverse to federal plaintiff)]. "Because the issue is not before us, this decision does not speak to whether or under what circumstances allegations of fraud by state court opponents (acting without the participation of the state court) escape *Rooker-Feldman*."

Second, the court of appeals pointed out that it was not deciding whether *Rooker-Feldman* would bar this plaintiff's claim if she had filed her federal lawsuit after first obtaining an order setting aside the relevant state-court judgment. The appellate panel remarked that it was not at all certain that a federal suit alleging a violation of federal rights arising from state-court civil proceedings that have later been invalidated would call on the federal court to review and reject a final state-court judgment so as to trigger *Rooker-Feldman*. "But this case does not present that issue, so we reserve it for another day."

- **Conclusion and Disposition.** Because all the elements of the *Rooker-Feldman* doctrine were present in this case, the Seventh Circuit panel concluded that the district court lacked jurisdiction over this action. Accordingly, the court affirmed the district court's dismissal without prejudice.

- **Denial of Rehearing en Banc.** Because the appellate panel overruled circuit precedent, it had circulated its opinion among all active judges of the circuit, and a majority voted not to rehear the case en banc.

  Circuit Judge Kirsch, joined by Circuit Judge St. Eve, dissented from the denial of rehearing en banc. The dissenting judges disagreed with the panel's decision to overrule the corruption exception to *Rooker-Feldman*. They read Nesses and its progeny as correctly recognizing that *Rooker-Feldman* is inapplicable to a federal suit alleging a conspiracy that results in a state-court judgment, so long as the plaintiff does not seek reversal of that judgment.

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SERVICE AND FILING OF DOCUMENTS

Extension of Time

Rodriguez v. Hirshberg Acceptance Corp.

62 F.4th 270, 2023 U.S. App. LEXIS 6006 (6th Cir. Mar. 14, 2023)

The Sixth Circuit holds that failing to show excusable neglect under Civil Rule 6(b)(1) to extend a time period to file documents with the court is not an independent ground for a final judgment or other case-dispositive order; instead, the court must invoke an alternative rule or its inherent authority to support that disposition.

- **Facts and Procedural Background; Administrative Closing Order.** Kathryn Rodriguez sued Hirshberg Acceptance, a debt collector, alleging the defendant miscalculated the amount she and other similarly situated debtors owed on personal debt in violation of the Fair Debt Collection Practices Act. After initial discovery, the parties and the district court recognized that a pending appeal in the Sixth Circuit would likely resolve most of the issues in the case. The parties therefore jointly requested a stay. Instead, the district court chose to administratively close the case until the appeal was resolved. The administrative closing order provided that within 14 days of the appellate decision, either party could move to reopen the case.

- **Attempts to Reopen Case.** The pending appeal was decided in February 2020, just before the start of the COVID-19 pandemic. Neither party moved to reopen the case within 14 days. Instead, four months later, Rodriguez moved for an extension of time under Civil Rule 6(b)(1), citing the pandemic and other factors to show excusable neglect for missing the deadline [see Fed. R. Civ. P. 6(b)(1)]. The district court denied the motion in June 2020, leaving the case administratively closed. Rodriguez then moved for a clarification of that order, asking whether it was intended to be a final judgment. While that motion was pending, Rodriguez also filed a notice of appeal from the June 2020 order. The district court then issued an order stating that the June 2020 order was a final judgment, so that any request to reopen was moot. Rodriguez also appealed the clarification order, and the two pending appeals were consolidated.

- **Nature of Administrative Closing Orders.** The Sixth Circuit began its analysis with an explanation of administrative closing orders. They are a tool of docket management to temporarily remove a case from the active docket and hold it in abeyance until some future event permits or requires continuing it. As the court of appeals put it: "an administrative closure is not tantamount to a formal dismissal of a case."

- **Final Judgment Under 28 U.S.C. § 1291.** Given the nature of administrative closing orders, the Sixth Circuit noted that it was apparent that the initial order was not an appealable final judgment under 28 U.S.C. § 1291, because it expressly contemplated further proceedings. But when the district court denied reopening due to the missed 14-day deadline, that order was a final appealable judgment because it definitively showed that the district court "disassociated" itself from the case and the action was over. The separate clarification order reemphasized this point as to finality. The court of appeals distinguished an earlier case in which the administrative closing order stated that it would be automatically converted to a dismissal with prejudice if no party sought to reopen within 60 days [*see* Morris v. City of Hobart, 39 F.3d 1105, 1110 (10th Cir. 1994)], noting that the order in this case had no such language.

- **Rule 6(b)(1) Applies to Deadlines Only.** With appellate jurisdiction secure, the Sixth Circuit proceeded to the merits. The court first noted that the only authority cited by the district court to refuse to reopen the case was Rule 6(b)(1)(B). But that rule simply provides for extending a missed deadline once an action has been commenced, and "[a]uthority to extend a deadline . . . should not be confused with authority to dismiss the action altogether." The court of appeals conceded that missing a deadline and failing to show excusable neglect for an extension will often have adverse consequences for the dilatory party. But if the consequence is dismissal, the district court must invoke some authority other than Rule 6(b)(1)(B), because nothing in that

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rule indicates that it is designed for dispensing with an entire action. Because it relied on an inapplicable rule to terminate the case, the district court abused its discretion, and remand was required.

- **Suggested Course of Action on Remand.** Finally, the Sixth Circuit suggested how the district court could properly dispose of the case on remand: grant the motion to reopen and then dismiss the case for failure to prosecute under Rule 41(b) due to the missed deadline [see Fed. R. Civ. P. 41(b)]. This would not only have been procedurally proper, but it would also have eliminated any ambiguity about the finality of the district court's action. The court of appeals noted that if the district court on remand elected to follow this suggestion, it would be guided by the four-part test for assessing whether to dismiss a case with prejudice under Rule 41(b): (1) whether the failure to comply was due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced; (3) whether there was a warning that failure to comply could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered.

- **Disposition.** The Sixth Circuit reversed the district court's orders and remanded for further proceedings consistent with its opinion.