No. 23-1239

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROGER WILSON,

Plaintiff-Appellant,

v.

DEPARTMENT OF JUSTICE; MERRICK B. GARLAND, U.S. Attorney General,

Defendants-Appellees.

ORDER

Before: GIBBONS, Circuit Judge.

Roger Wilson, proceeding pro se, appeals the district court's judgment dismissing his complaint, which challenged the constitutionality of the Respect for Marriage Act, Pub. L. 117-228, 136 Stat. 2305 (2022). He moves for leave to proceed in forma pauperis ("IFP"). *See* Fed. R. App. P. 24(a)(5). Because Wilson's appeal lacks an arguable basis in law or fact, he may not proceed IFP on appeal.

Wilson filed a "Notice of Rule 5.1 Constitutional Challenge to a Statute," naming the Department of Justice and United States Attorney General Merrick Garland as "defendants." He alleged that "the federal statute regarding same-sex marriage," which he did not identify, violates the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb, *et seq.*, and the First Amendment. Citing *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), Wilson argued that the right to same-sex marriage is unconstitutional because it is not "deeply rooted in the history and tradition of the United States."

A magistrate judge recommended dismissing Wilson's lawsuit for lack of subject-matter jurisdiction, because Wilson lacked standing under Article III of the Constitution. Alternatively, the magistrate judge, who had granted Wilson leave to proceed IFP, recommended dismissing the

APPENDIX A

complaint under 28 U.S.C. § 1915(e)(2)(B), for failure to state a claim upon which relief may be granted. Wilson objected, identifying the Respect for Marriage Act as the statute that he wished to challenge. He alleged that he had standing because he is "an ordained minister of the Church of Jesus Christ, . . . marriage was the second institution created by the God of the religious institution that [he] represent[s]," and the Respect for Marriage Act changed the institution of marriage as "it was created to be by the Founder of [his] religion." According to Wilson, the government's definition of marriage causes "direct reputational damage to the most sacred institution of Christianity, which inturn [sic], causes injury and loss of reputation to every Christian." Within his objections, Wilson sought leave to amend his initial pleading to convert it "to a Complaint for Damages." Over Wilson's objections, the district court dismissed the complaint, finding that Wilson lacked Article III standing, and certified that an appeal could not be taken in good faith.

An indigent litigant may obtain leave to proceed IFP on appeal if the appeal is taken in good faith. Fed. R. App. P. 24(a); *Owens v. Keeling*, 461 F.3d 763, 776 (6th Cir. 2006). An appeal is not taken in good faith if it is frivolous, i.e., it lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Coppedge v. United States*, 369 U.S. 438, 445 (1962).

Any appeal from the district court's judgment would lack an arguable basis in law or fact. As the district court noted, Federal Rule of Civil Procedure 5.1 simply outlines notice requirements that must be met if a party files a complaint or other motion that draws into question the constitutionality of a statute. Fed. R. Civ. P. 5.1. Even if the district court had construed Wilson's initial pleading as a complaint for damages—or allowed Wilson to amend his pleading to seek damages—Wilson did not adequately plead standing, and neither his objections to the magistrate judge's report and recommendation nor his IFP motion suggest that he could do so. To establish Article III standing, "a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021). Wilson's allegation that the Respect for Marriage Act conflicts with his

sincerely held religious beliefs does not establish a "concrete" or "particularized" injury. *Id.*; *see Hollingsworth v. Perry*, 570 U.S. 693, 706-07 (2013). "Article III standing 'is not to be placed in the hands of concerned bystanders, who will use it simply as a vehicle for the vindication of value interests.'" *Hollingsworth*, 570 U.S. at 707 (quoting *Diamond v. Charles*, 476 U.S. 54, 62 (1986)). Wilson also did not connect his status as an ordained minister to a "concrete" or "particularized" injury. *TransUnion LLC*, 141 S. Ct. at 2203. "If a party does not have standing to bring an action, then the court has no authority to hear the matter and must dismiss the case." *Binno v. Am. Bar Ass'n*, 826 F.3d 338, 344 (6th Cir. 2016).

Wilson's motion is therefore **DENIED**. Unless Wilson pays the $505 filing fee to the district court within 30 days of the entry of this order, his appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROGER WILSON,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,

Defendants.
_____/

Case No. 1:22-cv-1027

Hon. Janet M. Beckering

ORDER DENYING MOTION FOR LEAVE TO APPEAL *IN FORMA PAUPERIS*

This Court dismissed *pro se* plaintiff's action for lack of jurisdiction and for failure to state a claim. *See* Opinion and Order (ECF No. 8); Judgment (ECF No. 9). Because this action was filed *in forma pauperis*, this Court also certified pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Judgment would not be taken in good faith. *See* Opinion and Order at PageID.26. Accordingly, plaintiff's motion for leave to appeal *in forma pauperis* (ECF No. 11) is **DENIED**.

IT IS SO ORDERED.

Dated: April 14, 2023

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge

APPENDIX B

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROGER WILSON,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF JUSTICE, et al.,

Defendants.
_____/

Case No. 1:22-cv-1027

HON. JANE M. BECKERING

OPINION AND ORDER

Plaintiff, proceeding pro se, initiated this action on November 3, 2022. On January 6, 2023, the Magistrate Judge issued a Report and Recommendation, recommending that the action be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) for lack of subject matter jurisdiction and failure to state a claim. The matter is presently before the Court on Plaintiff's objection to the Report and Recommendation (ECF No. 7).

In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made. Plaintiff's objection, which merely identifies his role in his church and reiterates his religious beliefs, does not identify any error in the Magistrate Judge's standing analysis or ultimate conclusion that this matter is properly dismissed. Accordingly, the objection is denied, and the Report and Recommendation is approved and adopted as the Opinion of the Court.

APPENDIX C

A Judgment will also be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. For the above reasons and because this action was filed *in forma pauperis,* this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Judgment would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610–11 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Accordingly:

IT IS HEREBY ORDERED that the Objection (ECF No. 7) is DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 6) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Complaint (ECF No. 1) is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B) for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: February 8, 2023

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROGER WILSON,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF JUSTICE, et al.,

Defendants.
_____/

Case No. 1:22-cv-1027

HON. JANE M. BECKERING

JUDGMENT

In accordance with the Order entered this date:

IT IS HEREBY ORDERED that the Complaint is DISMISSED.

This matter is closed.

Dated: February 8, 2023

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROGER WILSON,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF JUSTICE and MERRICK GARLAND,

Defendants.
_____/

Case No. 1:22-cv-1027

Hon. Jane M. Beckering

REPORT AND RECOMMENDATION

This is a civil action brought by *pro se* plaintiff Roger Wilson against the United States Department of Justice and United States Attorney General Merrick Garland. For the reasons set forth below, this action should be dismissed.

Wilson did not file a complaint. Rather, he initiated this lawsuit with a document entitled "Notice of Rule 5.1. [Fed. R. Civ. P. 5.1] Constitutional Challenge to a Statute."[1] Wilson stated that he filed this action "pursuant to Rule 5.1" and seeks to bring a constitutional challenge

[1] Fed. R. Civ. P. 5.1 provides in part:

"**(a) Notice by a Party.** A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly: **(1)** file a notice of constitutional question stating the question and identifying the paper that raises it, if: **(A)** a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity . . . and **(2)** serve the notice and paper on the Attorney General of the United States if a federal statute is questioned--or on the state attorney general if a state statute is questioned--either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

(b) Certification by the Court. The court must, under 28 U.S.C. § 2403, certify to the appropriate attorney general that a statute has been questioned.

(c) Intervention; Final Decision on the Merits. Unless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional. . . .

against a "federal statute regarding same-sex marriage." Compl. (ECF No. 1, PageID.1). Plaintiff contends that this unidentified statute is unconstitutional for various reasons, such as: [t]he United States Government has not been granted the power, either by God, or the Constitution, to either regulate or redefine the institution of marriage"; the First Amendment prohibits the United States Government from making or changing laws respecting an establishment of religion; the government infringed on that right by redefining the institution of marriage to include homosexuality; "[a]n institution created and owned by God, is provided with sovereign immunity by the First Amendment; and "the government breached that immunity." *Id.* at PageID.1-4. For his relief, plaintiff states that he is "challenging the constitutionality of same-sex marriage for the reasons stated herein." *Id.* at PageID.4.

II. Discussion

A. Lack of subject matter jurisdiction

Wilson lacks standing to bring this lawsuit. "Federal courts are courts of limited jurisdiction" which "possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375, 377 (1994). "It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Id.* (internal citations omitted). Federal subject-matter jurisdiction "can never be waived or forfeited," *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012), and "courts are obligated to consider *sua sponte* whether they have such jurisdiction," *Vander Boegh v. EnergySolutions, Inc.*, 772 F.3d 1056, 1064 (6th Cir. 2014). In this regard, Fed. R. Civ. P. 12(h)(3) provides that "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) (Federal courts "have an independent obligation to determine whether subject-matter jurisdiction exists,

even in the absence of a challenge from any party."); *Rauch v. Day & Night Manufacturing Corp.*, 576 F.2d 697, 701 (6th Cir. 1978) ("Rule 12(h)(3) preserves and recognizes the court's time-honored obligation, even sua sponte, to dismiss any action over which it has no subject-matter jurisdiction").

"Article III standing is a jurisdictional requirement that cannot be waived, and such may be brought up at any time in the proceeding. Fed. R. Civ. P. 12(h)(3)." *Zurich Insurance Company v. Logitrans, Inc.*, 297 F.3d 528, 531 (6th Cir. 2002). As this Court previously explained:

> "The doctrine [of standing to sue] limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016); *see, e.g., Allen v. Write*, 468 U.S. 737, 751 (1984).
>
> "[T]he 'irreducible constitutional minimum' of standing consists of three elements." *Spokeo*, 136 S. Ct. at 1547 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 556, 560 (1992)). "The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Id.* (citing *Lujan*, 504 U.S. at 560-61). "The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements." *Id.*
>
> "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual imminent, not conjectural or hypothetical.'" *Id.* (citing *Lujan*, 504 U.S. at 560).
>
> For an injury to be 'particularized,' it 'must affect the plaintiff in a personal and individual way." *Id.* (quoting *Lujan*, 504 U.S. at 560 n.1). "An injury must also be 'concrete'"—that is, it "must be '*de facto*'" and "actually exist." *Id.*
>
> "Where, as here, a case is at the pleading stage, the plaintiff must 'clearly . . . allege facts demonstrating' each element [of standing]." *Id.* at 1547 (quoting *Warth v. Seldin*, 422 U.S. 490, 518 (1975)). And, of course, a plaintiff "must demonstrate standing for *each claim* he seeks to press and for each form of relief that is sought." *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008) (emphasis added); *accord Town of Chester, N.Y. v. Laroe Estates, Inc.*, __ S Ct. __, 2017 WL 2407473, at *5 (2017).

Miller v. Interurban Transit Partnership, No. 1:18-cv-905, 2019 WL 4196148 at *2 (Aug. 7, 2019), R&R *adopted* 2019 WL 4194326 (W.D. Mich. Sept. 4, 2019).

Here, Wilson's "Notice" is not a complaint and does not contain any allegations that he suffered an injury. Wilson's Notice is essentially a manifesto expressing his religious beliefs regarding homosexuality and the institution of marriage, and his personal opinions regarding the limited role of the federal government. In short, Wilson has not shown that he has standing to bring this lawsuit under Article III. *See Spokeo*, 136 S. Ct. at 1547. Accordingly, Wilson's lawsuit should be dismissed for lack of federal subject matter jurisdiction.

B. Wilson has failed to state a claim

Furthermore, Wilson has failed to state a claim. The Court allowed Wilson to file this action *in forma pauperis* pursuant to § 1915. *See* Order (ECF No. 5). For that reason, it must review the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B), which provides that the Court "shall dismiss" actions brought *in forma pauperis* "at any time if the court determines that . . . the action . . . (ii) fails to state a claim on which relief may be granted." In determining whether a complaint should be dismissed for failure to state a claim under § 1915(e)(2), the Court applies the dismissal standard articulated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007). *See Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010). Under this standard:

> [A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.

Iqbal, 556 U.S. at 678 (internal citations and quotation marks omitted).

In making this determination, the complaint must be construed in the light most favorable to the plaintiff, and its well-pleaded facts must be accepted as true. *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987). As discussed, while *pro se* pleadings are to be liberally construed, "this court is not required to conjure up unpled allegations." *Dietz v.Sanders*, 100 Fed. Appx. 334, 338 (6th Cir. 2004).

Here, Wilson did not file a complaint. He brought this lawsuit pursuant to Fed. R. Civ. P. 5.1 and commenced it by filing a "Notice" under that rule. Wilson cannot bring a lawsuit under this rule because "Rule 5.1 of the Federal Rules of Civil Procedure is strictly a procedural rule and not a basis for a cause of action." *Hale/Camacho v. Department of Saftey & Homeland Security*, No. 2:19-02519-MSN-DKV, 2019 WL 5199239 at *4 (W.D. Aug. 30, 2019), R&R *adopted* 2019 WL 5197302 (W.D. Tenn. Oct. 15, 2019). Furthermore, the substance of this "Notice" does not state a claim to relief that is plausible on its face. As discussed, Wilson's Notice does not contain any factual allegations and is essentially a manifesto expressing his religious beliefs and personal opinions. Accordingly, the lawsuit should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

III. RECOMMENDATION

For these reasons, I respectfully recommend that plaintiff's complaint be **DISMISSED**.

Dated: January 6, 2023

/s/ Ray Kent
RAY KENT
United States Magistrate Judge

ANY OBJECTIONS to this Report and Recommendation must be served and filed with the Clerk of the Court within fourteen (14) days after service of the report. All objections and responses to objections are governed by W.D. Mich. LCivR 72.3(b). Failure to serve and file written objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Case No. 23-1239

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

ROGER WILSON

Plaintiff - Appellant

v.

DEPARTMENT OF JUSTICE; MERRICK B. GARLAND, U.S. Attorney General

Defendants - Appellees

Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation(s):

The proper fee was not paid by August 18, 2023.

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT
Deborah S. Hunt, Clerk

Issued: September 05, 2023

APPENDIX E