RECENT CASE

NINTH CIRCUIT IGNORES PRINCIPLES OF FEDERALISM AND THE *ROOKER-FELDMAN* DOCTRINE: *Bates v. Jones*, 131 F.3d 843 (9th Cir. 1997) (en banc).

In upholding lifetime term limits for certain California state offices, the decision by the en banc Ninth Circuit Court of Appeals in *Bates v. Jones*[1] appears, at first blush, to recognize a theme central to our nation's system of government: that the States have the freedom to "serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."[2] Specifically, the court's holding appears to adhere to the importance of federalism and the Tenth Amendment[3] in our system of government, even when the activity in question seemingly treads upon interests protected under the First[4] and Fourteenth[5] Amendments.[6] In reality, however, although the majority's decision avoided a direct conflict between the federal and state courts, the *Bates* court failed to acknowledge fully the important relationship between the state and federal systems.

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1. 131 F.3d 843 (9th Cir. 1997).

2. New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

3. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X.

4. "Congress shall make no law respecting an establishment of religion, nor prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I.

5. ". . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § I.

6. Eric Corwin has recognized that courts give great deference to the notion that States are granted the authority to determine their own form of government, even when individuals' rights protected under the First and Fourteenth Amendments are implicated. *See* Eric H. Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 598 (1991). He centers this argument around *Oregon v. Mitchell*, 400 U.S. 112 (1970), which held that Congress did not have the power to lower the voting age in state and local elections. The Court in that case stated that, "In interpreting what the Fourteenth Amendment means, the Equal Protection Clause should not be stretched to nullify the States' powers over elections which they had before the Constitution was adopted and which they have retained throughout our history." *Mitchell*, 400 U.S. at 125.

The majority overlooked the *Rooker-Feldman* doctrine[7] that embodies the fundamental principles of federalism upon which we premise our governmental system. That doctrine prevents federal courts from exercising appellate review of state court decisions, which is exactly what happened when the *Bates* court assumed jurisdiction. Instead, the majority in *Bates* should have recognized that, because of federalism, the Ninth Circuit had no basis for passing judgment.

In 1990, California voters passed Proposition 140, an initiative imposing lifetime term limits on state legislators and other state officials.[8] The stated purpose behind the Proposition was "to restore a free and democratic system of fair elections, and to encourage qualified candidates to seek public office" by placing limits "upon the number of terms which may be served."[9] A year later, the California Legislature (both the Senate and Assembly); certain individual legislators; and various citizens, voters, and taxpayers challenged the constitutionality of the term limits in *State of California v. Eu.*[10] The petitioners asserted: (1) that the lifetime term limits violated the First and Fourteenth Amendments of the United States Constitution because they substantially burdened two fundamental rights, the right to vote and the right to be a candidate for public office; and (2) that there was no compelling state interest to support such limits.[11] The California Supreme Court, exercising its original jurisdiction,[12] held that the Proposition did not violate the

7. This doctrine developed from two Supreme Court decisions. *See* Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); *see also* notes 60-67 and accompanying text.

8. The Proposition limited persons elected after November 5, 1990, to the office of Governor, Lieutenant Governor, Attorney General, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction; to the State Board of Equalization; and to the state Senate to two terms. It further limited members of the State Assembly to three terms. *See State of California v. Eu*, 816 P.2d 1309, 1313 (Cal.), *cert. denied*, 503 U.S. 919 (1992).

9. CAL. CONST. art. 4, § 1.5.

10. 816 P.2d 1309 (Cal.), *cert. denied*, 503 U.S. 919 (1992).

11. *See id.* at 1313.

12. Judge Lucas, who was joined in his majority opinion by Judges Arabian, Baxter, George, Kennard, and Panelli, noted that the court usually declines to "exercise such jurisdiction, preferring initial disposition by the lower courts," but that "the present case involves issues of sufficient public importance to justify departing from our usual course." *Id.* at 1312. Judge Mosk dissented on grounds unrelated to the constitutionality of the lifetime limits. *See id.* at 1336-42 (Mosk, J., concurring and dissenting).

plaintiff's federal constitutional rights under the First and Fourteenth Amendments.[13]

In 1995, Tom Bates, then a member of the California Assembly, and a group of his constituents filed a similar claim regarding Proposition 140's constitutionality in the federal District Court for the Northern District of California.[14] The district court held that the Proposition's lifetime term limits on state legislators violated the rights of voters and candidates under the First and Fourteenth Amendments.[15] District Court Judge Wilken applied the balancing test established in *Anderson v. Celebrezze,*[16] which the Supreme Court has used to consider First and Fourteenth Amendment rights in "ballot access" cases.[17] Under the *Anderson* test, a court must first look at the character and extent of the injury to the plaintiff's asserted, protected rights. Then, it must examine the state interests that purportedly justify the burden imposed on the plaintiff, considering whether the interests sufficiently support the imposition of such a burden.[18] The *Bates* court concluded that the term limits did impose a severe burden on First and Fourteenth Amendment rights of voting and association, and further that they were not narrowly constructed to serve a compelling state interest.[19]

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13. The court, using the balancing test set out by the Supreme Court in *Anderson v. Celebrezze,* 460 U.S. 780 (1983), determined that the State of California's interest in limiting incumbency to restore fair elections overcame the individuals' interests in their right to vote and right to be a candidate for public office, and further that Proposition 140 was a reasonable action for advancing such state interests. *See Eu,* 816 P.2d at 1323-24.

14. Bates sought to enjoin enforcement of the California term limits so that he could run for reelection in 1996 for a potential eleventh term in the Assembly. *See Bates v. Jones,* 958 F. Supp. 1446, 1452 (N.D. Cal. 1997).

15. *See id.* at 1452.

16. 460 U.S. 780 (1983) (striking down an early filing deadline for third-party candidates).

17. *See Bates,* 958 F. Supp. at 1457-59.

18. *See Anderson,* 460 U.S. at 789.

19. *See Bates,* 958 F. Supp. at 1452. The court found that the State had a compelling interest in defining its own political institutions and in reducing the unfair electoral advantages enjoyed by incumbents. The court then concluded that such interests did not justify the burden lifetime term limits imposed upon rights protected by the First and Fourteenth Amendments. The court found that consecutive term limits (among other targeted reforms) could sufficiently reduce the electoral advantages of incumbency without completely wasting valuable legislative experience. *Id.* at 1471.

On appeal, the Court of Appeals for the Ninth Circuit affirmed. Judge Reinhardt's decision,[20] although based on the notion that Proposition 140 would impose a severe limitation on people's fundamental rights, did not reach the issue whether the term limits were constitutional. Because of the severe limit on rights, Reinhardt found that the *Burdick* test,[21] which determines the level of scrutiny depending on the restriction of rights, required application of strict scrutiny, and further stated that such scrutiny applied not only to the effect of the Proposition, but also to the enactment process.[22] Judge Reinhardt then concluded that the court had to reject the Proposition because it did not provide California voters with adequate notice of the severity of such a restriction on their fundamental rights because the Proposition was ambiguous on its face as to whether the term limits imposed consecutive or lifetime bans.[23] Based on this finding, the court affirmed the lower court's permanent injunction against enforcement of the term limits.[24] Judge Sneed dissented, arguing that the wording of Proposition 140, in light of the surrounding context, was sufficient to assure an informed vote, and, therefore, Proposition 140 passed strict scrutiny and was constitutional.[25]

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20. *See Bates v. Jones*, 127 F.3d 839 (9th Cir. 1997). Judge Fletcher joined in the opinion of Judge Reinhardt.

21. The Court in *Burdick v. Takushi*, 504 U.S. 428 (1992), explained further the extent of the test described in *Anderson*. The Court stated that the level of scrutiny applied in examining the burden imposed depends upon the extent to which the plaintiff's rights are restricted. A "'severe'" restriction requires the regulation to be "narrowly drawn to advance a state interest of compelling importance," but, when the State imposes "'reasonable, nondiscriminatory restrictions,'" the State's interests are usually sufficient to justify the regulations. *Id.* at 433 (quoting Norman v. Reed, 502 U.S. 279, 289 (1992); *Anderson*, 460 U.S. at 788).

22. *See Bates*, 127 F.3d at 857.

23. *See id.* at 844. Judge Reinhardt found authoritative the California Supreme Court's determination in *Eu* that Proposition 140 was ambiguous as to its intent to impose a lifetime ban. Reinhardt, however, did not accept that court's view that, regardless of the ambiguity, the average voter would likely conclude that the Proposition imposed lifetime limits. Reinhardt noted that the phrase "lifetime limits" was nowhere to be found in the text of the Proposition, and, further, that the language differed from that used in both other States' lifetime bans and the lifetime presidential term limits. The Proposition used "[n]o Senator" and "[n]o member of the Assembly," but other lifetime bans, like the presidential limitation, contained the phrase "[n]o person." *Id.* at 856.

24. *See id.* at 864.

25. *See id.* (Sneed, J., dissenting). Judge Sneed argued that, under California law, courts were allowed to "examine indications of voter intent that lie outside the four corners of the initiative." *Id.* at (Sneed, J. dissenting). He pointed out that the "Argument Against Proposition 140," included in the ballot pamphlet accompanying the initiative, made it clear that the Proposition would impose a lifetime ban. Additionally,

Following the panel's judgment, the Ninth Circuit Court of Appeals granted a rehearing en banc, in which the court, in an opinion written by Judge Thompson,[26] reversed the panel's decision.[27] The en banc court first addressed the State's argument that *res judicata* prevented the present action, based on the California Supreme Court's decision in *Eu*.[28] It concluded that California's public-interest exception[29] to *res judicata* applied, and, as a result, the doctrine did not prevent a reexamination of the constitutional questions by the federal courts.[30] The court next turned to the issue of whether the Proposition gave adequate notice to the voters. The en banc court disagreed with the panel, and held that the ballot materials and surrounding context[31] made it clear that the Proposition imposed not consecutive, but lifetime term limits.

Finally, the court examined the constitutionality of the term limits using the test set out in *Burdick v. Takushi*.[32] Contrary to the district court's finding, the court held that the burden imposed by the term limits on the plaintiffs' right to vote for the candidate of their choice and the asserted right of an incumbent

there was another term-limit measure on the ballot in 1990, Proposition 131, which imposed only consecutive term limits. The distinction between the Propositions, and the choice thus provided to the voters, received a great deal of media attention. This public scrutiny was further heightened as a result of a ruling by the California Supreme Court five days before the election that held that if both Propositions passed, the one receiving a fewer number of votes would not take effect. *See id.* at 864-65 (Sneed, J., dissenting).

26. Chief Judge Hug, Jr., and Judges Browning, Fletcher, Kleinfeld, Pregerson, and Trott joined in the opinion of Judge Thompson.

27. *See* Bates v. Jones, 131 F.3d 843 (9th Cir. 1997) (en banc).

28. *See id.* at 845-46. The panel and district court concluded that *res judicata* did not apply because the *Eu* petitioners did not adequately represent the interests of Bates and his former constituents. *See Bates*, 127 F.3d at 850; *Bates*, 958 F. Supp. at 1456. The panel additionally held that, even if the parties were in privity, California's public-interest exception to *res judicata* would apply. *See Bates*, 127 F.3d at 849-850.

29. California recognizes an exception to *res judicata* when the issues involved are of public importance and there are unusual circumstances favoring a reexamination of the issues. *See* Kopp v. Fair Political Practices Comm'n, 905 P.2d 1248 (Cal. 1995). The unusual circumstances in the case of Proposition 140 were the California Supreme Court's exercise of its original jurisdiction (eliminating the usual course of appellate review), and two recent decisions by the United States Supreme Court that focused on the validity of term limits. *See* United States Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995); Burdick v. Takushi, 504 U.S. 428 (1992); *see also Bates*, 131 F.3d at 845-46.

30. *See Bates*, 131 F.3d at 845.

31. The court referred to the fact that, in addition to Proposition 140's lifetime term limits, there was another initiative on the ballot that year (Proposition 131) proposing consecutive term limits, and that there was much media attention surrounding the issues. *See id.* at 846.

32. 504 U.S. 428 (1992); *see also* note 21.

to run again for her office was not severe.[33] The impact is minimal because the "lifetime term limits do not constitute a discriminatory restriction," and are nothing more than a neutral candidacy qualification, which the States have the right to impose.[34] Turning to the other side of the balancing test, the court found that the legitimate interest of the State in controlling the unfair advantages of incumbents justified the burden.[35]

Judge O'Scannlain concurred in the decision, and further suggested that the case failed to even raise a federal question.[36] O'Scannlain looked to *Moore v. McCartney*,[37] in which the Supreme Court summarily dismissed an appeal from the West Virginia Supreme Court's decision upholding term limits on state executive officials.[38] O'Scannlain asserted that the Court's dismissal is binding on all lower courts just as if it were a decision on the merits,[39] and that only by reaching the conclusion that there is a constitutionally significant difference between executive and legislative term limits or between permanent and consecutive term limits could the court ignore the precedential value of *Moore*.[40] Finding that all courts that have considered term limits of any kind have held that such limits on state officeholders are constitutional, he concluded that there was no significant difference between executive and legislative term limits, or consecutive and lifetime limits.[41] Moreover, O'Scannlain suggested that the panel's concern with doctrinal developments after *Moore* was unjustified because none of the cases dealt as directly as did *Moore* with state-imposed term limits on state officeholders.[42] Thus, O'Scannlain found *Moore*

33. *See Bates*, 131 F.3d at 847.

34. *Id.*

35. *See id.*

36. *See id.* at 847 (O'Scannlain, J., concurring).

37. 425 U.S. 946 (1976).

38. *See Bates*, 131 F.3d at 848-50 (O'Scannlain, J., concurring).

39. In explaining this rationale, O'Scannlain cited *Mandel v. Bradley*, 432 U.S. 173 (1977) (per curiam), and *Wright v. Lane County Dist. Ct.*, 647 F.2d 940 (9th Cir. 1981), both of which concluded that summary dismissals for want of a federal question are decisions on the merits and are binding until subsequent Supreme Court decisions say otherwise. *See Bates*, 131 F.3d at 848 (O'Scannlain, J., concurring).

40. *See id.* (O'Scannlain, J., concurring).

41. *See id.* at 848-49 (O'Scannlain, J., concurring).

42. In the panel opinion, Judge Reinhardt had pointed out that, although a summary dismissal is a decision on the merits, it is controlling only on "the precise issues presented and necessarily decided." Bates v. Jones, 127 F.2d 839, 852 (9th Cir. 1997) (quoting

controlling and argued that the court should have adhered to it and summarily dismissed the appeal for want of a federal question.[43]

Judge Rymer, who also concurred in the decision, likewise suggested that the district court should not have heard this case, but her conclusion was based on the fact that the court was simply reviewing a decision of the California Supreme Court.[44] She pointed out that, under the doctrine established by the United States Supreme Court in *Rooker v. Fidelity Trust Co.*,[45] a state court's decision of a federal question is conclusive until it is reversed or modified by the United States Supreme Court. Furthermore, because the issues in *Eu* and *Bates* are identical, *res judicata* applied.[46] Additionally, she asserted that the State's interest is even stronger than Judge Thompson's opinion suggested because, in approving Proposition 140, the people

Mandel v. Bradley, 432 U.S. 173, 176 (1977)). He then concluded that, even if *Moore* addressed the precise issues involved in *Bates*, "extensive intervening doctrinal developments—including *Burdick v. Takushi*, 504 U.S. 428 (1992), *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983), and *U.S. Term Limits v. Thornton*, 514 U.S. 779 (1995)—strongly suggest[ed] that continued reliance on *Moore* [was] unwarranted." *Id.* Judge O'Scannlain, on the other hand, felt that these and other relevant cases decided by the Supreme Court in the years between *Moore* and *Bates* did not substantially modify *Moore*'s fundamental premise. *See Bates*, 131 F.3d at 849 (O'Scannlain, J., concurring).

43. *See Bates*, 131 F.3d at 849-50 (O'Scannlain, J., concurring). He quickly dismissed *Thornton* as irrelevant because that case dealt with state-imposed limits on federal officeholders, and the decision was based on the Qualifications Clause of the United States Constitution. *See id.* at 849 (O'Scannlain, J., concurring); *see also* U.S. CONST. art. I, § 5, cl. 1 ("Each House shall be the Judge of the Elections, returns and Qualifications of its own Members . . . ."). In addition, he stated that term limits did not have a disparate impact on any group and were, therefore, distinct from the traditional ballot-access cases: those with restrictions based on wealth, and those imposing restrictions on small political parties or independent candidates. *See Bates*, 131 F.3d at 850 (O'Scannlain, J., concurring).

44. *See id.* at 855 (Rymer, J., concurring). Rymer noted that the federal district court's exercise of "appellate jurisdiction" in re-reviewing the constitutionality of Proposition 140 put the court on a collision course with the California Supreme Court. *Id.* at 857 (Rymer, J., concurring). Judge Schroeder made a similar argument in her opinion, in which she dissented from the majority's decision to reach the merits of the constitutional question. *See id.* at 860 (Schroeder, J., dissenting).

45. 263 U.S. 413 (1923).

46. *See Bates*, 131 F.3d at 857 (Rymer, J., concurring). Rymer argued that because the issues are identical, new voters and legislators do not suffer any injustice from the term limits, as it affects them in the same way it affected the plaintiffs in *Eu*. Thus, there are no circumstances necessitating the application of the public-interest exception to *res judicata*. *See id.* at 857-58 (Rymer, J., concurring). Judge Hawkins, in his concurrence, disagreed, arguing that the parties are not in complete privity because Bates and his constituents are asserting their own right to run for an additional term. *See id.* at 859-60 (Hawkins, J., concurring).

had exercised their constitutional right to determine the structure of their state government.[47]

Judge Fletcher[48] dissented in part from the en banc majority opinion and agreed with the earlier panel decision that Proposition 140 failed to provide adequate notice of the severity of the term limits to the California voters. He seized upon the precise wording contained in the initiative, arguing that the language actually supported the view that Proposition 140 imposed only consecutive term limits.[49] Fletcher noted that Proposition 140 states that "*[n]o Senator* may serve more than two terms," and "*[n]o member* of the Assembly may serve more than two terms."[50] In contrast, the Twenty-second Amendment to the United States Constitution, which clearly imposes a lifetime limit, provides that "*[n]o person* shall be elected to the office of the President more than twice . . . ."[51]

Turning to the constitutional question,[52] Judge Fletcher felt that the rights in question were fundamental[53] and therefore required strict scrutiny of the term limits, instead of the lesser standard used by the majority. Drawing on the Supreme Court's recent opinion in *United States Term Limits, Inc. v. Thornton*,[54] he asserted that both state and federal term limits disadvantage a particular class of candidates, and, therefore, the deferential

47. *See id.* at 857 (Rymer, J., concurring). The authority of the people of California to define the terms of California state offices is derived from Article IV, Section 4 of the California Constitution. Because the term limits do not violate any other provision of the state Constitution, they are constitutional. *See id.* at 859 (Rymer, J., concurring).

48. Judge Pregerson joined in Judge Fletcher's dissent, in which Fletcher also concurred with the majority holding that *res judicata* does not bar the present action from federal courts. *See id.* at 861-65 (Fletcher, J., concurring in part and dissenting in part).

49. *See id.* at 866 (Fletcher, J., concurring in part and dissenting in part).

50. *Id.* (Fletcher, J., concurring in part and dissenting in part) (quoting California Proposition 140) (emphasis added).

51. U.S. CONST. amend. XXII (emphasis added).

52. Fletcher dissented only from the majority's holding on the notice issue, but he also discussed at length his concern regarding the majority's level of inquiry into the constitutional questions. *See Bates*, 131 F.3d at 868-74 (Fletcher, J., concurring in part and dissenting in part).

53. In making this determination, Judge Fletcher looked to the U.S. Supreme Court, which has stated that "'[t]he people are the best judges who ought to represent them,'" and that "'[t]o dictate and control them, to tell them whom they shall not elect, is to abridge their natural rights.'" *Id.* at 868 (Fletcher, J., concurring in part and dissenting in part) (quoting United States Term Limits, Inc. v. Thornton, 514 U.S. 779, 794-95 (1995) (holding that States may not impose qualifications for members of Congress in addition to those set forth by the Constitution)).

54. 514 U.S. 779 (1995).

review given by the majority was clearly unwarranted.[55] Judge Fletcher agreed with the district court's observation that Proposition 140 penalized voters and essentially "prevent[ed] [voters] from expressing their political preference for candidates with legislative experience."[56] So, although term limits may seem neutral, they disadvantaged those voters who value legislative experience.[57] On the other hand, he acknowledged the strong state interest in allowing States to experiment with such things as term limits under the principle of federalism. Fletcher then analyzed the Proposition to determine if the drafters "narrowly tailored" the term limits to further those interests.[58] Ultimately, he concluded that the state interests were sufficient to validate the term limits, but cautioned against foreclosing the possibility of revisiting the issue in the future if circumstances warrant it.[59]

At first glance, the en banc majority *Bates* decision appears to strongly reaffirm the importance of adhering to the idea of federalism in our government. A closer look, however, reveals that it was unnecessary to consider all of the issues raised by the parties. In fact, by doing so, the majority actually failed to give adequate respect to the principle of federalism and the separation between the federal and state systems. Only Judge Rymer's concurrence acknowledged that the *Rooker-Feldman* doctrine controls this case. The California Supreme Court decided the issues, and, because federal courts have no appellate jurisdiction over state court decisions, the Ninth Circuit had no authority to review the case.

The *Rooker-Feldman* doctrine stems from the Supreme Court decision in *Rooker v. Fidelity Trust Co.*[60] In *Rooker*, the Court noted

55. *See Bates*, 131 F.3d at 870 (Fletcher, J., concurring in part and dissenting in part); *see also Thornton*, 514 U.S. at 835.

56. *Id.* at 871 (Fletcher, J., concurring in part and dissenting in part) (quoting Bates v. Jones, 958 F. Supp. 1446, 1463 (N.D. Cal. 1997)).

57. *See id.* at 870 (Fletcher, J., concurring in part and dissenting in part).

58. *Id.* at 873 (Fletcher, J., concurring in part and dissenting in part).

59. *See id.* (Fletcher, J., concurring in part and dissenting in part).

60. 263 U.S. 413 (1923). In *Rooker*, the reason asserted by the plaintiffs for resorting to the federal district court was that the decision of the Indiana Supreme Court was in contravention of the Contract Clause of the Constitution of the United States. *See id.* at 414-15; *see also* U.S. CONST. art I, § 10, Cl. 1 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . ."). The district court properly dismissed the case for lack of jurisdiction, and the petitioners then appealed directly to the United States Supreme Court.

that a decision by a state court having jurisdiction over the subject matter and parties was conclusive, and that no federal court other than the Supreme Court could exercise appellate review of that case.[61] The other part of the doctrine came years later in *District of Columbia Court of Appeals v. Feldman.*[62] The Court restated the rule that federal courts cannot exercise appellate jurisdiction, and further held that such a limitation on federal jurisdiction applies to any constitutional claims inextricably intertwined with the issues raised in a proceeding before a state court.[63]

The doctrinal development in *Rooker* and *Feldman* stemmed from the Court's interpretation of the statutory scheme relating to the jurisdiction of federal and state courts according to Congressional intent. Section 1257 of Title 28 of the United States Code provides that "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court...."[64] Although this language clearly gives the Supreme Court appellate jurisdiction over state court decisions, it is silent as to the authority of lower federal courts. Congressional grants of power to the federal district courts are found in sections 1331 and 1343. Section 1331 provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."[65] Finally, section 1343 provides that "[t]he district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person...."[66] The *Rooker-Feldman* doctrine captures the Supreme Court's interpretation of the relation between these provisions: district courts have no authority to review decisions of state courts, as that power is reserved solely for the Supreme Court.[67]

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61. *See Rooker,* 263 U.S. at 415-16.

62. 460 U.S. 462 (1983). The Supreme Court held that the district court did not have jurisdiction to review the District of Columbia Court of Appeals's denials of requests for waivers of a bar admission rule requiring applicants to have graduated from an approved law school. *See id.* at 463.

63. *See id.* at 486-87.

64. 28 U.S.C.A. § 1257 (1994 and West Supp. 1998).

65. 28 U.S.C.A. § 1331 (1994 and West Supp. 1998).

66. 28 U.S.C.A. § 1343 (1994 and West Supp. 1998).

67. "The *Rooker-Feldman* doctrine interprets 28 U.S.C. section 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 this Court." ASARCO, Inc. v. Kadish, 490

Judge Fletcher in dissent argued, however, that *Rooker-Feldman* did not apply in *Bates* because Bates and his constituents were not parties to the *Eu* proceedings in the California state courts, and, thus, the case was not an appeal of the *Eu* case.[68] Judge Fletcher's analysis of the doctrine is incorrect because the *Rooker-Feldman* doctrine operates in basically the same way as does *res judicata*. *Res judicata* applies only when a final judgment is rendered, and claims barred by *res judicata* cannot be relitigated as original actions simply based upon an alternative legal theory. Thus, where *res judicata* bars an action involving review from state to a lower federal court, *Rooker-Feldman* would likewise bar the action.[69]

The principles of *Rooker-Feldman* (or *res judicata*) bar any claim that is founded on the same claim as in the state proceeding.[70] Judge Fletcher recognized this in his doctrinal analysis, but his conclusions that the parties in *Bates* were not parties in the *Eu* case and that the parties in the *Eu* case did not represent Bates and his constituents are flawed. As Professor Williamson Chang has noted, the relevant inquiry in determining whether the action is actually an appeal turns on the nature of the issues raised in the federal court.[71] Furthermore, Professor Chang has cautioned that courts must be careful to discern whether a claim is actually an appeal that has been disguised through a manipulation of the parties or pleadings.[72] Assemblyman Bates, whose career as a California state legislator was soon coming to an end due to Proposition 140, was looking for any way to

U.S. 605, 622 (1989) (holding that a state supreme court decision that remanded a case to the trial court to enter a judgment declaring the statute unconstitutional was a final judgment and thus the United States Supreme Court did have jurisdiction over the case).

68. "Rooker-Feldman does not bar individual constitutional claims by persons not parties to earlier state court litigation." *Bates*, 131 F.3d at 864 (Fletcher, J., dissenting) (quoting Valenti v. Mitchell, 962 F.2d 288, 298 (3d. Cir. 1992)).

69. *See* Benjamin Smith, Texaco, Inc. v. Pennzoil Co.: *Beyond a Crude Analysis of the* Rooker-Feldman *Doctrine's Preclusion of Federal Jurisdiction*, 41 U. MIAMI L. REV. 627, 654 (1987); *see also* Williamson B.C. Chang, *Rediscovering the* Rooker *Doctrine: Section 1983, Res Judicata and the Federal Courts*, 31 HASTINGS L.J. 1337, 1341 (1980). Professor Chang agreed that the scope of claim preclusion is identical under the two doctrines, and so any claim that is barred by *res judicata* is also barred under *Rooker-Feldman*. Because of this similarity, he noted that they can be thought of as two segments of one general doctrine, with *Rooker-Feldman* as a jurisdictional bar to relitigation and *res judicata* as a waivable affirmative defense. *See* Chang, *supra*, at 1355.

70. *See* Chang, *supra* note 69, at 1354.

71. *See id.* at 1354-55.

72. *See id.* at 1344.

prevent that from happening.[73] The claim that he and his constituents presented was therefore nothing more than a disguised appeal from the decision in *Eu.*

Though they did not name Bates and his constituents as parties to the *Eu* proceedings, the parties in the *Eu* proceedings adequately represented them. Thus, a determination that the *Rooker-Feldman* doctrine operates as a jurisdictional bar would not deprive Bates and his constituents of due process under the Fourteenth Amendment. As the Supreme Court has explained, "[the] Court is justified in saying that there has been a failure of due process only in those cases where it cannot be said that the procedure adopted, fairly insures the protection of the interests of absent parties who are to be bound by it."[74]

While due process operates to produce fairness within the judicial system, *res judicata* and *Rooker-Feldman* ensure that the level of protection provided allows the system to operate efficiently. The purpose behind the doctrines is two-fold: (1) to protect litigants from the burden of relitigating an identical issue with the same party or his privy; and (2) to promote judicial economy by preventing needless litigation. Both of these concerns are implicated in this case. Failure to invoke the *Rooker-Feldman* doctrine in this instance opens the door for a never-ending stream of legislators filing claims challenging the validity of Proposition 140, which could result in an enormous waste of judicial resources. Furthermore, this encourages legislators to spend more time on personal issues instead of spending time working for their constituents, and frustrates a major purpose behind term limits, which is to encourage legislators to focus their energy on representing the people instead of focusing on re-election. This is exactly the type of scenario that the *Rooker-Feldman* doctrine is designed to prevent.

The application of the *Rooker-Feldman* doctrine is additionally important in this case because the situation brings to light the reason why the doctrine does not completely fall under *res judicata.* Many cases and commentators have asserted that the

73. He raised the same claims that the parties had litigated in *Eu,* and his lawyer even represented the parties in *Eu. See Bates,* 131 F.3d at 857 (Rymer, J., concurring).

74. Hansberry v. Lee, 311 U.S. 32, 42 (1940) (holding that it is an unlawful denial of due process of law guaranteed by the Fourteenth Amendment to bind parties by a judgment rendered in an earlier litigation to which they were not parties).

two doctrines are completely interchangeable.[75] As one commentator explained, "[t]he final question, 'jurisdiction or *res judicata*?,' is essentially an academic one, although staunch advocates of the *Rooker-Feldman* doctrine would argue that the sacred principles of comity, federalism and our 'dual system of government' are possibly at stake."[76] Indeed, the *Rooker-Feldman* doctrine is an essential safeguard of the "sacred principles" of our system of government, and that is why it must be looked upon as something more than just a synonym of *res judicata*.

Bates is a perfect example of the importance of the *Rooker-Feldman* doctrine in preserving federalism. Although *res judicata* may be limited by things such as the public-interest exception, as it is in California,[77] the concerns surrounding the creation of such exceptions simply do not exist in the context of *Rooker-Feldman*. Even more than just serving to prevent parties from unnecessary litigation, the *Rooker-Feldman* doctrine operates to protect the idea of federalism, a theme central to our governmental framework. Allowing the federal courts to apply an exception to the *Rooker-Feldman* doctrine would directly undermine state sovereignty by giving federal courts too much discretion in deciding whether to review state court decisions. Moreover, relaxing the original jurisdiction limit on federal courts would weaken the decisionmaking process of the judicial system by allowing federal courts essentially to attack state courts' judgments.[78]

Indeed, the fact that *Rooker-Feldman* is a jurisdictional bar to relitigation demonstrates the necessity of the doctrine as a protector of federalism, and not simply a waivable defense like *res judicata*. In *Bates*, the majority failed to consider the

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75. *See* Gary Thompson, *The* Rooker-Feldman *Doctrine and the Subject Matter Jurisdiction of Federal District Courts*, 42 RUTGERS L. REV. 859 (1990). Thompson argues that the *Rooker-Feldman* doctrine is completely unnecessary, mainly because it substantially overlaps with other doctrines controlling movement from state to federal court, such as the principles of preclusion and doctrines of abstention. In addition, he asserts that the benefits to federal courts of having the doctrine are not substantial enough to necessitate having it as an independent doctrine. *See id.* at 918-19; *see also*, Smith, *supra* note 69, at 654-55. Although generally agreeing that the *Rooker-Feldman* doctrine is equivalent to *res judicata*, Smith points out that if the doctrine is interpreted to preclude federal consideration of certain non-inextricably intertwined claims, then it actually goes beyond the scope of *res judicata*, which only prevents litigation of issues within a given series of connected transactions. *See id.* at 655.

76. Thompson, *supra* note 75, at 911.

77. *See Bates*, 131 F.3d at 845.

78. *See* Chang, *supra* note 69, at 1348.

differences between *res judicata* and *Rooker-Feldman,* and, in doing so, improperly extended California's public-interest exception to cover *Rooker-Feldman* in addition to *res judicata.*

The en banc decision in *Bates* completely failed to acknowledge the importance of federalism and our dual system of government protected by the *Rooker-Feldman* doctrine, yet was able to avoid major controversy because its decision coincided with the one rendered by the California Supreme Court in *Eu.* The interests of Bates and his constituents were identical to those of the legislators and voters who challenged Proposition 140 in the state courts in *Eu.* It seems unreasonable not to conclude that the parties in *Eu* adequately represented Bates and his constituents, and that the federal court in *Bates* inappropriately exercised appellate review of the *Eu* decision. Furthermore, the principles behind upholding state sovereignty require courts to adhere to the *Rooker-Feldman* doctrine. The doctrine's strength comes primarily from its position as a jurisdictional bar to relitigation, and allowing the application of any exceptions severely restricts the doctrine's effectiveness. Although a public-interest exception may be justified when considering the application of *res judicata,* courts must not apply such an exception to the *Rooker-Feldman* doctrine because of the fundamental principles it protects.

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