IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

JOE BLESSETT, Plaintiff,	§	
V.	§	CIVIL ACTION NO. 3:22-CV-00009
STATE OF TEXAS, GREG ABBOTT, KEN PAXTON, TEXAS OFFICE OF ATTORNEY GENERAL CHILD SUPPORT ENFORCEMENT DIVISION, STEVEN C. MCCRAW, TEXAS DEPARTMENT OF PUBLIC SAFETY, XAVIER BECERRA, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ANTHONY BLINKIN, U.S. DEPARTMENT OF STATE, UNITED STATES, CIY OF GALVESTON, SINKIN LAW FIRM Defendants	§	

STATE DEFENDANTS' MOTION TO DISMISS

Defendants the State of Texas, Greg Abbott, Ken Paxton, Texas Office of the Attorney General Child Support Enforcement Division, Steven McCraw, and the Texas Department of Public Safety ("State Defendants") hereby files this Motion to Dismiss Plaintiff's Complaint and Injunction for Declaratory Judgment ("Complaint") pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). In support of this motion, Defendant states the following:

I. INTRODUCTION

Plaintiff Joe Blessett ("Blessett") filed his original *pro se* Complaint on January 7, 2022. As best distilled from the Complaint, Plaintiff complains of issues concerning his divorce and subsequent child

support proceedings.[1] Despite liberal pleading standards given to *pro se* litigants, all of Plaintiff's claims against the State Defendants are barred by sovereign immunity under the Eleventh Amendment and should be dismissed pursuant to Fed. Rule Civ. P. 12(b)(1), for lack of subject matter jurisdiction. Further, because the Complaint does not assert a plausible basis for relief, this Court should dismiss this case pursuant to Fed. Rule Civ. P. 12(b)(6).

II. STANDARD OF REVIEW

Defendants move for dismissal pursuant to Federal Rules of Civil Procedure Rule 12(b)(1) and 12(b)(6). When the court lacks the statutory or constitutional power to adjudicate a case, the case is properly dismissed for lack of subject-matter jurisdiction. *Hooks v. Landmark Indus., Inc.*, 797 F.3d 309, 312 (5th Cir. 2015). "The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). "Accordingly, the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist." *Id.*

"A 'facial attack' on the complaint requires the court merely to look and see if plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion. "The burden of proof for a [Federal] Rule [of Civil Procedure] 12(b)(1) motion to dismiss is on the party asserting jurisdiction," and, at the pleading stage, the plaintiff's "'burden is to allege a plausible set of facts establishing jurisdiction.'" *Laufer v. Mann Hosp., L.L.C.*, 996 F.3d 269, 271 (5th Cir. 2021) (quoting *Physician Hosps. of Am. v. Sebelius*, 691 F.3d 649, 652 (5th Cir. 2012)). Federal courts "must presume that a suit lies outside [their] limited jurisdiction, and the burden of establishing federal jurisdiction rests on the party seeking the federal forum." *Howery v.*

[1] Blessett has filed prior cases, against some if not all of the same named Defendants, involving some if not all of the same claims, and all originating in the Southern District of Texas. Those cases are Cause No. 3:17-CV-00164 filed on May 19, 2017, Fifth Circuit Court of Appeals Cause No. 20-40135, United States Supreme Court Cause No. 21-999; Cause No. 3-17-CV-00370; 3-18-CV-00153, voluntarily dismissed in the Fifth Circuit Court of Appeals Cause No. 18-41058; 3-18-CV-00415; and 3-18-CV-00137. This is now the sixth iteration of some of the same allegations and complaints Blessett has previously filed.

Allstate Ins. Co., 243 F.3d 912, 916 (5th Cir. 2001).

Federal Rule of Civil Procedure 12(b)(6) governs motions to dismiss for failure to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). To avoid dismissal under Rule 12(b)(6), a plaintiff must plead sufficient facts to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "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." *Id.* While courts must accept all factual allegations as true, they "do not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions." *Plotkin v. IP Axess Inc.*, 407 F.3d 690, 696 (5th Cir. 2005); *see also Iqbal*, 556 U.S. at 679. When reviewing a motion to dismiss for failure to state a claim, "[t]he court's review is limited to the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint." *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010); *see also Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 546 (5th Cir. 2010).

III. ARGUMENT AND AUTHORITIES

A. Plaintiff does not have standing to sue state officials in their individual capacities.[2]

"[S]tanding is perhaps the most important of the jurisdictional doctrines." *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990), holding modified by *City of Littlejohn, Colo. v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004)(internal quotation omitted). To establish standing, a plaintiff must show: (1) an actual or imminent, concrete and particularized "injury-in-fact"; (2) that is fairly traceable to the challenged action of the defendant (causation); and (3) that is likely to be redressed by a favorable decision (redressability). *Friends of the Earth, Inc. v. Laidlaw Envt'l. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000).

[2] Defendants have been named in their "unofficial capacity." However, no such capacity exists in Federal District Court jurisprudence. Therefore, Defendants respond under the assumption Blessett means "individual capacity."

All three elements are "an indispensable part of the plaintiff's case" and the party seeking to invoke federal jurisdiction bears the burden to establish them. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). Jurisdiction is "a threshold issue that must be resolved before any federal court reaches the merits of the case before it." *Perez v. U.S.*, 312 F.3d 191, 194 (5th Cir. 2002); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998). And, "[r]elief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court." *Inclusive Communities Project, Inc. v. Dep't of Treasury*, 946 F.3d 649, 655 (5th Cir. 2019)(quoting *Citizens for a Better Env't*, 523 U.S. at 107).

Additionally, courts are generally hesitant to confer standing on individuals with "self-inflicted" wounds, such as in Blessett's case. In *Clapper v. Amnesty Int'l. USA*, the respondents claimed they suffered actual injuries as they incurred "present costs and burdens that are based on a fear of surveillance" attributable to the challenged statute. 568 U.S. 398, 416 (2013). The Supreme Court rejected this end-run around an Article III's "imminent" analysis:

> Respondents' contention that they have standing because they incurred certain costs as a reasonable reaction to a risk of harm is unavailing—because the harm respondents seek to avoid is not certainly impending. In other words, respondents cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.

Id. The Supreme Court reasoned that "[i]f the law were otherwise, an enterprising plaintiff would be able to secure a lower standard for Article III standing simply by making an expenditure based on a nonparanoid fear." *Id.*

Blessett does not and cannot meet any elements of standing specific to the Defendants named in their individual capacities. In their individual capacities, acting as the named person, neither Greg Abbott, Ken Paxton, nor Stephen McCraw have caused an "actual or imminent injury" to Blessett that is "fairly traceable," and the Court cannot grant any, injunctive or monetary, relief against these Defendants that redresses Blessett's Complaint. Finally, Blessett's claims arise out of Blessett's divorce decree and failure to pay child support. Not only are these "self-inflicted" wounds but as discussed

infra, Blessett cannot collaterally attack these underlying final judgments. As such, this Court should dismiss Blessett's claims against the individual capacity Defendants for lack of standing.

B. The doctrine of sovereign immunity protects the State Defendants from suits unless the Legislature expressly consents.

"[F]or over a century now, [the Supreme Court has] made clear that the Constitution does not provide for federal jurisdiction over suits against nonconsenting States." *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 73 (2000). "[A]bsent waiver by the State or valid congressional override, the Eleventh Amendment bars a damages action against a State in federal court." *Kentucky v. Graham*, 473 U.S. 159, 169 (1985).

The Eleventh Amendment of the United States Constitution bars suits in federal court against a state or one of its agencies, regardless of the relief requested, by anyone other than the federal government or another state. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). "Even in cases where the State itself is not a named defendant, the State's Eleventh Amendment immunity will extend to any state agency or other political entity that is deemed the 'alter ego' or an 'arm' of the State." *Vogt v. Bd. of Comm'r of the Orleans Levee Dis.*, 294 F3d 684, 688–89 (5th Cir. 2002) (citing *Regents of the Univ. of California v. Doe*, 519 US 425, 429 (1997)); *see also Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977). "A suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). "Suits against state officials in their official capacity [] should be treated as suits against the State." *Hafer v. Melo*, 502 U.S. 21, 25 (1991). And, the Eleventh Amendment continues to "bar a damages against a State in federal court" and "[t]his bar remains in effect when State officials are sued for damages in their official capacity." *Graham*, 473 U.S. at169.

There are three exceptions that allow for suits against state, state agencies, and state officials in federal court: (1) clearly stated waiver or consent to suit by the state; (2) valid abrogation by

Congress; or (3) the state's amenity to suit under the *Ex Parte Young* doctrine. *See Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 304 (1990); *Ex parte Young*, 209 U.S. 123 (1908). First, a state may explicitly waive its sovereign immunity. *Daigle v. Gulf State Utils. Co. Loc. Union No. 2286,*, 794 F.2d 974, 980 (5th Cir. 1986). Waiver must be unequivocal; courts require a "clear declaration" to be "certain that the State in fact consents to suit." *Sossamon v. Tex.*, 563 U.S. 277, 284 (2011). Second, Congress may abrogate sovereign immunity through a clear expression of the intent to do so if it acts "pursuant to a valid exercise of power." *Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 55 (1996). Third, plaintiff "alleges an ongoing violation of federal law" under *Ex parte Young. Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 255 (2011); *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 270 (1997).

Blessett has sued the State of Texas, Office of the Attorney General Child Support Division, the Department of Public Safety, and the Director of the Texas Department of Public Safety, Steven McCraw in his official capacity. All claims against these State agencies and officials, including any requests for damages, are barred by sovereign immunity. As regurgitated from previous cases Blessett has filed involving some of the same agency plaintiffs, Blessett alleges the above-named State agency Defendants have violated and ignored Blessett's "constitutional rights" by enforcing and collecting child support arrears which ultimately lead to the suspension of his driver license by the Texas Department of Public Safety and the suspension of his passport by the Secretary of State.

As mentioned *supra*, in the absence of consent or Congressional abrogation, "a suit in which the State or one of its agencies. . . is named as the defendant is proscribed by the Eleventh Amendment." *Pennhurst State Sch. & Hosp.*, 465 U.S. at 100.. Moreover, "[t]his jurisdictional bar applies regardless of the nature of the relief sought." *Id.* Congress did not abrogate the states' sovereign immunity for § 1983 suits. *See Quern v. Jordan*, 440 U.S. 332, 340-45 (1979). And Texas has not waived its sovereign immunity to suit in federal court for § 1983 claims. *See Aguilar v. Tex. Dept. of Crim.Just.*, 160 F.3d 1052, 1054 (5th Cir. 1998). And, Blessett has not put fourth any argument regarding this

being an *Ex Parte Young* exception to sovereign immunity. Accordingly, the Texas State agency Defendants and Director McCraw, in his official capacity, are immune from Plaintiff's claims. *See e.g., Lewis v. Univ. of Texas Med. Branch at Galveston*, 665 F.3d 625, 630 (5th Cir. 2011)(upholding dismissal of substantive due process claim against state university as barred by the Eleventh Amendment); *Oliver v. Univ. of Tex. Sys.*, 988 F.2d 1209 (5th Cir. 1993)(unpublished)(per curiam)(affirming dismissal under Rule 12(b)(1) of plaintiff's Section § 1983, claim against university as barred by sovereign immunity). Thus, Blessett's claims against the Texas State agency Defendants, including Director McCraw, and any and all requests for damages should be dismissed with prejudice pursuant to Rule 12(b)(1).

C. Plaintiff's Complaint does not establish a cause of action for relief can be granted.

The facts and allegations do not establish a plausible basis for relief in federal court and must be dismissed under Rule 12(b)(6). *Iqbal*, 556 U.S. at 678.

Blessett names Governor Greg Abbott, Attorney General Ken Paxton, and the Director of the Texas Department of Public Safety Steven McCraw all in their individual capacities and all are shielded from liability due to qualified immunity. As a general matter, "unless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery." *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). Although an affirmative defense, individual capacity defendants may raise qualified immunity in a motion to dismiss for failure to state a claim. *See e.g. Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 194 (5th Cir. 2009); *Anderson v. Valdez*, 845 F.3d 580, 588–89 (5th Cir. 2016). "[A] plaintiff seeking to overcome qualified immunity must plead specific facts that both allow the court to draw the reasonable inference that the defendant is liable for the harm he has alleged and that defeat a qualified immunity defense with equal specificity." *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012). In all, Blessett's Complaint fails to assert and is devoid of any factual allegations demonstrating the Defendants violated clearly established law.

D. Blessett cannot collaterally attack the underlying divorce decree or child support orders in this matter.

To the extent any of the allegations in this case mirror allegations that have been dismissed by this Court in prior Blessett case filings, see supra n.1, Blessett cannot reassert those same claims here. And to the extent Blessett challenges the divorce decree and prior child support judgements, "lower federal courts possess no power whatever to sit in direct review of state court decisions." *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs,* 398 U.S. 281 (1970). A federal district court lacks jurisdiction to reverse or modify a state court judgment because "[t]o do so would be an exercise of appellate jurisdiction." *Rooker v. Fid. T. Co.*, 263 U.S. 413, 416 (1923). "The jurisdiction possessed by the District Courts is strictly original." *Id.*

The *Rooker-Feldman* doctrine bars a federal court from entertaining collateral attacks on state court judgments. *United States v. Shepard*, 23 F.3d 923, 924 (5th Cir. 1994). "[L]itigants may not obtain review of state court actions by filing complaints about those actions in lower federal courts cast in the form of civil rights suits." *Hale v. Harney*, 786 F.2d 688, 691 (5th Cir. 1986); *Liedtke v. State Bar of Tex.*, 18 F.3d 315, 317 (5th Cir. 1994). "If the district court is confronted with issues that are 'inextricably intertwined' with a state judgment, the court is 'in essence being called upon to review the state-court decision,' and the originality of the district court's jurisdiction precludes such a review." *Shepard*, 23 F.3d at 924 (citing *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983)).

The titular *Feldman* case is a classic example. *D.C. Court of Appeals v. Feldman*, 470 U.S. 462 (1983). There, the D.C. Court of Appeals refused to admit Marc Feldman, *id.* at 465–68, and Edward Hickey, *id.* at 470–72, to the District of Columbia bar because they had not graduated from ABA-accredited law schools. The would-be lawyers then sued in federal district court, arguing that the D.C. Court's policy violated federal law and asking the federal court to order the state court to admit them to the bar, or at least permit them to sit for the D.C. bar exam. *Id.* at 468–73. The Supreme Court held

the district court lacked jurisdiction because federal law authorizes only the Supreme Court to review state court decisions. *Id.* at 486 (citing 28 U.S.C. § 1257). Because Feldman and Hickey "sought review in [federal district court] of the [state court's] denial of their" requests for bar admission, "the District Court lacked subject matter jurisdiction." *Id.* at 482. That was true *even though* their "challenges allege[d] that the state court's action was unconstitutional." *Id. at 486*.

Accordingly, to the extent Blessett attacks the divorce or child support orders, the attack is impermissible and cannot be a basis to find in favor of Blessett's Complaint.

IV. PRAYER

For the reasons stated above, the State Defendants request this Court grant their Motion to Dismiss and dismiss all claims with prejudice.

Respectfully, submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN COWLES
Deputy Attorney General for Civil Litigation

THOMAS A. ALBRIGHT
Chief - General Litigation Division

/s/ Halie E. Daniels
HALIE E. DANIELS
Texas Bar No. 24100169
Southern District Federal ID No. 3380631
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

(512) 463-2120 | FAX: (512) 320-0667
halie.daniels@oag.texas.gov

COUNSEL FOR STATE DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2022, a true and correct copy of the foregoing document was served via Certified Mail, Return Receipt Requested (CMRR # 7020 1290 0000 7439 0909), regular mail, and email to the following:

Joe Blessett
7970 Fredericksburg Rd, Suite 101-708
San Antonio, Texas 78229
joe@joeblessett.com

Pro Se Plaintiff

/s/ Halie E. Daniels
HALIE E. DANIELS
Assistant Attorney General