



**Handling Fair Housing Act
Disability Claims
in the Context of an Imminent or
Pending Eviction Action**

FACT SHEET

Prepared by the
Judge David L. Bazelon Center for Mental Health Law

1101 15th Street, NW, Suite 1212

Washington, DC 20005

202-467-5730

202-223-0409

Website: www.bazelon.org

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Where to file a Fair Housing Act claim when eviction proceedings are pending in state court: A lawyer's dilemma

Ralph, who has a mental illness, requires the assistance of a support animal to ameliorate the effects of his disability. Unfortunately, his landlord has rejected Ralph's requests for a reasonable accommodation to keep his animal and has issued him an eviction notice for violating the apartment complex's "no pets" policy. Because Ralph has refused to vacate his apartment, the landlord has started eviction proceedings against him in state court. Ralph visits Lily, a legal services attorney, for her assistance with this case. Lily realizes Ralph has a claim¹ under the Fair Housing Act (FHA), 42 U.S.C. § 3601, et seq., which gives her several options to consider in her representation of Ralph's eviction case.

First, Lily may litigate this case in state court as defenses and counterclaims to the eviction proceeding. A minority of state courts require a defendant to present his defenses in that forum. Unfortunately, state courts are sometimes inhospitable forums for FHA claims because the judges lack expertise in civil rights law and view these claims as complicated. Accordingly, Lily may choose a more favorable forum.

Second, Lily may file an affirmative case with the landlord's case in a court of general jurisdiction, where Lily can ask that the landlord's claims and Ralph's claims be joined. Although no jury and no discovery would be allowed in such a court, broader equitable relief may be attainable.

Third, Lily may choose to file an administrative complaint with the United States Department of Housing and Urban Development (HUD), which is responsible for enforcing the FHA.² While having HUD investigate may give Ralph some leverage in negotiating with the landlord, HUD cannot tell the landlord to stop the eviction. Filing a HUD complaint is not required before pursuing an action in federal court, but it will not change or terminate Ralph's eviction case.

Last, Lily may choose to file a lawsuit in federal court alleging discrimination under the FHA.³ This lawsuit must be filed within two years of the date the discrimination occurred.⁴ Federal court is probably the ideal forum in which to

litigate Ralph's complaint because federal judges are familiar with FHA claims. However, pursuing a claim in federal court does not mean a landlord will stop an eviction action that is proceeding in state court.

If an eviction proceeding is occurring in state court, Lily may encounter difficulties in presenting Ralph's FHA claims to a federal court because of abstention doctrines and the Anti-Injunction Act. The doctrine of abstention bars federal courts from deciding matters where the relief sought would require the court to determine that a state court judgment was incorrect or to take action that would render the state court action ineffectual.

Relevant law

When judicial proceedings concerning the same parties and arising from the same operative nucleus of fact but asserting different claims are filed in federal and state court, jurisdictional problems may arise. If the parties do not raise the question of whether a court has subject matter jurisdiction over the claims before it, a court can raise this question *sua sponte*.⁵ Furthermore, a court may address jurisdictional questions for the first time on appeal.⁶ A plaintiff should therefore be ready to assert the court's jurisdiction over its claims and respond to the court's concerns about abstention doctrines. The Rooker-Feldman doctrine,⁷ the *Younger* abstention doctrine⁸ and the Anti-Injunction Act⁹ may all affect whether a federal court will hear a plaintiff's claims.

Rooker-Feldman doctrine

If an eviction proceeding has already been litigated in state court, a party might raise the Rooker-Feldman doctrine in federal court. Under the Rooker-Feldman doctrine, federal courts generally lack jurisdiction over challenges to state court judgments or over general constitutional claims that are "inextricably intertwined"¹⁰ with claims already adjudicated in state court.¹¹ The doctrine is based on the rule that within the federal system only the United States Supreme Court has the authority to review a state court judgment.¹² The doctrine applies if granting the plaintiff the requested relief would require a federal court to determine the state court judgment was incorrect or to take action that would cause the state court decision to be ineffectual.¹³ The Rooker-Feldman doctrine thus precludes plaintiffs from bringing straightforward appeals and indirect challenges that might undermine state court judgments.

Federal courts are likely to apply the Rooker-Feldman doctrine if they perceive that a plaintiff is attempting to reverse her eviction proceedings by masking her suit as a civil rights claim and claiming money damages.¹⁴ Accordingly, if a party is going through an eviction proceeding in state court, she should bring in all of

her counterclaims inextricably intertwined to the claim or a federal court will refuse to hear them.¹⁵

Some courts hold that the Rooker-Feldman doctrine applies only to final judgments; however, others hold that the doctrine also applies to interlocutory orders.¹⁶ Courts have ruled that the Rooker-Feldman doctrine even applies when a federal court is asked to review the actions of a state court that a party alleges were unconstitutional.¹⁷ The Third Circuit has developed an exception to this rule and allows a plaintiff in federal actions to challenge a state court action he alleges was unconstitutional if the plaintiff was not a party in the state court proceeding.¹⁸

Several exceptions to the Rooker-Feldman doctrine have developed. One federal court held that the Rooker-Feldman doctrine was not implicated where a plaintiff had already presented her discrimination claims in an unsuccessful motion for summary judgment in state court.¹⁹ This court determined there had been not state court judgment on the discrimination issue.

The Rooker-Feldman doctrine does not apply to the court's consideration of a "federal claim alleging a prior injury that a state court failed to remedy."²⁰ However, the doctrine does apply to a federal claim alleging injury from a state court decision.²¹ The doctrine does not apply if the plaintiff presents a claim that is independent of a state court's decision²² or if the plaintiff did not have a reasonable opportunity to present her federal claim in state court.²³ Furthermore, in some jurisdictions if a state proceeding alleging a violation of a plaintiff's constitutional rights occurs in a court of limited jurisdiction that does not have the power to award money damages, the Rooker-Feldman doctrine does not bar a federal court from hearing a claim seeking monetary damages for violation of those rights.²⁴

Federal courts may make an exception to the Rooker-Feldman doctrine if a party learns that she was defrauded by the opposing party and such fraud prevented her from raising her claims.²⁵ Other courts, however, have held that a showing of fraud is insufficient to defeat the doctrine and have required a showing of some factor independent of the opposing party's actions that prevented her from raising her federal claims.²⁶

If a federal court accepts jurisdiction, issue-preclusion doctrines of *res judicata* and collateral estoppel create additional barriers for a plaintiff to overcome. *Res judicata* is an affirmative defense and mandates that the federal court grant a state court decision the same preclusive effect it would have in state court.²⁷ Therefore the federal court may have to apply state law to determine whether *res judicata* bars the plaintiff's claims.²⁸ Collateral estoppel prevents a party from re-litigating an issue that was decided in a previous proceeding if that party had an opportunity to litigate the issue in the first proceeding. Collateral estoppel may be applied when the two proceedings involve different causes of action. To argue that

collateral estoppel does not apply to an issue, a plaintiff might argue that *this* issue was not *actually litigated* or was not *necessarily decided* in court.

Younger Abstention Doctrine

If an eviction proceeding is being litigated in state court when the federal claim is filed, a party might raise the *Younger* abstention doctrine. Under this doctrine, federal courts should abstain in favor of pending state judicial proceedings, absent extraordinary circumstances. Abstention is proper if: (1) the complaint constitutes the basis of an ongoing²⁹ state judicial³⁰ proceeding, (2) the proceeding implicates important state interests, and (3) an adequate opportunity exists in the state proceeding to raise constitutional challenges.³¹ If all three prongs are satisfied, a federal court should abstain unless it detects “bad faith, harassment, or some extraordinary circumstance that would make abstention inappropriate.”³²

Under this federalism doctrine, the federal government tries to protect federal rights and interests in a manner that does not improperly interfere with legitimate activities of the state. Federal courts may abstain to allow state courts to decide underlying issues of state statutory law, particularly if the state court interpretation may foreclose the need to review some of the plaintiff’s federal claims.³³ Although *Younger* may prohibit courts from ordering declaratory or injunctive relief that would interfere with a state proceeding, a court may still have jurisdiction over a damages claim, unless the damages claim would require a declaration that a state statute is unconstitutional.³⁴

Under the second prong of *Younger*, a federal court will abstain if the proceeding concerns important state interests. Recently, some federal courts have held that *Younger* abstention does not apply when a state court proceeding concerns an eviction because “important state interests” are not at stake.³⁵ In *Brooklyn Institute of Arts & Sciences v. City of New York*, 64 F. Supp. 2d 184, 194 (E.D.N.Y. 1999), the court stated that an “ejectment action” is merely “a landlord-tenant action that is routinely available in disputes between private parties,” does not “uniquely [further] the state court’s ability to perform their judicial functions,” and “does not involve any important state interests.”³⁶ Other courts have disagreed and found evictions to be complicated procedures heavily regulated by state law where the state has an interest in the defenses raised.³⁷

Second Circuit courts, in particular, invoke the *Younger* abstention doctrine as an exception rather than a rule. In the Second Circuit, courts determine whether “important state interests” are implicated by examining whether “the state action concerns the central sovereign functions of state government.”³⁸ The court examines the significance of the “generic proceedings to the State” rather than the state’s “interest in the outcome of the particular case.”³⁹

Under the third prong of *Younger*, a federal court will abstain if an adequate opportunity exists in the state proceeding to raise constitutional challenges. A court will look at not only whether the plaintiff did, in fact, raise the defense, but whether the state law allowed the plaintiff to raise the defense. In *Newell v. Rolling Hills*

Apartments, 2001 U.S. Dist. LEXIS 3598 (N.D. Iowa 2001), a federal court stayed an action before it, seeking injunctive relief to stop a landlord from evicting a tenant. The federal court rejected the tenant’s argument that she could not raise a discrimination defense in state court and deferred to the state court to determine whether Iowa law allowed such a defense to a forcible entry and detainer action.⁴⁰

Last, the court will look for extraordinary circumstances to determine whether or not it should abstain. Such circumstances may include situations in which the court is “incompetent, biased, or otherwise incapable of fairly interpreting the statute in question.”⁴¹ A person pursuing a disability discrimination claim may be able to document that the state court is not “disability friendly” and argue for the federal court to take jurisdiction of the case.

Anti-Injunction Act

When a party initiates a case under the FHA in federal court, she might ask the federal court to stay proceedings in the state court with an injunction. The power of the federal court to enjoin such proceedings may be limited by the Anti-Injunction Act, 28 U.S.C. § 2283 (1990), which holds that a federal court “may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” The Anti-Injunction Act does not prevent the court from issuing injunctions against the institution of state court proceedings but only bars injunctions against ongoing proceedings.⁴² Although federal courts may not be able to enjoin state court proceedings, some may be able to enjoin the parties themselves from proceeding with the eviction. A Fifth Circuit decision, however, prohibits courts from enjoining both parties and state courts under the Anti-Injunction Act.⁴³

The leading case describing when an injunction is “necessary in aid of [a court’s] jurisdiction” is *Atlantic Coast Line Rail Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970). Under *Atlantic Coast Line*, “federal injunctive relief may be required to prevent a state court from so interfering with a federal court’s consideration or disposition of a case as to seriously impair the federal court’s flexibility and authority to decide that case.”⁴⁴ Applying *Atlantic Coast Line*’s reasoning, a federal court issued an injunction “in aid of its jurisdiction” in an eviction case where the tenants would not have been allowed to bring their defenses, which were at the heart of the case, in state court.⁴⁵ Had the federal court not issued an injunction in this case, the court would have been bound by the state court’s decision and would not have been able to grant relief to the tenant without further upsetting the state court’s ruling and raising greater federalism concerns.⁴⁶

Basic advice to navigate around abstention doctrines and the Anti-Injunction Act

1. Plaintiffs should try to incorporate their constitutional claims, such as equal protection, due process and the FHA, into their defense at the state level in case a federal court might decide they were “inextricably intertwined” with the state court proceeding.
2. Plaintiffs should try to remove state claims to federal court before the state court decides on the eviction proceeding. However, if a district court determines the claims were improperly removed for lack of subject matter jurisdiction under 28 U.S.C. § 1447 (c), that decision would not be reviewable on appeal.⁴⁷
3. A party asserting collateral estoppel as a defense holds the burden of showing that the identical issue was previously decided while the other party holds the burden of showing that it lacked a full and fair opportunity to litigate the issue.⁴⁸ A party may argue that the issue was not litigated at the state level if the state dismissed the suit due to the statute of limitations.
4. Even if there is no outright fraud at the state level, *Long v. Shorebank Dev. Corp.*, 182 F.3d 548 (7th Cir. 1999), could be used to argue that a tenant-plaintiff cannot be prevented from fully litigating her claim. Thus, external factors that may have affected the state court’s holding should be considered at the federal level.
5. Plaintiffs should look into bringing potential claims under the Fair Debt Collection Practices Act (“FDCPA”), as this claim cannot be brought as a defense in many state courts.
6. The plaintiff must characterize the injury as not having an opportunity to litigate the claim rather than the unfavorable outcome of the state proceeding.
7. Plaintiffs should see whether the state court allows discrimination claims to be brought when defending against eviction claims. If the state court does not allow such a defense, then the plaintiff would have standing for the claim in federal court. If not, then the *Younger* abstention doctrine will apply.
8. If a plaintiff is filing her action in federal court but state eviction proceedings have not commenced, she should request a stay of potential state court eviction proceedings in her complaint to avoid the restrictions of the Anti-Injunction Act.⁴⁹

For more information: E-mail: mallen@relmanlaw.com

Website: www.bazelon.org.

Endnotes

¹ 42 U.S.C. § 3604 (f)(3)(B)

² 42 U.S.C. § 3612

³ 42 U.S.C. § 3613 (a)

⁴ *Id.*

⁵ See *Marbury v. Madison*, 5 U.S. 137 (1803).

⁶ *Doctor's Assocs., Inc. v. Distajo*, 107 F.3d 126, 137 (2d Cir. 1997).

⁷ This doctrine developed from two Supreme Court cases, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

⁸ This doctrine was first articulated in *Younger v. Harris*, 401 U.S. 37 (1971).

⁹ Anti-Injunction Act, 28 U.S.C. § 2283 (1990).

¹⁰ See also *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J. concurring) (A federal claim is inextricably intertwined with a state court judgment “if the federal claim succeeds only to the extent that the state court wrongly decided the issue before it.”); *Karamoko v. New York City Hous. Auth.*, 170 F. Supp. 2d 372 (S.D.N.Y. 2001), citing *Moccio v. New York State Office of Court Admin.*, 95 F.3d 195, 199-200 (2d Cir. 1996) (interpreting a claim as “inextricably intertwined” if a plaintiff had the opportunity to raise it in state court and it would be barred under issue preclusion).

¹¹ *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983) (stating U.S. Supreme Court has sole authority to review state court judgments).

¹² 28 U.S.C. § 1257.

¹³ *FOCUS v. Allegheny County Court of Common Pleas*, 75 F.3d 834, 840 (3d Cir. 1992).

¹⁴ See *Chambers v. The Habitat Co.*, 2003 U.S. App. LEXIS 11569, at *7 (7th Cir. 2003).

¹⁵ *Id.*, at *5 (refusing to hear § 1983 action challenging violation of due process rights for omitting language from lease required by HUD regulations because that claim was germane to dispute over possession and could have been raised in state court.)

¹⁶ *Doctor's Assocs., Inc. v. Distajo*, 107 F.3d 126, 137-38 (2d Cir. 1997), *Plymouth & Brockton Street Railway Co. v. Leyland*, 941 F. Supp. 14, 16 (D. Mass. 1996). See also *Dubinka v. Judges of Superior Court*, 23 F.3d 218, 221 (9th Cir. 1994); *Port Auth. Police Benev. Ass'n, Inc. v. Port Auth. of N.Y. and N.J. Police Dep't*, 973 F.2d 169, 177 (3d Cir. 1992). But see *Matter of Meyerland Co.*, 960 F.2d 512, 516 (5th Cir. 1992).

¹⁷ See *Burch v. Billingtier*, 2003 U.S. Dist. LEXIS 4975 (E.D.Pa. 2003) (holding court could not review actions of state court judges that allegedly violated plaintiff's due process rights).

¹⁸ *FOCUS v. Allegheny County Court of Common Pleas*, 75 F.3d 834, 840-41 (3d Cir. 1996).

¹⁹ *Andujar v Hewitt*, 2002 WL 1792065, at *6 (S.D.N.Y. 2002).

²⁰ *Long v. Shorebank Dev. Corp.*, 182 F.3d 548 (7th Cir. 1999) (quoting *Centres, Inc. v. Town of Brookfield*, 148 F.3d 699, 702 (7th Cir. 1998))

²¹ See, e.g., *Thomas v. 5445 Edgewater Plaza Condominium Ass'n*, 2000 U.S. App. LEXIS 4126, at *4 (7th Cir. 2000) (barring § 1983 due process claim regarding improper notice because the injury was caused by state court's decision on eviction matter).

²² *Long v. Shorebank Dev. Corp.* 182 F.3d at 548. (holding that claims under Fair Debt Collection Practices Act but not due process claims were independent of state court judgment).

²³ *Wood v. Orange County*, 715 F.2d 1543 (11th Cir. 1983) (Rooker-Feldman does not apply to claims that state law does not allow a defendant to raise, even if the claims touch upon the state court claim).

²⁴ *Karamoko v. New York City Hous. Auth.*, 170 F. Supp. 2d 372, 377 (S.D.N.Y. 2001).

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- ²⁵ *Long v. Shorebank Dev. Corp.*, 182 F.3d 548 (7th Cir. 1999) (reversing district court’s judgment dismissing claims under Rooker-Feldman doctrine. Rooker-Feldman doctrine did not preclude plaintiff’s federal claim because she could not have brought fraud as a defense in state court).
- ²⁶ *Kropelnicki v. Siegel*, 290 F. 3d 118 (2d Cir. 2002) (such factors may include state court action or state court procedures that have barred litigants from presenting claims).
- ²⁷ Full Faith and Credit Statute, 28 U.S.C. § 1738.
- ²⁸ See *Karamoko v. New York City Hous. Auth.*, 170 F. Supp. 2d 372 (S.D.N.Y. 2001) (applying New York state law to determine that claim barred since dismissal on grounds of statute of limitations operates as dismissal on merits for res judicata).
- ²⁹ See, e.g., *New Orleans Pub. Serv., Inc. v. New Orleans*, 491 U.S. 350, 358 (1989) (finding that a state proceeding is ongoing if it is pending “at the time the federal court enters its order regarding abstention.”) If a state court proceeding has terminated, it is not considered to be ongoing. Thus, the Younger abstention doctrine would not apply but the Rooker-Feldman doctrine might be applicable. If state judicial proceeding has been deferred pending entry of the federal court’s decision on abstention, the state proceeding is considered to be ongoing. See *Harmon v. City of Kansas City, Mo.*, 197 F.3d 321, 325 (8th Cir. 1999); *Newell v. Rolling Hills Apartments*, 134 F. Supp. 2d 1026 (N.D. Iowa 2001).
- ³⁰ The Younger doctrine has been extended to preclude federal courts from interfering in pending state administrative proceedings which are judicial in nature. See *Ohio Civil Rights Comm’n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 627 (1986); *Middlesex County Ethics Comm’n*, 457 U.S. 423, 431-32 (1987).
- ³¹ *Younger v. Harris*, 401 U.S. 37 (1971).
- ³² *Middlesex County Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 435 (1982).
- ³³ *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 603 (1975).
- ³⁴ *Yamaha Motor Corp. v. Stroud*, 179 F.3d 598, 603 (8th Cir 1999).
- ³⁵ *Brooklyn Inst. of Arts & Sciences v. City of New York*, 64 F. Supp. 2d 184, 194 (E.D.N.Y. 1999); *Andujar v. Hewitt*, 2002 WL 1792065, at *6-7 (S.D.N.Y. 2002)
- ³⁶ *Id.*
- ³⁷ *Newell v. Rolling Hills Apartments*, 134 F. Supp. 2d 1026, 1035 (N.D. Iowa 2001).
- ³⁸ *Philip Morris, Inc. v. Blumenthal*, 123 F.3d 103, 106 (2d Cir. 1997).
- ³⁹ *Scheiner v. New York Health & Hospitals Corp.*, 1999 WL 771383, at *5 (S.D.N.Y. Sept. 28, 1999) (citing *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 365 (1989).
- ⁴⁰ *Newell v. Rolling Hills Apartments*, 134 F. Supp. 2d at 1038.
- ⁴¹ *Yamaha Motor Corp. v. Stroud*, 179 F.3d 598, 603 (8th Cir. 1999).
- ⁴² *Dombrowski v. Pfister*, 380 U.S. 479, 484 n.2 (1965).
- ⁴³ *Tampa Phosphate R. Co. v. Seaboard Coast Line R. Co.*, 418 F.2d 387 (5th Cir. 1969) (holding “§ 2283 applies irrespective of whether the federal injunction is directed to parties or to the state courts.”)
- ⁴⁴ *Atlantic Coast Line Rail Co. v. Brotherhood of Locomotive Engineers*, 298 U.S. 281, 295 (1970).
- ⁴⁵ See *Peggy Lattimore v. Northwest Cooperative Homes Ass’n.*, 1990 U.S. Dist. LEXIS 3285, at *14 (1990) (Plaintiff sued to reassert her rights to Section 8 assistance and succession rights to her father’s membership in a housing cooperative).
- ⁴⁶ *Id.*
- ⁴⁷ See *Hamilton v. Aetna Life & Casualty Co.*, 5 F.3d 642, 644 (2d Cir. 1993).
- ⁴⁸ *Karamoko v. New York City Hous. Auth.*, 170 F. Supp. 2d 372, 378 (S.D.N.Y. 2001).
- ⁴⁹ See *Peggy Lattimore v. Northwest Cooperative Homes Ass’n.*, 1990 U.S. Dist. LEXIS 3285 (1990).