19-5075

No. 18-2424

ORIGINAL

SUPREME COURT OF THE UNITED STATES

Washington, DC

No. 17-1154

No. 1:16-cv-01346-TDS-JEP (M.D.N.C. Feb. 1, 2017).

Grace Makau,

Petitioner,

v.

LOUISE MEYER, District Court Judge; KRIS BAILEY, District Court Judge; VINCE ROZIER, District Court Judge; ERIN GRABER, District Court Judge; CHRISTINE M. WALZYK, District Court Judge; BEVERLY SCARLETT, District Court Judge; JOE M. BUCKNER, District Court Judge; LUNSFORD LONG, District Court Judge; PAIGE VERNON, District Court Judge,

Judge Thomas D. Shroeder, United States District Court for the Middle District of North Carolina, at Greensboro.

Judge Niemeyer, Judge Harris and Judge Shedd, Circuit Judges

Respondents,

On Petition for a Writ of Certiorari to

the United States Court of Appeals

for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: 19-CVD-237

** Please include the following case in relation to the writ certiorari (petition for custodial changes), unjust treatment from the various agencies that have been deemed to be harrassment in nature, emotional distress and other financial stressors that have affected normalcy, balance, inalienable rights, relations even nuclear, and other familial relations due to the defamation from the courts. *and defendant and the parties involved.**

19-CVD-237 from Granville County District Court

- a retaliatory case filed to sabotage this petition because of dependant/respondents past rulings of discrimination which have greatly affected familial relations. This is one example of the many presented forth.

Questions Presented

I. THE REHEARING PANEL DENIAL DISREGARDED RULE OF LAW, LAW {NCGS 50-13.5(d)(3)} AND/OR FEDERAL QUESTION (14th Amendment, EXTENDING THE INJUSTICE AND THE BREAKING OF LAW

II. THE APPEALLANT COURT OF THE MIDDLE DISTRICT OVERLOOKED OR MISAPPREHENDED AND MUST ARGUE IN SUPPORT OF THE PETITION

III. THE DISTRICT COURT JUDGE ERRED IN STRIKING THE AMMENDED COMPLAINT

a. The Rehearing En banc's denial filed May 15th 2019, did not address the issue; federal question, deferring reunification, extending the alienation, breaking and denial of human and constitutional rights to live with maternal family whom they've been estranged from, to whom the courts have discriminated against based on various factors including but not limited to race, color, nationality, familial status, religion, gender, social/financial status, favoring the more affluent and more powerful criminal abusive fathers who have continued and allowed to continue by the courts to not only break the law but deny appellant basic human inalienable rights awarded to any parent who "chose" and had the audacity to give birth; punishing appellant's minors and appellant by causing anxiety through separation due to appellant's choice of life, liberty and pursuit of happiness promised under the declaration of independence. A violation of the 14th amendment without question and the NC General Statute NCGS 50-13.5(d)(3)

b. The court of appeal's decision ruling dated April 8th 2019, in affirming district court's decision overlooked the appellant's right to "petition the government" thereby exercising **her first amendment right** against the sanctions set forth by the district court.

Rule 40 states, a petition for panel rehearing may be filed within 14 days after entry of judgment. **But in a civil case**, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is:

(A) *the United States*;

(B) *a United States agency*;

(C) *a United States officer or employee sued in an official capacity*; or

(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf – including all instances in which the United States represents that person when the court of appeals' judgment is entered or files the petition for that person.

All except D of which are the case.

c. The amended complaint is solely based on violations not presented on the original complaint. Emphasis on **NCGS 50-13.5(d)**

d. The amended complaint supports the **Executive Order 13841 of June 20, 2018**, submitted on the standard of the administration and laws set forth **("families remain together")** hence the clause "It is also the policy of this Administration ***to maintain family unity***, including by detaining alien families together **where appropriate** and **consistent with law and available resources**. It is unfortunate that Congress's failure to

act and court orders have put the Administration in the position of separating alien families ***to effectively enforce the law***."

e. The arrival of Appellant's oldest daughter H, on November 23rd 2018 as a transfer student to University (as a Naval Officer) prompted the amendment. The amended complaint re-enforces the issue on the original complaint in correction to the ongoing dismissal of the "Rights regarding alienation, estrangement and violation of sibling rights: ..648 .. There is also a constitutional ***right to live together as a family***, 649 and this right is not limited to the nuclear family."

f. Under Rule 60 (b) the motion, must be made within a reasonable time—and for reasons (1), (2), newly discovered evidence that, with reasonable diligence, **could not have been discovered in time to move for a new trial under Rule 59(b)**; and (3) no more than a year after the entry of the judgment or order or the date of the proceeding. (2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

g. Under Fed. R. Civ. P. 11(b), Zaczek v. Fauquier Cty., Va, 746 F. Supp. 1071, 1077 (E.D. Va. 1991, id. at 1077 n.21, the First Amendment right "to petition the Government for a redress of grievances" includes a right of court access, .. guaranteeing the right of a legally injured person to obtain a meaningful remedy," would entitle the appellant to relief from the final judgment of the case.

From the original complaint (case 17-1154):

a. Applying the domestic-relations exceptions to federal jurisdiction over bona fide federal questions would violate Article III

b. The case was/is not subject to the Younger abstention doctrine.

c. The Rooker-Feldman doctrine should not have been applied in this case

IV. THE CASE OUGHT TO BE REMANDED FOR A DECISION BASED ON THE MERIT

a. The District Court below **has a duty to resolve the federal question on its merits**

b. The rights of the appellant guaranteed under the Constitution **should not be dismissed** for judicial convenience

c. The state actors have clearly show very bad faith and at the least the inability to guarantee or respect the constitutional rights of the appellant.

d. There is no parity between federal and state courts in relation to rights under **42 U.S.C. § 1983**.

TABLE OF CONTENTS

TABLE OF AUTHORITIES:

Statutes: (US Constitution)

28 U.S.C. § 1291;

28 U.S.C. § 1915 (e)(2)(B)

42 U.S.C. § 1983, 1985, 1985(2), 1985(3) and 1986

50 U.S.C § 3931 (b)(b)(4) and (c)

U.S. Const., Amend. XIV

U.S. Const., Amend. IV

U.S. Const., Amend. V

U.S. Const., art. I, §6, cl.

NCGS § 50-13.5(d)(3)

NCGS §14-184.

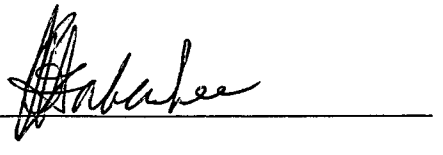
NCGS § 96-15.01(b)

CERTIFICATE OF SERVICE

****

I certify that on _____ the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true copy and correct copy at the address listed below:

316 Fayetteville St, Raleigh NC 27601



Signature

6/24/2019

Date

STATEMENT OF SUBJECT MATTER AND APPLELLANT JURISDICTION

The Rehearing En banc's denial (18-2424) filed on May 15th 2019, out of no vote; no poll requested under Fed. R. App. P. 35 on the petition, failed to address the heart of the matter, invalidating the Executive Order 13841; Section 1, signed June 20th 2018, 42 U.S.C. Sec. 1983 in addition to the Due Process and Equal Protection clause of the Fourteenth Amendment and the federal question which falls under the federal jurisdiction 28 U.S. Code § 1331, and the (NCGS 50-13.5(d)(3). Unlike popular belief that reuniting the immigrant families now separated at the border due to a prior Order from the White House ordering the separation, appellant's case is quite simply relevant. None of the parties involved are undocumented, or ever came illegally through the border, none of the parties involved are lost and none of the parties involved are unidentified, and all of the parties involved are living in plain sight and able to be located should not only make the case, qualifying the appellant, therefore eliminated the challenges the administration is facing currently.

This case, has been lingering for several years, even though several attempts to file for custody were thwarted due to discrimination and a blatant lack of conscience of the part of the officers in charge, Appellant hasn't lost hope, neither have the minor children involved. The parties keeping the minor children (custodians) have not only violated visitation rights but broken the laws related to custody on numerous occasions not only disqualifying them to have custody but elevating appellants drive and motivation for these custody filings in order to acquire custody but petitioned the federal government under appellant's first amendment provisions to seek relief. No compensation has been awarded and no relief has been granted

to date but a continuation of violations, harassments and bullyings that have kept going on for years.

The Appellant Court, on April 8th 2019, erred by overlooking and prompting the petition for rehearing and/or petition for rehearing en banc's filing, with the intention to enforce the appellant's first amendment rights to petition the government on this ongoing proceedings to uphold the appellant's and the minor children of US citizenship their fourteenth amendment rights. The affirming of the District's Court's decision ruling supported the breaking of the NC General Statutes, the fourteenth amendment and the first amendment and opposition of these laws both state and federal, allowing the department to enable the custodial parent to "evade jurisdiction of an NC court" (NCGS 50-13.5(d)(3)_without penalty, apprehension or consequence. This case has been heard on more than one occasion in the lower courts and the continual deprivation of parental rights been upheld against the constitution and NCGS.

The District Court abstained from hearing this domestic matter filed under federal question jurisdiction and stroked the case, stating irrelevancy and repetition from the original complaint. The District Court stated that the original complaint (Case 17-1154) had been appealed in higher courts (June 22nd 2017 in the Fourth Circuit Court of Appeals and dismissed and the petition for writ certiorari on November 27th 2017 at the United States Supreme Court) and denied warrantying the District Court's decision to strike the case off the record. This appeal is filed on the basis that the Fourth Circuit of Appeals must decide several jurisdictional questions and address abuse of discretion by the federal courts below:

What District Court overlooked in the amendment complaint No. 1:16CV1346, was what prompted the filing of the amendment and this Fourth Circuit appeal that follows.

The Federal question raised supports the **Executive Order 13841 signed June 20, 2018, Section 1**. In it the question on the standard of the administration and laws set forth; ("families remain together") hence the clause "It is also the policy of this Administration ***to maintain family unity***, including by detaining alien families together **where appropriate** and **consistent with law and available resources**. It is unfortunate that Congress's failure to act and court orders have put the Administration in the position of separating alien families ***to effectively enforce the law***."

The effective date of this Executive Order signed in June 20th 2018, Section 1, came after the original complaint was filed in 2017 and appealed thereafter and wasn't included in the original complaint The District Court argued irrelevance and repletion in the amendment overlooking this very important document in support of the amended complaint.

Secondly, the location of one of the minor children mentioned in the case changed from Charlotte, NC in the original complaint No.17-1154 to Detroit, MI in the amended complaint No. 1:16CV1346. The amended complaint is based on violations not presented on the original complaint. Emphasis on **NCGS 50-13.5(d)(3).** In the original complaint, challenges were presented in the attempt to have visitations with the minor child with moving of the minor child to a different city (*637 Harwyn Dr., **Charlotte, NC 28215***) which is 3 hours away from the visitation location, and within the NC jurisdiction), to a different state all together, over 14 hours' drive arriving **1656 Collingwood St., Detroit, MI 48206** on **September the 12th, 2018**, from the State of the NC visitation's order jurisdiction; the silent

party mentioned in the complaint having "evaded the jurisdiction of this NC court order" according to **NCGS 50-13.5(d)(3).**

Which brings the amended complaint to this third federal question, case and point. As a result of the District Court's no votes, violations, dismissals and depravations, refusal to uphold the law, the Fourth Circuit's responsibility of upholding the law and statutes and constitution of the amended complaint re-enforcing the issue on the original complaint in correction to the ongoing dismissal of the "Rights regarding alienation, estrangement and violation of sibling rights: (with one of the minor children's siblings residing with the Appellant awaiting University) **be enforced**. There is also a constitutional ***right to live together as a family***, and this right is not limited to the nuclear family."

Every other federal question has been addressed in the previous complaint and to avoid tedious and annoying repetitions according to the District Courts, the appeal will be short to give emphasis on those three issues raised.

This appeal, in addition to the amendment complaint appeals, raises unresolved questions from the original complaint, surrounding Federal Questions and the Domestic-Relations Exception which continue to be a detriment to real people by permitting unfettered, unsupervised and unguided exercise of discretion by District Courts to decline jurisdiction of Federal Questions that absolutely satisfy Article III requirements.

The Appellant is of the view that Article III courts have mandatory jurisdiction in federal questions and that there is no text in the US Constitution that permits Article III courts to decline Federal Questions by denying and striking, deploying abstention doctrines that are

unsupported by a strict reading of the Constitution. Only the **US Supreme Court has the abstention authority.** Lack of clear guidance in the Domestic-Relations is "child's play" for the courts unwilling to discharge mandatory constitutional duties which leads to the suffering of people like the Appellant.

The appellant alleged, and complained of the following actions of the appellees:

a. The denial of parental rights for more than 8 years since their removal in January 5th 2011, based on an exparte order/s without due process, finding of facts and without the hearing of the Appellant of the case, warrantying a mistrial and a voiding of "removal orders." The appellant was alleged to have relocated to another state by the Department, yet was unmistakably found in less than 24 hours (next day) of the signing of the exparte orders signed by Judge Joe Buckner in January 2011. This clearly reveals The Department knew exactly where the appellant was and fraudulently acquired the custody of the minor children under false pretenses; under penalty of perjury!
b. Improper influence of the Defendant's (then Plaintiff's) incredibly influential family on the entire court system of Orange, Durham and Wake.
c. Indefinitely extending exparte orders for months without hearing of the Appellant and therefore denying the defendant now plaintiff/appellant's parental rights guaranteed by the US Constitution.
d. Summarily refusing to hear the Appellant and always issuing and enforcing those orders that favor the children fathers whom couldn't under rule of law be considered

as credible witnesses but were put on the stand anyway in support of the Department's agenda.

e. Building up a fraudulent case that snow balled from a myriads of allegations perpetrated by the fathers of the children and the Department alike which was later used in one evaluation to discredit Appellant's ability to parent. The Appellant hasn't failed to mention how well the minor children have excelled in the midst of the psychological tortures and outperforming in their school. The psychological issues raised were said to be hereditary yet the results and expert study suggest quite the opposite with the discovery of the trans-generational epigenetic inheritance, stating the lasting intelligent gene actually comes from the XXX chromosome.

All of the above cited activities by the Appellant among other activities **are a violation of 42 U.S.C. Sec. 1983 in addition to the Due Process and Equal Protection clause of the 14th amendment, Rule of Law,** all to which the President of the United States enforced by signing the Executive Order 13841 Section 1 of June 20, 2018 ensuring families are kept together.

The violation of 42 U.S.C. Sec. 1983 in addition to the Due Process and Equal Protection clause of the 14th amendment raises a federal question which falls under the federal jurisdiction 28 U.S. Code § 1331.

The Court of Appeals for the Fourth Circuit has appellate jurisdiction pursuant to 28 U.S. Code § 1291, which grants appellate review of final decisions of district courts in the United States.

The United States District Court for the Middle District of North Carolina, at Greensboro, exercised subject matter jurisdiction over this action pursuant to 28 U.S. Code § 1331 which grants federal question jurisdiction over to district courts of the United States.

Appellant certifies that the instant appeal arises from a final decision of the District Court. The District Court entered a judgment, dated November 13th 2018 striking the amended complaint referencing the amendments mentioned above and the declaration and denying the motion for preliminary injunction, thereby closing the case.

The Notice of Appeal was filed in November, the 28th 2018. The Decision on this appeal was made on April 8th 2019. A Petition for Rehearing and Petition for rehearing En Banc underway to be submitted in a timely manner in compliance with Rule 40.

STATEMENT OF THE ISSUES PRESENTED:

a. Whether the District Court erred in striking and denying, dismissing Appellant's claims pursuant to 28 U.S. Code § 1915(e)(2)(B) and whether there were sufficient grounds to determine that the suit was frivolous and failed to state to state a claim upon which relief may be granted by the federal court?
b. Whether there were grounds justifying the amended complaint ruling under Rule 60 (b) of the federal rules of civil procedure and Fed. R. Civ. P. 11(b), Zaczek v. Fauquier Cty., Va, 746 F. Supp. 1071, 1077 (E.D. Va. 1991, id. at 1077 n.21, that would entitle the appellant to relief from the final judgment of the case?

c. Whether a no vote (of confidence) of participating Judges from Rehearing Enbanc validates a denial under Fed. R. App. P. 35, invalidating constitutional rights under the fourteenth amendment, Rule of Law, NCGS 50-13.5(d)(3) and of course the action pursuant to 28 U.S. Code § 1331 which grants federal question jurisdiction over to district courts of the United States?

And from the original dismissed and denied complaint of November 18th 2016;

d. Whether applying the disputing arguments against the federal question and/or domestic relations exception to bar federal courts from jurisdiction over bona fide federal questions violate Article III, which endows federal courts with jurisdiction over all federal question cases in law or equity?

e. Whether Article III courts are REQUIRED to decline federal question jurisdiction regardless of its nature by deploying laws unrelated to the federal questions raised including but not limited to the Domestic-Relations Exceptions?

f. Whether the federal-question jurisdiction statute reflect a congressional intent that federal jurisdiction extent to domestic-relations matters that raise questions of federal law?

g. Whether the District Courts below abused its discretion in determining that the federal question presented was subject to the Domestic-Relations Exception and therefore unworthy of federal consideration?

h. Whether this case raises facts that are appropriate for an exception to the Younger abstention doctrine?

i. Whether the Rooker-Feldman (mentioned in the original complaint dated November 18th 2016), Rule II, Fed. R. Civ. P. 11(b), Zaczek v. Fauquier Cty., Va, 746 F. Supp. 1071, 1077 (E.D. Va. 1991, id. at 1077 n.21, or any other aforementioned laws, rules, statutes applies in this case against the U.S. Constitution and Deprivation of parental and sibling rights; the foremost federal question?

STATEMENT OF THE CASE:

Appellant, in requesting for an upholding of the laws of this great land including but not limited to the fourteenth amendment, Rule of Law, NCGS 50-13.5(d)(3) and of course the action pursuant to 28 U.S. Code § 1331 which grants federal question jurisdiction over to district courts of the United States, against the 18-2424 Rehearing En banc's denial order filed on May 15th 2019 due to no vote under Fed. R. App. P. 35, **still seeks relief**; justice under the laws of the land, the basic human inalienable right – that all men (women) are equal and deserving of the right to life, liberty and pursuit of happiness (family unity); the right to live with the minor children.

Appellant, in seeking relief against the affirmation of the District Court's ruling dated April 8th 2019, by denying the appellant her first, fifth, fourteenth, and **NCGS 50-13.5(d) is unconstitutional, unstatutory, against the rule of law, unpatriotic, and a breaking of the law. It upholds deprivation and promotes injustice for the siblings by permitting Defendants to break the law against the "Rule of Law."** The Rule of Law states that "**everyone** must follow the law, NO ONE is above the law, LEADERS must obey the law, even the GOVERNMENT/s must obey the law" yet we see the opposite happening with

government agencies, court officers/officials, the leaders of this country unable to uphold the law where it is most needed, causing undue pain to innocent victims while awarding and rewarding perpetrators and breakers of the law.

Appellant, against District Court Judge's inception of "Fed. R. Civ. P. 11(b), Zaczek v. Fauquier Cty., Va, 746 F. Supp. 1071, 1077 (E.D. Va. 1991, id. at 1077 n.21," ***sanctions reasoning; sanctions' ruling,*** in the stricken amended complaint, denial ruling/judgment, ultimately closing of the case, brought the amended action pursuant to **the First Amendment right** "to petition the Government for a redress of grievances" includes a right of court access, .. guaranteeing the right of a legally injured person to obtain a meaningful remedy." This action specifically addresses federal questions related to violations under 42 U.S.C. § 1983 and the Fourteenth Amendment, the Due Process Clause of the Fourteenth Amendment which protects the fundamental right of parents.

Appellant, the Plaintiff, brought this action in the District Court under 42 U.S.C. Sec. 1983 civil rights action and Rule 60(b)(2) under Rule 59(b), seeking inter-alia, seeking an injunction against a number of North Carolina State Judges who had so egregiously misapplied North Carolina State law as to deprive appellant of her civil rights in violation of the US Constitution.

The Appellant filed the amended complaint (Doc 31), stating the newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); that her minor child was relocated away from the visitation order within NC jurisdiction, thereby depriving parental rights and evading the jurisdiction of the NC court related to the minor child, with one of the minor children moving in to

attend University, depriving her as well with the evasions of the jurisdictions of NC court orders related to sibling visits.

The Appellant also included the Executive Order 13841, Section 1, of June 20, 2018. In it the question on the standard of the administration and laws set forth; ("families remain together") hence the clause "It is also the policy of this Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources. It is unfortunate that Congress's failure to act and court orders have put the Administration in the position of separating alien families to effectively enforce the law."

The Appellant along with the amended complaint filed a motion for a Preliminary Injunction (Doc 33) in support of the amended complaint, to enjoin the various Appellees acting in their official capacities as judicial officers of the state of North Carolina.

The Appellant, the Plaintiff, having had physical custody of her sons ages 13, 11 and 8, (now living with her 19 year old college student) since their birth, raised them in Wake, Durham and Orange Counties, North Carolina prior to the Appellees issuance of exparte orders from August 20th 2009, August 20th 2010, consequently removing the minor children in December 21st 2010 (Wake County -08CVD842) and January 4th 2011 (Orange 11-JA-1 and 11-JA-2), from Appellant's custody on allegations of failure to appear summons sent to false addresses given by H's father and ultimately The Department of Social Services (CPS Division), Orange County with the allegations of relocation. Proceedings continued

occurring exparte for a period of time, a consequence of which Appellant was deprived of her children (APP. 32-37).

The Orange County Department of Social Services, Child Protective Services Division failing to conduct proper inquiry in good faith, and in a conspiracy with the children's fathers, participated in the exparte hearings, without notice of the Appellant, which resulted in the deprivation of the Appellant of the custody of her own children for over 6 years and counting on to 7 come January 2019 (APP. 35-36).

A good number proceedings were done in judge's private chambers in informal settings and in the absence of the appellant who was not notified. This unfortunately is a pattern and practice by these state judges which result in violation of constitutional rights of parties and consequently serious suffering of low income and unsophisticated parents (APP 35-37).

STATEMENT OF THE FACTS:

The Appellant is the natural mother of three that are subject to this case; (one was waiting in the shadows until resolve) and being minors Z, H, and L of ages 14, 11, and 9 (with their oldest H, 20) respectively. On Monday the 23rd of April, 2019, a Rehearing En Banc was mailed priority arriving on time. After a "stayed" or acceptance and receipt of the Rehearing Enbanc filing, a Ruling was signed into Order, and filed in May 15th 2019. On November 28th 2018, filed a notice of appeal, upon submitting her appeal was denied relief on April 8th 2019. On November October 26th, 2018, Appellant re-filed suit against the various Appellees by way of an amended Complaint with the Application to proceed in Forma Pauperis. The Plaintiff, Appellant names as Defendants nine North Carolina State District Court Judges.

She alleges Appellees conducted family court proceedings in a way that violated several of her constitutional and other rights, resulting in several parental and sibling deprivations since January 5th, 2011 when the completion of the minor children's removal were from her care was finalized, with deprivations of two minor children over the age of four APP. 8). Appellant complained that due to the continual harmful effects of the exparte deprivation orders, The Appellant has been deprived of any and all access to her children (APP. 8). Appellant sought declaratory and injunctive relief, including a preliminary injunction that would prohibit Defendants from "presiding over any action brought in the North Carolina State forum affecting the Appellant's fundamental rights, including the Appellant's custody rights, right to access her children and the right to live with her children" APP. 8). Appellant also asked that the preliminary injunction "declare orders removing her parental rights for the past 4 years as void" APP. 8). The Magistrate Judge Joy Peake and District Court Judge presiding Thomas D. Schroeder, on January 11th 2017 and November 13th 2018, citing various abstention doctrines, determining the case to be frivolous, stating violations of Rule 60 (b), Fed. R. Civ. P. 11(b), Zaczek v. Fauquier Cty., Va, 746 F. Supp. 1071, 1077 (E.D. Va. 1991, id. at 1077 n.21 **(sanctions),** recommended the action be dismissed, stroke, denied and closed without prejudice as frivolous for failing to state a cognizable claim pursuant to 28 U.S.C. § 1915(e)(2)(B) APP. 8-11). Consistent with the recommendation and ruling, Thomas D Schroeder, United States District Judge, entered judgment on February 1st 2017 and most recent November 13th 2018.

The Appellant raised the following issues in her amended complaint and motion for preliminary injunction (APP 13-15):

a. Denial of parental rights for more than 6 years into the 7 year of deprivation come January 2019, based on exparte order/s without any finding of fact, without hearing the defendant now Plaintiff Appellant in her defense. This was **achieved by OCDSS interception** of the custody arrangements between the children's parents in place and the many **diversionary tactics** such as multiple continuances, recusal of judges based on **made up allegations of "evasion of jurisdiction of NC courts, to allegations of neglect to ultimately allegations of abuse, and mental health** against what the Appellant had already been doing in the past 5 years prior which is provide care for her children, **manipulation of the system**, steering the case to suit the agencies agenda and that of the children's fathers, **imposition of unnecessary financial** and other burdens perpetrated by fathers and Social Workers handling the cases **through harassment calls to employers with allegations of abuse, mental incapacitation (disposition) warning employers of Appellants inability to function, warding employers off from offering meaningful employment;** {most recent 2018 example at the AICPA where Appellant was unfairly discharged, where she worked with Mr. Atwater's first ex-wife (Jada Atwater-Martinez) who shares a daughter with Mr. Atwater ("D.A.")}, improper and sometimes absence of service of process on the Plaintiff Appellant and failure to maintain proper or any records of proceedings, **even court child-related payments**, therefore precluding appeals or other review by the appellant process. **I also was reposed by the lien holder and lost my Jeep as a result. Child support also garnished ALL of my tax returns and didn't get a dime**

b. Improper influence of the Defendant's, (then Plaintiff's) credibly influential family on the entire court system of Orange, Wake and Durham Counties. Tim Webb is not only a past Military Operative in the United States Army but has served in law enforcement as an Officer and possesses a weight of influence over due process involving the adoption of Z. This was his agenda from get go even relinquished his parental rights to facilitate the adoption of Z. The Atwater family is revered because of hierarchy of military background and Mrs. Atwater Sr. even worked at the time of this case, at the Department of Social Services herself in Monroe, North Carolina - Union County, and then there is Spence Clark's involvement in the military as a Veteran of the Gulf War as a Marine, other assets, The Department's federal resources, agenda (quota imposed on the number of children abducted by The Department of Social Services and the monetary compensations from the Federal Government towards such causes to The Department of Social Services, to foster families, adoption tax credits, both influence and have the greater advantage.

c. Indefinitely extending exparte orders for months without hearing of the Appellant, and therefore **denying Appellant her parental rights guaranteed by the United States Constitution.**

d. Granting orders without evidentiary hearing whatsoever; entering Judge signed orders without hearing of the Appellant; **a denial of due process and equal protection.**

e. Summarily refusing to enforce court orders in favor of the Plaintiff, then Defendant's in State Courts, and always enforcing those that favor of the children's fathers, regardless of their violent past, present and future (Ref. Mr. and Mrs. Atwater).

Each of the allegations above were specifically alleged in the complaint and amended complaint and each individual or in addition with others raise serious federal questions under 42 U.S.C. § 1983 and the Fourteenth Amendment. The Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning their care, custody, and control of their families.

SUMMARY OF ARGUMENT

This action was not appropriate (and illegal) for sua sponte dismissals and/or denials pursuant to 28 U.S.C. § 1915(e)(2)(B).

To begin with, The District Court ***did not*** make a finding that it did not have jurisdiction to entertain the action. It did in fact have the jurisdiction under to 28 U.S.C. § 1331. The fact the court below found some basis for abstention does not necessarily render the action frivolous. Once a federal question is presented, and a case such as this one clearly presents a federal question in an action complaint with Article III, then **the court cannot decline jurisdiction** by the exercise of abstention principles, (and/or other refuting rules, laws and/or regulations), that are unsupported by any text in the US Constitution. **Article III authority is expressively granted or rather imposed by the US Constitution** as opposed to the abstention doctrines, other rules, laws and regulations.

Ankrenbandt v. Richards 504 U.S. 689, 703 (1992), decided in 1992, which the court below relied upon as authority for domestic relations abstention doctrine, purported to limit the exception to requests for "divorce, alimony, and child custody cases decrees." The Appellant's

case is not asking the federal court to grant divorce, alimony, or child custody as previously alleged in the abstention doctrines. The Appellant's case is entirely a question of major violations of federal law in the process of adjudicating child custody in state court. The Appellant's action is more appropriate for treatment under *District v. Newdow* 542 U.S. 1 (2004), which implied that federal courts should hear cases raising "delicate issues of domestic relations" only in "rare instances," and only when "necessary to answer a substantial federal question that transcends or exists apart from the family law issue."

Appellant's is such a rare instance. Appellant alleged a string/list of egregious violations of the U.S. Constitution by state actors hiding behind immunity and aided by various abstentions doctrines including the domestic-relations exception. Federal courts have a responsibility to resolve properly presented federal questions without abstaining and sending those questions back to the state violators to resolve them.

Federal and State courts have no parity and cannot be viewed as having identical authority, responsibility and motivation to address the federal questions. This circuit has previously found it appropriate in a case like this one for the federal court to retain federal question jurisdiction.

"While we agree that the District Court properly abstained under the circumstances, we hold Kelser's action should have been retained on the District Court's docket until pending proceedings were resolved in state courts. Because those proceedings are now closed and Mrs. Kelser concedes that disposition of the state cases has mooted her federal claim for injunctive

and declaratory relief. We perceive no potential offense to state court interests in the allowing her § 1983 damage action to go forward at this stage. Accordingly, we remand for further proceedings."

See *Kelser v. Ann Arundel County Department of Social Services*, 679 F. 2d 1092. (Fourth Circuit 1982).

ARGUMENT

STANDARD OF REVIEW

This court reviews questions of law under a de novo standard of review.

Williams v. Dept. of Veteran Affairs, 104 F.3d 670(4th Circuit 1997)

Rehearing En Banc's ruling didn't address the issue, regardless of its retention of 28 U.S.C. § 1915(e)(2)(B), a continual separation and alienation against the fourteenth amendment, the Due Process Clause of the Fourteenth Amendment which protects the fundamental right of parents and ignoring June 20th 2018's Executive Order **13841**, Section 1, ordering a reunification, defying the rule of law.

Appellant's appeal in the fourth circuit upheld and affirmed District Court's ruling and sanctioning future cases against her first amendment rights.

Appellant's actions were striken, denied and dismissed and case closed as a matter of law pursuant to 28 U.S.C. § 1915(e)(2)(B).

The District Court below employed sanctions, Rule 60 and three abstentions doctrines from the original complaint t decline jurisdiction in the matter consequently dismissing the action pursuant to 28 U.S.C. § 1915(e)(2)(B).

1. Rule 60 (b),
2. Fed. R. Civ. P. 11(b), Zaczek v. Fauquier Cty., Va, 746 F. Supp. 1071, 1077 (E.D. Va. 1991, id. at 1077 n.21 (sanctions), - for the amended complaint filed October 26th 2018.
3. The Younger v. Harris, 401 U.S. 37 (1971) abstention doctrine
4. The Rooker-Feldman Doctrine

The Rule 60 Exception to federal jurisdiction:

"(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. §1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) Bills and Writs Abolished. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

Notes

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)"

The Fed. R. Civ. P. 11(b), Zaczek v. Fauquier Cty., Va, 746 F. Supp. 1071, 1077 (E.D. Va. 1991, id. at 1077 n.21, Sanctions Exception

The First Amendment right "to petition the Government for a redress of grievances" includes a right of court access, .. guaranteeing the right of a legally injured person to obtain a meaningful remedy." This action specifically addresses federal questions related to violations under 42 U.S.C. § 1983 and the Fourteenth Amendment, the Due Process Clause of the Fourteenth Amendment which protects the fundamental right of parents.

"September 16, 2002

The right to petition the government for redress of grievances includes a right to file suit in a court of law.

The U.S. Supreme Court has collapsed or folded in the distinct right to petition with other protections for group speech. In NAACP v. Button, Virginia attempted to enforce its prohibition of attorney solicitation against the NAACP, which was soliciting and promoting litigation

designed to end racial segregation. In its 1963 decision, the Court found that such lawsuits were a form of "political expression" and that the NAACP was a political association. As such, the Court upheld a First Amendment right of judicial access without special reliance on the petition clause.

When right-to-sue claims do not involve issues of constitutional magnitude, the Court has grounded its First Amendment analysis in associational freedoms inherent in a collective resort to the courts. But when neither constitutional issues nor collective action is present, the Court has addressed claims of the right to seek redress in court as a due-process or equal-protection challenge.

In its 1971 decision Boddie v. Connecticut, for example, the Court ordered the waiver of court costs for indigents seeking a divorce — not because of the right to petition, but because marriage and its dissolution have been recognized as fundamental private interests. The Court reasoned that to deny a divorce for lack of ability to pay the state's court costs was to deny a fundamental right entirely. Though the petitioners in Boddie raised the petition clause as a basis for their challenge, the federal courts at every level viewed the complaint through the prism of due process, which is the right to fair administration of justice.

Due process, not the petition clause, likewise supports prisoners' access to law libraries and legal advisers in order to attack their sentences and challenge the conditions of their confinement.

The most significant confirmation of a petition-based right to seek judicial redress comes not from free-speech jurisprudence but from antitrust law. In a series of cases beginning with Eastern Railroad Presidents Conference v. Noerr Motor Freight Inc. in 1961, the Supreme Court recognized that antitrust statutes should not penalize petitioners who join to seek passage and enforcement of laws.

In Noerr, 41 truck drivers and their trade unions sued a collection of railroads, railroad presidents and the public relations firm hired to influence legislation concerning truck weight limits and tax rates for heavy trucks. The Court found that the railroad defendants' influence campaign was immune from antitrust liability under the Sherman Act because "the right to petition is one of the freedoms protected by the Bill of Rights, and we cannot, of course, lightly impute to Congress an intent to invade these freedoms."

Even if, as was true four years later in United Mine Workers v. Pennington, the defendants specifically intended to eliminate competition through their petitioning efforts, they remain immune from liability. In the 1972 decision California Motor Transport v. Trucking Unlimited, the Court capped the so-called "Noerr-Pennington doctrine" by explicitly linking antitrust immunity to the petition clause:

"The same philosophy governs the approach of citizens or groups of them to administrative agencies (which are both creatures of the legislature, and arms of the executive) and to courts, the third branch of Government. Certainly, the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right to petition."

The shelter afforded by the petition clause from application of antitrust laws has been expanded by lower courts to include immunity from state tort laws and the Civil Rights Act for activities designed to elicit government action. An example would be a 1980 case, Missouri v. NOW, in which Missouri claimed economic damage from a National Organization for Women boycott to induce states to ratify the Equal Rights Amendment. The court held NOW's activities to be political, a form of petition that was thereby immune from Missouri's effort to stop them.

Excepted from such immunity, however, is a "sham" petition that is baseless, objectively unreasonable, and undertaken for an improper purpose unrelated to the vindication of rights. In Landmarks Holding Corp. v. Bermant (1981), for instance, a court found in favor of real-estate developers seeking to build a shopping center. The developers alleged a campaign of meritless lawsuits and moves for delay by property owners and competing shopping centers.

In 1983, the Supreme Court's opinion in Bill Johnson's Restaurants, Inc. v. NLRB set out the principle that "the right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances."

In a June 2002 decision, BE&K Construction Co. v. National Labor Relations Board, the high court, though not ruling on First Amendment grounds, nevertheless noted that it had long viewed the right to sue in court as a form of petition.

"We have recognized this right to petition as one of the most precious of the liberties safeguarded by the Bill of Rights," Justice Sandra Day O'Connor wrote for the Court, "and have explained that the right is implied by the very idea of a government, republican in form."

O'Connor further observed that the First Amendment petition clause says nothing about success in petitioning — "it speaks simply of the right of the people to petition the Government for a redress of grievances."

First Amendment scholar David L. Hudson Jr. contributed to this article."

The Domestic-Relations Exception to Federal Jurisdiction:

The US Supreme Court also recognized that, domestic-relations exception is trumped by the Fourteenth amendment and the civil rights act. In *Obergefell v. Hodges*, 576 U.S. ___(2015), the Plaintiffs in each case argued that the states' statutes banning same-sex marriage violated the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment, and one group of plaintiffs also brought claims under the Civil Rights Act. This was an acknowledgement that the domestic-relations exception could not override the 14th Amendment or the Civil Rights Act.

The federal question in *Obergefell* is not distinguishable from the Appellant's. For the foregoing reasons, the Appellant's complaint below cannot be characterized as frivolous.

Appellant is of the view that the proposition that "federal courts are courts of limited jurisdiction and generally abstain from hearing child custody matters" [APP. 10] is erroneous because once a federal question is present and satisfies Title III requirements, then federal courts cannot decline jurisdiction by way of abstention.

Appellant respectfully urges this court to consider as the 6thcircuit did, that the exception applies only to a "'core' domestic relations case," such as one "seeking a declaration of marital or parental," and not to "a constitutional claim in which it is incidental that the underlying dispute involves" domestic relations. *Catz v. Chalker*, 142 F.3d 279 (6th Circuit 1998).

Appellant's case is not asking the Federal Court to determine marital or parental status, but the resolution of a constitutional claim that is distinct from such rights.

Exceptions to the Younger Absention Doctrine

Younger implied that a federal court may act to enjoin a state court proceeding when certain extraordinary circumstances exist that involve traditional considerations of equity jurisprudence. Younger 401 U.S. at 53-54. These three principal exceptions include bad faith and harassment, patently unconstitutional statutes, and lack of an adequate state forum. Younger 401 U.S. at 53-54.

The bad faith and harassment exception was specifically mentioned in the opinion as the kind of extraordinary circumstances that would justify federal intervention in the state proceeding.

In the instant case, Appellant made specific allegations in the complaint and in the motion for preliminary injunction to the effect that proceedings to rip away her children were brought in bad faith coupled with the acquiescence or willful blindness of state officials and judicial officers which culminated in her losing parental rights for a period of more than 6 years going on 7 years come January 2019. [APP.8.].

The federal court ought to have made at least a modest inquiry into the facts to see if they amount to any of the exceptions to the younger doctrine.

The Court below just made a cursory reference to the nature of the case and did not look at any possible merits of the claim before declining jurisdiction. It is unclear from the opinion [APP.9.], whether the court below considered the merits of the claim or the underlying federal question. The court below abdicated its duty to the Constitution contrary to its responsibility to discharge its Title III responsibilities.

Appellant raised serious federal questions about the adequacy of the state forum [ApP.13-14]. Specifically, she made allegations about the collusion between state actors and the Appellees acting under color of law to deprive of the rights to her children without due process.

These allegations raise a federal question that the district court ought to have asserted jurisdiction over and at least made a reasonable inquiry.

Federal courts ought not to treat state courts as being at par with them when assessing adequacy in resolving federal questions.

The Rooker-Feldman Doctrine

The court below should have considered the merits of the Appellant's claim alleged by the Appellant that adverse action against her was the result of certain results of fraud, duress, and or misrepresentation and that her due process and equal protection rights were violated. The

district court, not having considered the merits of the action, could not have found whether or not the allegations in the pleadings would reveal such fraud, duress or other misrepresentation.

REASONS FOR GRANTING RELIEF:

CONCLUSION

Appellant urges the Supreme Court to reconsider its prior ruling, grant relief under 28 U.S.C. §1655, fourteenth amendment, the Due Process Clause of the Fourteenth Amendment which protects the fundamental right of parents and ignoring June 20th 2018's Executive Order **13841**, Section 1, ordering a reunification, 28 U.S.C. § 1915(e)(2)(B), declaration of inalienable rights, human rights, right to live with minor children overturning the adoption decree of one of the minor children, and rule of law and considering NCGS 50-13.5(d)(3) regarding the minor children; Let them be returned to the Petitioner.

Vacate Appellant Court's ruling to affirm District Court's decision ruling. Appellant urges this Court to vacate the trial court's striking, denial, dismissal and closure and remand this case for further proceedings. In addition to the appeal certification and service, the weather for the week of December 10th 2018 to December 14th 2018 wasn't conducive for road travel; (post office was closed for operations for a week) per State officials (and the state of emergency) the State of North Carolina issued, barred prompter filing of the Appellant's brief. Attached photos concur.