No. 23-770

IN THE

Supreme Court of the United States

JOHN DOE,

Petitioner,

v.

BILL CROUCH, CABINET SECRETARY OF THE WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES; AYNE AMJAD, COMMISSIONER FOR THE WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND MATTHEW WICKERT, STATE REGISTRAR FOR VITAL STATISTICS

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

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QUESTIONS PRESENTED

Does *Rooker-Feldman* bar jurisdiction when declaring a statute unconstitutional would undermine a state court's reliance upon the statute?

Does *Rooker-Feldman* preclude the federal court from deciding the constitutionality of a legislative act that the state court ratified, acquiesced in, and/or left unpunished?

Is the redressability element of standing satisfied when a favorable decision would mandate equal treatment?

LIST OF PARTIES

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

RELATED PROCEEDINGS

Doe v. Crouch, et al., No. 2:22-cv-00328, U.S. District Court for the Southern District of West Virginia. Judgment entered March 30, 2023.

Doe v. Crouch, et al., No. 23-1364, United States Court of Appeals for the Fourth Circuit. Judgment entered July 28, 2023.

OPINIONS BELOW

The opinions of the Fourth Circuit (App. 1a) and District Court for the Southern District of West Virginia (App. 3a) are unpublished.

JURISDICTION

The Fourth Circuit entered judgment on July 28, 2023. App. 1a. A timely petition for rehearing was denied on August 28, 2023. App. 40a. Application 23A244 extended the time to file a petition for a writ of certiorari to January 25, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Pertinent constitutional and statutory provisions are reproduced in the appendix. App. 41a-44a.

STATEMENT OF THE CASE

My children were conceived through in-vitro fertilization and gestational surrogacy. It is undisputed that I am my children's biological mother and their biological father is an anonymous donor. W.Va. § 16-5-10(e) specifies the person who will appear as the legal mother on a child's state-issued birth certificate: "For the purposes of birth registration, the woman who gives birth to the child is presumed to be the mother[.]" I requested Defendants to not place the gestational surrogate's name on my children's birth certificates. Even so, Defendants proceeded to record the gestational surrogate as my children's legal mother pursuant to § 16-5-10(e). My children's birth certificates now reflect incorrect

maternity, incorrect paternity, and incorrect legal names.

Defendants permit legal paternity to be proved or disproved at any time based upon genetics, fraud, or material mistake of fact. See § 16-5-10(h)(5)(A); § 16-5-10(h)(5)(D); § 16-5-10(h)(5)(E); and, § 48-24-103(a). Defendants refuse me this same right because they conclusively presume legal maternity based upon the act of giving birth. See § 16-5-10(e).

After Defendants recorded a gestational surrogate as the legal mother of my children, the gestational surrogate sought custody of my children in a family court: Defendants were not parties. The state court ratified Defendants application of § 16-5-10(e) in *S.U. v. C.J.*, No. 18-0566 (W.Va. 2019):

> We note from the outset that Mother gave birth to all four children; their birth certificates provide that Father is their legal father and Mother is their legal mother.
>
> * * *
>
> Succinctly stated, Father failed to submit competent evidence to overcome the presumption set forth in West Virginia Code § 16-5-10(e) that "the woman who gives birth to the child is presumed to be the mother[.]" For this reason, it was wholly unnecessary for the family court to conduct a psychological-parent analysis when Mother is the legal mother of all four children.

I then filed this action in federal court and presented the court with two questions:

> "Does the Defendants' application of self-operative code §16-5-10(e) to identify a biological stranger birth mother as the biological and/or

> legal mother of my children on their birth certificates create a true establishment of maternity?"
>
> "Does the Defendants' application of §16-5-10(e) violate my First, Fourth, and Fourteenth Amendment rights by pre-empting and supplanting me as the biological and legal mother of my children?"

I requested the court to (1) declare the biological and legal parents of my children to be myself and an anonymous donor; (2) declare that the challenged statute and practices violate the protections afforded by the United States Constitution and comparable provisions of the West Virginia Constitution; (3) order Defendants to correct my children's birth certificates; and, (4) to award me nominal damages of one dollar ($1.00) for the violation of my Constitutional rights. The court dismissed my complaint stating:

> [T]he *Rooker-Feldman* doctrine applies to [John Doe's] requests for an order directing Defendants to modify the children's birth certificates and a judgment declaring him and an anonymous donor the children's legal parents. [John Doe] attempts to escape the doctrine's application by arguing that he is not challenging a state court judgment, but rather Defendants' own decision to apply § 16-5-10(e)'s presumption. Granting the relief requested by [John Doe], however, would directly contravene the state courts' decisions on parentage and render their orders ineffectual[.] App. 14a.

* * *

> Because these forms of relief implicate issues adjudicated in state court, and undermine the final resolution thereof, the *Rooker-Feldman* doctrine bars this court from granting the requested relief. App. 14a.

The court also held that a "request for a declaration that § 16-5-10(e)'s presumption is unconstitutional cannot satisfy redressability for purposes of standing." App. 17a.

REASONS FOR GRANTING THE PETITION

I. The Fourth Circuit's Holding Equates to a Right Without a Remedy

The Fourth Circuit invalidates the purpose of 42 USC § 1983 which is to provide access to a federal forum for claims of unconstitutional treatment at the hands of state officials. And, this Court has already held that "a request for nominal damages satisfies the redressability element of standing where a plaintiff's claim is based on a completed violation of a legal right". *Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021) at 801-02.

"The inability to obtain an accurate birth certificate saddles the child with the life-long disability of a government identity document that does not reflect the child's parentage and burdens the ability of the child's parents to exercise their parental rights and responsibilities." *Henry v. Himes*, 14 F. Supp. 3d 1036 (S.D. Ohio 2014). A birth certificate is "the only common governmentally-conferred, uniformly recognized, readily-accepted record that

establishes identity, parentage, and citizenship, and it is required in an array of legal contexts." *Id.*

Defendants' refusal to acknowledge my biological maternity in my children renders my maternity, and the Fourteenth Amendment rights stemming therefrom, non-existent for all legal purposes. A favorable decision would mandate equal treatment such that I could prove/disprove maternity in the same way Defendants allow paternity to be proved/disproved. The stigma of discrimination "accords a basis for standing" to "those persons who are personally denied equal treatment by the challenged discriminatory conduct" *Allen v. Wright*, 468 U.S. 737 (1984).

II. The Fourth Circuit's Expansion of *Rooker-Feldman* Interferes with Efforts to Vindicate Federal Rights and Conflicts with Other Circuits

This action challenges "the validity of a rule promulgated in a non-judicial proceeding," see *Feldman*, 460 U.S. at 486-87, 103 S.Ct. 1303, and it seeks to block wrongful enforcement of the rule by strangers to the state proceeding. The fact that Defendants' actions, rather than any state-court judgment, is the source of injury is alone sufficient to make *Rooker-Feldman* inapplicable under *Exxon*, 544 U.S. 280, 282 (2005) ("*Rooker-Feldman* does not apply to a suit seeking review of state agency action").

The Second Circuit holds that there is no abstention under *Rooker-Feldman* where "state-court judgments were a mere ratification of the harm allegedly caused by defendants." *Cho v. City of N.Y.*,

910 F.3d 639 (2d Cir. 2018) at 647. See also *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77 (2d Cir. 2005) (The fact that the state court chose not to remedy the injury does not transform the subsequent federal suit on the same matter into an appeal, forbidden by *Rooker-Feldman*, of the state-court judgment.).

The Third Circuit agrees that "the *Rooker-Feldman* doctrine does not apply merely because the claim for relief if granted would as a practical matter undermine a valid state court order." *In re Philadelphia Ent.*, 879 F.3d 492 (3d Cir. 2018). See also *Great W. Mining v. Fox Rothschild*, 615 F.3d 159 (3d Cir. 2010) at 168 (noting that declaring a statute unconstitutional would not "amount to appellate reversal or modification of a valid state court decree" relying on that statute).

Similar to the Fourth Circuit, however, the Eighth Circuit stated *In re Athens/Alpha Gas Corp.*, 715 F. 3d 230 (8th Cir. 2013), that "[e]ven after *Exxon Mobil*, this court, for better or worse, see *Dodson v. Univ. of Ark. for Med. Scis.*, 601 F.3d 750, 756-60 (8th Cir. 2010) has held that *Rooker-Feldman* forecloses federal jurisdiction when a decision in favor of a federal plaintiff would "wholly undermine" the state court's ruling. *Id.*"

In the Ninth Circuit, Judge Collins dissents in *Wallingford v. Bonta*, 82 F. 4th 797 (9th Cir. 2023), holding that "the mere fact that a challenge to a . . . state statute being wrongfully enforced by state officials . . . would have the effect of voiding a portion of a state court judgment is not sufficient . . . to trigger the *Rooker-Feldman* doctrine."

Chief Judge Sutton in his concurrence in *VanderKodde v. Mary Jane M. Elliott, P.C.*, 951 F.3d 397 (6th Cir. 2020) recognized that *Rooker-Feldman* continues to "interfer[e] with efforts to vindicate federal rights" in each circuit and urged this Court to give the doctrine "one last requiem". *Id.*

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Petitioner