

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

David Martin,)	
)	
Plaintiff,)	
)	Case No. 22-cv-6296
v.)	
)	Honorable Andrea R. Wood
Attorney General Kwame Raoul, Judge)	
Gregory Emmett Ahern Jr., Unnamed)	
Cook County Clerks, Cook County,)	
)	
Defendants.)	

**DEFENDANTS ATTORNEY GENERAL RAOUL AND JUDGE AHERN’S
REPLY IN SUPPORT OF THEIR MOTION TO DISMISS
PLAINTIFF’S AMENDED COMPLAINT**

Defendants, Attorney General Kwame Raoul and the Honorable Judge Gregory Ahern, Jr. (the “State Defendants”), by their attorney, Kwame Raoul, Attorney General of Illinois, submit the following reply in further support of their motion to dismiss Plaintiff’s amended complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

INTRODUCTION

The allegations in Plaintiff’s amended complaint stem from an underlying case in the Circuit Court of Cook County that was brought pursuant to 750 ILCS 5/513 (the “College Contribution Statute”), a section of the Illinois Marriage and Dissolution of Marriage Act. *See* 750 ILCS 5/101 *et seq.* The procedural history is convoluted, but, in short, Judge Ahern entered orders in the underlying case and refused to certify a bystander’s report, and Plaintiff challenges Judge Ahern’s rulings.

Plaintiff’s response to the State Defendants’ opening brief provides some clarification to his claims. Plaintiff states that he does not want to disrupt the underlying judgment entered by Judge Ahern but claims that Judge Ahern’s refusal to enter a bystander’s report for use in Plaintiff’s

appeal violates his due process rights. Finally, Plaintiff challenges the College Contribution Statute itself, asserting that it violates his Fourteenth Amendment substantive due process and equal protection rights and that it is unconstitutionally vague. Plaintiff also challenges the limitations on recording and using other features available via Zoom or other video-conference platforms by non-court employee participants, as well as the manner in which online hearing information is provided to parties in the Circuit Court of Cook County. Additionally, Plaintiff alleges that unidentified Circuit Court of Cook County employees tampered with court records.

However, as explained in the State Defendants' opening brief, Plaintiff cannot state any viable claim against either State Defendant. Plaintiff frames his claims as constitutional violations, but they are actually challenges to state court procedures and rulings. As such, this Court should not exercise jurisdiction over these claims. Further, any general challenge to the College Contribution Statute also fails because the statute is constitutional both on its face and as applied to Plaintiff. As such, Plaintiff's claims against the State Defendants should be dismissed.

ARGUMENT

As a preliminary matter, Plaintiff's amended complaint and response brief do not contain any allegation or arguments that Judge Ahern or Attorney General Raoul are responsible for the Circuit Court of Cook County's or Illinois Supreme Court's rules related to recording Zoom hearings or using Zoom features. *See* ECF Nos. 10 & 26. Plaintiff also does not make any allegations or arguments that Judge Ahern altered any court records. *Id.* As such, the State Defendants do not respond to these counts or arguments, but if this Court construes these claims as being against Judge Ahern or Attorney General Raoul, Plaintiff has failed to state viable claims. As to the remaining counts of Plaintiff's amended complaint, they also fail for the reasons described in the State Defendants' opening brief and herein.

I. PLAINTIFF CANNOT STATE ANY VIABLE CLAIM AGAINST JUDGE AHERN.

A. This Court lacks jurisdiction over Plaintiff's claims against Judge Ahern.

In his response, Plaintiff clarifies that he does not challenge Judge Ahern's order requiring him to make payments under the College Contribution Statute. ECF No. 26 at 15 ("[My federal case does not] challenge Ahern's previous order granting an award to Ms. Thomas."). Instead, he claims that his relief relates entirely to Judge Ahern not entering a bystander's report in the underlying action. *See generally id.* For this reason, he argues that the domestic relations exception and *Rooker-Feldman* doctrine do not apply. However, while the underlying claim is not specifically a divorce, alimony, or child custody case, if Plaintiff were challenging the underlying order requiring him to contribute to his son's educational expenses under the College Contribution Act, that is the type of financial obligation that would fall squarely within the bounds of the domestic relations exception. And if Plaintiff were challenging Judge Ahern's order for payment, that would be barred by either the *Rooker-Feldman* doctrine or *Younger* abstention for the reasons described in the State Defendants' opening brief. ECF No. 21 at 4-5.

Moreover, there is some case law holding that a challenge to an interlocutory order such as Judge Ahern's decision not to enter the bystander's report is also barred by the *Rooker-Feldman* doctrine. "[I]nterlocutory orders entered prior to the final disposition of state court lawsuits are not immune from the jurisdiction-stripping powers of *Rooker-Feldman*." *Sykes v. Cook County Circuit Court Probate Division*, 837 F.3d 736, 742 (7th Cir. 2016); *see also Harold v. Steel*, 773 F.3d 884, 887 (2014); *Bauer v. Koester*, 951 F.3d 863, 867 (7th Cir. 2020) (holding that *Rooker-Feldman* applied in a foreclosure action absent a final order when the foreclosure was "effectively final"). *But see Kowalski v. Boliker*, 893 F.3d 987, 995 (7th Cir. 2018) (stating that *Rooker-Feldman* "does not apply independently to interlocutory orders"); *Hadzi-Tanovic v. Johnson*, 62 F.4th 394, 400



n.2, 405 (7th Cir. 2023) (quoting *Sykes* for the proposition that interlocutory orders are subject to *Rooker-Feldman*, but also stating in a footnote that *Rooker-Feldman* may not apply to orders that are “not final and therefore not automatically appealable”).

Whether or not *Rooker-Feldman* applies, the Court should nevertheless abstain from deciding Plaintiff’s claims. Plaintiff’s claims against Judge Ahern stem from Judge Ahern’s decision not to enter the bystander’s report and Plaintiff’s claim that the Circuit Court did not have jurisdiction over the underlying case, either because he was not properly served by a third party or because a different lawsuit was on appeal. *See generally* ECF No. 26. These are the exact kinds of state court issues that federal courts should abstain from hearing. Plaintiff asserts that comity requires respect for the Constitution by the states and that Judge Ahern has not respected the Constitution. ECF No. 26 at 23. However, at its core, Plaintiff has a dispute about how a state court judge has decided issues of state law. Deciding Plaintiff’s claim would be an inappropriate intrusion into the workings of the state court system because “[e]xercising federal jurisdiction over [these] claims would ‘reflect a lack of respect for the state’s ability to resolve [these issues] properly before its courts.’” *J.B. v. Woodard*, 997 F.3d 714, 722 (7th Cir. 2021) (quoting *SKS & Assocs., Inc. v. Dark*, 619 F.3d 674, 679 (7th Cir. 2010)); *see also Hadzi-Tanovic*, 62 F.4th at 400 n.2 (“And, in domestic relations cases where no abstention doctrine fits exactly, we have held that abstention is nevertheless appropriate where federal jurisdiction “threaten[s] interference with and disruption of local family law proceedings.”); *Bush v. Carr*, No. 20 C 6634, 2021 U.S. Dist. LEXIS 191289, at *2-3 (N.D. Ill. Oct. 5, 2021) (declining to exercise jurisdiction when plaintiff asked a federal court to rule on the constitutionality of a state court judge’s rulings and actions). Because Plaintiff is asking this Court to inject itself into state court proceedings dealing with state law, this Court should decline to exercise jurisdiction based on general principles of federal abstention.

B. Plaintiff has not stated a viable Section 1983 claim against Judge Ahern.

Plaintiff argues that Judge Ahern's decision not to enter a bystander's report violates either his due process or equal protection rights. While he claims that he seeks declaratory relief, in effect Plaintiff seeks an order directing Judge Ahern to certify a bystander's report. *See generally* ECF No. 26. Turning to any possible claim against Judge Ahern related to distributing Zoom information, Plaintiff also does not state a viable claim as he does not allege that Judge Ahern actually distributes Zoom information. *Id.* at 9 & 19. As such, Plaintiff has no viable claim against Judge Ahern related to the Zoom information. Moreover, to the extent that he seeks an order directing Judge Ahern to provide Zoom information, this would be another request for an injunction.

As explained in the State Defendants' opening brief, Section 1983 bars any suit for injunctive relief against a judge. In 1996, Congress amended 42 U.S.C. § 1983 to provide that "injunctive relief shall not be granted" in an action brought against "a judicial officer for an act or omission taken in such officer's judicial capacity . . . unless a declaratory decree was violated or declaratory relief was unavailable." *Haas v. Wisconsin*, 109 F. App'x 107, 114 (7th Cir. 2004) (quoting 42 U.S.C. § 1983). Thus, Plaintiff cannot pursue a Section 1983 claim for injunctive relief against Judge Ahern. Moreover, any request for declaratory relief is also barred because the Eleventh Amendment "does not permit judgments against state officers declaring that they violated federal law in the past." *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993). Therefore, any Section 1983 claim against Judge Ahern, be it for injunctive or declaratory relief, is barred.

C. Any Possible Request For Monetary Damages Is Barred By Absolute Judicial Immunity.

Finally, Plaintiff's response brief makes it clear that he is not seeking any monetary relief from Judge Ahern. *See* ECF No. 26. However, even if he were, Judge Ahern would be entitled to absolute judicial immunity. Plaintiff's main issue with Judge Ahern relates to Judge Ahern refusing to certify a bystander's report. *See id.* Making this type of decision in a lawsuit is a clear example of a judicial act. *See Loubster v. Thacker*, 440 F.3d 439, 442 (7th Cir. 2006) (holding that the entry of rulings are judicial acts). Plaintiff argues that Judge Ahern lacked jurisdiction because the case was not transferred to him and because a different case related to child support had been appealed. ECF No. 26 at 7, 16 & 12. However, these arguments do not change the fact that as a sitting judge in the Circuit Court of Cook County, Judge Ahern had jurisdiction to hear any claim brought in the Cook County Circuit Court. *See* Ill. Const. Art. 6 §§ 6 & 9. As such, if Plaintiff's claims are construed as a request for monetary relief, any such claim is barred by absolute judicial immunity.

II. PLAINTIFF CANNOT STATE ANY VIABLE CLAIM AGAINST ATTORNEY GENERAL RAOUL.

Plaintiff also brings claims against Attorney General Raoul asserting that the College Contribution Statute is unconstitutionally vague and that it violates the substantive due process clause of the Fourteenth Amendment on its face and as applied to Plaintiff. However, as explained in Defendants' opening brief, Plaintiff's claims against the Attorney General are barred by the Eleventh Amendment and, even if they were not barred, Plaintiff's challenges to the constitutionality of the College Contribution Statute fail.

A. Plaintiff's claims against Attorney General Raoul are barred by the Eleventh Amendment.

Plaintiff's response argues that Attorney General Raoul is a proper defendant pursuant to the *Ex parte Young* exception because Federal Rule of Civil Procedure 5.1(a)(1)(B) requires a litigant to serve notice to the Attorney General of a constitutional challenge to a state statute when no other state official is named as a defendant in the case. ECF No. 26 at 27. However, the Attorney General's *option* to intervene pursuant to Federal Rule of Civil Procedure 5.1 does not make the Attorney General a proper defendant under the *Ex parte Young* doctrine. *Compare* Solomon v. Madigan, No. 17-cv-06144, ECF No. 34 (N.D. Ill. April 23, 2018) (granting Attorney General's motion to dismiss because she was not a proper defendant under *Ex parte Young*) (attached as Exhibit A) *with* Solomon v. Cook Cty. Bd. of Comm'rs, 559 F. Supp. 3d 675, 686 (N.D. Ill. 2021) (noting that on May 29, 2019, the Court granted the Attorney General's motion to intervene in the same case to defend the constitutionality of the state statute at issue).

To state an official capacity claim for injunctive relief, the named official must have some involvement in the enforcement of the challenged statute. *Doe v. Holcomb*, 883 F.3d 971, 975 (7th Cir. 2019) (citing *Ex parte Young*, 209 U.S. at 123, 157 (1908)). Here, Plaintiff does not allege that the Attorney General has any involvement with enforcing the College Contribution Statute or the Illinois Marriage and Dissolution of Marriage Act. As such, Plaintiff's claims against the Attorney General are barred by the Eleventh Amendment.¹

¹ Nor would Judge Ahern be a proper defendant for a challenge to the constitutionality of a state statute under *Ex parte Young*. *See, e.g., Ortiz v. Foxx*, 596 F. Supp. 3d 1100, 1110 (N.D. Ill. 2022) (holding that the judge defendants were not proper defendants under *Ex parte Young*, finding that no case or controversy exists between a judge who adjudicates claims under a statute and a litigant who attacks the constitutionality of that statute.). Moreover, "the principle of comity between distinct state and federal judicial branches suggests that a federal court should not lightly require a state judge to stand as a defendant to a federal suit challenging a state law the judge is bound to apply—let alone to compel that judge, through an injunction, not to apply the law as enacted." *Id.*

B. The College Contribution Statute is constitutional.

It appears that Plaintiff's main issue with the College Contribution Statute is that he believes it should not apply to him. To support this position, Plaintiff notes that he and his child's mother were never married, and that therefore the Marriage and Marriage Dissolution Law, or its subsections, cannot apply to his situation. ECF No. 26 at 14 & 28. However, the College Contribution Statute applies to unmarried parents. *See Rawles v. Hartman*, 527 N.E.2d 680, 683 (Ill. App. 3d) (1988) (holding that a court can provide for the education expenses of a nonminor child born to unmarried parents). Plaintiff then argues that, for this reason, the portion of the Marriage and Marriage Dissolution Law that does not allow a trial by jury does not apply to him. ECF No. 26 at 28-29. However, as explained in the State Defendants' opening brief, the Marriage and Marriage Dissolution Law clearly does not provide for a trial by jury (750 ILCS 5/103) and the right to a trial by jury only applies to suits that were "at common law" when the constitution was adopted, and divorce, custody, and child support proceedings were equitable proceedings. *See Maines v. Vermillion Cnty. Circuit Court*, 980 F.2d 733 (7th Cir. 1992)

Plaintiff also argues that the College Contribution Statute does not apply to him because his child is over the age of majority. *Id.* However, the statute explicitly "authorizes the trial court to make provisions for the education and maintenance of children after they have attained the age of majority." *In re Marriage of Falat*, 559 N.E.2d 33, 37 (Ill. App. 1st) (1990). In general, Plaintiff misconstrues the purpose of the relevant statutes, which are to govern issues related, in part, to educational expenses for co-parents and to ensure that each parent provides fair compensation for their child's education. *See* 750 ILCS 5/513.

Here, like the plaintiffs in *Ortiz*, Plaintiff has named a state court judge in order to challenge the constitutionality of a state statute. Like in *Ortiz*, the judge is not a proper defendant for this claim. Plaintiff's claim against Judge Ahern that the College Contribution Statute is unconstitutional is therefore barred by the Eleventh Amendment.

Plaintiff also argues that the College Contribution Statute violates his rights because he does not believe there was an underlying controversy between himself and his child's mother. *See generally* ECF No. 26. This appears to also be the basis for his vagueness challenge. *Id.* at 28-30. However, Plaintiff's position on the underlying claim does not relate to the constitutionality of the statute itself. Moreover, as described above and in the State Defendants' opening brief, any challenges to the underlying case and its rulings are issues of state law and this Court should decline to exercise jurisdiction over them. Plaintiff seems to believe that a statute must outline every conceivable way that it may be applied to in order to not be vague, but that requirement would be impossible. As the Supreme Court has recognized, "[c]ondemned to the use of words, we can never expect mathematical certainty from our language." *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972). Due process thus requires only "reasonable specificity." *Coates v. Cincinnati*, 402 U.S. 611, 614 (1971). Moreover, less clarity is required in purely civil statutes (such as the College Contribution Statute) because the "consequences of imprecision are qualitatively less severe." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982). Here, the College Contribution Statute is not unconstitutionally vague because it provides clear direction about what educational expenses may be awarded to support a non-minor child and the factors that can be considered in making those determinations. *See* 750 ILCS 5/513.

Finally, Plaintiff continues to argue that the College Contribution Statute violates that his parental rights because, he asserts, his parental rights include the right to make all financial decisions related to his child. ECF No. 26 at 31. However, Plaintiff cites no authority for this position, and it is simply false. There is no right to be free from making financial contribution to support one's child and Plaintiff is trying to pervert the Constitution to avoid having to help fund his child's education. The College Contribution Statute is constitutional so long as it is rationally related to a legitimate government interest, and it will stand unless the plaintiff can negate every

conceivable basis for the government action. *Minerva Dairy, Inc. v. Harsdorf*, 905 F.3d 1047, 1053 (7th Cir. 2018) (internal citations omitted). Here, the College Contribution Statute provides framework for state courts to determine how to allocate the expenses for a child's higher education between the parents and promotes the education of children and equity between the parties. The College Contribution Statute is rational and Plaintiff's substantive due process claim fails.

CONCLUSION

Plaintiff's claims against Judge Ahern fail because the Court lacks jurisdiction over these claims, or in the alternative, should abstain from hearing these claims pursuant to principles of comity. Plaintiff has also failed to state any claim against Judge Ahern, and Judge Ahern is entitled to absolute judicial immunity for any claims for damages. Further, Plaintiff's claims against Attorney General Raoul fail because Plaintiff has not stated a claim against him.

WHEREFORE, the State Defendants respectfully request that this Court grant their motion and dismiss all claims against them.

Respectfully Submitted,

KWAME RAOUL
Attorney General of Illinois

/s/ Mary A. Johnston
Mary A. Johnston
Assistant Attorney General
100 W. Randolph Street, 13th Floor
Chicago, Illinois 60601
(312) 814-4417
Mary.johnston@ilag.gov