

No. 26-5057

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

RAMSI A. WOODCOCK

Plaintiff-Appellant,

- v. -

UNIVERSITY OF KENTUCKY; ELI CAPILOUTO, IN HIS OFFICIAL AND
INDIVIDUAL CAPACITIES; ROBERT DIPAOLO, IN HIS OFFICIAL AND
INDIVIDUAL CAPACITIES; WILLIAM EUGENE THRO, IN HIS OFFICIAL
AND INDIVIDUAL CAPACITIES; JAMES C. DUFF, IN HIS INDIVIDUAL
CAPACITY; LINDA MCMAHON, IN HER OFFICIAL CAPACITY AS UNITED
STATES SECRETARY OF EDUCATION; RUSSELL MATTHEW COLEMAN,
ATTORNEY GENERAL; GREGORY F. VAN TATENHOVE, IN HIS OFFICIAL
CAPACITY

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Kentucky at Lexington
(Docket No. 5:25-cv-00424-DCR)

**PLAINTIFF'S COMBINED RESPONSE TO APPELLEES' IMPROPER
RULE 43 NOTICE, OBJECTION, AND MOTION TO STRIKE**

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INTRODUCTION

On July 27, 2026, on the eve of oral argument in this case, Appellees University of Kentucky, President Capilouto, Provost DiPaola, Interim Dean Duff, and General Counsel Thro (“University Defendants”) filed a document (the “Notice”) purporting to notify this Court of the automatic substitution of Defendant Gregory Van Tatenhove for James Duff as official capacity defendant pursuant to Fed. R. App. P. 43(c)(2). Dkt. 93. Under cover of providing this Notice—which is not required by Rule 43(c)(2), as the substitution is automatic—University Defendants attempted to supplemental their briefs without authorization, reference facts relating to events that took place *after* the filing of the case, and pad the record with 814 pages of additional material that does not relate to any argument raised by either the University Defendants or Appellee Kentucky Attorney General in their principal briefs in this appeal.

Specifically, University Defendants notified this court that plaintiff filed a lawsuit in state court against University Defendants on July 20, 2026 (the “state court action”), argued that the claims in that case “arise from the same transactional nucleus of facts as his claims in this case and seek[] essentially the same relief as in this case” and further argued that “[b]ecause the Supreme Court of Kentucky generally follows federal constitutional analysis for free speech claims, the claims in the state case are substantively identical to the claims in this case.”

University Defendants further attached as an exhibit a document that they describe as a “copy” of Plaintiff’s complaint in that case.

Defendants further notified this Court that Plaintiff filed a lawsuit against the University and Defendants Capilouto, DiPaola and Van Tatenhove on July 13, 2026, challenging the University’s appointment of Defendant Van Tatenhove as Dean of the J. David Rosenberg College of Law (the “dean suit”). The Notice acknowledges that “this new federal suit is irrelevant to the *Younger* abstention issues pending before this Court” but nevertheless goes on to state that “it reflects Professor Woodcock’s expansive view of academic freedom, which forms the basis for his underlying First Amendment claims presently before the district court.” The University Defendants not only attached the complaint in dean suit as an exhibit as well but further attached multiple additional filings from that case, none with any obvious relevance to this case.

The Notice raises no issues relevant to the claims at issue in this appeal and violates the rule against introducing post-filing events into the record, the requirement that a party confine its arguments to its briefs and the record, and the rule upon which the Notice purports to rely, Rule 43(c)(2), which does not authorize filing a notice that discusses other actions filed by Plaintiff. Accordingly, Plaintiff objects to this misuse of Rule 43 and related violations of this Court’s rules, and moves to strike the third and fourth paragraphs of the Notice, along with

all of the exhibits. Alternatively, if this Court denies Plaintiff's motion, Plaintiff herein responds to clarify that the Notice raises no issues relevant to the claims at issue in this appeal. Plaintiff tenders Part A of his argument below to clarify the nature of the state court action, Part B to respond to University Defendant's arguments, and Part C in support of his objection and motion to strike.

ARGUMENT

A. University Defendants Mischaracterize Plaintiff's State Court Action

Contrary to University Defendants' suggestion, Plaintiff's state court action alleges a variety of state claims, including breach of contract and violations of Kentucky's Campus Free Speech Protection Act, the Kentucky Civil Rights Act, and numerous provisions of the Kentucky Constitution. Plaintiff filed the action as a protective measure because the statute of limitations was about to run on some of those claims. Plaintiff inadvertently filed the action in the wrong state venue and intends to seek a stay of that action as soon as Plaintiff's motion to transfer venue is granted by the state court.

B. Plaintiff's State Court Action Is Not Relevant to the *Younger* Abstention Issues in the Present Appeal

Because the notice distinguishes the dean suit as being "irrelevant" to *Younger* abstention, the notice implicitly suggests that the state court action *is*

relevant to the *Younger* abstention issues in the present appeal. In fact, the state court action is not relevant.

1. The State Court Action Does Not Fall Within Any of the Younger Exceptions to the General Rule that Federal Courts Must Hear Federal Claims

Younger abstention is appropriate only in rare cases in which a federal decision would “intru[de]” into “ongoing”: (1) “state criminal prosecutions”, (2) “civil enforcement proceedings” that are “akin to a criminal prosecution”, or (3) “civil proceedings involving certain orders . . . uniquely in furtherance of the state courts’ ability to perform their judicial functions.” *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 78–79 (2013). Each of these exceptions to the general rule that federal courts have a “virtually unflagging” “obligation” to “hear and decide” constitutional claims over which they have jurisdiction requires that the *state* be the plaintiff bringing the prosecution or enforcement action. *Id.* at 77. Here, *Plaintiff* has brought the state court action. So *Younger* does not apply.

2. Defendants Forfeited Their Right to Argue that a State Court Challenge Would Afford Plaintiff an Adequate Opportunity to Raise Federal Constitutional Claims and Anyway Precedent Forbids Abstention From Such an Action

It is possible that University Defendants believe that the state court action is relevant to the rule that *Younger* abstention applies only where the plaintiff has an “adequate remedy” for violations of federal constitutional rights available in the

state proceeding. *Flynt v. Leis*, 574 F. 2d 874, 881 (6th Cir. 1977). Plaintiff contends on appeal that abstention was not appropriate because the University has barred him from access to a remedy for the unconstitutional investigation, suspension, and ban until the investigation, suspension, and ban have ended and Defendant Capilouto, who is the University president, has made a ruling on whether to file charges against him. Defendants may wish to argue that the state court action shows that an adequate remedy for violation of Plaintiff's federal First Amendment and constitutional due process rights is available to Plaintiff.

Defendants do not actually articulate such an argument in their notice and, in any case, it fails for at least four reasons: (1) Defendants failed to raise this argument in their briefing and therefore forfeited it; (2) the state court action is a new proceeding initiated by Plaintiff and therefore does not count for purposes of “adequate remedy” analysis under this Court's precedents; (3) Plaintiff brings no federal constitutional claims in the state court action, so it does not implicate the underlying policy of *Younger*, which is to honor the competence of state tribunals to decide *federal* constitutional questions; and (4) Plaintiff brought the state court action because the statute of limitations was about to run on some of his state claims and Plaintiff intends to motion to stay the state court action.

Forfeiture. A “fail[ure] to respond” is a “waiv[er]” of its rights with respect to an issue on appeal. *CardSoft v. Verifone, Inc.*, 769 F. 3d 1114, 1119–20 (Fed. Cir.

2014); *McPherson v. Kelsey*, 125 F. 3d 989, 995–96 (6th Cir. 1996). Defendants have forfeited or waived any argument that Plaintiff has an adequate remedy for his federal constitutional through a suit to enjoin the investigation, suspension, and ban in state court. Neither Defendants nor the Kentucky Attorney General made this argument anywhere in their response briefs, which they filed more than three months ago. Defendants may wish to argue that they could not have raised this issue before Plaintiff filed the state court action on July 20. That is incorrect, however. This Court does not require that a plaintiff have actually raised claims in a state proceeding in order to conclude that an adequate remedy is available. *Squire v. Coughlan*, 469 F. 3d 551, 557 (6th Cir. 2006) (holding that abstention was appropriate where the plaintiff “failed to raise [her] constitutional claim in the state disciplinary proceedings”). If the University Defendants wished to argue that Plaintiff has an adequate remedy available via a state court action under the Kentucky Constitution, they should have raised that issue in their response briefs. They cannot now try to sneak it into this appeal by appending it to an un-called-for notice of an *automatic* party substitution under Rule 43(c)(2).

New Proceeding. This Court has stated that

[w]e are aware of no case in which a federal plaintiff is deemed to have the “opportunity” to have his or her federal claim heard in a state proceeding solely because the plaintiff could have . . . filed a new complaint in state court. If that were the rule, *Younger* abstention would

almost always be appropriate, because there are few situations in which a federal plaintiff would not be able to file the federal suit in state court.

Habich v. City of Dearborn, 331 F. 3d 524, 531–32 (6th Cir. 2003).

No Federal Claims. Plaintiff brings only state law claims in the state court action. Plaintiff does not seek relief for violations of the U.S. Constitution in the state court action. Accordingly, the underlying policy of *Younger* abstention, that taking federal constitutional claims out of the hands of state tribunals “reflect[s] negatively upon the state court’s ability to enforce [federal] constitutional principles” is not implicated by the state court action at issue here. *Steffel v. Thompson*, 415 U.S. 452, 462 (1973).

Intent to Stay. Plaintiff brought the state court action because the statute of limitations was about to run on some of his state claims. Plaintiff intends to motion to stay the state court action. “There is nothing necessarily inappropriate” “about filing a protective action.” *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 294 n.9 (2005).

C. This Court Should Strike the Parts of the Notice and Exhibits That Relate to the State Court Action or the Dean Suit

The Notice violates the rule against introducing post-filing events into the record, the requirement that a party confine its arguments to its briefs and the

record, and Rule 43(c)(2), upon which the Notice purports to rely, which does not authorize filing a notice that discusses other actions filed by Plaintiff.

1. The Notice Impermissibly Attempts to Introduce Post-Filing Events into the Record

“The filing of the operative complaint ‘fixes the controversy’ as of that date, and federal courts will not consider post-complaint factual developments.” *Blick v. Ann Arbor Public School Dist.*, 105 F. 4th 868, 876 (6th Cir. 2024). University Defendants are attempting to introduce facts into the record relating to events that transpired *after* this case was brought. That is not permitted. Plaintiff failed this action on November 13, 2025, and, for purposes of this litigation, the facts are frozen as of that date. While this Court may take judicial notice of government documents, such as the state court action complaint, this Court may not do so in order to bring facts that have transpired after the filing of the action into the record. To the extent that the defendants wish this Court to consider the state court action in connection with *Younger* abstention, the existence of the state court action is a *factual* element of the *Younger* analysis. It is not legal authority *governing* the law of *Younger* abstention. Accordingly, this Court may not consider it because it relates to a post-filing factual development.

Even if the state court action or the dean suit were legal authority, University Defendants’ only permissible method of bringing it into the record would be

through a Rule 28(j) letter. That avenue is barred, however, because Defendants may only file such a letter if they can “refer[]” the “supplemental citations” “to the page of” their “brief” to which they relate. Fed. R. App. P. 28(j). However, as noted above, Defendants failed to raised the question whether a state court challenge would afford Plaintiff an adequate remedy for his federal constitutional claims *anywhere in their appellate briefs*. Accordingly, University Defendants cannot now seek to argue the point even if they were to repackage their citation to the state court action into a Rule 28(j) letter.

These arguments apply with even greater force the University’s discussion of the dean case, which the University admits is “irrelevant” to *Younger* analysis. The University also mischaracterizes the dean suit as reflecting Plaintiff’s “expansive view of academic freedom, which forms the basis for his underlying First Amendment claims.” Plaintiff does not plead any free standing academic freedom claims either in this case, the dean case, or the state court action. In the dean case, Plaintiff claims, inter alia, that the appointment of Defendant Van Tatenhove as dean of the College of Law over the objection of a substantial majority of the law faculty violates the law faculty’s right of expressive association by imposing a member and leader on the law faculty that the law faculty do not want.

2. The Notice Violates Rule 28, Which Requires that University Defendants Limit Their Appellate Arguments to Their Briefs and the Record

Defendants are attempting to use the Notice to make legal arguments that they are only permitted to make in their briefs. Rule 28 states that the University Defendants' brief "must contain" their "contentions and the reasons for them, with citations to the authorities and parts of the record on which" they "rel[y]". Fed. R. App. P. 28(a)(8)(A), (b). Because the Notice distinguishes the dean suit as being "irrelevant" to *Younger* abstention, the Notice implicitly suggests that the state court action *is* relevant to the *Younger* abstention issues in the present appeal. This is an argument about an issue on appeal that University Defendants are not permitted to make outside of the confines of their appellate brief. Moreover, the Notice attempts, through 814 pages of exhibits to cite to material that is not in the record on appeal. This violates Rule 28's requirement that University Defendants "cit[e]" to the "parts of the record on which" they "rel[y]."

3. The Notice Violates Rule 43(c)(2), Which Does Not Provide for the Filing of a Notice Discussing Cases

Rule 43(c)(2) provides for "[a]utomatic [s]ubstitution of [o]fficeholder[s]. That is all. It does not authorize University Defendants to file a Notice, must less to use the Notice as a vehicle for discussing other cases filed by Plaintiff. University

Defendants improperly claimed in their Notice to rely on Rule 43(c)(2) for authority in making the filing.

CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that this Court grant Plaintiff's motion to strike the third and fourth paragraphs of the Notice, along with all of the exhibits.

July 27, 2026

Respectfully submitted,

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TYPE-VOLUME CERTIFICATION

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that this response complies with the type-volume limitation in Rule 27(d)(2)(A) because, as counted by the Microsoft Word word count tool, this response contains 2,428 words, excluding the parts exempted by Rule 32(f). This response complies with the typeface requirements in Rule 32(a)(5)(A) and the type-style requirements in Rule 32(a)(6) because this response has been prepared in proportionally spaced 14-point Times New Roman font.

Dated: July 27, 2026

/s/ Joe F. Childers

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CERTIFICATE OF SERVICE

I certify that on July 27, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the CM/ECF system. I also certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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