APPENDIX

(FILED: July 28, 2023)

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1364

JOHN DOE,
Plaintiff - Appellant,
v.

BILL CROUCH, in his official capacity as Cabinet Secretary of the West Virginia Department of Health and Human Resources; AYNE AMJAD, in her official capacity as Commissioner for the West Virginia Department of Health and Human Resources, Bureau of Public Health and State Health Officer, and; MATTHEW WICKERT, in his official capacity as the State Registrar for Vital Statistics,
Defendants - Appellees.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Joseph R. Goodwin, District Judge. (2:22-cv-00328)

Submitted: July 25, 2023 Decided: July 28, 2023

Before WYNN and HEYTENS, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

John Doe, Appellant Pro Se. Lindsay Sara See, OFFICE OF THE ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John Doe appeals the district court's order adopting the magistrate judge's recommendation with modifications, dismissing his 42 U.S.C. § 1983 civil action challenging application of W. Va. Code. § 16-5-10(e) for lack of Article III standing and as barred by the Rooker-Feldman[1] doctrine, and directing him to show cause why a prefiling injunction should not issue. Doe confines his appeal to the district court's dismissal of his complaint. We have reviewed the record and find no reversible error. See *Episcopal Church in S.C. v. Church Ins. Co. of Vt.*, 997 F.3d 149, 154 (4th Cir. 2021) (reviewing de novo dismissal for lack of standing); *Hulsey v. Cisa*, 947 F.3d 246, 249 (4th Cir. 2020) (reviewing de novo dismissal of claims as barred by *Rooker-Feldman*). Accordingly, we affirm the district court's order. *Doe v. Crouch*, No. 2:22-cv-00328 (S.D.W. Va. Mar. 30, 2023). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

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[1] *D.C. Ct. of App. v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923).

(FILED: March 30, 2023)

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA CHARLESTON DIVISION

JOHN DOE,
Plaintiff,
v.

BILL CROUCH, et al.,
Defendants.

Civil Action No. 2:22-cv-00328

MEMORANDUM OPINION AND ORDER

Pending before the court are several procedural motions filed by the pro se Plaintiff John Doe ("S.U."), [ECF Nos. 3, 4, 5, 22], and a motion to dismiss filed by Defendants, [ECF Nos. 15, 18]. This case is the most recent chapter in an ongoing saga of litigation related to the custody and parentage of S.U.'s three minor children. Undeterred by the series of adverse rulings against him, S.U. initiated the instant action in a roundabout attempt to challenge issues previously decided by the West Virginia courts. For the reasons explained below, this case is **DISMISSED**, and the pending motions are **DENIED as moot.**

I. Background

Plaintiff S.U. is "legally known to be male" and has "physical traits of a male"; however, he "also ha[s] ovarian tissue."[1] [ECF No. 1, ¶ 8]. Using S.U.'s ova

[1] S.U.'s gender is neither the subject matter of the instant litigation nor of this opinion.

and the sperm of an anonymous donor, three embryos were created in a laboratory setting through the process of in vitro fertilization. *Id.* ¶¶ 12–14. Those embryos were then implanted into the uterus of C.J., who carried the three children—first a singleton and then a set of twins—in two separate pregnancies. *Id.* ¶¶ 14–15.

The proper characterization of S.U. and C.J.'s relationship is contentious. Previously, S.U. claimed that C.J. was merely his roommate. S.U. v. C.J., No. 18-0566, 2019 WL 5692550, at *4 (W. Va. Nov. 4, 2019). His story later changed, and for a period of time, he described C.J. as an in-home babysitter for the children. *Id.* In his current Complaint, S.U. contends that C.J. was a "biological stranger acting as a gestational surrogate" for him. [ECF No. 1, ¶ 12]. The Supreme Court of Appeals of West Virginia, however, has explained that S.U. and C.J. "were in a relationship for approximately twelve years," during which time the children were conceived. *S.U.*, 2019 WL 5692550, at *1. In any event, C.J. has cared for the children since their births. *Jenkins v. Upton*, No. 1:22-cv-3, 2022 WL 8316814, at *1 n.1 (N.D. W. Va. Mar. 18, 2022), report and recommendation adopted, 2022 WL 4594483 (N.D. W. Va. Sept. 30, 2022). It is undisputed, however, that C.J. is not the children's biological mother and that the children's biological parents are S.U. (biological mother) and an anonymous sperm donor (biological father). *S.U.*, 2019 WL 5692550, at *2.

Shortly before C.J. gave birth to the twins, S.U. filed a Petition for Declaration of Parentage in the Circuit Court of Kanawha County "in an attempt to prevent [C.J.'s] name from being listed on the twins' birth certificate[s]." *Id.* The circuit court transferred

the matter "to the Family Court of Mason County where the parties resided," and there, a custody battle ensued. *Id.* The family court concluded that C.J. had been the children's primary caregiver and that the children had "a close emotional bond to [her]." *Id.* at *3. The court determined that C.J. was not biologically related to the three children; however, it "applied the doctrine of psychological parent to find [that her] name should remain on the children's birth certificates." *Id.* The court further found that S.U. had been physically and mentally abusive toward C.J., which caused the children emotional stress. *Id.* The court therefore ordered S.U. to participate in counseling services and awarded C.J. sole legal and physical custody of the children. *Id.* at *1, *3. S.U. appealed the family court's rulings to the Supreme Court of Appeals of West Virginia, which affirmed the court's order. *Id.* at *5.

The family court's custody and parentage determination has led to a series of court filings by S.U. in multiple jurisdictions,[2] which this court takes

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[2] In fact, S.U.'s vexatious conduct started before the family court rendered a final decision on the issues of custody and parentage. See *S.U. v. C.J.*, No. 3:17-cv-02366, 2017 WL 3616642 (S.D. W. Va. July 28, 2017), report and recommendation adopted, 2017 WL 3612859 (S.D. W. Va. Aug. 22, 2017). On April 17, 2017, S.U. filed a complaint in this court following the family court's issuance of a temporary order "award[ing] primary custody of two of the children to C. J., as well as secondary custody of a third child." *Id.* at *1. The complaint asserted nine counts against C.J., including a claim for breach of contract, and requested relief in the form of an order granting S.U. immediate sole legal and physical custody of the three children and "corrected birth certificates removing C. J. as the parent" and changing the names of two of the children. *Id.* at *1–2. The court dismissed S.U.'s complaint for lack of subject matter jurisdiction over child custody disputes. *S.U.*, 2017 WL 3612859, at *1.

judicial notice of herein. In November 2019, S.U. filed a petition "in the Circuit Court of Gilmer County seeking to have [C.J.] removed from the birth certificates of the . . . three . . .children and to have them returned to his custody." *S.U. v. C.J.*, No. 19-1181, 2021 WL 365824, at *2 (W. Va. Feb. 2, 2021). The circuit court denied the petition. *Id.* It concluded that S.U. was attempting to overturn the Supreme Court of Appeals' decision and that *res judicata* precluded S.U. from relitigating issues previously decided by the family court. *Id.* S.U. appealed, and the Supreme Court of Appeals of West Virginia affirmed the circuit court's dismissal. *Id.* at *4.

On June 29, 2020, S.U. initiated a civil action in this court against Matthew Wickert—one of the named defendants in the instant case—in Mr. Wickert's official capacity as State Registrar for Vital Statistics. *S.U. v. Wickert*, No. 2:20-cv-00450 (S.D. W. Va. June 29, 2020), at ECF No. 1. The complaint asserted equal protection and substantive due process challenges. *Id.* S.U. sought the following relief: (1) a declaratory judgment stating that West Virginia Code § 16-5-10(e)—which creates a presumption that a woman who gives birth to a child is the child's mother—violates the Fourteenth Amendment to the United States Constitution; (2) an injunction enjoining the enforcement of § 16-5-10(e); (3) an order requiring Mr. Wickert to amend the children's birth certificates to include only S.U.'s name; (4) a declaration that all orders from the family court action were null and void; (5) an order permitting "law enforcement to assist [S.U.] with securing physical custody of his children"; and (6) other appropriate relief. *Id.* at 18–19. The Honorable John T. Copenhaver, Jr. dismissed the matter for lack of

standing and lack of jurisdiction under the *Rooker-Feldman* doctrine.[3] *S.U. v. Wickert*, No. 2:20-cv-00450, 2021 WL 1153996, at *4, *6–9 (S.D. W. Va. Mar. 26, 2021), *aff'd per curiam as modified*, 2022 WL 34139 (4th Cir. Jan. 4, 2022).

On July 17, 2020, S.U. filed a complaint against C.J. in the United States District Court for the Northern District of West Virginia. Roe v. Jenkins, No. 1:20-cv-00140 (N.D. W. Va. July 17, 2020), at ECF No. 1. The complaint similarly asserted equal protection and due process violations. *Id.* S.U. requested that the court (1) enter a declaratory judgment stating that C.J. is not the legal parent of S.U.'s biological children; (2) issue an injunction enjoining C.J. from having the care and custody of the children; (3) issue a writ of habeas corpus or a temporary restraining order requiring C.J. to surrender the children to S.U.; (4) order C.J. to pay the fees and costs for all actions relating to the custody of the children; (5) order C.J. to pay damages for S.U.'s emotional distress; and (6) grant further relief as required by justice. *Id.* at 9. The court dismissed the action for lack of subject matter jurisdiction over custody disputes. See *Roe v. Jenkins*, No. 1:20-cv-00140, 2020 WL 9257057, at *3 (N.D. W. Va. Aug. 5, 2020), *report and recommendation adopted*, 2021 WL 1026524 (N.D. W. Va. Mar. 17, 2021).

In addition to filing the district court cases, S.U. also attempted to indirectly challenge the state court rulings by obtaining an adoption order from an out-of-state family court. On May 15, 2020, S.U. filed a

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[3] The *Rooker-Feldman* doctrine is a jurisdictional rule that prohibits federal district courts from reviewing state court judgments. *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983).

petition for stepparent adoption in the Court of Common Pleas of Allegheny County, Pennsylvania, Orphans' Court requesting that the court terminate C.J.'s parental rights and allow S.U.'s wife, C.U., to adopt the three children. *In re Adoption of L.U.*, No. 1353 WDA 2020, 2021 WL 1998454, at *1 (Pa. Super. Ct. May 19, 2021). The orphans' court took judicial notice of the decisions by the Family Court of Mason County and the Supreme Court of Appeals of West Virginia and dismissed the petition. *Id.* at *2. S.U. appealed, and the Superior Court of Pennsylvania affirmed the dismissal on May 19, 2021. *Id.* at *6.

Undeterred, S.U. initiated an adoption action in the Superior Court of the District of Columbia, Family Court Operations Division, Domestic Relations Branch ("D.C. family court"). *Jenkins*, 2022 WL 8316814, at *1. Based on false information provided by S.U. and C.U., the D.C. family court issued final decrees of adoption for the children to be adopted by C.U. and "authorized name changes for two of the children." *Id.* at *2. A month later, C.J. seemingly became aware of the adoption proceedings and "filed a petition for *ex parte* relief and [an] immediate hearing in the Circuit Court of Gilmer County, West Virginia." *Id.* The circuit court, following a hearing, entered an order temporarily enjoining S.U. and C.U. from taking the children. *Id.* On January 3, 2022, the same day the injunction was entered, C.J. moved to intervene in the adoption matter in D.C. family court. *Id.* The court granted her motion and set a hearing for January 27, 2022. *Id.* On January 10, 2022, prior to the D.C. family court hearing, S.U. and C.U. removed the Gilmer County action to the Northern District of West Virginia based on federal question jurisdiction. *Id.* In his complaint, S.U. requested that the adoption

orders be given full faith and credit. *Id.* Shortly thereafter, the D.C. family court vacated the adoption decrees and reinstated the children's names. *Id.* The court also set a hearing to address potential sanctions on S.U. and C.U. *Id.* Additionally, because the D.C. family court vacated its order, which had prompted C.J. to file the Gilmer County action, the federal district court dismissed the matter before it as moot. *Jenkins*, 2022 WL 4594483, at *1.

At some point following the conclusion of the Allegheny County action but before the end of the D.C. family court action, S.U. filed a petition in the Westmoreland County Orphans' Court in Greensburg, Pennsylvania to terminate C.J.'s parental rights to the three children. *In re Adoption of L.U.*, Nos. 428 WDA 2022, 1 WDA 2023, 2 WDA 2023, 2023 WL 118733, at *1 (Pa. Super. Ct. Jan. 6, 2023). The orphans' court dismissed the petition for lack of jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act. *Id.* As usual, S.U. appealed the order, which was affirmed by the Superior Court of Pennsylvania on January 6, 2023. *Id.* at *8. On March 6, 2023, the Supreme Court of Pennsylvania denied S.U.'s Petition for Allowance of Appeal. *In re Adoption of L.U.*, Nos. 16 WAL 2023, 17 WAL 2023, 18 WAL 2023, 2023 WL 2364274, at *1 (Pa. Mar. 6, 2023).[4]

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[4] While this factual background cites numerous related cases, it does not include every case filed by S.U. concerning the custody and parentage of his children. See, e.g., *In re Change of Name Regarding Minors*, No. 21-0258, 2022 WL 1556113, at *1 (W. Va. May 17, 2022) (appealing an order from the Circuit Court of Kanawha County, which "dismiss[ed] [S.U.'s] appeals from a family court order denying his motions to reinstate two petitions to change the names of his minor children"); *In re Adoption of E.U.*, No. 21-0165, 2022 WL 293352, at *1 (W. Va. Feb. 1, 2022)

Finally, on August 8, 2022, S.U. filed the instant Verified Complaint for Declaratory and Further Relief. [ECF No. 1]. He contends that the "Defendants' application of § 16-5-10(e)"—which creates a presumption that a woman who births a child is the child's mother, unless otherwise specified by statute or determined by a court prior to the filing of the birth certificate—"caused [his] children's birth certificates to recite incorrect maternity; incorrect paternity; and, incorrect legal names." *Id.* ¶ 18. He states that West Virginia Code § 16-5-10(a)'s requirement that a birth certificate be filed within seven days of live birth "did not permit [him] the opportunity to obtain DNA testing prior to the Defendants' filing and registration of [his] children's birth certificates." *Id.* ¶ 16. S.U. asserts that the Defendants' application of § 16-5-10(e) violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. *Id.* at 18–20. He also contends that the challenged statute violates the First and Fourth Amendments. *Id.* at 20–21. S.U. requests that the court (1) "[i]ssue a judgment declaring the biological and legal parents of [his] children to be [himself] and an anonymous donor"; (2) "[i]ssue a judgment declaring 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 the Defendants "to correct the parentage and

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(appealing an order from the Circuit Court of Putnam County, denying S.U. and C.U.'s petition to allow C.U. to adopt the three children); *In re E.U.*, No. 20-0039, 2021 W. Va. LEXIS 523, at *1 (W. Va. Oct. 13, 2021) (appealing an order entered by the Circuit Court of Mason County on January 15, 2020, which denied S.U. and C.U.'s petition for adoption because C.J.'s consent was required).

names recited on [his] children's birth certificates"; (4) award him nominal damages for violations of his constitutional rights; (5) award him "costs and expenses in filing this action"; and (6) grant him any other relief the court deems just. *Id.* at 21–22.

This case was referred to Magistrate Judge Dwane L. Tinsley for submission of proposed findings of fact and recommendations for disposition pursuant to 28 U.S.C. § 636. [ECF No. 11]. Magistrate Judge Tinsley submitted his Proposed Findings & Recommendation ("PF&R") and recommended that the court dismiss this action without prejudice *sua sponte* based on the *Rooker-Feldman* abstention doctrine, and deny the pending motions. [ECF No. 25, at 15]. S.U. timely filed objections to the PF&R on March 6, 2023. [ECF No. 27].

II. Legal Standard

A district court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). This court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, this court need not conduct a *de novo* review "when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

III. Discussion

I will first address S.U.'s objections to the magistrate judge's PF&R and then discuss the legal ramifications of S.U.'s burdensome and vexatious conduct.

A. Objections to the PF&R

Magistrate Judge Tinsley determined that this action is barred by the *Rooker-Feldman* doctrine "because S.U. indirectly—but fundamentally—seeks to functionally reverse the Mason County Circuit Court's prior rulings through this civil action." [ECF No. 25, at 12]. S.U. contends, however, that the Rooker-Feldman doctrine is inapplicable because Defendants' application of § 16-5-10(e) is not a judicial act. [ECF No. 27, at 2]. That is, S.U. claims that his injuries are not caused by any state court decision, but instead are the result of "Defendants' administrative enforcement of its own code to create erroneous birth certificates and Defendants' subsequent refusal to correct [the] children's birth certificates." *Id.* at 3. The court concludes that this matter must be dismissed for lack of subject matter jurisdiction based on the *Rooker-Feldman* doctrine and the absence of standing. Accordingly, the court adopts the PF&R with a modification to address standing. This modification, however, does not alter the magistrate judge's overall recommendations.

1. *Rooker-Feldman*

The *Rooker-Feldman* doctrine deprives district courts of subject matter jurisdiction over "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting

district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); see also *Ernst v. Child & Youth Servs.*, 108 F.3d 486, 491 (3d Cir. 1997) ("[I]t is improper for federal district courts to exercise jurisdiction over a case that is the functional equivalent of an appeal from a state court judgment."). The doctrine rests on the principle that "a United States District Court has no authority to review final judgments of a state court in judicial proceedings." *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 482 (1983). If, "in order to grant the federal plaintiff the relief sought, the federal court must determine that the state court judgment was erroneously entered or must take action that would render the judgment ineffectual," then the *Rooker-Feldman* doctrine applies. *Ernst*, 108 F.3d at 491 (quoting *FOCUS v. Allegheny Cnty. Ct. of Common Pleas*, 75 F.3d 834, 840 (3d Cir. 1996)); see also *Charchenko v. City of Stillwater*, 47 F.3d 981, 983 (8th Cir. 1995) (*Rooker-Feldman* bars district court review "[i]f the relief requested in the federal action requires determining that the state court decision is wrong or would void the state court's ruling.").

In the instant case, S.U. seeks, among other relief, an order directing Defendants "to correct the parentage and names recited on [his] children's birth certificates." [ECF No. 1, at 22]. He also requests a "judgment declaring the biological and legal parents of [his] children to be [himself] and an anonymous donor." *Id.* at 21.

Judge Copenhaver previously determined that the *Rooker-Feldman* doctrine applied in S.U. "to the extent [S.U.] [was seeking] an order directing the defendant to modify the plaintiff's children's birth

certificates." 2021 WL 1153996, at *6. There, the court concluded that the elements of the *Rooker-Feldman* doctrine were met because the issue of whether the children's birth certificates should be amended was previously decided against S.U. in state court, and S.U. sought review of that decision in federal district court. *Id.* at *8–9. The court therefore concluded that S.U. was barred from seeking this form of relief. *Id.* at *9. Interestingly, S.U. asks the court again for essentially the same relief—an order directing Defendants to amend the birth certificates and a judgment declaring S.U. and an anonymous donor the legal parents of the children. [ECF No. 1, at 21–22]. Magistrate Judge Tinsley, relying on S.U., concluded that this court lacks jurisdiction to grant this relief based on the *Rooker-Feldman* doctrine. [ECF No. 25, at 12–15]. The court agrees with the analyses of Judge Copenhaver and Judge Tinsley and concludes that the *Rooker-Feldman* doctrine applies to S.U.'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. S.U. 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 S.U., however, would directly contravene the state courts' decisions on parentage and render their orders ineffectual—an outcome S.U. has sought time and time again. 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.

2. Standing

"The standing doctrine is an indispensable expression of the Constitution's limitation on Article III courts' power to adjudicate 'cases and controversies.'" *Frank Krasner Enters., Ltd. v. Montgomery Cnty.*, 401 F.3d 230, 234 (4th Cir. 2005) (citing *Allen v. Wright*, 468 U.S. 737, 750–51 (1984)). Thus, "[s]tanding implicates the court's subject matter jurisdiction." *South Carolina v. United States*, 912 F.3d 720, 726 (4th Cir. 2019) (citing *Long Term Care Partners, LLC v. United States*, 516 F.3d 225, 230 (4th Cir. 2008)). To establish standing, "a plaintiff must show (1) [he] has suffered an 'injury in fact' . . . ; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000)). A plaintiff must "'demonstrate standing for each claim he seeks to press' and 'for each form of relief' sought." *Outdoor Amusement Bus. Ass'n v. Dep't of Homeland Sec.*, 983 F.3d 671, 680 (4th Cir. 2020) (quoting *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008)).

With respect to S.U.'s request for a declaration that § 16-5-10(e)'s presumption is unconstitutional, Judge Copenhaver previously determined that S.U. lacked standing to seek a declaratory judgment. S.U., 2021 WL 1153996, at *5–6. The court explained that declaratory relief, by itself, could not satisfy the redressability prong, absent S.U. identifying some concrete relief likely to result from the declaratory judgment. *Id.* at *5. The court concluded that the relief identified by S.U.—future success in state court custody litigation—was "too speculative to satisfy the

redressability requirement" for purposes of standing. *Id.* at *6. In the present case, S.U. identifies a different form of relief that will allegedly result from a declaratory judgment: he "would no longer be forced to identify a biological stranger as the biological/legal mother of [his] children nor would [he] be forced to identify [his] children by the names that were given to them by a biological stranger." [ECF No. 1, ¶ 48]. He also states that such relief would "clarify uncertain legal relations between [him] and [his] children." *Id.* ¶ 51.

It is unclear to the court how a declaration that § 16-5-10(e)'s presumption is unconstitutional is likely to produce the relief identified by S.U., whose alleged injury primarily stems from the inclusion of C.J.'s name on the children's birth certificates. A declaratory judgment, by itself, would not change the children's legal parents or names. The Family Court of Mason County previously determined that while C.J. is not biologically related to the three children she is their mother, as she "ha[s] been the primary caregiver for the children" and "the children have a close emotional bond to [her]." *S.U.*, 2019 WL 5692550, at *3. The court rejected S.U.'s claim that C.J. was merely a gestational surrogate and found that S.U. and C.J. had been in a long-term relationship, during which time the children were conceived. *Id.* at *4. Declaring the maternal presumption unconstitutional would not affect the family court's reasoning on the issue of parentage or custody, given the family court's conclusion that C.J. was never a gestational surrogate but instead an intended parent.

Like in S.U., which was affirmed by the Fourth Circuit,[5] the court concludes that S.U.'s "request for a declaration that § 16-5-10(e)'s presumption is unconstitutional cannot satisfy redressability for purposes of standing." 2021 WL 1153996, at *5.

B. Prefiling Injunction

"[T]he All Writs Act . . . grants federal courts the authority to limit access to the courts by vexatious and repetitive litigants." *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 817 (4th Cir. 2004). A district court, however, should not issue a prefiling injunction "absent 'exigent circumstances, such as a litigant's continuous abuse of the judicial process by filing meritless and repetitive actions.'" *Id.* at 818 (quoting *Brow v. Farrelly*, 994 F.2d 1027, 1038 (3d Cir. 1993)). Notably, "'use of such measures against a pro se plaintiff should be approached with particular caution' and should 'remain very much the exception to the general rule of free access to the courts.'" *Id.* (quoting *Pavilonis v. King*, 626 F.2d 1075, 1079 (1st Cir. 1980)).

In deciding whether to issue a prefiling injunction, the court must consider all relevant circumstances, including:

> (1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the

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[5] The Fourth Circuit found no reversible error contained in the district court's order. *S.U. v. Wickert*, No. 21-1351, 2022 WL 34139, at *1 (4th Cir. Jan. 4, 2022) (per curiam). The court did, however, modify the order "to reflect that the dismissal [was] without prejudice." *Id.*

> burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions.

Id.

Before a court issues a prefiling injunction, it "must afford a litigant notice and an opportunity to be heard." *Id.* at 819. Additionally, once the court determines that an injunction is warranted, it must narrowly tailor the injunction "to fit the specific circumstances at issue." *Id.* at 818.

Ever since the Family Court of Mason County entered its final order on custody and parentage, S.U. has been determined to divest C.J. of custody and strip her of her status as the children's mother. In his effort to do so, S.U. has filed complaints in numerous jurisdictions, including the Southern District of West Virginia, the Northern District of West Virginia, the Circuit Court of Gilmer County, the Circuit Court of Putnam County, the Family Court of Kanawha County, the Court of Common Pleas of Allegheny County, the Westmoreland County Orphans' Court, and the Superior Court of the District of Columbia. See *supra* Part I (collecting cases). Except for S.U.'s short-lived victory in D.C. family court, he has been unsuccessful in these prior proceedings; nevertheless, he persists in litigating claims or issues that have been fully resolved in state court. Indeed, just two years before filing the instant Complaint, S.U. initiated a nearly identical action in this court, complaining of the same injuries and requesting similar relief. See *S.U.*, 2021 WL 1153996, at *1–2. The case was dismissed on March 26, 2021, *id.* at *10, and the Fourth Circuit affirmed the court's judgment on January 4, 2022, *S.U.*, 2022 WL 34139, at *1.

Based on S.U.'s history of duplicative filings, the first *Cromer* factor is satisfied.

The second *Cromer* factor is also met. After considering the evidence presented at the final custody hearings, the family court awarded sole legal and physical custody of S.U.'s children to C.J., their mother, and concluded that the children's birth certificates should not be changed. *S.U.*, 2019 WL 5692550, at *1–3. The Supreme Court of Appeals of West Virginia has repeatedly upheld the family court's decision. See, e.g., *id.* at *5. Additionally, other courts, including this court, have continually dismissed S.U.'s claims relating to the custody and parentage of his children. See, e.g., *S.U.*, 2021 WL 1153996, at *10; *Roe*, 2021 WL 1026524, at *4. Despite the courts' rulings, S.U. continues to initiate lawsuits challenging the parentage of his children and requesting that the children's birth certificates be amended. Given his lack of success in any court on the same claims, the court concludes that S.U. did not have a good faith basis for pursing the instant litigation.

Both federal and state courts have been burdened by S.U.'s unsuccessful litigation concerning his children's legal parents. *See, e.g., In re Adoption of E.U.*, 2022 WL 293352, at *2 ("[T]his issue [that C.J. is merely a gestational surrogate] has been rejected multiple times, and this Court simply refuses to entertain it further."). Additionally, the same defendants, such as Mr. Wickert and C.J., have been forced to waste their time, energy, and resources defending against S.U.'s meritless lawsuits. See, e.g., *S.U.*, 2021 WL 1153996, at *1–10 (dismissing S.U.'s complaint filed against Mr. Wickert). The third

Cromer factor therefore weighs in favor of a prefiling injunction.

The fourth *Cromer* factor is "the adequacy of alternative sanctions." 390 F.3d at 818. Careful consideration of this factor is extremely important. *Id.* If alternative sanctions would be sufficient to deter future frivolous filings, then a prefiling injunction is inappropriate. *Id.*

Multiple state courts have previously determined S.U. to be a vexatious litigant. See, e.g., *S.U. v. C.J.*, No. 21-0322, 2022 WL 3905107, at *2 (W. Va. Aug. 30, 2022); *S.U. v. Cent. Atl. Legal Grp., LLC*, No. 20-1006, 2022 WL 293551, at *2 (W.Va. Feb. 1, 2022); *In re Children of S.U.*, Nos. 20-0515, 20-0516, 20-0612, 20-0710, 2021 W. Va. LEXIS 537, at *6 (W. Va. Oct. 13, 2021). For example, S.U. is "prohibited . . . from filing any self-represented pleadings of any kind related to the . . . children or to [C.J.]" in Mason County Family and Circuit Courts. *S.U.*, 2022 WL 3905107, at *2. Additionally, S.U. has been held in contempt numerous times for his harassing behavior and monetary sanctions have been imposed against him. *See, e.g., In re Children of S.U.*, 2021 W. Va. LEXIS 537, at *6. He remains undeterred. Accordingly, alternative sanctions are not viable, and the fourth *Cromer* factor is satisfied.

All *Cromer* factors are satisfied, and absent a showing of good cause, a prefiling injunction against S.U. is warranted. The court concludes that S.U. should be barred from filing any civil action in this District relating to the custody or parentage of his children, including the information contained on their birth certificates, without first obtaining leave of court or securing legal counsel. This Order serves as S.U.'s notice that the court is inclined to impose a prefiling

injunction against him. S.U. shall show cause within fourteen (14) days from the entry date of this Order as to why the court should not issue the injunction. Failure to respond will result in the issuance of a prefiling injunction.

IV. Conclusion

For the foregoing reasons, the court adopts the magistrate judge's PF&R [ECF No. 25] as modified herein. The court **ORDERS** that this case is **DISMISSED** and **STRICKEN** from the docket of this court. The parties' pending motions [ECF Nos. 3, 4, 5, 15, 18, 22] are **DENIED as moot**. Plaintiff is **DIRECTED** to **SHOW CAUSE** in writing within **fourteen (14) days** from entry of this Order explaining why a prefiling injunction should not issue.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: March 30, 2023
Joseph R. Goodwin
United States District Judge

(FILED: February 28, 2023)

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA CHARLESTON DIVISION

JOHN DOE,
Plaintiff,

v. Case Number: 2:22-cv-00328

BILL J. CROUCH, et al.,
Defendants.

PROPOSED FINDINGS & RECOMMENDATION

This civil action is assigned to the Honorable Joseph R. Goodwin, United States District Judge, and referred to the undersigned United States Magistrate Judge for "submission of proposed findings of fact and recommendations for disposition" pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 11.) Pending are a number of procedural motions filed by the pro se Plaintiff John Doe ("Plaintiff" or "S.U."), as well as a motion to dismiss filed by the named Defendants Ayne Amjad, Bill Crouch, and Matthew Wickert (collectively, "Defendants" or the "West Virginia State Officials"), all of whom S.U. has named in their official capacities. (ECF Nos. 3, 4, 5, 15, 18, 22.) For the reasons set forth herein, it is respectfully **RECOMMENDED** that the presiding District Judge **DISMISS** this action without prejudice *sua sponte* based upon the Rooker-Feldman abstention doctrine, and **DENY** each of the pending motions.

I. BACKGROUND

This case is the latest iteration of Plaintiff S.U.'s child-custody dispute, reflecting what U.S. Magistrate Judge Michael Aloi of the U.S. District Court, Northern District of West Virginia, described as S.U.'s habit of making "incessant filings in various jurisdictions in an attempt to circumvent the prior rulings of West Virginia's circuit courts and Supreme Court of Appeals." *Jenkins v. Upton*, 1:22-cv-3, 2022 WL 8316814, at *5 (N.D. W. Va. Mar. 18, 2022), *report and recommendation adopted*, 2022 WL 4594483 (N.D. W. Va. Sept. 30, 2022). Because those filings are directly relevant to the disposition of the case sub judice, the undersigned therefore begins by taking judicial notice of the extensive litigation which precedes, and forms the backdrop of, this civil action. S.U. was not designated as "a binary male or female at birth;" while he has "ovarian tissue," he has physical traits of a male, is legally known to be male, and lives as a male. (ECF No. 1 at 2 ¶ 8.) Using ova, or eggs, extracted from S.U.'s body, along with sperm from an unnamed donor, three embryos were developed in a laboratory and at S.U.'s behest were implanted into the uterus of C.J.; the nature of the relationship between S.U. and C.J. was disputed, with S.U. insisting that C.J. merely entered into a contract with him to act as his "gestational surrogate," while C.J. represented that she and S.U. were in a relationship for approximately twelve years and lived together as a couple before their relationship deteriorated. See *Jenkins*, 2022 WL 8316814, at *1 n.1, n.2; S.U. v. C.J., 18-0566, 2019 WL 5692550, at *1 (W. Va. Nov. 4, 2019). In any event, C.J. carried the three children in two separate pregnancies, gave birth to the children, and cared for the children since the time of their births; however, it is undisputed that

C.J. is not biologically related to the children, and that S.U. is their biological mother, having provided the eggs with which the embryos were created. *Jenkins*, 2022 WL 8316814, at *2 n.1.

Shortly before C.J. gave birth to twins—the youngest of the three children—S.U. filed a Petition for Declaration of Parentage and Motion to Seal Record in the Circuit Court of Kanawha County, West Virginia, "in an attempt to prevent [C.J.'s] name from being listed on the twins' birth certificate." *S.U.*, 2019 WL 5692550, at *2. S.U. also sought custody of the children. The matter was ultimately transferred from the Kanawha County Circuit Court to the Family Court of Mason County, West Virginia ("Mason County Family Court"), Civil Action No. 16-D-233, as the parties resided in Mason County at the time. See *id.* at *1-*2. In August 2017, the Mason County Family Court denied S.U.'s motion to amend the children's birth certificates; as a result, C.J. remains listed as the children's mother on their birth certificates. *Id.* at *2.

During the custody-determination portion of the proceedings before the Mason County Family Court, Dr.Timothy Saar produced written reports concerning his evaluations of the parties and the children. *Id.* at *3. Dr. Saar opined that the children viewed C.J. as their mother and exhibited a close emotional bond with her, while S.U. "exhibited psychological and behavioral factors which appear to be harmful to the children, including [S.U.'s] failure to "consider that the children would be emotionally harmed if [C.J.] were eliminated from their lives," S.U.'s stated goal of "getting [C.J.] out of the picture," and that "preventing emotional harm to the children was not a priority" for S.U. *Id.* Dr. Saar expressed "significant concerns"

about S.U. having unsupervised contact with the children. *Id.*

On May 16, 2018, the Mason County Family Court entered an Order awarding primary custody to C.J., concluding that was in the best interest of the children as C.J. had been the primary caregiver for the children, was a "fit and proper parent," and the children shared a close emotional bond with her. *Id.* The Mason County Family Court's determination was also based upon S.U.'s own conduct, finding that S.U. initiated physical and mental abuse against C.J. in the children's presence which caused them emotional distress, including kicking C.J. in the stomach and calling her "fat, stupid, and ugly." *Id.* at *4-*5. S.U. was ordered to enroll in counseling services and to pay child support. *Id.* at *3.

S.U. appealed the Mason County Family Court's rulings to the Supreme Court of Appeals of West Virginia, seeking an order of adoption, an order to remove C.J.'s name from the children's birth certificates, and an order awarding S.U. sole custody of the children. *Id.* The assignments of error listed by S.U. on appeal were all grounded on his contention that C.J. was "nothing more than a gestational surrogate for the parties' three youngest children." *Id.* at *4. On November 4, 2019, the Supreme Court of Appeals issued a decision upholding the Mason County Family Court's rulings. See *id.* Importantly, in reaching its decision the Supreme Court of Appeals expressly rejected S.U.'s constitutional-due-process argument, finding that he was afforded due process. *Id.* at *5.

On April 17, 2017, while his appeal of the Mason County Family Court's decision was still pending, S.U. initiated a civil action in this Court against C.J.,

asserting claims for breach of contract, fraud, negligent misrepresentation, unjust enrichment, promissory estoppel, equitable estoppel, anticipatory breach, violation of due process under the United States Constitution, and intentional infliction of emotional distress. See *S.U. v. C.J.*, 3:17-cv-02366, 2017 WL 3616642, at *1 (S.D. W. Va. July 28, 2017), report and recommendation adopted, 3:17-cv-2366, 2017 WL 3612859 (S.D. W. Va. Aug. 22, 2017). The relief sought in S.U.'s Complaint included "immediate sole residential and legal custody of the three children who are not C.J.'s biological children;" "corrected birth certificates removing C.J. as the parent of those three children;" and "corrected birth certificates changing the names of the last two children to the names selected by [S.U.]." *Id.* at *2.

Recommending dismissal, U.S. Magistrate Judge Cheryl Eifert of the U.S. District Court, Southern District of West Virginia, found that "the long-standing domestic relations exception to subject matter jurisdiction effectively 'divests the federal courts of power to issue divorce, alimony, and child custody decrees.'" *Id.* at *3 (quoting *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992)). Further, Magistrate Judge Eifert found that, to the extent S.U. sought "to 'revisit or rehear' the matters already decided in [the Mason County] Family Court," such a request violated the *Rooker-Feldman* doctrine. *Id.* Presiding District Judge Robert C. Chambers agreed, and dismissed the action for lack of subject-matter jurisdiction. *S.U. v. C.J.*, 3:17-cv-2366, 2017 WL 3612859, at *1 (S.D. W. Va. Aug. 22, 2017).

As Magistrate Judge Aloi observed in subsequent litigation, S.U. was undeterred by these losses, and he proceeded to make a series of surreptitious court

filings in multiple jurisdictions in order to "trick[] and defraud[] unsuspecting courts into entering a ruling contrary to the [prior] rulings of the Family Court of Mason County and the Supreme Court of Appeals of West Virginia." *Jenkins*, 1:22-cv-3, ECF No. 21 at 3 n.3.[1]

The first in S.U.'s series of court filings described by Magistrate Judge Aloi occurred in November 2019—the same month that the West Virginia Supreme Court of Appeals issued its decision on appeal of the Mason County Family Court's decision—when S.U. filed an "Emergency Petition to Disestablish Maternity of Gestational Surrogate" in the Circuit Court of Gilmer County, West Virginia. See *S.U. v. C.J.*, 19-1181, 2021 WL 365824, at *1-2 (W. Va. Feb. 2, 2021). In the petition, S.U. sought "to have [C.J.] removed from the birth certificates of the parties' three youngest children and to have them returned to his custody." *Id.* at *2. In a December 11, 2019 order, the Gilmer County Circuit Court

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[1] As this Court previously determined in similar litigation asserted by this Plaintiff, S.U.'s request to proceed anonymously (ECF No. 4) should be DENIED in light of the requirement set forth in Rule 10(a) of the Federal Rules of Civil Procedure that the complaint "must name all the parties" and the presumption stated by the Fourth Circuit Court of Appeals for public access to court records, particularly in cases where government officials are named as parties. *S.U. v. Wickert*, 2:20-cv-450 (S.D. W. Va. Sept. 10, 2020) (citing *Doe v. Pub. Citizen*, 749 F.3d 246, 273 (4th Cir. 2014)). Moreover, due to the procedural history of the events giving rise to this case—including Magistrate Judge Aloi's prior finding of S.U.'s fraudulent activity—the "John Doe" designation is particularly inappropriate. Accordingly, the undersigned refers to Plaintiff herein by his initials, S.U., in order to appropriately balance the public's right of access and the Court's interest in preventing fraud against the privacy interests of S.U. and the three minor children at issue.

dismissed S.U.'s petition *sua sponte*, concluding that it was an attempt to overturn the prior decision of the Supreme Court of Appeals of West Virginia and to relitigate custody and birth-certificate issues, which S.U. was precluded from litigating under the doctrine of *res judicata*. *See id.*

S.U. appealed the Gilmer County Circuit Court's decision to the Supreme Court of Appeals of West Virginia. *Id.* In a February 1, 2021 memorandum decision, the Supreme Court of Appeals agreed with the circuit court's determination that S.U.'s petition was barred by *res judicata*. See *id.* at *1-4. The decision expressly rejected S.U.'s argument that his prior action had not involved a request to remove "the surrogate's" name from the children's birth certificates as "disingenuous," because S.U. had made "clear efforts" to do so in the prior action—indeed, "the ultimate issue being litigated . . . is [C.J.]'s inclusion on the children's birth certificates." *Id.* at *3. Finding that S.U. "fully litigated the propriety of [C.J.'s] designation as the children's mother," the Supreme Court of Appeals ruled that the case before them was an improper "attempt[] to relitigate" the same issue. *Id.*

On June 29, 2020, S.U. initiated a civil action in this Court against Matthew Wickert—one of the named Defendants in the case sub judice—in Mr. Wickert's official capacity as the West Virginia State Registrar pursuant to 42 U.S.C. § 1983. *S.U. v. Wickert*, 2:20-cv-450, ECF No. 1 (S.D. W. Va. June 29, 2020). In his Complaint, S.U. asserted both equal-protection and substantive-due-process challenges to West Virginia Code § 16-5-10(e)—which provides generally that a woman who gives birth to a child is presumed to be the child's mother—arguing that the

statute violates the Fourteenth Amendment to the United States Constitution. *Id.* at 15–17. The relief sought a declaratory judgment deeming § 16-5-10(e) to be unconstitutional, as well as an order enjoining Mr. Wickert from enforcing the statute "and any other laws that permit a gestational surrogate to be a legal parent in contrast to the biological parent's wishes." *Id.* at 18. The relief S.U. sought in the Complaint included an order that, *inter alia*, (1) required Mr. Wickert "to amend the birth certificates of [the three children] to reflect only Plaintiff's name;" (2) required Mr. Wickert to remove the name of C.J., "the gestational surrogate," from the children's birth certificates; (3) voided the orders in the Mason County Family Court action that awarded custody to C.J.; and (4) gave "permission for law enforcement to assist Plaintiff with securing physical custody of his children, if necessary." *Id.* at 19. Presiding U.S. District Judge John T. Copenhaver, Jr. dismissed the action for several independent reasons, including lack of standing, along with application of the *Rooker-Feldman* abstention doctrine. *S.U. v. Wickert*, 2:20-cv-450, 2021 WL 1153996, at *8 (S.D. W. Va. Mar. 26, 2021), *aff'd as modified*, 21-cv-1351, 2022 WL 34139 (4th Cir. Jan. 4, 2022).

On July 17, 2020, S.U. filed a complaint in the U.S. District Court for the Northern District of West Virginia (the "Northern District"). See *Roe v. Jenkins*, 1:20-cv-140, 2020 WL 9257057 (N.D. W. Va. Aug. 5, 2020), *report and recommendation adopted*, 2021 WL 1026524 (N.D. W. Va. Mar. 17, 2021). Therein, S.U. sought custody of the children; he asserted that C.J. was only a "gestational surrogate" who was not entitled to custody, and that C.J. was abusive and neglectful towards the children. *Id.* Ultimately, the

Northern District dismissed the case for lack of federal jurisdiction over child-custody disputes. *Id.* Importantly, Magistrate Judge Aloi found as follows: Here, [S.U.] seeks principally to strip custody of the children at issue immediately from [C.J.], and allocate custody, care and control of these children to himself. [S.U.] seeks such result after having unsuccessfully sought the same in multiple state courts. But in doing so, he cites no binding authority for this Court to substitute its judgment for or assert its jurisdiction in the stead of state courts. There is no further inquiry to be made. *Id.* at *2. Presiding District Judge Thomas Kleeh agreed, rejecting S.U.'s attempt to characterize the lawsuit as a civil-rights action and finding that "it is a child custody dispute that must be, and has been, resolved in state court." *Roe v. Jenkins*, 1:20-cv-140, 2021 WL 1026524, at *4 (N.D. W. Va. Mar. 17, 2021).

It appears that S.U. next changed tactics and sought to challenge the effect of the Mason County Family Court's rulings indirectly by obtaining an adoption order from an out-of-state family court and using the adoption order to regain custody of the three children and change their names. First, it appears that S.U. initiated litigation in Pennsylvania to adopt the children; however, it appears that a court in Westmoreland County, Pennsylvania, dismissed S.U.'s adoption action on October 8, 2021. *See Jenkins*, 2022 WL 8316814, at *1 n.3.

Undeterred, S.U. next initiated an adoption action with the Superior Court of the District of Columbia, Family Court Operations Division, Domestic Relations Branch (the "D.C. Family Court"). *Id.* Importantly, S.U. did not name C.J. as a party, and did not provide C.J.—the legal custodian of the children—with notice of the D.C. Family Court

proceedings; further, S.U. did not inform the D.C. Family Court of the Mason County Family Court's rulings. Thus, on November 22, 2021, the D.C. Family Court issued Final Decrees of Adoption for the three children, permitting S.U.'s spouse, C.U., to adopt the children; the Final Decrees also authorized name changes for two of the children—the same name changes that S.U. had pursued unsuccessfully in West Virginia. *Id.*

Ostensibly, C.J. became aware that S.U. initiated the adoption proceedings in the D.C. Family Court, because she filed an emergency petition for *ex parte* relief and immediate hearing in the Circuit Court of Gilmer County, West Virginia, on December 22, 2021 (the "Gilmer County action"). C.J. obtained emergency temporary relief, after which she sought a declaratory judgment that the final decrees of adoption from the D.C. Family Court were "void due to fraud and/or [have] no authority within the State of West Virginia." *Id.*

Approximately twelve days later on January 3, 2022, C.J. also filed a motion to intervene with the D.C. Family Court, arguing that the Final Decrees of Adoption should not have been adjudicated without her consent in light of the Mason County Family Court's prior award of parental rights to C.J. *Id.* The D.C. Family Court set a hearing on C.J.'s motion for January 27, 2022. *Id.*

On January 10, 2022—before the hearing before the D.C. Family Court took place—S.U. removed C.J.'s Gilmer County action to the U.S. District Court for the Northern District of West Virginia based upon federal-question jurisdiction. *Id.* In support of his jurisdictional allegations, S.U. asserted that C.J.'s Gilmer County action "arises under the Constitution"

for two reasons. *Id.* First, S.U. characterized C.J.'s action to void the D.C. Family Court's adoption orders as a "request[] that the final orders of adoption not be given full faith and credit" in violation of 28 U.S.C. § 1738; second, S.U. asserted that he was "seek[ing] redress pursuant to 42 U.S.C. § 1983 [as] he is being deprived [of] numerous rights secured by the Constitution." *Id.* He moved for an order declaring "the final adoption orders of the District of Columbia . . . as entitled to full faith and credit through the United States." *Id.*

On January 27, 2022, S.U. and C.J. appeared before the D.C. Family Court for the scheduled hearing on C.J.'s motion to intervene. *Id.* The D.C. Family Court granted C.J. leave to intervene, vacated its Final Decree of Adoption for each of the three children, reinstated C.J.'s parental rights, reinstated the three children's names, and set a hearing on the issue of whether sanctions were appropriate based upon S.U.'s misrepresentations of fact to the court.[2] *Id.*

Following the January 27, 2022 hearing before the D.C. Family Court, the parties returned to the removed Gilmer County action and represented to the U.S. District Court for the Northern District of West Virginia that the case was moot due to the D.C. Family Court's decision vacating the order that prompted C.J. to file the Gilmer County action. Presiding Chief District Judge Thomas Kleeh dismissed the action as moot on September 30, 2022. *Jenkins v. Upton*, 1:22-cv-3, 2022 WL 4594483, at *1 (N.D. W. Va. Sept. 30, 2022).

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[2] It is unclear whether the D.C. Family Court ultimately entered sanctions against either S.U. or his wife, C.U. See *id.*

Finally, S.U. initiated the instant civil action in this Court on August 8, 2022. (ECF No. 1.) S.U. alleges that his children "were conceived through in-vitro fertilization and were carried to birth by an unmarried biological stranger acting as a gestational surrogate." (ECF No. 1 at 3 ¶ 12.) Because West Virginia Code § 16-5-10(a) requires a certificate of a live birth which occurs in West Virginia to be filed with Vital Statistics or as directed by the State Registrar within seven days, S.U. alleges that he lacked sufficient time to obtain DNA testing "prior to the Defendants' filing and registration of [his] children's birth certificates which occurred against my wishes[.]" *Id.* ¶ 16. S.U. asserts that "[t]he result of Defendants' application of § 16-5-10(e) caused [his] children's birth certificates to recite incorrect maternity; incorrect paternity; and, incorrect legal names." Id. ¶ 18. S.U. asserts that the operation of the West Virginia statute deprived him of his constitutional right to due process because it "entered a biological stranger as a biological parent on [his] children's birth certificates" without S.U.'s permission, "permitted a biological stranger to enter legal names of [his] children on their birth certificates" without S.U.'s permission, and "automatically created a de facto adoption of [S.U.'s] children." *Id.* ¶¶ 90-99. S.U. asserts that "Defendants' foregoing acts cause ongoing harm because there is no method to correct my children's names on their birth certificates *without undergoing a best interest [of the children] analysis.*"[3] *Id.* ¶ 99 (emphasis added).

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[3] Notably, S.U. does not inform the Court of the Mason County Family Court's relevant determinations, which included a finding that awarding primary custody to C.J. was in the children's best interests.

Additionally, S.U. alleged that Defendants' actions violated S.U.'s constitutional right to equal protection because he did not receive the same treatment as mothers who can give birth to their biological children. *Id.* ¶ 105. S.U. also alleges a First-Amendment violation, asserting that "Defendants' filing and registration of [S.U.'s] children's birth certificates . . . with incorrect legal names . . . [and] with incorrect parentage forces [S.U.] and [his] children to recite the same on any official documents," which he asserts "thus violates our freedom of speech." *Id.* ¶¶ 108-112. Finally, S.U. alleges that "Defendants' filing and registration of [his] children's birth certificates naming a biological stranger as the biological and legal mother violates [his] and [his] children's protected and private information without any ramifications," which he alleges violates the Fourth Amendment to the United States Constitution. *Id.* ¶¶ 113-115.

The relief S.U. seeks in his Complaint includes, *inter alia*, (1) a declaratory judgment determining "the biological and legal parents of [S.U.'s] children to be [S.U.] and an anonymous donor;" (2) a declaratory judgment determining that West Virginia Code § 16-5-10(e) violates S.U.'s constitutional rights; and (3) an order requiring Defendants "to correct the parentage and names recited on [S.U.'s] children's birth certificates." *See generally id.*

Having reviewed S.U.'s Complaint in this action, and having been made aware of the extensive litigation history regarding the parentage and legal names of S.U.'s three children as recited above, the undersigned now takes up this Court's jurisdiction over this matter *sua sponte*.

II. ANALYSIS

The procedural backdrop underpinning this civil action and the relief S.U. seeks in his Complaint implicate application of the *Rooker-Feldman* doctrine, because S.U. indirectly—but fundamentally—seeks to functionally reverse the Mason County Circuit Court's prior rulings through this civil action. As the Fourth Circuit Court of Appeals "has consistently treated the *Rooker–Feldman* doctrine as jurisdictional," the Court is "obliged to address it" at the outset of the case, and may raise the issue *sua sponte*. *Wickert*, 2021 WL 1153996, at *6 (citing *Smalley v. Shapiro & Burson*, 526 F. App'x 231, 235 (4th Cir. 2013)).

The *Rooker-Feldman* doctrine provides in relevant part that "a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *S.U. v. Wickert*, 2:20-cv-450, 2021 WL 1153996, at *8 (citing *Curley v. Adams Creek Assocs.*, 409 F. App'x 678, 680 (4th Cir. 2011) (quotations omitted)). That is precisely the case in the matter at hand.

In his Complaint, S.U. seeks an order directing the Defendants—West Virginia state officials—to add S.U.'s name to the children's birth certificates, to remove C.J.'s name from the children's birth certificates, and to change the children's names—on the ground that application of § 16-5-10(e)'s presumption violates S.U.'s constitutional rights. (*See* ECF No. 1.) Further, because S.U.'s Complaint in the instant case also seeks "a judgment declaring the biological and legal parents of my children to be myself and an anonymous donor," an order by this Court granting the relief requested would directly contravene the Mason County Circuit Court's custody

determination by making S.U.—not C.J.—the children's legal parent. (See ECF No. 1 at 21 ¶ A). This is improper.

As discussed above, S.U. has already used the same tactic in previous litigation before this Court, without success. The instant action against Mr. Wickert and two other West Virginia state officials substantially mirrors S.U.'s prior 2020 action in this Court against Mr. Wickert that was dismissed by Judge Copenhaver. *See Wickert*, 2021 WL 1153996, at *8. As Judge Copenhaver explained in *Wickert*, "[t]he *Rooker-Feldman* doctrine applies if a case is (1) brought by [a] state court loser[] (2) who complain[s] of injuries caused by state-court judgments (3) that are rendered before the [federal] district court proceedings commenced, (4) and invit[es] district court review and rejection of those judgments." *Wickert*, 2021 WL 1153996, at *8-*9 (citing *Davani v. Va. Dep't of Transp.*, 434 F.3d 712, 718 (4th Cir. 2006)).

Here, just as in *Wickert*, the four *Rooker-Feldman* requirements are met. First, the current action is brought by a Plaintiff who pursued nearly identical claims in state-court actions and lost. The Mason County Family Court's rulings have been fully and fairly litigated in the West Virginia state courts and upheld—twice—on appeal by the State's highest court. Notably, as Judge Copenhaver observed, S.U. "has argued before both the [S]upreme [C]ourt [of Appeals of West Virginia] and the lower state courts that application of § 16-5-10(e)'s presumption violated his Fourteenth Amendment rights." *Wickert*, 2021 WL 1153996, at *8 n.9.

Second, S.U. complains that his injuries have been caused in large part by the state courts' decisions to

enforce the presumption of West Virginia Code § 16-5-10(e) and thereby permit C.J., "the surrogate," to remain on his three youngest children's birth certificates. See *Wickert*, 2021 WL 1153996, at *9 (explaining that the second *Rooker-Feldman* requirement was met when S.U.'s complaint—just as in the case *sub judice*—asserted, *inter alia*, that the West Virginia official's enforcement of § 16-5-10(e) violates the plaintiff's equal protection and due process rights).

Third, the state courts' decisions were rendered before S.U. commenced the current action in federal court. On November 4, 2019, the Supreme Court of Appeals of West Virginia issued a decision upholding the Mason County Family Court's May 16, 2018 rulings. In contrast, S.U. initiated this civil action on August 8, 2022.

Lastly, the fourth and final *Rooker-Feldman* factor identified by Judge Copenhaver in Wickert applies to this action as well. S.U. takes great pains in his Complaint to repackage and distinguish this action from prior proceedings, and adds two more West Virginia state officials; nonetheless, this case once again indirectly, but fundamentally, seeks to escape the results of the Mason County Circuit Court's rulings. Just as in the instant action, the relief S.U.'s Complaint sought in Wickert included a declaratory judgment determining that West Virginia Code § 16-5-10(e) violated S.U.'s constitutional rights, along with an order requiring Mr. Wickert—in his official capacity as the State Registrar—to amend the three children's birth certificates "to reflect only [S.U.'s] name," to remove C.J.'s name, and to change the youngest two children's names. Compare *Wickert*, 2021 WL 1153996, at *2, with (ECF No. 1 at 22 ¶ C

(seeking an order requiring Defendants "to correct the parentage and names recited on my children's birth certificates *as I provide*") (emphasis added).) S.U. thereby invites this court to review and reject the state courts' decisions. Just as the Supreme Court of Appeals previously found, "the ultimate issue being litigated" in this case—and all the previous cases described above—is [C.J.]'s inclusion on the children's birth certificates" and her designation therein "as the children's mother." S.U., 2021 WL 365824, at *3.

Accordingly, for the reasons stated herein the undersigned **FINDS** that, to the extent S.U. has any standing in the instant action, see *Wickert*, 2021 WL 1153996, at *3-*4, sua sponte dismissal without prejudice4 for lack of subject-matter jurisdiction under the *Rooker-Feldman* doctrine is proper. Additionally, in light of the undersigned's recommendation of dismissal, it is further recommended that—just as Judge Copenhaver ruled in Wickert—the parties' pending motions (ECF Nos. 3, 4, 5, 15, 18, 22) be **DENIED** as moot.

III. RECOMMENDATION

Accordingly, for the reasons set forth hereinabove, it is respectfully **RECOMMENDED** that the presiding District Judge **DISMISS** this action without prejudice[4] based upon the *Rooker-Feldman*

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[4] Dismissal under the *Rooker-Feldman* doctrine constitutes a dismissal for lack of subject matter jurisdiction and, therefore, must be without prejudice. See *Womack v. Owens*, 736 Fed. App'x 356, 357 (4th Cir. 2018) ("[A] dismissal for lack of subject matter jurisdiction must be one without prejudice, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits.").

abstention doctrine, and **DENY** each of the parties' pending motions (ECF Nos. 3, 4, 5, 15, 18, 22).

The parties are notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the parties shall have fourteen days (filing of objections) and then three days (service/mailing) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of *de novo* review by the district court and a waiver of appellate review by the circuit court of appeals. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Wright v. Collins*, 766 F.2d 841, 846 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Copies of such objections shall be served on the opposing parties and Judge Goodwin.

The Clerk is **DIRECTED** to file this Proposed Findings and Recommendation, to transmit a copy to counsel of record, and to mail a copy to Plaintiff.

ENTER: February 28, 2023
Dwane L. Tinsley
United States Magistrate Judge

FILED: August 28, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1364
(2:22-cv-00328)

JOHN DOE
Plaintiff - Appellant

v.

BILL CROUCH, in his official capacity as Cabinet Secretary of the West Virginia Department of Health and Human Resources; AYNE AMJAD, in her official capacity as Commissioner for the West Virginia Department of Health and Human Resources, Bureau of Public Health and State Health Officer, and; MATTHEW WICKERT, in his official capacity as the State Register for Vital Statistics
Defendants - Appellees

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wynn, Judge Heytens, and Senior Judge Floyd.

For the Court
/s/ Patricia S. Connor, Clerk

U.S. Const. amend XIV, § 1:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

West Virginia Code §16-5-10. Birth registration acknowledgment and rescission of paternity:

§ 16-5-10(e): For the purposes of birth registration, the woman who gives birth to the child is presumed to be the mother, unless otherwise specifically provided by state law or determined by a court of competent jurisdiction prior to the filing of the certificate of birth.

§ 16-5-10(h): A notarized affidavit of paternity, signed by the mother and the man to be named as the father, acknowledging that the man is the father of the child, legally establishes the man as the father of the child for all purposes, and child support may be established pursuant to the provisions of chapter forty-eight of this code.

> **(5)** An acknowledgment executed under the provisions of this subsection may be rescinded as follows:
>
> > **(A)** The parent wishing to rescind the acknowledgment shall file with the clerk of the circuit court of the county in which the child resides a verified complaint stating the name of the child, the name of the other parent, the date

of the birth of the child, the date of the signing of the affidavit of paternity, and a statement that he or she wishes to rescind the acknowledgment of the paternity. If the complaint is filed more than sixty days from the date of execution of the affidavit of paternity or the date of an administrative or judicial proceeding relating to the child in which the signatory of the affidavit of paternity is a party, the complaint shall include specific allegations concerning the elements of fraud, duress or material mistake of fact.

(D) If the complaint was filed within sixty days of the date the affidavit of paternity was executed, the court shall order the acknowledgment to be rescinded without any requirement of a showing of fraud, duress, or material mistake of fact.

(E) If the complaint was filed more than sixty days from the date of execution of the affidavit of paternity or the date of an administrative or judicial proceeding relating to the child in which the signatory of the affidavit of paternity is a party, the court may set aside the acknowledgment only upon a finding, by clear and convincing evidence, that the affidavit of paternity was executed under circumstances of fraud, duress or material mistake of fact.

West Virginia Code § 48-24-103. Medical testing procedures to aid in the determination of paternity.

§ 48-24-103(a): Prior to the commencement of an action for the establishment of paternity, the Bureau for Child Support enforcement may order the mother, her child and the man to submit to genetic tests to aid in proving or disproving paternity. The bureau may order the tests upon the request, supported by a sworn statement, of any person entitled to petition the court for a determination of paternity as provided in section one of this article. If the request is made by a party alleging paternity, the statement shall set forth facts establishing a reasonable possibility or requisite sexual contact between the parties. If the request is made by a party denying paternity, the statement may set forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties or other facts supporting a denial of paternity. If genetic testing is not performed pursuant to an order of the Bureau for Child Support enforcement, the court may, on its own motion or shall upon the motion of any party, order such tests. A request or motion may be made upon ten days' written notice to the mother and alleged father without the necessity of filing a complaint. When the tests are ordered, the court or the bureau shall direct that the inherited characteristics, including, but not limited to, blood types, be determined by appropriate testing procedures at a hospital, independent medical institution or independent medical laboratory duly licensed under the laws of this state or any other state

and an expert qualified as an examiner of genetic markers shall analyze, interpret and report on the results to the court or to the Bureau for Child Support enforcement. The results shall be considered as follows:

(1) Blood or tissue test results which exclude the man as the father of the child are admissible and shall be clear and convincing evidence of nonpaternity and, if a complaint has been filed, the court shall, upon considering such evidence, dismiss the action.

(2) Blood or tissue test results which show a statistical probability of paternity of less than ninety-eight percent are admissible and shall be weighed along with other evidence of the respondent's paternity.

(3) Undisputed blood or tissue test results which show a statistical probability of paternity of more than ninety-eight percent shall, when filed, legally establish the man as the father of the child for all purposes and child support may be established pursuant to the provisions of this chapter.