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COLLATERAL ESTOPPEL AND THE SEVENTH AMENDMENT RIGHT TO A JURY TRIAL: WHEN A PARTY JOINS LEGAL AND EQUITABLE CLAIMS, CAN A COURT'S ERRONEOUS DISMISSAL OF THE LEGAL CLAIM DENY THE PARTY THE OPPORTUNITY FOR A JURY TRIAL?

The seventh amendment to the United States Constitution guarantees a litigant the right to a jury trial.¹ Because the English often deprived the American colonists of an opportunity for a jury trial, the framers of the Constitution placed great importance on the right to a jury trial.² In drafting

1. U.S. CONST. amend. VII. The seventh amendment to the United States Constitution, adopted by the colonial states in 1791, provides that "[i]n Suits at common law, . . . the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." *Id.*

Courts have interpreted the seventh amendment's guarantee of the right to a jury trial in suits at common law to mean any suits asserting legal rights, as opposed to equitable, maritime, and admiralty rights. *Parsons v. Bedford*, 28 U.S. (3 Pet.) 474, 474-79 (1830); see 5 J. MOORE, J. LUCAS & J. WICKER, *MOORE'S FEDERAL PRACTICE* ¶ 38.11(5)-(6), at 38-78 to 38-86 (2d. ed. 1987) (stating general rule that party may demand jury trial in actions historically at law). The seventh amendment right to a jury trial also extends to statutorily created legal rights. *Curtis v. Loether*, 415 U.S. 189, 195 (1974); see 5 J. MOORE, J. LUCAS & J. WICKER, *supra*, ¶ 38.12(1), at 38-118 (noting that Congress statutorily may enlarge right to jury trial). In extending the right to a jury trial to statutorily created legal rights, the United States Supreme Court in *Curtis v. Loether* reasoned that a claim based on the Civil Rights Act of 1968 was basically a tort claim for compensatory damages based on the defendant's breach of a statutorily created duty. *Curtis v. Loether*, 415 U.S. 189, 191 (1974); see Civil Rights Act of 1968, ch. 45, 82 Stat. 88 (codified as amended at 42 U.S.C. §§ 3601-3631 (1982 & Supp. III 1985)) (prohibiting discriminatory housing practices).

2. See *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 501 (1959) (reasoning that right to jury trial is of such historical importance that courts strictly should scrutinize any infringement of that right). In analyzing the right to a jury trial, Blackstone asserted that the concept of a civil jury trial was one of the most glorious concepts of the English law. 3 W. BLACKSTONE, *COMMENTARIES* *379, at 1340 (1898). Thomas Jefferson believed that the civil jury trial was a safeguard against governmental and judicial abuse of rights and, therefore, was the only right guaranteeing that the government would operate within the principles of the Constitution. 3 WRITINGS OF THOMAS JEFFERSON (Washington ed.) 71; see *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 343 (1979) & n.10 (Rehnquist, J., dissenting) (analyzing importance of jury trial to framers of United States Constitution). England's denial to the American colonists of the right to a jury trial was an important factor in the colonies' decision to enter the Revolutionary War. *Parklane*, 439 U.S. at 340 (Rehnquist, J., dissenting); see R. POUND, *THE DEVELOPMENT OF CONSTITUTIONAL GUARANTEES OF LIBERTY* 69-72 (1957) (explaining how England's expansion of admiralty jurisdiction deprived Americans of trials by jury); C. UBBELOHDE, *THE VICE-ADMIRALTY COURTS AND THE AMERICAN REVOLUTION* 208-11 (1960) (recounting that because vice-admiralty courts denied American colonists Englishmen's rights, American colonists objected to England's vice-admiralty courts). After America entered the Revolutionary War, each of the thirteen states restored the right to a civil jury trial. See, e.g., GA. CONST. art. VI, § 15, para. 1 (guaranteeing right to civil jury trial); MASS. CONST. art.

the seventh amendment, the framers of the Constitution sought to prevent corruption of and state encroachment upon the right to a jury trial in civil cases.³ Certain procedural devices and administrative procedures, however, infringe upon a litigant's right to a jury trial.⁴ These procedural devices

XV (giving citizens right to civil jury trial); VA. CONST. art. I § 11 (describing right to civil jury trial as sacred); see also Wolfram, *The Constitutional History of the Seventh Amendment*, 57 MINN. L. REV. 639, 655 (1973) (analyzing importance of jury trial to colonial America). The right to a civil jury trial was probably one of the only rights that the thirteen states universally restored. See *Parklane*, 439 U.S. at 341 (Rehnquist, J., dissenting) (reviewing American history of jury trial); see also L. LEVY, *LEGACY OF SUPPRESSION: FREEDOM OF SPEECH AND PRESS IN EARLY AMERICAN HISTORY* 281 (1960) (noting colonial states' belief that juries prevented governmental abuse). In *THE FEDERALIST*, Alexander Hamilton even contended that to protect the sanctity of the jury trial, juries, instead of judges, should review civil jury verdicts that parties appealed. *THE FEDERALIST* No. 81 and 83 (A. Hamilton); see *Galloway v. United States*, 319 U.S. 372, 397-98 (1943) (Black, J., dissenting) (analyzing Alexander Hamilton's view of civil jury trial). Alexander Hamilton, however, did not wish to include in the Constitution the right to a civil jury trial. *THE FEDERALIST* Nos. 81 and 83 (A. Hamilton). Alexander Hamilton reasoned that states should provide their own rules and limitations for the right to a civil jury trial, and that the right to a civil jury trial was not as critical as the right to a criminal jury trial. *Id.* At the ratification debates, however, the anti-Federalists staunchly supported the right to a civil jury trial. 1 ANNALS OF CONG. 435 (1789); see *Parklane*, 439 U.S. at 343 (Rehnquist, J., dissenting) (surveying framers' positions on placing right to civil jury trial in Constitution). Consequently, following Congress' proposal, the thirteen states ratified the seventh amendment. *Parklane*, 439 U.S. at 343 (Rehnquist, J., dissenting).

Courts and commentators, however, have questioned the value of juries in civil trials. See *Skidmore v. Baltimore & Ohio R.R.*, 167 F.2d 54, 62 (2d Cir. 1948) (stating that general verdict allows jurors to insert prejudice into verdict and ignore judge's instructions on law). Critics generally base attacks on the jury system on two points. *Id.* One, jury trials are time consuming and, therefore, congest the court system. See De Parcq, *Thoughts on the Civil Jury*, 3 TULSA L.J. 1, 1 (1966) (surveying strengths and weaknesses of civil juries). Two, because juries are unlearned in the law, juries' decision making is often irrational and not based on the law. *Id.*; see also J. FRANK, *COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN LEGAL JUSTICE* 108 (1950) (commentators conflict on desirability of juries in civil trials); James, *Right to a Jury Trial in Civil Actions*, 72 YALE L.J. 655, 664-69 (1963) (explaining problems that jury trials and jury waiver procedures cause in judicial systems merging law and equity); Redish, *Seventh Amendment Right To Jury Trial: A Study in the Irrationality of Rational Decision Making*, 70 NW. U.L. REV. 486, 502-08 (1975) (noting that juries are often incompetent, prejudiced, and sluggish). *But see* Kalven, *The Dignity of the Civil Jury*, 50 VA. L. REV. 1055, 1061, 1066 (1964) (discounting burden that juries place on judicial system and refuting claims that juries cannot handle intricate issues).

3. See 5 J. MOORE, J. LUCAS & J. WICKER, *supra* note 1, ¶ 38.02, 38-14 (characterizing jury as device to protect common man); Kalven, *supra* note 2, at 1069, 1075 (using study data to determine elements that juries add to legal system); Pope, *The Jury*, 39 TEX. L. REV. 426, 443 (1961) (portraying function of judge and jury as one of checks and balances on government).

4. See *Katchen v. Landy*, 382 U.S. 323, 339-40 (1966) (noting that summary jurisdiction proceedings allow court to determine legal issues before equitable issues, although court's determination could collaterally estop jury trial of legal claim); *Galloway v. United States*, 319 U.S. 372, 393 (1943) (recognizing that although plaintiff requested jury trial, directed verdict allows court to render verdict); *Baltimore & Carolina Line v. Redman*, 295 U.S. 654, 659-61 (1935) (determining that regardless of jury's verdict, judgment notwithstanding verdict enables court to render verdict); *Fidelity & Deposit Co. v. United States*, 187 U.S. 315, 321-22 (1902) (ascertaining that although defendant requested jury trial, court may grant summary judgment); *Walker v. New Mexico & S. Pac. R.R.*, 165 U.S. 593, 598 (1897) (holding that court may structure factual questions for jury and render legal judgment based on law).

and administrative procedures occasionally prevent juries from resolving disputes and, consequently, have infringed on the seventh amendment's guarantee of the right to a jury trial.⁵ Although conflicting with the seventh amendment's guarantee to a jury trial, the procedural devices and administrative procedures, nevertheless, have withstood constitutional challenges.⁶

5. See *supra* note 4 and accompanying text (discussing conflict between procedural devices and right to jury trial).

6. See *Katchen v. Landy*, 382 U.S. 323, 339-40 (1966) (holding that bankruptcy summary jurisdiction proceedings did not violate plaintiff's right to jury trial); *Galloway v. United States*, 319 U.S. 372, 393 (1943) (deciding that directed verdict did not encroach upon right to jury trial); *Baltimore & Carolina Line v. Redman*, 295 U.S. 654, 659-61 (1935) (determining that judgment notwithstanding verdict did not violate party's right to jury trial); *Fidelity & Deposit Co. v. United States*, 187 U.S. 315, 321-22 (1902) (ascertaining that summary judgment did not detract from party's right to jury trial); *Walker v. New Mexico & S. Pac. R.R.*, 165 U.S. 593, 598 (1897) (holding that special verdict did not violate defendant's right to jury trial).

In *Katchen v. Landy* the United States Supreme Court considered whether the trial court's consideration of equitable claims before legal claims in the summary jurisdiction proceedings of a bankruptcy action violated the plaintiff's right to a jury trial. *Katchen*, 382 U.S. at 328-29. A summary jurisdiction proceeding is a provision in the Bankruptcy Act that allows a court to dismiss claims without adhering to all of the procedures and requirements of a full trial. See 11 U.S.C. § 502(j) (1982) (granting court power to allow or disallow claims according to equities of case). The Supreme Court held that summary jurisdiction procedures did not violate the right to a jury trial. *Katchen*, 382 U.S. at 339-40. In *Katchen* the Supreme Court recognized that in rare instances, a court may determine equitable issues before legal claims, even when a court's determination of the equitable claims could collaterally estop the plaintiff from trying his legal claim. *Id.* The *Katchen* Court reasoned that in enacting the summary jurisdiction procedure, Congress intended to promote justice by prompt settlement of claims. *Id.* at 328-29. The Supreme Court concluded, therefore, that the trial court constitutionally may consider the equitable claim before the legal claim. *Id.*

In *Galloway v. United States* the United States Supreme Court considered whether a directed verdict violated a party's right to a jury trial. *Galloway*, 319 U.S. at 393. The *Galloway* Court noted that a directed verdict is a judgment that the court renders against a party, as a matter of law, because the party has not established a prima facie case. *Id.* at 393. The Supreme Court held that because a directed verdict does not infringe upon a jury's function as fact finder, the directed verdict did not deprive the plaintiff of the right to a jury trial. *Id.* at 396. The Supreme Court recognized that juries determine factual issues and judges determine legal issues. *Id.* The Supreme Court reasoned, therefore, that if the plaintiff did not present enough facts from which the jury could make reasonable inferences to resolve the factual issues, the judge could direct the verdict as a matter of law. *Id.*

In *Baltimore & Carolina Line v. Redman* the United States Supreme Court considered whether a judgment notwithstanding the verdict violated a party's right to a jury trial. *Redman*, 295 U.S. at 659. The *Redman* Court recognized that a judgment notwithstanding the verdict is a judgment that the court renders for a party regardless of the jury's verdict for the opposing party. *Id.* The *Redman* Court recognized, further, that a court may grant a judgment notwithstanding the verdict if, as a matter of law, the jury bases the verdict on insufficient evidence. *Id.* In *Redman* the Supreme Court held that the judgment for the defendant notwithstanding the jury's verdict for the plaintiff did not violate the plaintiff's right to a jury trial. *Id.* at 661. The *Redman* Court reasoned that the seventh amendment only preserves the right to a jury trial as the right existed at common law when the United States adopted the seventh amendment. *Id.* at 657. The Court noted that when the states adopted the seventh amendment, judgments notwithstanding the verdict existed at common law. *Id.* at 659-61. The

Collateral estoppel,⁷ a procedural device, also may conflict with the seventh amendment's guarantee of the right to a jury trial.⁸ Collateral estoppel typically allows a litigant to prevent the relitigation of factual issues already determined during a previous trial.⁹ Collateral estoppel, thus, promotes judicial economy and efficiency.¹⁰ By allowing a litigant to invoke collateral estoppel, however, courts occasionally may deny a litigant the right to a

Supreme Court held, therefore, that judgments notwithstanding the verdict did not violate the seventh amendment. *Id.*

In *Fidelity & Deposit Company v. United States* the United States Supreme Court considered whether summary judgment violated a party's right to a jury trial. *Fidelity & Deposit*, 187 U.S. at 321-22. The *Fidelity & Deposit* Court noted that a court may grant summary judgment if, based on the affidavits and pleadings, no issue of material fact is in dispute. *Id.* The Supreme Court noted, additionally, that the law must entitle a party to judgment before a court may grant summary judgment. *Id.* The Supreme Court held that because the defendant's response affidavits did not state a defense sufficient to defeat the plaintiff's right to recovery, summary judgment did not violate the defendant's right to a jury trial. *Id.* The Supreme Court reasoned that the right to a jury trial does not accrue until a factual issue is in dispute. *Id.*

In *Walker v. New Mexico and South Pacific Railroad Company* the United States Supreme Court considered whether special verdicts violated the defendant's right to a jury trial. *Walker*, 165 U.S. at 595. The *Walker* Court acknowledged that a special verdict is a statement, given in response to the court's questions, of the jury's specific factual findings. *Id.* at 596. The *Walker* Court noted, further, that a court accepts the jury's factual findings and applies the law to render a judgment. *Id.* In *Walker* the Supreme Court held that special verdicts did not violate the petitioner's seventh amendment right to a jury trial. *Id.* at 598. The Supreme Court reasoned that special verdicts prevented injustice by simplifying issues before the jury. *Id.*

7. See *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979) (stating that collateral estoppel precludes relitigation of issues that court actually and necessarily determined in previous cause of action); see also RESTATEMENT OF JUDGMENTS § 68(1) (1942) (recognizing that one jury trial of factual issues actually and necessarily determined constitutionally is sufficient). In *Parklane Hosiery Co. v. Shore* the United States Supreme Court noted that by invoking collateral estoppel, a party may prevent the relitigation of issues already determined in a previous action. *Parklane*, 439 U.S. at 326. The *Parklane* Court distinguished collateral estoppel from res judicata by stating that in res judicata, a judgment on the merits in a previous suit bars parties or persons privy to the parties from bringing a second suit based on the same cause of action. *Id.* The *Parklane* Court recognized, therefore, that collateral estoppel refers to the preclusion of issues, whereas res judicata refers to the preclusion of claims. *Id.*

The *Parklane* Court stated that collateral estoppel and res judicata protect litigants and the judicial system from the needless relitigation of issues. *Id.*; see *Blonder-Tongue Laboratories, Inc. v. University of Ill. Found.*, 402 U.S. 313, 328-29 (1971) (res judicata prevents litigants from harassing defendants with repeated assertions of same claims). Collateral estoppel accomplishes at least three objectives. Vestal, *Res Judicata/Preclusion by Judgment: The Law Applied in Federal Courts*, 66 MICH. L. REV. 1723, 1723 (1968). First, by preventing inconsistent judgments, collateral estoppel preserves the integrity of the judicial system. *Id.* Second, collateral estoppel protects litigants against the harassment of having to retry the same issue. *Id.* Finally, by preventing parties from relitigating the same issues and claims, collateral estoppel promotes judicial economy. *Id.*

8. See *Parklane*, 439 U.S. at 326 (analyzing whether plaintiff could use previous equitable determination to collaterally estop relitigation of factual issues in subsequent legal claim).

9. See *supra* note 7 and accompanying text (analyzing collateral estoppel's purpose and application).

10. *Id.*

trial by jury because a jury previously may not have determined a factual issue.¹¹ Courts inconsistently have determined whether trial courts that erroneously have dismissed legal claims properly joined with equitable claims unconstitutionally deny a plaintiff the right to a jury trial when the defendant, on remand of the erroneously dismissed legal claim, invokes collateral estoppel to prevent a plaintiff from relitigating a factual issue previously determined in the equitable, non-jury claim.¹²

In *Parklane Hosiery Company v. Shore*¹³ the United States Supreme Court considered whether collateral estoppel unconstitutionally infringes on the right to a jury trial.¹⁴ In *Parklane* the plaintiff attempted to invoke collateral estoppel to prevent the defendant, who did not have a right to a jury trial in the previous litigation, from relitigating in a legal action previous nonjury determinations.¹⁵ The plaintiff in *Parklane*, however, was not a

11. See *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 510 (1959) (reasoning that when party joins legal and equitable claims, courts sometimes may try equitable claim first even if collateral estoppel could prevent jury trial of facts underlying legal claim); *infra* note 19 (discussing *Beacon* Court's holding that party does not lose right to jury trial by joining legal and equitable claims).

12. Compare *Hussein v. Oshkosh Motor Truck Co.*, 816 F.2d 348, 356-57 (7th Cir. 1987) (holding that by barring relitigation in retrial of issues common to plaintiff's legal and equitable claims, collateral estoppel violated plaintiff's right to jury trial) with *Ritter v. Mount St. Mary's College*, 814 F.2d 986, 988 (4th Cir. 1987) (holding that by barring relitigation in retrial of issues common to plaintiff's legal and equitable claims, collateral estoppel did not violate plaintiff's right to jury trial), *cert. denied*, 108 S. Ct. 260 (1987) and *Swentek v. USAIR, Inc.*, 830 F.2d 552, 563 (4th Cir. 1987) (refusing to apply *Ritter* court holding if original trial court clearly did not intend factual findings of equitable claim to preclude new trial of legal claim).

13. 439 U.S. 322 (1979).

14. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979).

15. *Id.* In *Parklane Hosiery Co. v. Shore* the Securities Exchange Commission (SEC) obtained a declaratory judgment against *Parklane Hosiery, Inc.* (*Parklane*) in a non-jury trial. *Id.* at 325. A declaratory judgment is a binding adjudication in equity on the rights or status of a party that is conclusive as to subsequent actions between the parties. See 28 U.S.C. § 2201 (1982) (courts may, with effect of final judgment, declare rights of any party seeking declaration). *Shore*, the plaintiff, subsequently, brought a class action suit against *Parklane*. *Parklane*, 439 U.S. at 324. Claiming that determinations from the declaratory judgment collaterally estopped the plaintiff from relitigating the issues of the SEC action, the SEC sought a partial summary judgment. *Id.* at 325. The district court, however, denied the plaintiff's motion for summary judgment. *Id.* The district court reasoned that collateral estoppel would deny the defendant the right to a jury trial. *Id.* The plaintiff appealed the district court's denial of the motion for summary judgment to the United States Court of Appeals for the Second for summary judgment to the United States Court of Appeals for the Second Circuit. *Id.* The Second Circuit reversed the district court. *Id.* The Second Circuit reasoned that because the defendant had a full and fair opportunity to litigate the issues in the SEC action, no issues remained for jury determination in the subsequent class action. *Id.*

The United States Supreme Court, however, granted certiorari. *Id.* The *Parklane* Court considered, first, whether irrespective of the seventh amendment, the doctrine of collateral estoppel permitted the plaintiff's invocation of collateral estoppel. *Id.* at 326. The *Parklane* Court recognized that courts generally prohibit collateral estoppel when, in certain situations, collateral estoppel would be unfair to the opposing party. *Id.* at 326-27. The *Parklane* Court recognized, further, that to promote fairness in the litigation of claims, courts at common law

party to the litigation of the previous equitable claim.¹⁶ The *Parklane* Court held that the plaintiff's invocation of collateral estoppel did not violate the defendant's right to a jury trial.¹⁷ The Supreme Court reasoned that an equitable determination constitutionally could collaterally estop the relitigation of factual issues in a subsequent legal claim.¹⁸ The *Parklane* Court noted, however, that when a party joins legal and equitable claims, the district court always should exercise discretion to preserve the right to a jury trial of the facts underlying the legal claim.¹⁹

required mutuality before allowing a party to invoke collateral estoppel. *Id.* The Supreme Court noted that mutuality required that for a party to invoke collateral estoppel in the current suit, both parties had to be the identical parties in the previous suit. *Id.* In *Parklane* the Supreme Court recognized that by attempting to preclude the defendant from relitigating an issue that the defendant previously and unsuccessfully had litigated in an action to which the plaintiff was not a party, the plaintiff offensively invoked collateral estoppel. *Id.* The *Parklane* Court reasoned, therefore, that offensive collateral estoppel is nonmutual. *Id.* The *Parklane* court disposed, however, of collateral estoppel's requirement of mutuality and permitted the use of offensive collateral estoppel. *See id.* (stating that Supreme Court already had abandoned mutuality of estoppel); *Blonder-Tongue Laboratories, Inc. v. University of Ill. Found.*, 402 U.S. 313, 349-50 (1971) (rejecting mutuality by permitting nonmutual, defensive collateral estoppel).

In addition to reasoning that the invocation of nonmutual collateral estoppel was constitutional, the *Parklane* Court reasoned that because the defendant had incentive vigorously to litigate the SEC action, the plaintiff fairly could invoke collateral estoppel. *Parklane*, 439 U.S. at 332. The *Parklane* Court noted, however, that courts still need to examine whether a party's invocation of collateral estoppel would be unfair to the opposing party. *Id.* at 331-32. The *Parklane* Court, subsequently, gave examples of factors for courts to consider that would render unfair a party's invocation of offensive collateral estoppel. *Id.* at 331-32. The *Parklane* Court noted, first, that if the first suit for damages was small and the defendant had little incentive to defend vigorously, the invocation of collateral estoppel may be unfair. *Id.* at 330. The *Parklane* Court noted, second, that when the defendant has previous favorable judgments on the issue, the invocation of collateral estoppel may be unfair because the courts already have recognized the validity of the defendant's position. *Id.* The *Parklane* Court noted, third, that when procedural opportunities that readily could cause a different result were unavailable to the defendant in the first cause of action, the use of collateral estoppel may be unfair. *Id.* at 330-31.

16. *Parklane*, 439 U.S. at 326.

17. *Id.* at 337.

18. *Id.* at 334; *see Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 510 (1959) (stating that equitable determination could collaterally estop relitigation of issues in subsequent legal claim); *infra* note 19 and accompanying text (discussing *Beacon* Court's holding that courts should attempt to preserve right to jury trial).

19. *Parklane*, 439 U.S. at 331; *Beacon*, 359 U.S. at 505. In *Beacon* the United States Supreme Court considered whether if the trial court conducted a bench trial on the facts common to properly joined legal and equitable claims, the trial court violated a party's right to a jury trial. *Id.* The plaintiff in *Beacon* brought an antitrust action, and in response, the defendant sought a declaratory judgment to settle pivotal issues of the plaintiff's claim. *Id.* at 503. The plaintiff's antitrust action was a legal claim and the defendant's action for a declaratory judgment was an equitable claim. *Id.* at 502-04. Because of the legal claim, the plaintiff demanded a jury trial. *Id.* at 503; *see supra* note 1 and accompanying text (seventh amendment guarantees right to jury trial on legal claims). The district court, however, in equity and without a jury, first tried the declaratory judgment action and found for the defendant. *Beacon*, 359 U.S. at 503-04. The plaintiff, however, unsuccessfully appealed to the

In *Parklane* the defendant contended that because the plaintiff was not a party to the first litigation, the plaintiff's invocation of collateral estoppel would be unconstitutional.²⁰ The *Parklane* Court noted that the Supreme Court traditionally had used an historical analysis to determine the scope of a party's seventh amendment right to a jury trial.²¹ The *Parklane* Court recognized, furthermore, that the common-law concept of mutuality of estoppel required that to invoke collateral estoppel, the parties in the current suit had to be the identical parties in the previous suit.²² The *Parklane* Court, however, stating that the Supreme Court never rigidly has applied the strict historical approach to interpret the seventh amendment, rejected the strict historical analysis advocated by the defendant.²³ The *Parklane* Court, noting that many procedural devices have affected the seventh amendment right to a jury trial, reasoned that the seventh amendment preserves only the substance of the right to a jury trial.²⁴ The seventh amendment's purpose is to preserve the jury's function of determining factual issues.²⁵ The Supreme Court stated, furthermore, that the concerns of judicial economy may outweigh the importance of trying the facts before a jury.²⁶ The *Parklane* Court held, therefore, that an equitable determination constitutionally could collaterally estop the relitigation of factual issues in a subsequent legal claim.²⁷

United States Court of Appeals for the Ninth Circuit for a writ of mandamus ordering the district court to set aside the declaratory judgment. *Id.* at 501. The United States Supreme Court granted certiorari and held that to prevent collateral estoppel and preserve the plaintiff's right to a jury trial of the legal claim, the district court first should dispose of the plaintiff's legal claim. *Id.* at 501, 510. The Supreme Court reasoned that because the Constitution preserves the right to a jury trial, the district court should preserve, whenever possible, a party's right to a jury trial. *Id.* at 510. The Supreme Court stated, furthermore, that a court should deny a party the opportunity to a jury trial of the factual issues in only the most extreme circumstances. *Id.* at 510-11.

20. *Parklane*, 439 U.S. at 326.

21. See *Curtis v. Loether*, 415 U.S. 189, 193 (1974) (stating that general purpose of seventh amendment was to preserve right to jury trial as right to jury trial existed in 1791); *Colgrove v. Battin*, 413 U.S. 149, 155-57 (1973) (defining scope of right to jury trial by referring to right as right to jury trial existed in 1791); *Galloway v. United States*, 319 U.S. 372, 388-92 (1943) (reasoning that seventh amendment secures only fundamental substance of right to jury trial existing in 1791). The purpose of the United States Supreme Court's use of the historical analysis was to define the scope of the right to jury trial as the right existed in 1791 when the colonial states adopted the seventh amendment. See *Dimick v. Schiedt*, 293 U.S. 474, 476 (1935) (determining scope of seventh amendment with 1791 as reference point); *Wolfram*, *supra* note 2, at 642 (analyzing historical test for determining scope of seventh amendment).

22. *Parklane*, 439 U.S. at 326-27.

23. *Id.* at 336-37.

24. *Id.*; see *supra* note 4 and 6 and accompanying text (discussing cases eroding seventh amendment right to jury trial).

25. See *Baltimore & Carolina Line v. Redman*, 295 U.S. 654, 657 (1935) (holding that judgment notwithstanding verdict does not violate right to jury trial); *supra* notes 4 and 6 and accompanying text (explaining *Redman* Court's reasoning that seventh amendment right to jury trial should preserve juries' fact-finding function).

26. *Parklane*, 439 U.S. at 335.

27. *Id.* at 337.

Since *Parklane* the United States Court of Appeals for the Seventh Circuit and the United States Court of Appeals for the Fourth Circuit have considered the constitutionality of an application of collateral estoppel that diminishes a party's right to a jury trial.²⁸ In *Hussein v. Oshkosh Motor Truck Co.*²⁹ the United States Court of Appeals for the Seventh Circuit considered whether the defendant constitutionally could invoke collateral estoppel to deny the plaintiff the right to a jury trial on a claim arising under Title VII of the Civil Rights Act of 1964.³⁰ In *Hussein* the plaintiff, an Egyptian, filed suit in the United States District Court for the Eastern District of Wisconsin and alleged that employees of the defendant made ethnic slurs against the plaintiff.³¹ The plaintiff claimed that the defendant-employer was responsible for derogatory ethnic references that violated both Title VII of the Civil Rights Act of 1964,³² and section 1981 of the Civil Rights Act of 1866.³³ Because the section 1981 claim was a legal claim, the plaintiff demanded a jury trial.³⁴ The Title VII claim, however, was an equitable claim and accrued no right to a jury trial.³⁵ On the defendant's motion, the district court in *Hussein* dismissed the plaintiff's section 1981 claim.³⁶ The district court ruled that section 1981 of the Civil Rights Act of 1866 applied only to blacks.³⁷ Because the remaining Title VII claim was an equitable claim to which the right to a jury trial did not attach, the district court, consequently, conducted a bench trial on the Title VII claim.³⁸ At trial the district court found for the defendant.³⁹

28. See *Hussein v. Oshkosh Motor Truck Co.*, 816 F.2d 348, 349 (7th Cir. 1987) (determining whether defendant's invocation of collateral estoppel violated plaintiff's right to jury trial); *Ritter v. Mount St. Mary's College*, 814 F.2d 986, 991-92 (4th Cir. 1987) (considering whether defendant constitutionally could invoke collateral estoppel), *cert. denied*, 108 S. Ct. 260 (1987); *but cf.* *Swentek v. USAIR, Inc.*, 830 F.2d 552, 563 (4th Cir. 1987) (refusing to apply *Ritter* court's holding if original trial court clearly did not intend factual findings of equitable claim to preclude new trial of legal claim).

29. 816 F.2d 348 (7th Cir. 1987).

30. *Hussein v. Oshkosh Motor Co.*, 816 F.2d 348, 349-50 (7th Cir. 1987).

31. *Id.*

32. Civil Rights Act of 1964, ch. 88, 78 Stat. 253 (codified as amended at 42 U.S.C. §§ 2000e-1 to 2000e-17 (1982)).

33. *Hussein*, 816 F.2d at 350; Civil Rights Act of 1866, ch. 31, 14 Stat. 27 (codified as amended at 42 U.S.C. §§ 1981-1996 (1982)). In *Hussein* the plaintiff based the Title VII claim and the section 1981 claim on allegations of ethnic slurs. *Hussein*, 816 F.2d at 353.

34. *Hussein*, 816 F.2d at 350; *see supra* note 1 and accompanying text (explaining that right to jury trial exists for statutorily created legal rights).

35. *Hussein*, 816 F.2d at 350.

36. *Id.* at 350.

37. *Id.* In *Hussein* because the plaintiff was Egyptian and the district court believed that section 1981 only protected blacks, the district court dismissed the plaintiff's section 1981 claim. *Id.* at 352.

38. *Id.* at 350-51. In *Hussein* the district court reasoned that because only the equitable Title VII claim remained for trial, the plaintiff no longer had a right to a jury trial. *Id.* The district court reasoned, further, that the seventh amendment guarantees a plaintiff the right to a jury trial only on the legal claim. *Id.*; *see supra* note 1 and accompanying text (noting that right to jury trial only extends to legal claims).

39. *Hussein*, 816 F.2d at 351.

The plaintiff, subsequently, appealed the district court's dismissal of the section 1981 claim and denial of the plaintiff's right to a jury trial to the United States Court of Appeals for the Seventh Circuit.⁴⁰ On appeal the Seventh Circuit in *Hussein* ruled that the district court erred in dismissing the plaintiff's section 1981 claim.⁴¹ The Seventh Circuit reasoned that the Civil Rights Act of 1964 protects not only blacks, but also other minorities, including Egyptians.⁴² The defendant asserted, however, that regardless of the district court's erroneous dismissal of the section 1981 claim, the district court's factual determinations on the plaintiff's Title VII claim collaterally estopped any further litigation in the section 1981 claim of the factual determinations made in the Title VII action.⁴³ The defendant urged, therefore, the Seventh Circuit to dismiss the section 1981 claim because the factual determinations from the Title VII claim destroyed the plaintiff's prima facie case on the section 1981 claim.⁴⁴ The Seventh Circuit in *Hussein* held, however, that collateral estoppel did not bar the plaintiff from relitigating before a jury the issues common to both the Title VII and section 1981 claims.⁴⁵

In holding that the defendant's invocation of collateral estoppel would violate the plaintiff's right to a jury trial on the section 1981 claim, the Seventh Circuit reasoned that if the district court had not erroneously dismissed the section 1981 claim, the plaintiff would have had a right to a jury trial of the factual allegations underlying the section 1981 claim and the Title VII claim.⁴⁶ The Seventh Circuit acknowledged that because the plaintiff had a right to a jury trial on the factual issues underlying the legal claim, joinder of the legal claim and the equitable claim did not destroy the plaintiff's right to a jury trial of the legal claim.⁴⁷ The Seventh Circuit recognized, further, that when a plaintiff joins legal and equitable claims, the district court rarely should deny the plaintiff a jury trial on the factual issues underlying the legal claim.⁴⁸

After determining that the plaintiff had a right to a jury trial on the section 1981 claim, the Seventh Circuit considered whether the defendant's invocation of collateral estoppel would violate the defendant's right to a jury trial on the remanded section 1981 claim.⁴⁹ In reconciling the infringement of the plaintiff's right to a jury trial with the benefit of collateral estoppel to judicial economy, the *Hussein* court stated that no previous,

40. *Id.*

41. *Id.* at 352.

42. *Id.* In *Hussein* the Seventh Circuit held that because the plaintiff's complaint stated that he was an Egyptian and not a member of the white race, the district court should not have dismissed the plaintiff's section 1981 claim. *Id.*

43. *Id.* at 353.

44. *Id.*

45. *Id.* at 356-57.

46. *Id.* at 354.

47. *Id.*

48. *Id.*

49. *Id.* at 355.

valid judgment existed on which the defendant could base collateral estoppel.⁵⁰ The Seventh Circuit recognized that courts constitutionally may permit a party to use a previous, valid determination of an equitable claim to collaterally estop the relitigation of the same issue.⁵¹ The Seventh Circuit reasoned, however, that because the wrong trier of fact determined the factual issues identical to both the Title VII claim and the section 1981 claim, the district court's judgment on the equitable Title VII claim was invalid.⁵² The Seventh Circuit reasoned, further, that the joinder of the legal and equitable claims was compulsory because the factual allegations underlying the section 1981 claim and the Title VII claim were identical and res judicata would have barred a subsequent claim if the plaintiff had not brought the claims in the same action.⁵³ The Seventh Circuit concluded,

50. *Id.* at 354.

51. *Id.* at 355-56; see *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 337 (1979) (holding that equitable determination could collaterally estop relitigation of issues that court determined in subsequent legal action); *Beacon Theatres, Inc. v. Westover, Inc.*, 359 U.S. 500, 510-11 (1959) (holding that joinder of legal and equitable claims does not destroy right to jury trial); *supra* notes 15-19 and accompanying text (explaining *Parklane* Court's reasoning that plaintiff retains right to jury when joining legal claim and equitable claim); *supra* note 16 and accompanying text (discussing *Beacon* court's rationale that when joining legal and equitable claims, plaintiff retains right to jury trial of legal claim).

52. *Hussein* 816 F.2d at 356; see *Bouchet v. National Urban League, Inc.*, 730 F.2d 799, 803-04 (D.C. Cir. 1984). In *Bouchet v. National Urban League, Inc.* the plaintiff joined a Title VII equitable claim with legal state claims that gave the plaintiff the right to demand a jury trial of the facts underlying the state claims. *Id.* at 802. The district court, however, dismissed the state claims for lack of jurisdiction. *Id.* at 802-03. The district court, consequently, conducted a bench trial of the Title VII claim and found for the plaintiff. *Id.* at 803. The plaintiff appealed the district court's dismissal of the state claims to the United States Court of Appeals for the District of Columbia Circuit. *Id.* On appeal the *Bouchet* court noted that the plaintiff based the state claims and the Title VII claim on the same factual issues. *Id.* The *Bouchet* court recognized, consequently, that the plaintiff would have had a right to a jury trial of the factual issues common to both the state claims and the Title VII claim. *Id.* The *Bouchet* court reasoned, therefore, that if the district court erroneously dismissed the state claims, a retrial before a jury of the state claims and Title VII claim would be necessary. *Id.* at 803-04. The *Bouchet* court's reasoning, however, was in dicta because the *Bouchet* court ultimately decided that the district court erroneously did not dismiss the state claims. *Id.* at 805-06. The *Bouchet* court reasoned that the district court properly declined pendent jurisdiction over the state claims. *Id.*

53. *Hussein*, 816 F.2d at 356. In *Hussein* the Seventh Circuit employed the "same transaction test" to determine whether a party's joinder of claims was compulsory. *Id.*; see, e.g., *Car Carriers, Inc. v. Ford Motor Co.*, 789 F.2d 589, 593 (7th Cir. 1986) (holding that res judicata barred all claims arising from same transaction, but not brought in first cause of action); *Alexander v. Chicago Park Dist.*, 773 F.2d 850, 853 (7th Cir. 1985) (holding that previous valid judgment barred same parties from relitigating claims that party brought or could have brought in previous action), *cert. denied*, 475 U.S. 1095 (1986); *Harper Plastics, Inc. v. Amoco Chem. Corp.*, 657 F.2d 939, 945 (7th Cir. 1981) (holding that res judicata barred any grounds for recovery that party could have, but did not present in previous action). Under the same transaction test, res judicata bars a party from again bringing not only the same cause of action, but also any cause of action that arises from the same core of operative facts. *Alexander*, 773 F.2d at 854. The United States Supreme Court also has held that res judicata bars parties from relitigating claims that the party could have raised in the first cause

therefore, that the plaintiff had a right to a jury trial on the factual issues underlying the remanded section 1981 claim.⁵⁴

In addition to protecting the plaintiff's right to a jury trial, the Seventh Circuit in *Hussein* determined that because the plaintiff had a right to a jury trial on the remanded legal claim, the defendant's invocation of collateral estoppel would not needlessly burden judicial economy.⁵⁵ The Seventh Circuit recognized that the district court's erroneous dismissal of the section 1981 claim deprived the plaintiff of the opportunity for a jury trial.⁵⁶ The Seventh Circuit reasoned, therefore, that the relitigation of the factual issues of the Title VII claim in a trial of the remanded section 1981 claim was not needless.⁵⁷ The Seventh Circuit acknowledged, furthermore, that by protecting the plaintiff's right to a jury trial of the factual issues underlying the remanded legal claim, the court would not burden judicial economy any more than in other situations in which the district court commits a legal error requiring a retrial.⁵⁸ In rejecting the defendant's contention that collateral estoppel should preclude the plaintiff from retrying the section 1981 claim, the *Hussein* court stated that the defendant's constitutional right to a jury trial outweighed the resulting burden on judicial economy.⁵⁹ The Seventh Circuit in *Hussein* held, therefore, that the defendant could not constitutionally invoke collateral estoppel.⁶⁰

Disagreeing with the outcome in *Hussein*, in *Ritter v. Mount St. Mary's College*,⁶¹ the United States Court of Appeals for the Fourth Circuit determined that to prevent the relitigation of factual issues determined in an equitable claim, the defendant constitutionally could invoke collateral estoppel.⁶² In *Ritter* the defendant, a private, religious, educational institution, denied the plaintiff professorial tenure.⁶³ The plaintiff, subsequently, brought suit in the United States District Court for the District of Maryland and alleged that the defendant violated Title VII of the Civil Rights Act of 1964,⁶⁴ the Equal Pay Act of 1963 (EPA),⁶⁵ and the Age Discrimination in

of action. See *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981) (analyzing proper application of *res judicata*). In *Hussein* because the plaintiff based both claims on the employees' derogatory ethnic references, *res judicata* forced the plaintiff to join the Title VII claim and the section 1981 claim. *Hussein*, 816 F.2d at 356.

54. *Hussein*, 816 F.2d at 356.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 356-57.

60. *Id.*

61. 814 F.2d 986 (4th Cir. 1987).

62. See *Ritter v. Mount St. Mary's College*, 814 F.2d 986, 991-92 (4th Cir. 1987) (concluding that defendant's invocation of collateral estoppel was constitutional).

63. *Id.* at 988.

64. Civil Rights Act of 1964, ch. 88, 78 Stat. 253 (codified as amended at 42 U.S.C. §§ 2000e-1 to 2000e-17 (1982)).

65. Fair Labor Standard Act of 1938, ch. 676, 52 Stat. 1060 (codified as amended at 29 U.S.C. §§ 201-219 (1982 & Supp. III 1985)).

Employment Act (ADEA).⁶⁶ Because the EPA and ADEA claims were legal claims, the plaintiff demanded a jury trial.⁶⁷ The district court dismissed, however, the EPA and the ADEA claims on the grounds that the EPA and the ADEA do not apply to religious institutions.⁶⁸ Because the district court dismissed the legal claims and only the equitable Title VII claim remained, the defendant successfully moved the district court to strike the plaintiff's request for a jury trial.⁶⁹ At trial the district court, sitting as the fact finder, found for the defendant on the remaining Title VII claim.⁷⁰ The plaintiff, consequently, appealed the district court's dismissal of the EPA and ADEA claims and the district court's judgment for the defendant on the Title VII claim to the Fourth Circuit.⁷¹ On appeal the Fourth Circuit ruled that because the EPA and the ADEA claims applied to religious institutions, the district court erroneously had dismissed both the EPA and ADEA claims.⁷² The Fourth Circuit remanded, therefore, the EPA and ADEA claims to the district court.⁷³

On remand the defendant contended that because the trial judge originally made factual determinations that collaterally estopped the plaintiff from relitigating factual issues essential to the plaintiff's prima facie case on the EPA and ADEA claims, summary judgment was proper.⁷⁴ The

66. See *Ritter*, 814 F.2d at 989 (alleging that defendant denied plaintiff tenure on basis of age and sex); Age Discrimination in Employment Act of 1967 (ADEA), ch. 90, 81 Stat. 602 (codified as amended at 29 U.S.C. §§ 621-634 (1982 & Supp. III 1985)) (prohibiting discriminatory employment practices based on age or sex).

67. *Ritter*, 814 F.2d at 989; see *supra* note 1 and accompanying text (stating that plaintiff has right to jury trial on statutorily created legal claims).

68. *Ritter*, 814 F.2d at 989. In *Ritter* the defendant filed a motion to dismiss the Title VII claim, the EPA claim, and the ADEA claim under Federal Rule of Civil Procedure 12(b)(6). *Id.* The district court treated the motion to dismiss as a motion for summary judgment. *Id.* The Federal Rules of Civil Procedure give the trial court discretion to treat a 12(b)(6) motion as a motion for summary judgment. FED. R. Civ. P. 12(b)(6). The district court may grant a party's motion for summary judgment if no issue of material fact remains for trial and the law entitles the moving party to a judgment. FED. R. Civ. P. 56(c). The district court dismissed the ADEA claim and EPA claim based on the erroneous belief that the EPA and ADEA do not apply to religious institutions. *Ritter*, 814 F.2d at 989. The district court, however, denied the defendant's motion to dismiss the Title VII claim. *Id.*

69. *Ritter*, 814 F.2d at 989; see *supra* note 1 and accompanying text (stating that plaintiff has right to jury trial on statutorily created legal claims, but not on equitable claims).

70. *Ritter*, 814 F.2d at 989. In *Ritter* the district court found both that the plaintiff was not qualified for tenure and that the plaintiff's associate clearly was more qualified than the plaintiff. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* at 989-90. The *Ritter* court stated that to establish a prima facie case on the ADEA claim, the plaintiff must establish four elements. *Id.* at 992. The *Ritter* court noted that, first, the plaintiff must show membership in a protected class. *Id.* The *Ritter* court noted that, second, the plaintiff must show that the plaintiff had qualifications for tenure. *Id.* The *Ritter* court noted that, third, the plaintiff must show that despite the plaintiff's qualifications, the college rejected the plaintiff for tenure. *Id.* The *Ritter* court noted that, finally, the

plaintiff requested, however, that to prevent the defendant from collaterally estopping the plaintiff from trying the EPA and ADEA claims before a jury, the district court should vacate the judgment on the Title VII claim.⁷⁵ Reasoning that a district court does not have authority to vacate a judgment that a circuit court has affirmed, the district court denied the plaintiff's request to vacate the judgment.⁷⁶ The district court granted, therefore, the defendant's motion for summary judgment and dismissed, accordingly, the EPA and ADEA claims.⁷⁷ The district court reasoned that the factual findings from the Title VII action collaterally estopped the plaintiff from establishing the ADEA and EPA claims.⁷⁸ The plaintiff in *Ritter*, subsequently, appealed the constitutionality of the defendant's invocation of collateral estoppel to the Fourth Circuit.⁷⁹ On appeal the plaintiff contended that the defendant's invocation of collateral estoppel violated the plaintiff's right to a jury trial of the facts underlying the EPA and ADEA claims.⁸⁰

On appeal the Fourth Circuit determined that the district court's factual determinations from the original trial on the plaintiff's Title VII claim constitutionally could collaterally estop the plaintiff from relitigating on remand the factual issues of the EPA and ADEA claims.⁸¹ The Fourth Circuit acknowledged that an equity court's factual determinations constitutionally could collaterally estop a jury from making in a subsequent legal action the same factual determinations.⁸² The Fourth Circuit in *Ritter*

plaintiff must show that after rejecting the plaintiff for tenure, the college continued seeking applicants for the position. *Id.* The *Ritter* court stated, further, that to establish a prima facie case on the EPA claim, the plaintiff must prove that, unless the defendant based the pay differential on a factor other than sex, the defendant paid the plaintiff less wages than the defendant paid other employees for the same work. *Id.* at 993. The *Ritter* court noted that in the plaintiff's initial trial, the district court dismissed the plaintiff's Title VII claim because the district court found that the plaintiff was not qualified for tenure and that a co-worker was more qualified for tenure than the plaintiff. *Id.* The *Ritter* court reasoned, therefore, that if the court collaterally estopped the plaintiff from relitigating the issue of whether she was qualified for tenure, the plaintiff could not establish a ADEA prima facie case. *Id.* The *Ritter* court stated, similarly, that the plaintiff could not establish an EPA prima facie case because the district court's finding that the college did not deny tenure on the basis of sex collaterally estopped relitigation on the issue of sexual discrimination. *Id.*

75. *Id.* at 990.

76. *Id.*

77. *Id.*

78. *Id.*; see *supra* notes 71-74 and accompanying text (discussing *Ritter* court's determination that findings from Title VII action destroyed prima facie EPA and ADEA claims).

79. *Ritter v. Mount St. Mary's College*, 814 F.2d 986, 990 (4th Cir. 1987).

80. *Id.*

81. *Id.* at 992.

82. *Id.* at 990; see *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 337 (1979) (holding that equitable determinations can collaterally estop party from relitigating same issues in subsequent legal action); *Katchen v. Landy*, 382 U.S. 323, 338-40 (1966) (holding that if statutory scheme provides for prompt nonjury determination of issues and party joins legal and equitable claims, court first does not have to try legal claim); *supra* notes 13-17 and accompanying text (explaining *Parklane* Court's holding that equitable determination constitutionally could collaterally estop relitigation of factual issues in subsequent legal claim); *supra* note 6 (discussing *Katchen* court's rationale that right to jury trial applies to statutorily created legal claims).

recognized, further, that if the district court erroneously had not dismissed the EPA and ADEA claims, the seventh amendment would have guaranteed the plaintiff a jury trial on the EPA and ADEA claims.⁸³ The Fourth Circuit reasoned, therefore, that joinder of legal and equitable claims does not destroy the right to a jury trial on the factual issues underlying the legal claim.⁸⁴ The Fourth Circuit recognized, further, that if a plaintiff joins legal and equitable claims the district court rarely should deny the plaintiff's right to a jury trial by first trying the equitable claim.⁸⁵ The Fourth Circuit stated, however, that although district courts always should try to preserve the right to a jury trial of legal claims when a plaintiff joins legal and equitable claims, the preservation of the right to a jury trial is only a general prudential rule.⁸⁶

After noting that an equitable determination can collaterally estop the relitigation of issues in a subsequent legal action, the *Ritter* court acknowledged that the judicial system has a strong interest in the quick, efficient resolution of issues.⁸⁷ The *Ritter* court noted that if the defendant could not invoke collateral estoppel, either the district court would need to conduct a retrial of the factual issues underlying the legal claim, or the Fourth Circuit would have to hear an interlocutory appeal on the district court's dismissal of the legal claim.⁸⁸ The *Ritter* court reasoned, therefore, that by not allowing the defendant to invoke collateral estoppel, the courts excessively would burden judicial economy.⁸⁹ The Fourth Circuit reasoned, furthermore, that by requiring a retrial of the factual issues common to both the legal claim and equitable claim, the courts would discourage the parties from enthusiastically litigating the equitable claim.⁹⁰ The Fourth Circuit recognized, moreover, that the harm of denying the plaintiff a jury trial

83. *Ritter*, 814 F.2d at 990.

84. *Id.*

85. *Id.*; see *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 510 (1959) (holding that joinder of legal and equitable claims does not destroy right to jury trial); *supra* note 19 and accompanying text (explaining *Beacon* court's reasoning that plaintiff retains right to jury trial when joining legal and equitable claims).

86. *Ritter*, 814 F.2d at 990.

87. *Id.* at 991.

88. *Id.* In *Ritter* the Fourth Circuit stated that by granting a plaintiff a new jury trial on the issues already determined by the bench, the court excessively would burden judicial economy. *Id.* The Fourth Circuit reasoned that if a plaintiff joins legal and equitable claims and the district court dismisses the legal claim, either the plaintiff could burden the judicial system by making an interlocutory appeal, or the trial could proceed with the possibility that the circuit court would require a retrial of the factual issues common to both the legal and equitable claim. *Id.* Title 28 of the United States Code grants the circuit courts of appeals the discretion to review any interlocutory appeal, if an appeal is otherwise not available to a party, and an immediate appeal materially would advance the case. 28 U.S.C. § 1292(b) (1982). The Fourth Circuit stated that an interlocutory appeal would delay the trial and effectively force the parties to argue the merits of the case before the appeals court. *Ritter*, 814 F.2d at 991.

89. *Ritter*, 814 F.2d at 991.

90. *Id.*

does not override the judicial interest in the speedy resolution of disputes.⁹¹ The Fourth Circuit determined, therefore, that a previous judicial determination of the facts in the original Title VII claim collaterally estopped the plaintiff from relitigating the same facts in the trial on remand of the EPA and ADEA claims.⁹² The Fourth Circuit concluded, consequently, that because the district court already had determined factual issues essential to the plaintiff's prima facie case on both the EPA and ADEA claims, the district court properly granted summary judgment on the EPA and ADEA claims.⁹³

The Seventh Circuit in *Hussein* and the Fourth Circuit in *Ritter* disagree on whether the seventh amendment right to a jury trial is more important than collateral estoppel's judicial economy.⁹⁴ Because both the Seventh Circuit and Fourth Circuit each rendered a directly opposing decision on the constitutionality of the defendants' invocation of collateral estoppel, the strengths of each circuit's rationale are the weaknesses of the other circuit's rationale.⁹⁵ The *Hussein* rationale safeguards a litigant's constitutional right

91. *Id.* In *Ritter* the Fourth Circuit deferred to the Supreme Court's holding in *Parklane Hosiery Co. v. Shore* that when an equity court already has determined issues, the judicial interest in quick and efficient resolution of issues outweighs the plaintiff's right to have a jury resolve identical issues in a subsequent legal claim. *Id.*; see *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 337 (1979) (recognizing that factual determinations from equitable action constitutionally could collaterally estop relitigation of identical issues in subsequent legal claim); *supra* notes 13-27 and accompanying text (explaining *Parklane* Court's holding that equitable determinations constitutionally could collaterally estop party from relitigating same issues in subsequent legal action).

92. *Ritter*, 814 F.2d at 994.

93. *Id.* at 992-94; see *supra* notes 70-74 and accompanying text (discussing *Ritter* court's analysis of effect that collateral estoppel would have on plaintiff's prima facie ADEA and EPA claims); but cf. *Swentek v. USAIR, Inc.*, 830 F.2d 552, 563 (4th Cir. 1987) (refusing to apply *Ritter* court's holding if original trial court clearly did not intend factual findings of equitable claim to preclude new trial of legal claim). In *Swentek v. USAIR, Inc.* the United States Court of Appeals for the Fourth Circuit recognized the court's holding in *Ritter*, but refused to apply the *Ritter* holding to the facts of *Swentek*. *Id.* In *Swentek* the trial court dismissed the plaintiff's equitable Title VII claim, but the jury found for the plaintiff on a legal emotional distress claim. *Id.* at 554. The trial court, however, set aside the jury's findings and ordered a new trial on the emotional distress claim. *Id.* In the new trial the trial court entered a directed verdict for the defendant after the plaintiff had presented evidence on the emotional distress claim. *Id.* Subsequently, the plaintiff appealed the trial court's grant of the directed verdict to the Fourth Circuit. *Id.* In reversing the directed verdict on the emotional distress claim, the Fourth Circuit noted that the trial court's findings in the original trial, which resulted in a dismissal of the plaintiff's Title VII claim, could not collaterally estop the plaintiff's emotional distress claim in the second trial. *Id.* at 563. The Fourth Circuit reasoned that because the original trial court ordered a new trial of the plaintiff's emotional distress claim, the original trial court could not have intended the findings on the Title VII claim to preclude the plaintiff's emotional distress claim. *Id.* The Fourth Circuit stated, therefore, that in allowing the original trial court's findings on the equitable Title VII claim to collaterally estop a new trial of the plaintiff's legal emotional distress claim, the court would contradict the original trial court's intentions. *Id.*

94. See *supra* note 12 and accompanying text (contrasting conflicting outcomes of *Hussein* and *Ritter*).

95. *Id.*

to a jury trial⁹⁶ and recognizes as compulsory the plaintiff's joinder of claims.⁹⁷ The *Ritter* rationale, however, promotes judicial economy⁹⁸ and encourages parties enthusiastically to litigate claims.⁹⁹

By allowing the plaintiff to retry the factual issues before a jury, the *Hussein* rationale safeguards the constitutional guarantee of the right to a jury trial.¹⁰⁰ The history of the Constitution evidences the sanctity of the right to a jury trial.¹⁰¹ Citizens of the United States value the jury trial because England had denied colonists the English right to a jury trial.¹⁰² England's denial of the colonist's right to a jury trial was a principal reason for the Revolutionary War.¹⁰³ Thomas Jefferson, one of the framers of the Constitution, believed that because juries of citizens decided whether a defendant had violated the plaintiff's rights, the civil jury trial guarded citizens against the governmental and judicial abuse of personal rights.¹⁰⁴ Thomas Jefferson concluded, therefore, that the right to a jury trial guaranteed that the government would operate within the principles of the Constitution.¹⁰⁵

The United States Supreme Court also has recognized the importance of the right to a jury trial.¹⁰⁶ Because a jury could decide differently than a judge, the Supreme Court has stated that the availability of a jury as fact

96. See *infra* notes 100-17 and accompanying text (stating and analyzing advantages of *Hussein* rationale that protect right to jury trial).

97. See *Hussein v. Oshkosh Motor Truck Co.*, 816 F.2d 349, 356 (7th Cir. 1987) (stating that plaintiff's joinder of claims was compulsory); *supra* note 53 and accompanying text (noting *Hussein* court's recognition that plaintiff based legal and equitable claims on identical facts); *infra* notes 115-17 and accompanying text (analyzing importance of compulsory joinder in determining whether collateral estoppel violates right to jury trial).

98. See *Ritter v. Mount St. Mary's College*, 814 F.2d 986, 991 (4th Cir. 1984) (stating that concerns of judicial economy can outweigh importance of jury trial), *cert. denied*, 108 S. Ct. 260 (1987); *supra* note 91 and accompanying text (explaining manner in which *Ritter* rationale promotes judicial economy); *infra* notes 118-27 and accompanying text (discussing judicial economy as advantage of *Ritter* rationale).

99. See *Ritter*, 814 F.2d at 991-92 (ruling that when plaintiff joins legal and equitable claims and district court erroneously dismisses legal claim, equitable determination constitutionally could collaterally estop, on remand of legal claim, relitigation of facts common to both legal and equitable claims); *supra* notes 87-90 and accompanying text (discussing *Ritter* court's listing of advantages of holding); *infra* notes 128-32 and accompanying text (stating that Seventh Circuit's holding in *Ritter* encourages parties vigorously to litigate claims).

100. See *Hussein v. Oshkosh Motor Truck Co.*, 816 F.2d 348, 356 (7th Cir. 1987) (discussing *Hussein* court's protection of right to jury trial); *supra* notes 49-60 and accompanying text (stating that *Hussein* rationale protects right to jury trial).

101. See *supra* note 2 and accompanying text (analyzing constitutional history of right to jury trial).

102. *Id.* (discussing nonjury procedures of England's vice-admiralty courts).

103. *Id.* (noting that vice-admiralty courts' nonjury procedures were major impetus for American Revolution).

104. *Id.* (explaining importance of jury trial to framers of Constitution).

105. *Id.* (discussing Thomas Jefferson's view of right to jury trial as safeguard of constitutional principles).

106. *Id.* note 2 (discussing judicial view of importance of right to jury trial).

finder could be determinative of the outcome of the trial.¹⁰⁷ Furthermore, the Supreme Court has held that the Constitution not only guarantees the right to a jury trial of traditional legal claims, but also guarantees the right to a jury trial on statutorily created legal claims.¹⁰⁸ Consequently, by statutorily creating new legal claims, Congress effectively enlarges the right to a jury trial.¹⁰⁹ By reasoning, therefore, that the constitutional guarantee of the right to a jury trial was more important than collateral estoppel's judicial efficiency, the *Hussein* rationale protects the constitutional guarantee of the right to a jury trial.¹¹⁰

Additionally, the Supreme Court in *Parklane* recognized that if a plaintiff joins legal and equitable claims, a trial court has limited discretion in determining the sequence of trial to preserve the plaintiff's right to have a jury trial of the facts common to both the legal and equitable claims.¹¹¹ In balancing judicial economy against the infringement on the right to a jury trial, however, the *Hussein* court recognized that when a plaintiff joins legal and equitable claims, courts rarely should exercise discretion to deny the plaintiff the right to a jury trial on the legal claim.¹¹² The *Hussein* court reasoned, furthermore, that the district court's erroneous dismissal of the legal claim effectively was an abuse of judicial discretion.¹¹³ Therefore, by

107. See *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 353 (1979) (Rehnquist, J., dissenting) (stating that jury trial is procedural opportunity that could change trial outcome); *Byrd v. Blue Ridge Rural Elec. Coop.*, 356 U.S. 525, 537-539 (1958) (holding that, in personal injury cases, trial by jury instead of by judge could be determinative of trial result). *But see Parklane*, 439 U.S. at 332 n.19 (stating that presence or absence of jury is basically neutral to trial outcome).

108. See *Curtis v. Loether*, 415 U.S. 189, 195 (1974) (ruling that right to jury trial attaches to statutorily created legal claims); *supra* note 1 (explaining *Curtis* Court's holding that Congress statutorily may enlarge right to jury trial).

109. See *supra* note 108 and accompanying text (stating that by statutorily creating legal claims, Congress enlarges right to jury trial).

110. See *Hussein v. Oshkosh Motor Truck Co.*, 816 F.2d 349, 356 (7th Cir. 1987) (determining that importance of right to jury trial prevented defendant from invoking collateral estoppel); *supra* notes 46-60 and accompanying text (discussing *Hussein* court's consideration of judicial economy and right to jury trial).

111. See *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 334 (1979) (noting that when plaintiff joins legal and equitable claims, courts should protect right to jury trial of legal claim); *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 510 (1959) (ruling that to prevent collateral estoppel and preserve plaintiff's right to jury trial of legal claim, district court first should dispose of plaintiff's legal claim); *supra* note 19 and accompanying text (discussing *Parklane* Court's statement that courts should exercise discretion to protect right to jury trial); *supra* note 19 (discussing *Beacon* Court's holding that when plaintiff joins legal and equitable claims, courts first should dispose of legal claims).

112. See *Hussein*, 816 F.2d at 354 (noting that under normal circumstances, in joined legal and equitable action, courts always should resolve legal claim before equitable claim); *supra* notes 46-60 and accompanying text (discussing *Hussein* court's rationale for exercising discretion to protect right to jury trial).

113. See *Hussein*, 816 F.2d at 354-55 (discussing effects of district court's erroneous dismissal of legal claim); *supra* notes 46-48 and accompanying text (explaining *Hussein* court's rationale for not allowing district court's abuse of discretion to deny plaintiff jury trial on legal claim).

not allowing the defendant to invoke collateral estoppel, the *Hussein* court prevented the district court's abuse of discretion from destroying the plaintiff's constitutional guarantee of the right to a jury trial.¹¹⁴

In addition to recognizing that a court has limited discretion to deny the right to a jury trial when a party joins legal and equitable claims, the *Hussein* rationale also recognizes that the plaintiff's joinder of legal and equitable claims was compulsory.¹¹⁵ The plaintiff's compulsory joinder was a significant factor in the *Hussein* court's determination that the defendant's invocation of collateral estoppel infringed on the plaintiff's right to a jury trial.¹¹⁶ The *Hussein* court properly reasoned that courts failing to consider whether the plaintiff's joinder of legal and equitable claims is compulsory omit an important factor in determining whether the defendant constitutionally could invoke collateral estoppel.¹¹⁷

Although the *Hussein* rationale safeguards the seventh amendment right to a jury trial, the *Ritter* rationale promotes judicial economy by eliminating

114. See *Hussein* 816 F.2d 348 at 356-57 (disallowing defendant's invocation of collateral estoppel to prevent erroneous dismissal of legal claim from denying plaintiff right to jury trial); *supra* notes 46-60 and accompanying text (discussing *Hussein* court's reasoning for not allowing defendant to invoke collateral estoppel).

115. See *Hussein*, 816 F.2d at 356 (reasoning that if plaintiff had not joined legal and equitable claims, res judicata would have barred subsequent lawsuit); *supra* note 53 and accompanying text (discussing *Hussein* court's analysis of importance of considering whether res judicata forced plaintiff to join legal and equitable claims).

116. See *Hussein*, 816 F.2d at 356 (recognizing that because of res judicata, plaintiff's joinder of legal and equitable claims was compulsory); *supra* note 53 and accompanying text (discussing *Hussein* court's consideration of plaintiff's compulsory joinder of legal and equitable claims).

117. Compare *Hussein*, 816 F.2d at 356 (considering whether plaintiff's joinder was compulsory in determining whether defendant's invocation of collateral estoppel violated plaintiff's right to jury trial) with *Ritter v. Mount St. Mary's College*, 814 F.2d 986, 988-94 (4th Cir. 1987) (failing to consider whether joinder of claims was compulsory in determining whether defendant's invocation of collateral estoppel violated plaintiff's right to jury trial), *cert. denied*, 108 S. Ct. 260 (1984) and *Swentek v. USAIR, Inc.*, 830 F.2d 552, 563 (4th Cir. 1987) (refusing to apply *Ritter* court holding if original trial court clearly did not intend factual findings of equitable claim to preclude new trial of legal claim). The Fourth Circuit employs the core of operative facts test for res judicata. See *Nash County Bd. of Educ. v. Biltmore Co.*, 640 F.2d 484, 486-88 (4th Cir. 1981) (holding that state court consent judgment barred subsequent federal claim based on same set of operative facts), *cert. denied*, 454 U.S. 878 (1981). In *Nash County Board of Education v. Biltmore Co.*, the plaintiff based a federal claim on the same set of operative facts as a previous state claim. *Id.* at 488-89. The Fourth Circuit stated that the claims alleged the same wrong and involved identical facts and evidence. *Id.* The *Nash* court held, therefore, that even though the plaintiff brought the actions under two different statutes, res judicata barred the subsequent federal claim. *Id.* In *Ritter* the plaintiff's joinder of claims was compulsory because the plaintiff based the ADEA, EPA, and Title VII claims on the defendant's dismissal of the plaintiff and, consequently, res judicata could have barred any subsequent claim that the plaintiff failed to bring in the same original action. *Ritter*, 814 F.2d at 989-90 (explaining underlying facts of ADEA, EPA, and Title VII claims); *supra* note 74 and accompanying text (analyzing factual basis of plaintiff's claims in *Ritter*).

the need for a new trial on the plaintiff's legal claims.¹¹⁸ The *Ritter* rationale allows the defendant, after a district court erroneously has dismissed a legal claim and determined factual issues of a joined equitable claim, to collaterally estop the plaintiff from retrying the issues of the legal claim to a jury.¹¹⁹ The *Ritter* rationale, therefore, saves the judicial system and both parties the time and expense of a jury trial on the legal claim.¹²⁰

Similarly, the *Ritter* rationale promotes judicial economy by eliminating the plaintiff's need for an interlocutory appeal.¹²¹ The United States Code allows an interlocutory appeal before final judgment if an interlocutory appeal materially would advance the case.¹²² An interlocutory appeal unduly could delay the trial, however, by requiring the circuit court to hear the parties argue the merits of the case.¹²³ If the *Ritter* court had held that the defendant could not invoke collateral estoppel, either the plaintiff would have received a new trial of the legal claim, or the plaintiff could have made an interlocutory appeal, which materially would have advanced the case by preserving the plaintiff's right to a jury trial and eliminating the need for a new trial on the legal claim.¹²⁴ By receiving the right to a new trial or by making an interlocutory appeal, however, the plaintiff would be placing a burden on judicial economy.¹²⁵ By holding that the defendant could invoke collateral estoppel, however, the *Ritter* rationale does not allow the plaintiff a new trial of the legal claim.¹²⁶ Under the *Ritter* rationale,

118. See *Ritter*, 814 F.2d at 991 (stating advantages of defendant's invocation of collateral estoppel); *supra* notes 83-85 and accompanying text (discussing *Ritter* rationale's advantage of promoting judicial economy).

119. See *Ritter*, 814 F.2d at 992 (holding that defendant constitutionally could collaterally estop relitigation of issues essential to plaintiff's legal claim); *supra* notes 81-93 and accompanying text (discussing *Ritter* court's analysis of constitutionality of defendant's invocation of collateral estoppel).

120. See *Ritter*, 814 F.2d at 991 (stating that by granting defendant new trial, court excessively would burden judicial economy); *supra* notes 87-92 and accompanying text (discussing *Ritter* court's analysis of effect of disallowing defendant's invocation of collateral estoppel).

121. See *Ritter*, 814 F.2d at 991 (reasoning that by disallowing defendant's invocation of collateral estoppel, court eliminates need for interlocutory appeal); *supra* notes 87-92 and accompanying text (analyzing how *Ritter* court's rationale prevents interlocutory appeals and retrials of plaintiff's legal claims).

122. 28 U.S.C. § 1292(b) (1982).

123. See *Ritter*, 814 F.2d at 991 (stating that interlocutory appeal unnecessarily would burden judicial economy); *supra* note 84 and accompanying text (discussing interlocutory appeal as consequence of giving plaintiff right to retrial of legal claim).

124. See *Ritter*, 814 F.2d at 991 (stating that if defendant could not invoke collateral estoppel, interlocutory appeal could be proper to protect plaintiff's right to jury trial); *supra* note 88 and accompanying text (discussing *Ritter* court's statement that by granting retrial of erroneously dismissed legal claim, court would create need for interlocutory appeal).

125. See *Ritter*, 814 F.2d at 991 (stating that by granting plaintiff a retrial, court would create need for interlocutory appeal); *supra* note 88 and accompanying text (noting that by giving plaintiff right to new trial, courts excessively would burden judicial economy).

126. See *Ritter*, 814 F.2d at 991 (reasoning that because court does not grant retrial of legal claims, plaintiff has no need for interlocutory appeal); *supra* note 88 and accompanying text (discussing *Ritter* court's analysis of effect of granting plaintiff retrial of legal claim).

therefore, the district court's dismissal of a legal claim that the plaintiff joined with an equitable claim would not require an interlocutory appeal to determine whether the dismissal was erroneous.¹²⁷

In addition to promoting judicial economy, the *Ritter* rationale encourages parties vigorously to litigate claims.¹²⁸ If an equitable determination could not constitutionally collaterally estop the relitigation of a legal claim that the district court erroneously dismissed, a new trial of the legal claim would be necessary.¹²⁹ By requiring a new trial on the legal claim, courts would diminish both parties' incentive effectively to litigate the equitable claim.¹³⁰ Because the *Ritter* rationale requires equitable determinations to be binding on subsequent legal actions, however, the *Ritter* rationale does not necessitate a new trial of the facts common to both the legal and equitable claims.¹³¹ The *Ritter* rationale, therefore, encourages the parties effectively to litigate the equitable claim.¹³²

Although both the *Hussein* rationale and the *Ritter* rationale have strengths, the *Hussein* rationale is preferable to the *Ritter* rationale for three reasons.¹³³ First, the *Hussein* rationale properly applies the *Parklane* Court's principles to protect the right to a jury trial without overburdening judicial economy.¹³⁴ The *Ritter* rationale, in contrast, indiscriminately extends the *Parklane* Court's holding to new and different fact situations at the expense of the seventh amendment guarantee to a jury trial.¹³⁵ By addressing only

127. See *Ritter*, 814 F.2d at 991 (analyzing effect of granting plaintiff retrial of legal claim); see also *supra* note 88 and accompanying text (discussing *Ritter* court's reasoning that interlocutory appeal would be proper to protect plaintiff's right to jury trial of legal claim).

128. See *Ritter*, 814 F.2d at 991 (noting that by allowing defendant to invoke collateral estoppel, courts would encourage enthusiastic litigation of claims); *supra* notes 87-90 and accompanying text (discussing *Ritter* court's analysis of effects of holding).

129. See *Ritter*, 814 F.2d at 991 (noting that if court holds unconstitutional defendant's invocation of collateral estoppel, plaintiff would be able to try legal claim before a jury); *supra* notes 87-90 and accompanying text (discussing reasons that *Ritter* court acknowledged that collateral estoppel would benefit judicial economy).

130. See *Ritter* 814 F.2d at 991 (during bench trial, parties would realize that reversal of district court's dismissal of legal claims would necessitate new trial before jury of factual issues common to both legal and equitable claims); *supra* notes 88-90 and accompanying text (explaining *Ritter* court's reasoning that by disallowing defendant's invocation of collateral estoppel, court would encourage parties effectively to litigate claims).

131. See *Ritter*, 814 F.2d at 991 (noting that one trial of facts common to legal and equitable claims was sufficient); *supra* notes 81-93 and accompanying text (explaining *Ritter* court's ruling that defendant constitutionally could invoke collateral estoppel).

132. See *Ritter*, 814 F.2d at 991 (reasoning that by holding that defendant constitutionally could invoke collateral estoppel in legal action, courts encourage parties zealously to litigate equitable claims); *supra* notes 88-90 and accompanying text (discussing *Ritter* court's list of benefits of holding).

133. See *infra* notes 134-53 and accompanying text (discussing advantages of *Hussein* rationale).

134. See *supra* notes 111-14 and accompanying text (stating that *Hussein* court applies *Parklane* Court's holding to protect right to jury trial).

135. See *infra* notes 136-41 and accompanying text (noting that *Ritter* too easily disposes of plaintiff's right to jury trial).

whether an equitable determination constitutionally could collaterally estop relitigation of the issues in a subsequent and separate legal claim, the *Parklane* Court failed to address whether, if a plaintiff properly joins legal and equitable claims, an equitable determination constitutionally could collaterally estop relitigation of factual issues on the remand of the same legal claim.¹³⁶ Moreover, in *Parklane* an erroneous dismissal of the legal claim did not deny a party the opportunity to have a jury trial of the factual issues of the legal claim.¹³⁷ Furthermore, in *Parklane*, the Supreme Court recognized that when a plaintiff joins legal and equitable claims, the trial court whenever possible should exercise discretion to preserve the right to a jury trial on the facts common to both the legal and equitable claims.¹³⁸ Although the district court in *Ritter* erroneously dismissed the legal claim, the *Ritter* court could have exercised discretion to protect the right to a jury trial by disallowing the defendant's invocation of collateral estoppel and denying the motion for summary judgment on the remanded legal claim.¹³⁹ In *Ritter*, however, the Seventh Circuit described the defendant's invocation of collateral estoppel as unfair, but failed to protect the plaintiff's right to a jury trial on the remanded legal claim.¹⁴⁰ The *Ritter* rationale, therefore, inappropriately extends the *Parklane* Court's holding.¹⁴¹

Second, the *Hussein* rationale is better than the *Ritter* rationale because the *Hussein* rationale applies *Parklane's* principles to the facts of each individual case.¹⁴² The *Hussein* rationale realizes that the concerns of col-

136. See *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 324-25 (1979) (considering only subsequent and separate legal claim); *supra* notes 13-27 and accompanying text (discussing *Parklane* Court's consideration of whether equitable determination could collaterally estop relitigation of identical issues in subsequent and separate legal claim).

137. See *Parklane*, 439 U.S. at 324-25 (explaining facts of *Parklane*); *supra* note 14 and accompanying text (reviewing facts of *Parklane*, which did not involve joinder or district court's erroneous dismissal of legal claims).

138. See *Parklane*, 439 U.S. at 334 (recognizing that in joined legal and equitable claims, courts rarely should deny right to jury trial of legal claim); *supra* notes 13-27 and accompanying text (discussing *Parklane* Court's holding that equitable determination constitutionally could collaterally estop relitigation of issues in subsequent legal claim).

139. See *Ritter v. Mount St. Mary's College*, 814 F.2d 986, 989 (4th Cir. 1987) (noting that trial court erroneously interpreted EPA and ADEA); *supra* notes 72-73 (discussing *Ritter* court's determination that EPA and ADEA apply to religious institutions).

140. See *Ritter*, 814 F.2d at 991 (referring to district court's erroneous dismissal of legal claim denying plaintiff's right to jury trial of legal claim).

141. See *id.* (applying *Parklane* Court's principles and holding that defendant constitutionally could invoke collateral estoppel); *supra* notes 81-93 and accompanying text (discussing *Ritter* court's adherence to *Parklane* Court's holding that equitable determinations constitutionally could collaterally estop relitigation of issues in subsequent legal claim).

142. See *Parklane*, 439 U.S. at 333-37 (reasoning that plaintiff constitutionally could invoke collateral estoppel); *supra* notes 13-27 and accompanying text (reviewing *Parklane* Court's reasons for allowing equitable claim to collaterally estop relitigation of identical issues in subsequent legal claim); see also *supra* notes 111-17 and accompanying text (noting that *Hussein* court applied facts of case to determine if previous valid judgment existed and if right to jury trial outweighed judicial economy).

lateral estoppel can outweigh the importance of the right to a jury trial.¹⁴³ The *Hussein* rationale, however, determines on a case by case basis the infringement on the right to a jury trial and the benefit to judicial economy.¹⁴⁴ For example, in determining that collateral estoppel unconstitutionally infringed on the right to a jury trial, the *Hussein* court considered both that the joinder of claims was compulsory and that if the district court had not erroneously dismissed the legal claim, the plaintiff would have had a right to a jury trial of the legal claim.¹⁴⁵ The *Hussein* rationale, therefore, better applies the *Parklane* Court's principles by exercising discretion to preserve the seventh amendment guarantee to a jury trial.¹⁴⁶

Third, the *Hussein* rationale is better than the *Ritter* rationale because the *Ritter* rationale overstates the burden that a court would place on judicial economy by declaring unconstitutional the defendant's invocation of collateral estoppel.¹⁴⁷ On many interlocutory appeals, the circuit court would not have to hear the parties argue the merits of the case. For example, the circuit courts in both *Hussein* and *Ritter* remanded the cases for trial because the district courts erroneously interpreted the statutes on which the plaintiffs based the legal claims.¹⁴⁸ Interlocutory appeals in *Hussein* and *Ritter*, therefore, would not have required the parties to argue the factual issues of the case.¹⁴⁹ The interlocutory appeals, instead, only would have required the circuit courts to interpret statutes.¹⁵⁰ Furthermore, by requiring a retrial of the factual issues common to both the legal and

143. See *supra* notes 106-14 and accompanying text (analyzing *Hussein* court's balancing of importance of right to jury trial with interest in judicial economy).

144. See *Hussein v. Oshkosh Motor Truck Co.*, 816 F.2d 348, 354-56 (7th Cir. 1987) (conducting fact specific analysis to determine that defendant constitutionally could not invoke collateral estoppel); *supra* notes 111-17 and accompanying text (reviewing *Hussein* court's factual analysis).

145. See *Hussein*, 816 F.2d at 356 (recognizing res judicata as factor in weighing interest in judicial economy against importance of right to jury trial); *supra* notes 111-17 and accompanying text (analyzing *Hussein* court's consideration of res judicata).

146. See *Parklane*, 439 U.S. at 333-37 (reasoning that interest in quick and efficient resolution of claims could outweigh importance of right to jury trial); *supra* notes 13-27 and accompanying text (reviewing *Parklane* Court's reasons for allowing equitable claim to collaterally estop relitigation of identical issues in subsequent legal claim); *supra* notes 111-17 and accompanying text (noting that *Hussein* court conducted fact specific analysis in attempting to exercise discretion to preserve plaintiff's right to jury trial on legal claim).

147. See *supra* notes 118-27 and accompanying text (reviewing *Ritter* court's reasoning that by allowing invocation of collateral estoppel, court eliminates need for new trial and interlocutory appeal).

148. See *Hussein*, 816 F.2d at 352 (noting that trial court erroneously interpreted § 1981); *Ritter v. Mount St. Mary's College*, 814 F.2d 986, 989 (noting that trial court erroneously interpreted EPA and ADEA), *cert. denied*, 108 S. Ct. 260 (1987); *supra* notes 41-42 and accompanying text (explaining *Hussein* court's holding that § 1981 applies to Egyptians); *supra* notes 72-73 (discussing *Ritter* court's determination that EPA and ADEA apply to religious institutions).

149. See *supra* note 148 and accompanying text (noting that *Hussein* and *Ritter* appeals required statutory interpretations).

150. *Id.*

equitable claims, the courts would not sacrifice judicial economy any more than in other situations when judicial error requires a retrial.¹⁵¹ Moreover, the retrial's purpose would be to correct the trial judge's discretionary error to preserve the seventh amendment guarantee of the right to a jury trial.¹⁵² The courts, therefore, by creating the right to a new trial and the need for interlocutory appeal, would not excessively burden the judicial interest in the quick and efficient resolution of claims.¹⁵³

The *Hussein* rationale is preferable to the *Ritter* rationale because the *Hussein* rationale examines the facts in each case and, accordingly, exercises discretion to preserve the plaintiff's right to a jury trial of the facts underlying the legal claim.¹⁵⁴ The *Ritter* rationale, however, forgoes a fact specific analysis and broadly applies the *Parklane* Court's holding that an equitable determination constitutionally can collaterally estop the relitigation of the factual issues in a subsequent legal claim.¹⁵⁵ Like the *Ritter* rationale, the *Hussein* rationale recognizes that the concerns of judicial economy can outweigh the importance of trying the facts before a jury.¹⁵⁶ The *Hussein* rationale, however, weighs the constitutional right to a jury trial more heavily than judicial economy, and, accordingly, preserves the constitutional guarantee of the right to a jury trial at the comparatively small expense of judicial economy.¹⁵⁷

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151. See *Hussein*, 816 F.2d at 356 (assessing relatively small burden that court would place on judicial system by holding unconstitutional defendant's invocation of collateral estoppel).

152. See *supra* notes 142-46 and accompanying text (noting that by giving plaintiff right to retrial of legal claim, *Hussein* rationale protects right to jury trial).

153. *Id.*

154. See *supra* notes 142-46 and accompanying text (describing *Hussein* rationale's fact specific, discretionary analysis).

155. See *supra* notes 133-41 and accompanying text (explaining how *Ritter* rationale indiscriminately denies right to jury trial).

156. See *supra* note 143 and accompanying text (stating that *Hussein* rationale recognizes that interest in speedy resolution of conflicts can outweigh importance of right to jury trial).

157. See *supra*, notes 142-46 and accompanying text (explaining how *Hussein* rationale protects right to jury trial).

