NOTE

THE VEXATIOUS LITIGANT PROBLEM*

ABSTRACT

A federal court must often balance its duties of managing its docket with a person's right to access a court. This balancing act becomes difficult when litigants abuse their rights to access a court. Federal courts have the power to declare these types of litigants as vexatious litigants and limit their right to file. There are different factors federal courts use to determine when to declare a litigant vexatious and whether limiting the litigant's right to file is warranted. Federal courts are and should be hesitant to limit a litigant's right to file because "free" access to a court is a fundamental and valuable tenet of the American judicial system. However, this Note discusses the problem with these types of litigants and the necessity for federal courts to look more closely at each litigant's history and limit the litigant's right to file if the circumstances suggest the abuse of the courts will continue.

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TABLE OF CONTENTS

I. INTRODUCTION

Access to a court is a fundamental and valuable tenet of the American judicial system. It provides everyone with an opportunity and the right to redress their grievances.[1] However, this right can easily be abused.[2] Those who consistently abuse the judicial system negatively affect the efficiency and integrity of the judiciary, whether that be in state or federal court.[3] In addition, those proceeding pro se present courts with the special challenge of balancing a court's right to manage its docket with the right of the litigant to have their day in court.[4] Federal courts can declare such litigants who consistently abuse the judicial system, vexatious litigants.[5] However, because most pro se litigants do not understand how the judicial system works and there are little consequences in place for deterring abuse, courts are left with the decision to sanction the litigant and limit their ability to file.[6]

1. David Goodnight et al., *The Pro Se Dilemma: Washington Courts and Vexatious Pro Se Litigation*, WASH. ST. BAR NEWS, Jan. 2009, at 25, 25.

2. *See id.* at 26.

3. *See id.*; Bryan M. Haynes & Brandon Almond, *Pre-Filing Injunctions: A Practical Solution to the Problem of Harassing Pro Se Litigants*, VA. BAR ASS'N NEWS J., Aug./Sept. 2006, at 8, 8.

4. *See* Goodnight et al., *supra* note 1, at 25; Haynes & Almond *supra* note 3, at 8.

5. *See* Thottam v. Thottam, No. 4:12-CV-02133, 2013 WL 12120957, at *6 (S.D. Tex. Feb. 25, 2013), *aff'd sub nom.*, *In re* Thottam, 543 F. App'x 380 (5th Cir. 2013).

6. *See* Goodnight et al., *supra* note 1, at 25–26.

Federal courts have the authority to impose pre-filing injunctions if necessary to protect their dockets from vexatious litigants.[7] However, most federal courts are hesitant to extend pre-filing injunctions to enjoin litigants from filing in other federal courts outside of that court's jurisdiction, and it is even rarer for courts to extend pre-filing orders to state courts.[8] This Note argues that federal courts have the power to extend pre-filing injunctions to other federal courts outside of their respective jurisdiction. In addition, there are some circumstances where a federal court can and should enjoin a vexatious litigant from further filing in state court because it can indirectly affect a federal court's jurisdiction.[9]

This Note focuses on the power of federal courts to deal with the special problem of vexatious litigants. Part II provides an overview of the problem using a recent case out of the Fifth Circuit as an illustration of the problem. This part illustrates the burden such litigants impose on the court system and defending parties. In addition, it demonstrates the issue of solely imposing monetary sanctions or narrow pre-filing injunctions because of litigants' persistence in abusing the court system and harassing their opponents.

Part III discusses how to control the problem. It will begin with the court's power to impose pre-filing injunctions generally. A federal court has two sources of authority for imposing pre-filing injunctions on vexatious litigants. The first is through a defendant's motion for sanctions under Federal Rule of Civil Procedure 11, in which a defendant can request a pre-filing injunction.[10] And the second, is through its inherent power under the All Writs Act; however, before issuing a pre-filing injunction, a federal court must declare the litigant vexatious.[11] In addition, Part III lays out the tests various courts use to determine whether a litigant is vexatious.

Part IV will provide an overview of where the circuits stand on the issue of whether a federal court should or can impose a pre-filing injunction on other jurisdictions, both federal and state. Part V proposes circumstances in which a federal court should enjoin litigants from filing in other jurisdictions and discusses the potential shortcomings of a decision not to.

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7. *See* discussion *infra* Part III.
8. *See infra* Part IV.
9. *See* Goodnight et al., *supra* note 1, at 26; Haynes & Almond, *supra* note 3, at 9–10.
10. FED. R. CIV. P. 11; *see infra* Section III.A.
11. *See* All Writs Act, 28 U.S.C. § 1651(a); *infra* Section III.B.

II. DEFINING THE PROBLEM

The right of self-representation and open access to courts are fundamental and valuable tenets of the American court system.[12] These rights come from the *In Forma Pauperis* statute, which aimed to provide "poor persons with equal access to the federal courts."[13] Thus, it offers open access to the courts and allows those who cannot afford representation the opportunity to litigate their legitimate disputes and grievances.[14] Justification for this right comes from the idea that "[t]he due process clause requires that every man shall have the protection of his day in court."[15] However, the right of self-representation comes at a cost to the courts.[16] Pro se participation can lead to increased caseload, a delay in proceedings, or incoherent filings because pro se litigants lack the knowledge necessary to navigate the legal system.[17] Although these costs are understandable, there are situations where a pro se litigant abuses this right by going beyond these understandable costs by filing frivolous claims in bad faith.[18] This presents federal courts with the special challenge of balancing the right of self-representation with the need to protect and control their docket.[19]

It is difficult for federal courts to prevent such abuse when there are no safeguards in place to discourage pro se plaintiffs from abusing this right, like there are for lawyers.[20] For example, the Model Rules of Professional Conduct and the Federal Rules of Civil Procedure require lawyers to file claims based on good faith assertions of law and fact and not use the law to harass or intimidate others.[21] When a lawyer abuses the court system in such a way, there can be disciplinary action taken by the state ethics board and a federal court can impose sanctions.[22] However, lawyers have specialized knowledge

12. *See* Goodnight et al., *supra* note 1, at 25; *see also In re* Oliver, 682 F.2d 443, 446 (3d Cir. 1982) (citing Hardwick v. Brinson, 523 F.2d 798, 800 (5th Cir. 1975)).

13. *See In re Oliver*, 682 F.2d at 446.

14. *See* Michael J. Mueller, Note, *Abusive Pro Se Plaintiffs in the Federal Courts: Proposals for Judicial Control*, 18 U. MICH. J.L. REFORM 93, 97 (1984); Goodnight et al., *supra* note 1, at 25.

15. *See* Mueller, *supra* note 14, at 97–98; Truax v. Corrigan, 257 U.S. 312, 332 (1921) (citing Hurtado v. California, 110 U.S. 516, 535 (1884)).

16. *See, e.g.*, Dan Gustafson et al., *Pro Se Litigation and the Costs of Access to Justice*, 39 WM. MITCHELL L. REV. 32, 36–37 (2012) (discussing the common issues involved with pro se litigants).

17. *See id.* at 37; Goodnight et al., *supra* note 1, at 25.

18. *See* Goodnight et al., *supra* note 1, at 25–26.

19. *See* Mueller, *supra* note 14, at 98.

20. *See id.*

21. *See* FED. R. CIV. P. 11(b); MODEL RULES OF PRO. CONDUCT r. 3.1 (AM. BAR ASS'N 2024).

22. *See* FED. R. CIV. P. 11(c); MODEL RULES OF PRO. CONDUCT r. 3.1 (AM. BAR ASS'N 2024).

in understanding how the judiciary works and knowing the importance of having a good reputation in the legal field whereas pro se litigants do not.[23] These safeguards that are in place for holding lawyers accountable for filing claims recognize the costs associated with litigation not only for the judiciary but also for the defending litigants and taxpayers.[24] At a minimum, these rules allow both parties to an action to presume that no one is lying or bringing a claim for an improper purpose.[25] However, these rules do not necessarily apply to, protect, or prevent pro se litigants from filing in bad faith.[26]

For example, the ethics rules only apply to lawyers which forces lawyers to ensure their cases are filed in good faith, but this does not apply to those proceeding pro se.[27] Rule 11 of the Federal Rules of Civil Procedure applies to both lawyers and pro se litigants.[28] A court can issue sanctions on a litigant or his attorney for filing frivolous claims in bad faith.[29] However, because pro se litigants lack knowledge of the legal system, they might not understand the impact or effect of a sanction.[30] Whereas, if a litigant with representation or if an attorney receives sanctions, they know the effects of a sanction and how that could affect the attorney's reputation or the litigant's case.

Because the right of self-representation is a tenet of the American court system, which is justified by the Due Process Clause, courts view cases with pro se litigants with extreme caution.[31] In addition, pro se litigants can paint themselves as "a victim" or express the need for "justice" to obtain leniency from the court, which often works, and the litigant is given little to no punishment.[32] Even in situations where a court imposes a punishment like sanctions, it is usually not enough to make a meaningful difference to hold the litigant accountable for their abuse of the court system or to deter them for abusing the system again.[33] Therefore, although Rule 11 applies to litigants proceeding pro se, such litigants frequently do not know of this rule or know the effect

23. *See* Goodnight et al., *supra* note 1, at 25–26.

24. *See id.* at 26.

25. *See id.*

26. *See id.* (explaining that "[g]enerally speaking, vexatious *pro se* litigants are immune from the downside risk of their behavior").

27. *See* MODEL RULES OF PRO. CONDUCT Pmbl. & Scope (AM. BAR ASS'N 2024).

28. *See* FED. R. CIV. P. 11(b).

29. *See* FED. R. CIV. P. 11(c).

30. *See* Goodnight et al., *supra* note 1, at 26 (noting that pro se litigants view sanctions as trivial and simply the cost of doing business).

31. *See* Cromer v. Kraft Foods N. Am., Inc., 390 F.3d 812, 817–18 (4th Cir. 2004).

32. *See* Goodnight et al., *supra* note 1, at 26.

33. *See id.*

of a court imposing a sanction.[34] Therefore, serial pro se plaintiffs can disrupt the fundamental presumption that a claim is filed in good faith and based on a legitimate basis of law and fact.[35]

To illustrate the problem more, consider pro se plaintiff Neiman Nix, a former professional baseball player.[36] Nix owned a company that sold and distributed health supplements, which contained a naturally occurring form of a performance-enhancing substance.[37] The Major League Baseball (MLB) and the MLB Player's Association (MLBPA) have banned the use of the substance in any form by its players.[38] In 2013, the MLB launched an investigation into the sale of performance-enhancing drugs to its players.[39] Nix's company was amongst the targeted companies.[40] Following the investigation, Nix and his company sued the MLB in Florida state court, arguing that the MLB's investigation was unfair and discriminatory.[41] However, that case was dismissed because of a failure to prosecute.[42] Then in July 2016, Nix's company sued the Office of the Commissioner of Baseball and several MLB employees in New York federal court, challenging the same MLB investigation, this time arguing tortious interference with prospective economic advantage.[43] After a pre-trial conference to discuss the MLB's intent to file a motion for dismissal and sanctions, Nix's company voluntarily dismissed the suit in November 2016.[44]

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34. *See id.*

35. *See id.*

36. *See* Nix v. Major League Baseball, 62 F.4th 920, 925–26 (5th Cir.), *cert. denied*, 144 S. Ct. 165 (2023). Note that in his earlier suits he had counsel, but after his attorneys were sanctioned, he proceeded pro se in his other suits. *See* Nix v. Major League Baseball, 133 N.Y.S.3d 817, 817 (N.Y. App. Div. 2020); Nix v. Major League Baseball, No. H-21-4180, 2022 WL 2118986, at *3 (S.D. Tex. June 13, 2022), *aff'd*, 62 F.4th 920 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 165 (2023).

37. *See Nix*, 62 F.4th at 926; Amended Complaint at 7–8, Nix v. Major League Baseball, No. 1:16-cv-05604-ALC (S.D.N.Y. Aug. 29, 2016) ("One of the main ingredients used by Nix and DNA Sports Lab come from Bioidentical Insulin like Growth Factor ("IGF-1") . . . .").

38. *See* DNA Sports Performance Lab, Inc. v. Major League Baseball, No. C 20-00546 WHA, 2020 WL 6290374, at *1 (N.D. Cal. Oct. 27, 2020), *aff'd sub nom.*, Nix v. Major League Baseball, No. 20-17283, 2022 WL 4482455 (9th Cir. Sept. 27, 2022).

39. *Id.*

40. *Id.*

41. *See* Verified Complaint at 21–22, Nix v. Major League Baseball, No. 14-004294-CA-40 (Fla. Cir. Ct. Feb. 18, 2014).

42. Nix v. Major League Baseball, No. 14-004294-CA-40 (Fla. Cir. Ct. Nov. 6, 2014).

43. *See* Amended Complaint, *supra* note 37, at 6–7, 12, 15–16.

44. *See* DNA Sports Performance Lab, Inc. v. Major League Baseball, No. C 20-00546-WHA, 2020 WL 6290374, at *2 (N.D. Cal. Oct. 27, 2020), *aff'd sub nom.*, Nix v. Major League Baseball, No. 20-17283, 2022 WL 4482455 (9th Cir. Sept. 27, 2022).

Nix and his company did not stop there. Less than a month after the voluntary dismissal, his company sued the MLB, the MLB Commissioner, and several MLB employees again in New York state court this time for hacking his company's social media accounts, tortious interference, and defamation of Nix, which all allegedly occurred during the same 2013 MLB investigation.[45] The defendants removed to New York federal court based on the hacking claim; however, Nix dismissed that claim to proceed in New York state court.[46] The state court dismissed the suit on res judicata grounds in June 2018.[47] Then in December 2018, after denying a motion to reargue, the New York state court imposed monetary sanctions on Nix's company and his attorneys.[48] While that suit was ongoing, Nix, proceeding pro se this time, sued the MLB's counsel, their law firm, and several MLB coaches, managers, and clubs "in Florida state court, alleging RICO, trade secret, and computer abuse violations."[49] However, Nix voluntarily dismissed claims relating to the MLB investigation but the suit was still pending at that time against two MLB clubs and their employees based on unrelated allegations.[50]

Again, Nix did not stop there. In January 2019, Nix's company sued the Office of the Commissioner of Baseball, current and former MLB Commissioners, and several other MLB employees in Florida state court again for hacking and computer abuse violations during the same 2013 MLB investigation.[51] Following the 2016 suit, several media companies reported on the suit by publishing or republishing a statement from the MLB that Nix's company "admitted" to using a banned MLB substance.[52] As a result, Nix sued the media companies in Florida federal court, alleging that the statement was defamatory.[53]

45. *Id.*

46. *Id.*

47. *See id.*

48. *See DNA Sports Performance Lab, Inc.*, 2020 WL 6290374, at *2; Nix v. Major League Baseball, No. H-21-4180, 2022 WL 2118986, at *2 n.1 (S.D. Tex. June 13, 2022) (showing that in the New York case, "after remand, plaintiffs' claims dismissed on June 7, 2018, 2018 WL 2739433; plaintiffs' motion for re-argument denied and sanctions imposed on December 31, 2018; orders dismissing complaint and issuing sanctions affirmed on appeal by the New York Supreme Court, First Department, Appellate Division, No. 2018-3597, on December 15, 2020; motion for re-argument or in the alternative for leave to appeal to the New York Court of Appeals denied on March 11, 2021"), *aff'd*, 62 F.4th 920 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 165 (2023).

49. *See DNA Sports Performance Lab, Inc.*, 2020 WL 6290374, at *2.

50. *See id.*; *Nix v. Major League Baseball*, 2022 WL 2118986, at *2 n.1.

51. *See DNA Sports Performance Lab, Inc.*, 2020 WL 6290374, at *2.

52. *See id.*

53. *See id.*

However, the court dismissed the suit with prejudice, and the Eleventh Circuit affirmed its dismissal.[54]

In January 2020, Nix sued again, this time in California federal court, adding the MLB's union as a defendant, alleging false advertising along with other claims.[55] After failing to get Nix to dismiss the complaint voluntarily, the MLB union moved for sanctions, dismissal, and attorney's fees.[56] The California court concluded that Nix's complaint was baseless and was brought in bad faith, warranting sanctions.[57] The court awarded $137,446.25 in sanctions payable by Nix and his company to the MLB and the MLBPA.[58] After failing to pay the sanctions, the court held Nix and his company in contempt and also made his attorney pay sanctions because he "continued to enable these frivolous lawsuits."[59] The California federal court then issued an order declaring Nix a vexatious litigant and enjoined him from filing further claims in the Northern District of California relating to the banned MLB performance-enhancing substance that was at the center of the MLB's investigation against Nix without obtaining leave from the court.[60]

Despite being sanctioned twice and being held in civil contempt, Nix filed suit again, this time in Texas federal court and this time proceeding pro se.[61] He filed a 100-page complaint against forty-five defendants asserting nine different claims.[62] The Texas court found that "[f]or the past ten years, he has 'sued *seriatum* the league, its affiliates, and others with some tangential connection to baseball, such as ESPN and Gatorade, in both state and federal court.'"[63] The court granted the defendants' motions to dismiss with prejudice and sanctions.[64] The court refused to impose a broader pre-filing injunction covering other jurisdictions and instead limited the injunction to future filings within the Southern District of Texas without first

54. *See* Nix v. ESPN, Inc., 772 F. App'x 807, 809–10 (11th Cir. 2019).

55. *See DNA Sports Performance Lab, Inc.*, 2020 WL 6290374, at *4, *6.

56. *Id.* at *5.

57. *See id.* at *7–8.

58. *See id.* at *8.

59. *See* Nix v. Major League Baseball, No. H-21-4180, 2022 WL 2118986, at *3 (S.D. Tex. June 13, 2022), *aff'd*, 62 F.4th 920 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 165 (2023).

60. *See id.* at *20.

61. *See id.* at *1.

62. *See id.* at *4, *21 ("Nix asserts claims of RICO conspiracy, fraud, defamation, false advertising, aiding and abetting, tortious interference with contract, unjust enrichment, vicarious liability, and mental anguish.").

63. *See id.* at *2 (quoting DNA Sports Performance Lab, Inc. v. Major League Baseball, No. 3:20-cv-00546-WHA (N.D. Cal. Apr. 12, 2022), ECF No. 133, at 2).

64. *Id.* at *24.

seeking leave.[65] However, on appeal, the Fifth Circuit expanded the pre-filing injunction and enjoined Nix from filing any lawsuit against the defendants in any court within the Fifth Circuit's jurisdiction without first seeking permission. The Supreme Court in October denied Nix's petition for writ of certiorari.[66]

This example highlights the problem that serial litigants, in general, pose to the judiciary and defending parties whether they are proceeding pro se or not. The plaintiff filed nine lawsuits in four different states.[67] Four courts imposed monetary and injunctive sanctions.[68] The pre-filing orders were limited to the issuing court's jurisdiction, which did prevent the plaintiff from refiling in that district.[69] However, it did not stop him from filing other suits based on the same facts in other courts across the country.[70] Although, the plaintiff did not proceed pro se in all the lawsuits, this example illustrates the need for federal courts to impose broader pre-filing injunctions more frequently when there are signs that a litigant will continue to pursue litigation.[71] In the example, it took over four years before a state or federal court imposed sanctions on the plaintiff.[72] However, at that point, the plaintiff had already filed multiple suits that were dismissed and ruled on.[73] Imposing a pre-filing order earlier could have saved these courts and defending parties' time, money, and other resources because both the court and the defendants must respond to the cases filed.[74]

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65. *Id.* at *23. The court limited the injunction to filings against the MLB and the MLBPA because the other defendants did not seek injunctive relief against Nix. *See* Nix v. Major League Baseball, 62 F.4th 920, 936 n.28 (5th Cir.), *cert. denied*, 144 S. Ct. 165 (2023).

66. *See Nix*, 62 F.4th at 938; Nix v. Major League Baseball, 144 S. Ct. 165 (2023) (denying certiorari).

67. *See id.*; DNA Sports Performance Lab, Inc. v. Major League Baseball, No. C 20-00546-WHA, 2020 WL 6290374, at *7–8 (N.D. Cal. Oct. 27, 2020) (imposing monetary sanctions on plaintiffs DNA Sports Performance and Nix), *aff'd sub nom.*, Nix v. Major League Baseball, No. 20-17283, 2022 WL 4482455 (9th Cir. Sept. 27, 2022); *Nix*, 2022 WL 2118986, at *3 (stating that the Northern District of California later imposed a preclusion order for future lawsuits in the Northern District because Nix did not pay the sanctions).

68. *See Nix*, 62 F.4th at 938.

69. *See id.*

70. *See id.*; *DNA Sports Performance Lab, Inc.*, 2020 WL 6290374, at *2.

71. *See supra* note 36.

72. *See supra* notes 41–48 and accompanying text. Nix's first suit was in 2014 and, despite filing several suits afterwards that related to the same subject matter as the first suit, it was not until 2018 that a court imposed sanctions.

73. *See supra* notes 41–48 and accompanying text.

74. *See* Seth M. Rosenstein, *Default Judgments: What Happens When You Fail to Respond to a Lawsuit*, ANSELL GRIMM & AARON, PC, https://ansell.law/default-judgments-what-happens-when-you-fail-to-respond-to-a-lawsuit/ [https://perma.cc/7QNW-RL7Y] (last visited Aug. 18, 2024).

However, the case discussed above is not unique, there are many other cases that illustrate this problem.[75] Federal courts have the authority to control the problem by imposing pre-filing injunctions and extending the injunctions to other federal court jurisdictions and to state court jurisdictions, but federal courts are hesitant to do so.[76] As previously mentioned, courts have the challenge of balancing their right to control their docket with the rights of litigants to have access to the courts.[77] Whether the litigant is proceeding pro se or not, serial litigants can clog the judicial system, which delays other cases that are filed in good faith from being heard. Therefore, it is important for courts to hold serial litigants accountable to protect and manage its dockets but at the same time to protect other litigants' right to be heard.[78] A federal court can do this by declaring the litigant vexatious and imposing a broader pre-filing injunction in the first instance when the litigant's history warrants such action.[79]

III. CONTROLLING THE PROBLEM

The main way courts have addressed this problem is by imposing sanctions.[80] However, because most pro se litigants cannot afford representation, it is unlikely they could afford to pay a monetary sanction imposed by a court.[81] Therefore, the best

75. *See, e.g.*, Sieverding v. United States, No. 22-cv-198-SE, 2023 WL 4627650, at *1–2 (D.N.H. July 19, 2023) (discussing that plaintiff, after another district court enjoined her from filing lawsuits in any court related to the subject matter of the case, disregarded the order and filed in courts throughout the country and was jailed several times as a result of refusing to dismiss the lawsuits); Mina v. Chester County, 803 F. App'x 569, 570 (3d Cir. 2020) ("Mina is a prolific pro se litigant who has filed five actions in the U.S. District Court for the Eastern District of Pennsylvania in the last several years, attempting to seek relief for an alleged conspiracy between various state officials, judges, attorneys, court employees, and government entities, among others, for alleged mistreatment over the past twenty-four years."); Hussein v. Barr, No. 19-cv-292 (JRT/HB), 2019 WL 4463402, at *3 (D. Minn. Sept. 18, 2019) ("In addition to *Hussein I* and this case, Hussein has filed six additional cases in this District in 2019."), *aff'd*, No. 19-3083, 2020 WL 1492027 (8th Cir. Jan. 21, 2020).

76. *See infra* Part III.

77. See *supra* Part II for more discussion on the challenge courts have with regards to balancing their own rights with the rights of litigants.

78. *See supra* Part II.

79. *See* Mueller, *supra* note 14, at 98.

80. *See, e.g.*, Sieverding v. Colo. Bar Ass'n, 469 F.3d 1340, 1344 (10th Cir. 2006); *In re* Martin-Trigona, 737 F.2d 1254, 1262 (2d Cir. 1984); Harrelson v. United States, 613 F.2d 114, 116 (5th Cir. 1980). See also *supra* Part II for a discussion of the difficulty of deterring abusive conduct by serial litigants.

81. *See* Goodnight et al., *supra* note 1, at 26; Haynes & Almond, *supra* note 3, at 8.

option for a court is to impose a pre-filing injunction to prevent a pro se plaintiff from filing further litigation again.[82]

A. Sources of Authority for a Federal Court to Impose Pre-Filing Injunctions

Federal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct that hinders their ability to carry out their function.[83] Two sources of authority allow a federal court to impose a pre-filing injunction.[84] The first source is Federal Rule of Civil Procedure 11(c).[85] Under Rule 11, a defendant can file a motion for sanctions in which the defendant must specify which conduct allegedly violates subsection (b).[86] After proper notice and opportunity is given to the other side to respond, the court can impose sanctions if it finds the party violated Rule 11(b).[87] However, the nature of the sanction is "limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated."[88] The court, on its own initiative, can also impose sanctions on a party it determines violated Rule 11(b), but the same limitation applies.[89]

The second source of authority federal courts can use is the All Writs Act, which provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."[90] The All Writs Act is a combination of two provisions that come from the Judiciary Act of 1789.[91] Section 13 of the Judiciary Act of 1789 authorized district

82. *See* Haynes & Almond, *supra* note 3, at 8; Searcy v. Fort Worth ISD, No. 4:23-CV-00992-P, 2024 WL 3293871, at *2 (N.D. Tex. Apr. 10, 2024) ("Here, because money is admittedly tight for Plaintiff, the Court is loath to issue monetary sanctions. But federal courts have clear authority to issue pre-filing injunctions in circumstances like this." (citation omitted)); *see also* Day v. Allstate Ins. Co., 788 F.2d 1110, 1115 (5th Cir. 1986) (cautioning that where monetary sanctions are ineffective in deterring vexatious litigation, a pre-filing injunction is a sanction available to the court).

83. *See* Goodnight et al., *supra* note 1, at 28; Haynes & Almond, *supra* note 3, at 8.

84. Haynes & Almond, *supra* note 3, at 8.

85. *See* Haynes & Almond, *supra* note 3, at 8; FED. R. CIV. P. 11(c).

86. *See* FED. R. CIV. P. 11 (b), (c)(2) (subsection (b) requires all parties, represented or not, to certify that their pleading is not brought for an improper purpose, like to harass, is not frivolous, and is based on evidentiary support).

87. *See id.* at 11(b), (c).

88. *See id.* at 11(c)(4).

89. *See id.* at 11(c)(3)–(4).

90. *See* All Writs Act, 28 U.S.C. § 1651(a).

91. *See* Jennifer X. Luo, *Decoding Pandora's Box: All Writs Act and Separation of Powers*, 56 HARV. J. ON LEGIS. 257, 261–62 (2019); Judiciary Act of 1789, ch. 20, §§ 13, 14, 1 Stat. 73, 80–82.

courts "to issue writs of prohibition in courts of admiralty and maritime jurisdiction" and to issue writs of mandamus in cases that were warranted by the principles and usages of law.[92] "[S]ection 14 authorized federal courts to 'issue . . . all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of the law.'"[93] Section 14 gave the courts broader power because courts were authorized to issue writs not provided for by other statutes.[94] However, both §§ 13 and 14 limited the courts' power by requiring that any writ issued be in accordance with the "principles and usages of the law."[95] Section 14 further required that writs be "necessary for the exercise of their respective jurisdictions."[96]

The current All Writs Act combines both sections but does not state that writs issued cannot be "specially provided for by statute."[97] However, the Supreme Court has held that the All Writs Act was "intended to leave the all writs provision substantially unchanged," and the change in phrasing "d[id] not mark a congressional expansion of the powers of federal courts to authorize issuance of any 'appropriate' writ."[98] Thus, the All Writs Act has been interpreted to maintain the same limitations that §§ 13 and 14 of the Judiciary Act of 1789 provided.[99] Therefore, when a federal court decides whether to issue a writ, the writ must be (1) necessary for the exercise of their respective jurisdiction and (2) agreeable to the principles of law.[100] Before 1948, federal courts frequently issued unauthorized writs of mandamus, which the Supreme Court consistently reversed, so after 1948, the most common type of writ issued became injunctions.[101]

Federal courts have long issued injunctions pursuant to its authority under the All Writs Act "to enjoin plaintiffs from future filings when those plaintiffs consistently abuse the court system

92. *See* Luo, *supra* note 91, at 262.
93. *Id.* (quoting Judiciary Act of 1789, ch. 20, § 13, 1 Stat. 73, 81–82).
94. *Id.*
95. *Id.* (quoting Judiciary Act of 1789, ch. 20, § 13, 1 Stat. 73, 81–82).
96. *Id.* (quoting Judiciary Act of 1789, § 13, 1 Stat. 73, 81–82).
97. *Compare* All Writs Act, 28 U.S.C. § 1651(a), *with* Judiciary Act of 1789, ch. 20, §§ 13, 14, 1 Stat. 73, 80–82.
98. *See* Pa. Bureau of Corr. v. U.S. Marshals Serv., 474 U.S. 34, 42 (1985).
99. *See* Luo, *supra* note 91, at 263.
100. *See id.* at 262.
101. *See id.* at 264–65, 264 n.37.

and harass their opponents."[102] It is well established that the All Writs Act codified a federal court's inherent authority to issue writs or orders.[103] However, the All Writs Act was further limited by the Anti-Injunction Act.[104] Under the Anti-Injunction Act, federal courts are prohibited from enjoining state court proceedings except for in three situations:

> (1) If Congress expressly authorizes the injunction; (2) if it is necessary to effectuate or protect the court's judgment; or (3) if it is necessary to aid in the federal court's jurisdiction.[105]

Therefore, courts have said that the All Writs Act only applies when the injunction falls into one of those three exceptions.[106] Similar to the requirements of a Rule 11 motion for sanctions, a federal court must give the litigant adequate notice to oppose before imposing a pre-filing injunction.[107]

Although the All Writs Act gives federal courts the authority to issue injunctions, such injunctive relief is an extreme remedy.[108] Because access to courts is a valuable tenet of the American judicial system, courts are cautious about limiting a person's access.[109] However, courts also acknowledge that in some circumstances, pre-filing injunctions are necessary to avoid the relitigation of the same issues and to protect the clogging or abuse of the court system.[110]

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102. *See* Thottam v. Thottam, No. 4:12-cv-02133, 2013 WL 12120957, at *6 (S.D. Tex. Feb. 25, 2013) (quoting Baum v. Blue Moon Ventures, LLC, 513 F.3d 181, 190 (5th Cir. 2008)), *aff'd sub nom.*, *In re* Thottam, 543 F. App'x 380 (5th Cir. 2013).

103. *See* All Writs Act, 28 U.S.C. § 1651(a).

104. *See* Anti-Injunction Act, 28 U.S.C. § 2283; Newby v. Enron Corp., 302 F.3d 295, 301 (5th Cir. 2002).

105. 28 U.S.C. § 2283.

106. *See, e.g.*, *Newby*, 302 F.3d at 301.

107. *See* CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2942 (3d ed. 2024); FED. R. CIV. P. 11(c).

108. *See* Haynes & Almond, *supra* note 3, at 8.

109. *See id.*; *see also* Cromer v. Kraft Foods N. Am., Inc., 390 F.3d 812, 818 (4th Cir. 2004) ("'[U]se 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.'" (quoting Pavilonis v. King, 626 F.2d 1075, 1079 (1st Cir. 1980))); *see also* Brow v. Farrelly, 994 F.2d 1027, 1038 (3d Cir. 1993) ("The broad scope of the District Court's power, however, is limited by two fundamental tenets of our legal system—the litigant's rights to due process and access to the courts.").

110. *See* Haynes & Almond, *supra* note 3, at 8.

B. Standards for the Imposition of Pre-Filing Injunctions

The federal circuits agree that a court should not restrict a litigant's access to the courts absent exigent circumstances.[111] To determine whether such circumstances exist under both sources of authority, a federal court must determine whether the litigant is vexatious, therefore warranting a pre-filing injunction.[112] The federal circuits have enacted similar tests to determine this. Some circuits use the *Cromer* factors, which are as follows:

> (1) [T]he 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 burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions.[113]

Courts using the *Cromer* factors weigh all relevant circumstances to decide whether a pre-filing injunction is warranted.[114] Another test established by the Second Circuit in *Safir v. U.S. Lines, Inc.*, which is similar to the *Cromer* factors listed above, includes the following five factors:

> (1) [T]he litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.[115]

The Second Circuit instructs its district courts when using these factors to ultimately determine whether the history of vexatious litigation suggests that the litigant will continue to abuse the court system and harass defending parties.[116]

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111. *See, e.g.*, *Cromer*, 390 F.3d at 817–18; *Pavilonis*, 626 F.2d at 1079; *Brow*, 994 F.2d at 1038; Baum v. Blue Moon Ventures, LLC, 513 F.3d 181, 189 (5th Cir. 2008).

112. *See, e.g.*, Sieverding v. Colo. Bar Ass'n, 469 F.3d 1340, 1343, 1345 (10th Cir. 2006); *In re* Martin-Trigona, 737 F.2d 1254, 1263 (2d Cir. 1984); Harrelson v. United States, 613 F.2d 114, 116 (5th Cir. 1980); *Cromer*, 390 F.3d at 818.

113. *Baum*, 513 F.3d at 189; *Cromer*, 390 F.3d at 818. The fourth factor goes to the question of whether a pre-filing injunction is the appropriate sanction. *Cromer*, 390 F.3d at 818.

114. *See, e.g.*, *Cromer*, 390 F.3d at 818.

115. Safir v. U.S. Lines, Inc., 792 F.2d 19, 24 (2d Cir. 1986).

116. *See id.*

The Ninth Circuit has its own set of factors but has acknowledged that the Second Circuit's factors provide a helpful framework to apply the Ninth Circuit's factors.[117] The Ninth Circuit's factors are:

> (1) Whether the litigant had notice and opportunity to oppose; (2) whether there is an adequate record to review; (3) whether there are substantive findings as to the frivolous or harassing nature of the litigant's actions; and (4) the pre-filing injunction must be narrowly tailored to the vexatious litigant's behavior.[118]

The Ninth Circuit uses the *De Long* standard to determine whether the litigant is vexatious and whether a pre-filing order is adequate, similar to the purpose of the factors laid out in *Safir* and *Cromer*.[119] Regardless, balancing the right to access with the court's obligation to protect its docket is at the heart of each court's analysis.[120] Federal courts have broad discretion when assessing the appropriate sanction to deter future misconduct, but federal courts should impose the least severe sanction necessary to achieve that purpose.[121] When determining the scope of a pre-filing injunction, courts consider not only what is required to protect their own dockets but also what is required to protect the innocent parties while also preserving the rights of the vexatious litigants.[122] Although courts are hesitant to limit a litigant's access to court, courts acknowledge that no one has the right to abuse the court system or use the court system to harass others.[123]

To determine whether a litigant's actions are frivolous or harassing, courts look at the number of filings and the content of those filings.[124] When a litigant files numerous suits based on the same set of claims and facts that lack merit, this suggests the litigant's actions are frivolous.[125] In addition, it is harassing

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117. *See* Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, 1058 (9th Cir. 2007) (noting that it was not a reversible error when a district court applied the Second Circuit's factors instead of the Ninth's).

118. De Long v. Hennessey, 912 F.2d 1144, 1147–48 (9th Cir. 1990); *Molski*, 500 F.3d at 1058–59, 1061.

119. *See Molski*, 500 F.3d at 1058–59, 1065; *Cromer*, 390 F.3d at 818; *Safir*, 792 F.2d at 24.

120. *See In re* Martin-Trigona, 737 F.2d 1254, 1261 (2d Cir. 1984); *Molski*, 500 F.3d at 1058, 1061.

121. *See, e.g.*, Farguson v. MBank Hous., N.A., 808 F.2d 358, 360 (5th Cir. 1986).

122. *See id.*

123. *See, e.g.*, *In re Martin-Trigona*, 737 F.2d at 1262; *Molski*, 500 F.3d at 1058.

124. *See, e.g.*, *Molski*, 500 F.3d at 1059; *In re* Powell, 851 F.2d 427, 431 (D.C. Cir. 1988).

125. *See* Haynes & Almond, *supra* note 3, at 8–9; *cf. In re Powell*, 851 F.2d at 431 (discussing the characterization of pending litigation claims as frivolous based on the extent they are similar to claims already filed).

because, in every suit filed, the defendant must respond or face default, which means more fees are incurred.[126] Frivolous litigation can also be litigation that is based on false factual assertions, which has the same effect.[127]

Most courts enjoin vexatious litigants from filing future claims that arise from the same or similar set of facts and limit the injunction to the litigant who filed.[128] Courts also often limit the injunction to future filings in the same federal jurisdiction where the litigant first filed.[129] This protects the court system because each person gets one opportunity to litigate their grievances, and after a decision is rendered, that grievance is closed.[130] There is no need to relitigate because that would undermine the court's opinion; therefore, by ordering the vexatious litigant to no longer file based on the same facts, the court protects the value of the judicial system.[131] It also ensures that the litigant's right to access the courts is protected because the litigant had the chance to litigate and can still litigate again when another grievance arises.[132]

IV. FEDERAL CIRCUITS' POSITION ON CONTROLLING THE PROBLEM

The two sources of authority discussed in Part III are two ways in which federal courts can control the problem of vexatious litigants while also protecting litigants' rights; however, not all federal courts agree on how and to what extent pre-filing injunctions should be imposed. The federal circuits do not all agree on how broad pre-filing injunctions should be extended.[133] Most circuits agree that broader pre-filing injunctions are appropriate in specific factual circumstances but are hesitant to impose such injunctions in the first instance.[134] Some circuits refuse to extend

126. *See* Haynes & Almond, *supra* note 3, at 8; Rosenstein, *supra* note 74.

127. *See Molski*, 500 F.3d at 1060–61; *see also* FED. R. CIV. P. 11.

128. *See, e.g.*, Harrelson v. United States, 613 F.2d 114, 116 (5th Cir. 1980) (affirming an injunction against "any future litigation on any cause of action arising from the fact situation at issue"); Farguson v. MBank Hous., N.A., 808 F.2d 358, 360 (5th Cir. 1986) (dismissing an appeal of the district court's injunction because the injunction was specific and limited to the same claims against the same parties).

129. *See supra* Part II; *see also* Sieverding v. Colo. Bar Ass'n, 469 F.3d 1340, 1344 (10th Cir. 2006).

130. *See* Haynes & Almond, *supra* note 3, at 8–10 (discussing repetitive and previously litigated claims and the role of pre-filing injunctions as an "extra arrow in the quiver," in addition to res judicata and collateral estoppel, preventing re-litigation of issues already decided).

131. *Cf. id.* (discussing the courts' constitutional obligation to use its Article III powers to protect against serial litigants).

132. *Id.* at 9, 10 n.25.

133. Baum v. Blue Moon Ventures, LLC, 513 F.3d 181, 188–89, 191–92 (5th Cir. 2008).

134. *See* Haynes & Almond, *supra* note 3, at 8–10; *Baum*, 513 F.3d at 188–89, 191–92.

pre-filing injunctions to other federal courts' jurisdiction.[135] In contrast, other circuits extend pre-filing injunctions to other federal courts but are hesitant to extend them to state courts.[136] The primary concern federal courts have with extending pre-filing injunctions to other federal jurisdictions is that these injunctions do not affect the court's own jurisdiction, and therefore the court should not decide for another court.[137] This is a similar concern federal courts have with extending pre-filing injunctions to state courts, mainly that "[a]buse of state judicial process is not *per se* a threat to the jurisdiction of Article III courts and does not *per se* implicate other federal interests."[138]

The Tenth Circuit has been at the forefront of the position that federal courts do not have the authority to decide for other jurisdictions—federal or state—matters that affect their own jurisdiction.[139] In *Sieverding v. Colorado Bar Association*, the district court broadened a pre-filing injunction that was previously imposed on two pro se plaintiffs, which prohibited plaintiffs from further filing in any federal or state court in the United States without being represented by a lawyer or receiving permission from a district judge.[140] The plaintiffs continued filing in three different federal district courts across the country and at least one other state court, disregarding the previous pre-filing injunction.[141] For this reason, the district court broadened the pre-filing injunction.[142] However, the Tenth Circuit found that the pre-filing injunction was overly broad.[143]

The standard for the Tenth Circuit determining the scope of pre-filing injunctions is that it must be "carefully tailored as required by [Tenth Circuit] case law."[144] In *Sieverding*, the Tenth Circuit concluded that it was not reasonable to speak on behalf of other circuits, determining that the other circuits could manage their own dockets.[145] Therefore, the Tenth Circuit found it inappropriate to

135. *See infra* notes 142–46, 150 and accompanying text.

136. *See infra* note 151 and accompanying text.

137. *See* Sieverding v. Colo. Bar Ass'n, 469 F.3d 1340, 1344 (10th Cir. 2006) (stating that it is not reasonable for a court to limit filings in other federal circuits because those courts are capable of taking action on their own).

138. *Baum*, 513 F.3d at 191 (alteration in original) (quoting *In re* Martin-Trigona, 737 F.2d 1254, 1263 (2d Cir. 1984)).

139. *See Sieverding*, 469 F.3d at 1344.

140. *Id.* at 1342–45.

141. *Id.* at 1343.

142. *Id.*

143. *Id.* at 1345.

144. *Id.* at 1343.

145. *See id.* at 1344.

extend the pre-filing injunction to other federal circuits and to state courts.[146] The Tenth Circuit decided whether pre-filing orders could be extended to state courts by citing a Second Circuit opinion, *In re Martin-Trigona*, where the Second Circuit concluded it was inappropriate to extend orders to state courts.[147] However, it rejected the Second Circuit's position that a federal court could impose pre-filing orders on other federal courts outside of the circuit the district court sits in.[148] Therefore, in the Tenth Circuit, pre-filing injunctions are limited to enjoining litigants within the Tenth Circuit's jurisdiction.[149] The Eighth Circuit agrees with the Tenth Circuit that pre-filing orders should not be extended to other jurisdictions outside of the Eighth Circuit, in state or federal court.[150]

Unlike the Tenth and Eighth Circuit, the Second Circuit permits the imposition of pre-filing orders onto other federal courts but agrees that it is not appropriate to extend them to state courts.[151] In *Martin-Trigona*, the Second Circuit reasoned that although federal courts have the constitutional obligation and power to protect their respective jurisdictions by enjoining litigants from future filings in federal courts, the same reasoning does not apply to enjoin litigants from state courts.[152] It concluded that abuse in the state judicial process is not "*per se* a threat" to the federal judicial system.[153] The court referred to the principle of comity, which requires respecting another court's jurisdiction, and it reasoned that federal courts should refrain from intruding into state court proceedings.[154] However, the Second Circuit did find that some conditions could be placed upon litigants, requiring them to notify state courts of their litigation history based on the idea of cooperative federalism.[155] The court acknowledged that federal courts should protect the state

146. *Id.*

147. *See id.*; *In re* Martin-Trigona, 737 F.2d 1254, 1263 (2d Cir. 1984).

148. *See Sieverding*, 469 F.3d at 1344; *In re Martin-Trigona*, 737 F.2d at 1262.

149. *See Sieverding*, 469 F.3d at 1344.

150. *See, e.g.*, Van Deelen v. City of Kansas City, 262 F. App'x 723, 724 (8th Cir. 2007) (per curiam) (modifying an "injunction to apply only to actions filed in federal district courts within [the Eighth] [C]ircuit"); Noble v. Am. Nat'l Prop. & Cas. Ins. Co., 297 F. Supp. 3d 998, 1012 (D.S.D. 2018) ("The district court may not impose restrictions on filings outside certain jurisdictions." (citing *Van Deelen*, 262 F. App'x at 724)).

151. *See In re Martin-Trigona*, 737 F.2d at 1262–63. The Sixth Circuit also agrees with the Second Circuit. *See* Tropf v. Fid. Nat'l Title Ins. Co., 289 F.3d 929, 943 (6th Cir. 2002).

152. *See In re Martin-Trigona*, 737 F.2d at 1262–63.

153. *Id.* at 1263 (alteration in the original).

154. *Cf. id.* at 1262–63 (holding that independence between the branches of government goes against imposing injunctions on state courts).

155. *See id.* at 1263. See generally Frank R. Strong, *Cooperative Federalism*, 23 IOWA L. REV. 455, 459 for a discussion on cooperative federalism.

judicial system by requiring the litigants to disclose their vexatious history to state courts.[156]

The Fifth Circuit has long said that federal courts have the power to impose pre-filing injunctions on other federal courts[157] and even on future state court filings.[158] However, recent decisions show the Fifth Circuit's decision might change.[159] In *Nix v. Major League Baseball*, a district court cited the Tenth Circuit decision of *Sieverding* and determined it would be unreasonable to impose a pre-filing injunction on a jurisdiction that would not do the same.[160] This decision was later affirmed by the Fifth Circuit, which suggests that the Fifth Circuit might be changing its long-held jurisprudence and following suit with the Tenth Circuit.[161] As for imposing pre-filing injunctions on state courts, the Fifth Circuit has done so in the past.[162] However, it appears that the Fifth Circuit may not impose pre-filing injunctions on state courts in the future.[163] Despite this, the Fifth Circuit acknowledged that some circumstances warrant broader pre-filing orders but are hesitant to impose them in the first instance.[164] It is unclear how the Fifth Circuit will rule on future pre-filing injunctions, however there are certain circumstances that may warrant broader pre-filing orders.

156. *See In re Martin-Trigona*, 737 F.2d at 1263.

157. *See, e.g.*, Baum v. Blue Moon Ventures, LLC, 513 F.3d 181, 191–92 (5th Cir. 2008) (upholding a pre-filing injunction, which would bar a litigant from filing any additional actions in any federal court within the state of Texas without first obtaining leave from the district court judge).

158. Newby v. Enron Corp., 302 F.3d 295, 303 (5th Cir. 2002) ("We hold that the district court had authority under the All Writs Act to enjoin Fleming from filing future state court actions without its permission and did not abuse its discretion in doing so."); *see, e.g.*, Day v. Allstate Ins. Co., 788 F.2d 1110, 1115 (5th Cir. 1986) (affirming the possibility of an injunction against any future litigation on any cause of action arising from the fact situation at issue in federal or state court).

159. *See* Nix v. Major League Baseball, No. H-21-4180, 2022 WL 2118986, at *22–23 (S.D. Tex. June 13, 2022) ("It would be odd if this court could impose an injunction that would be enforceable in the district courts in the Tenth Circuit, when those courts could not do the same to courts in this circuit."), *aff'd*, 62 F.4th 920 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 165 (2023).

160. *See id.* at *22–23 (quoting Sieverding v. Colo. Bar Ass'n, 469 F.3d 1340, 1344 (10th Cir. 2006)).

161. *See Nix*, 62 F.4th 920.

162. *See Newby*, 302 F.3d at 303; *Day*, 788 F.2d at 1115.

163. *See Nix*, 2022 WL 2118986, at *22 (noting that an abuse of state judicial processes is not a per se threat to the jurisdiction of Article III courts and that the court is wary of issuing injunctive relief that may impact future state court proceedings); *Nix*, 62 F.4th at 936–38 (limiting prefiling injunctive relief to any federal court within the jurisdiction of the Fifth Circuit).

164. *See Nix*, 62 F.4th at 936–37.

A. Moving Forward: How to Control the Problem

Federal courts should feel comfortable imposing pre-filing injunctions on other jurisdictions, federal and state. This section highlights the need for broader pre-filing injunctions and discusses the circumstances that courts should look at when determining whether one is warranted. As *Nix* highlights, there is a need for courts to impose pre-filing orders more broadly when the circumstances suggest that the plaintiff will not stop.[165] Courts should still keep in mind the balancing test of protecting a litigant's right to access the court system with protecting the judicial system from abuse when determining the scope of the pre-filing injunction.[166] However, there can be no set standard for how broad or narrow a pre-filing injunction should be because that determination should be based on the history of each litigant.

Returning to Nix, he filed at least nine suits in four different states.[167] There were four different courts across the country that sanctioned him or his company.[168] A New York federal suit based on the MLB investigation was voluntarily dismissed by Nix before the court could decide whether sanctions were warranted.[169] However, two years later, a New York state court imposed monetary sanctions in a suit again relating to the MLB investigation.[170] A California federal court also imposed monetary sanctions and, after failing to pay the court, held Nix in contempt. It then later declared him a vexatious litigant and enjoined him from further filing in the Northern District of California.[171] A Texas district court declared Nix a vexatious litigant and imposed a pre-filing order limited to filings in the Southern District of Texas, but on appeal, the Fifth Circuit expanded the pre-filing order to cover all courts within the Fifth Circuit's jurisdiction—becoming the fourth court to impose sanctions on Nix and his company.[172] The courts that imposed pre-filing injunctions limited them to their jurisdictions but neither the monetary sanctions nor the injunctive relief stopped Nix from picking up and filing in another jurisdiction based on the same set of facts and against the

165. *See supra* Part II.
166. *See* Mueller, *supra* note 14, at 98.
167. *Nix*, 62 F.4th at 938.
168. *See id.*
169. *See supra* notes 43–44 and accompanying text.
170. *See* supra notes 45–48 and accompanying text.
171. *See supra* notes 55–60 and accompanying text.
172. *See Nix*, 62 F.4th at 938; discussion *supra* notes 61–66.

same defendants. However, Nix's actions affected at least forty-five defendants and both federal and state courts' jurisdictions.[173]

This case example highlights the circumstances in which a court should impose a broader pre-filing injunction.[174] As discussed above, federal courts have broad discretion on deciding the scope of an injunction.[175] Federal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct that hinders its ability to carry out its function.[176] To ensure litigants' rights are protected, courts should impose a limiting pre-filing order, such as restricting the litigant from filing in that jurisdiction again without getting permission from the court first.[177] In addition, the court should require that if the litigant were to file elsewhere, he or she would have to disclose to the court that he has a pre-filing order in another jurisdiction.[178] But when a litigant files in another federal court attempting to replicate what was done in the first court, the federal court should then extend the pre-filing order to apply to all federal courts.[179] In circumstances like those, it is clear that the litigant is determined to abuse the court system, and this abuse affects all federal courts. Because the second court will ensure that the litigant does not go to another federal court and does the same thing he did to the first court, this will protect all federal courts. However, pre-filing orders should always be limited to filings based on the same or similar set of facts and claims.[180] This ensures that the litigant's rights are not restricted completely because the litigant still has a right to access the courts on another matter that has not yet been decided.[181]

If the litigant wishes to continue to file after the broader pre-filing injunction, then it should follow that an even broader pre-filing order should be issued to include state courts. This

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173. *See* Nix v. Major League Baseball, No. H-21-4180, 2022 WL 2118986, at *2, *21 (S.D. Tex. June 13, 2022), *aff'd*, 62 F.4th 920 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 165 (2023).

174. *See id.*

175. *See supra* Section III.B.

176. *See* Goodnight et al., *supra* note 1, at 28; Haynes & Almond, *supra* note 3, at 8.

177. *See* Haynes & Almond, *supra* note 3, at 8.

178. *See Nix*, 2022 WL 2118986, at *24 (requiring litigant to file a copy of the opinion with any other court he may file in).

179. *See* Newby v. Enron Corp., 302 F.3d 295, 300, 303 (5th Cir. 2002) (concluding that litigant's actions "constitute[d] a sufficiently serious and systematic abuse of the courts to warrant the injunction" including federal and state courts).

180. *See* Harrelson v. United States, 613 F.2d 114, 116 (5th Cir. 1980) (affirming an injunction against any future litigation on any cause of action arising from the fact situation at issue).

181. *See* Haynes & Almond, *supra* note 3, at 8–9.

should only be warranted if the litigant's filings affect the federal court's jurisdiction in some way.[182] For example, if the litigant decides to file in state court and the defendants seek to remove the case to federal court, then a federal court's jurisdiction is at stake. Therefore, a federal court should, in that circumstance, extend the pre-filing order to include state courts.[183] There are some circumstances that warrant a broader pre-filing order, but federal courts should be cautious when determining the scope.

V. CONCLUSION

The rights to self-representation and to access the courts are necessary and valuable tenets of our judicial system, and courts are tasked with protecting these rights. Courts also have an obligation to protect their jurisdiction from abuse. Sometimes, protecting one interest means a court must restrict another. However, limiting someone's right should only occur when it is necessary. Pro se plaintiffs are in a unique position that they have the right to file, but there are no rules that keep them from abusing that right. This means that a court must ensure that a pro se plaintiff is not crossing the line.

This Note explains that a federal court can control the problem that occurs when there is a serial litigant abusing the court system by imposing a pre-filing injunction to prevent the plaintiff from filing future claims when their actions constitute vexatiousness. The federal circuits agree that an injunction is a severe sanction and should not be imposed lightly, however, they do not agree on the appropriate scope of the injunction. Some circuits deem that it is inappropriate to impose pre-filing orders that extend to other federal jurisdictions. Other circuits find it appropriate to extend injunctions to other federal courts, but not to state courts. This Note argued that there are some circumstances in which a federal court should and can do both. Under both the All Writs Act and Federal Rule of Civil Procedure 11, a federal court has the power to impose such pre-filing

182. *Cf. id.* ("[S]uch injunctive relief is an extreme remedy that should not be routinely granted, and that such relief is inappropriate unless there is a real and immediate threat of future injury combined with objectionable past conduct.").

183. *See* Cervantes v. Ocwen Loan Servicing, LLC, No. 5:19-cv-7, 2019 WL 6003129, at *9 (S.D. Tex. Aug. 28) (concluding that after plaintiff filed his "third suit based on the same transaction," after the Fifth Circuit dismissed other suits with prejudice, and plaintiff failed to pay monetary sanctions, a pre-filing injunction including state courts was warranted), *report and recommendation adopted*, No. 5:19-CV-7, 2019 WL 13190649 (S.D. Tex. Oct. 7, 2019).

orders.[184] But a federal court should only do so when the circumstances suggest that a litigant will continue to file and abuse the court system. Such circumstances were present in the case example of *Nix*, where a plaintiff filed multiple suits in multiple courts across the country with the same or a similar set of facts.

Pre-filing orders protect all courts—federal and state—from the abuse serial litigants can do; therefore, each federal court should extend orders to include all courts when the circumstances warrant one. Courts still must balance protecting their respective jurisdictions with the right of litigants to access the courts. However, no person should have the right to abuse the court system, and courts should, in certain circumstances, impose pre-filing orders because these injunctions are sometimes the only solution to litigant abuse.

Samantha Rust

184. *See supra* Section III.A.