IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 25-1950

MARVIN D. TUTT, Appellant,
v.
STATE OF MARYLAND, et al., Appellees.

APPELLANT'S MOTION TO VACATE AND REMAND WITH INSTRUCTIONS TO PERMIT AMENDMENT (WITHOUT PREJUDICE TO LATER INDIVIDUAL-CAPACITY OR POLICY/CUSTOM CLAIMS)

Appellant Marvin D. Tutt, pro se, moves under Fed. R. App. P. 27 to vacate the district court's July 24, 2025 judgment (dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii)) and remand with instructions to permit amendment under Fed. R. Civ. P. 15 so he may proceed on a narrowed Ex parte Young theory for prospective, official-capacity relief—without prejudice to seeking leave, after discovery, to add individual-capacity damages claims and/or policy/custom (municipal) claims if warranted.

1. Relief Requested

Authorize an amendment that:

1. names only appropriate current Maryland executive officials in their official capacities who have a connection to data maintenance and enforcement;

2. seeks purely prospective declaratory and injunctive relief requiring a constitutionally adequate verification/correction process for income data and a pause on executive enforcement against Appellant based on disputed or inaccurate data;

3. omits damages, omits the State/agencies as entities, and does not seek to modify any state child-support order; and

4. expressly preserves Appellant's ability to seek leave—after discovery—to add (i) individual-capacity damages claims and (ii) policy/custom claims against local governmental entities upon a good-faith factual basis. See Fed. R. Civ. P. 15(a)(2).

2. Posture and Standard

Final judgment entered: July 24, 2025. Notice of appeal: Aug. 15, 2025. De novo review applies to the Rule 12/§ 1915(e)(2)(B)(ii) determinations; pro se pleadings are construed liberally. Thomas v. Salvation Army S. Territory, 841 F.3d 632, 637 (4th Cir. 2016); Erickson v. Pardus, 551 U.S. 89, 94 (2007).

3. Grounds for Vacatur

A. Domestic-relations exception misapplied. The exception is "narrow," tied to divorce/alimony/custody in diversity, and does not bar federal-question § 1983 claims challenging executive conduct. Ankenbrandt v. Richards, 504 U.S. 689, 703 (1992); Marshall v. Marshall, 547 U.S. 293, 307–08 (2006). Appellant's claims (as narrowed) challenge ongoing executive practices (data maintenance/enforcement) and seek prospective compliance as to him; they do not ask a federal court to issue a divorce, alimony, or custody decree, nor to modify a state court order.

B. Younger abstention is inapplicable under Sprint. Younger is confined to three "exceptional" categories: (1) ongoing criminal prosecutions; (2) certain civil enforcement actions akin to criminal prosecutions; and (3) civil proceedings involving orders "uniquely in furtherance of the state courts' ability to perform their judicial functions." Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69, 78–79

(2013). Appellant's narrowed claims target ongoing executive practices and seek prospective compliance; they do not fit Sprint's categories and do not seek to modify any state-court order. As of the federal filing, the relevant state proceedings had concluded; post-filing activity cannot retroactively manufacture Younger. See id. at 81–82. In any event, the state forum was not an "adequate" vehicle to vindicate federal rights: Appellant had to seek—and obtained—recusal after assignment to a magistrate who previously worked for DSS, the parent agency of a party involved in the challenged practices. That concrete history underscores inadequacy for these federal claims.

C. Ex parte Young path remains open notwithstanding the Eleventh Amendment. Federal courts may enjoin ongoing violations of federal law by state officials in their official capacities. Verizon Md., Inc. v. Pub. Serv. Comm'n of Md., 535 U.S. 635, 645–46 (2002). The proposed amendment squarely fits that rubric: official-capacity defendants only; prospective relief only; no damages; and no request to alter any state judgment.

D. Rooker–Feldman does not apply. Appellant does not seek review or reversal of any state-court judgment. He challenges independent, ongoing executive practices (data maintenance and enforcement) and seeks prospective relief as to him. The doctrine is "confined to cases brought by state-court losers complaining of injuries

caused by state-court judgments and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005); see Thana v. Bd. of License Comm'rs, 827 F.3d 314, 320–22 (4th Cir. 2016).

E. Jurisdiction/abstention contradiction. The court both declared federal jurisdiction "lacking" and invoked Younger. But abstention "presupposes" jurisdiction. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 813 (1976); Sprint, 571 U.S. at 77–78. The mutually exclusive analysis itself warrants vacatur.

F. Failure to address federal constitutional claims. The dismissal did not meaningfully engage the First Amendment (access/retaliation) and Fourteenth Amendment (procedural due process; equal protection) theories. Especially with a pro se complaint raising federal-question claims, that wholesale non-analysis warrants reversal. Erickson, 551 U.S. at 94; Thomas, 841 F.3d at 637. Appellant also referenced the Eighth Amendment below; to streamline, he does not rely on that theory for vacatur here. The core federal claims are Fourteenth (procedural due process/equal protection) and First Amendment access.

G. Material factual mischaracterization of the state case. The court described the underlying matter as an "ex rel" action, but the state docket identifies two separate

plaintiffs—Regina Robinson and the Charles County Child Support Administration—listed independently and represented by the same counsel, with no "ex rel" designation. That error affected the legal framing (domestic-relations exception; abstention). When dismissal rests on a misread of judicially noticed records, vacatur is appropriate.

H. Leave to amend should have been allowed. Vacatur with leave to amend is the default absent clear futility—especially for pro se litigants. Goode v. Cent. Va. Legal Aid Soc'y, 807 F.3d 619, 623–24 (4th Cir. 2015); Laber v. Harvey, 438 F.3d 404, 427–28 (4th Cir. 2006) (en banc).

4. Proffer Showing the Amendment Is Not Futile—and Preserves Options

Concrete ongoing injury & traceability. For over 18 months, Appellant has been unemployed while State officials maintained and enforced a phantom $82,000 income—despite written notice—driving collections and collateral program denials (e.g., Medicaid/SNAP). The injuries are fairly traceable to specific executive policies/practices (data maintenance; enforcement triggers).

Redressability via prospective relief. Declaratory/injunctive orders requiring (i) a constitutionally adequate verification/correction process for income data and (ii) a

pause on executive enforcement against Appellant premised on disputed/inaccurate data would stop the ongoing harm without altering any state judgment, squarely within Ex parte Young and Verizon Maryland.

Pleading sufficiency. Appellant alleges (a) notice to responsible officials that the data are inaccurate; (b) the absence of a meaningful mechanism or hearing to correct the data; and (c) continued enforcement anyway—stating procedural-due-process claims under Mathews, and, if reached, ability-to-pay safeguards analogs (*Turner v. Rogers*; *Bearden*-type concerns). Equal Protection (irrational barriers to correction) and First Amendment access/retaliation are preserved as needed.

Parties/Capacity. The amendment would name only current executive officials with a nexus to the complained-of practices, in their official capacities.

Relief. Prospective declaratory and injunctive relief; no request to alter any state-court support judgment.

Reservation. Remand instructions should clarify the amendment is without prejudice to Appellant later seeking leave—after discovery—to add individual-capacity damages claims and/or policy/custom claims against local governmental entities if a good-faith basis emerges. See Fed. R. Civ. P. 15(a)(2).

Adequacy/Younger note. The state forum's adequacy is independently undermined by the assignment to, and required recusal of, a magistrate who had recently served with DSS, the parent agency of a party in the challenged practices—further reason Younger does not apply.

5. Alternative Limited-Remand Path

If preferred, the Court may remand under Fed. R. App. P. 12.1 for the district court to entertain an indicative ruling under Fed. R. Civ. P. 62.1 on a Rule 60(b) motion paired with a Rule 15 motion for leave to file the narrowed amendment. The district court could state whether it would grant relief; this Court could then issue a limited remand.

6. Conclusion

The Court should VACATE and REMAND with instructions to permit the focused Ex parte Young amendment outlined above, expressly without prejudice to Appellant later seeking discovery-informed amendments adding individual-capacity and/or policy/custom claims if warranted. Given the prior reliance on a factually erroneous "ex rel" premise and the simultaneous no-jurisdiction/abstention rulings, Appellant respectfully requests reassignment to a different district judge on remand to preserve the appearance of impartiality.

Footnote 1 - Disclaimer: Personal language— (OAG, District Court please read) - Pro se clarification, judicial notice, and record preservation. From the outset my focus has been **prospective, official-capacity relief and quiet, targeted fixes**, not a public crusade or windfall. Not a campaign against judicial misconduct. See Compl. ¶¶ **12(a), (c)** (stop ongoing collection; ensure it never happens again), **13–15** (limited personal objectives; individual relief so I can complete education and move on; any systemic benefit is incidental), **19–20** (commitment to resolve *this* case while enabling quiet remediation to prevent broader litigation), **41–42** (I can forgive/compromise; non-monetary reforms and prospective safeguards have concrete value), and **187** (injunctive relief's value—halt collection, correct records, and protect against future enforcement). I kept defendants broad at the pleading stage and named agencies (including Doe placeholders) because identities and precise roles sit behind government systems and are discoverable later—an approach consistent with notice pleading and the liberal construction owed to pro se litigants.

On the day I received a case management order from the district cord, I first noticed the requirement to serve that same order and pay for costs. At the time I had 0 cash, and felt completely blocked from the courts. In response to this, I filed a mandamus and motions to preserve all issues on record. The case management order was also in direct violation of federal law and required me to get permission from defendants before filing any motion. This and the circumstances unprecedented DOJ against Maryland has created profound challenges and chaos, which I believe warrants for my case to be started again on fresh ground. This is why I seek to narrow my complaint and focus on my goal of public service for parents and children. A lot of things in this case should have never happened. My hope is that the district court can understand and we can forgive internally and move forward, without their admission or apology. I will however acknowledge my anger, shame, and naivety. I am learning that there is a ***right*** way you must fight for your rights. Lately I recognized the importance of clarity and efficiency, rather than structurally covering all bases. Nothing here is more important to me than protecting parents and children from harm that they can't not understand, or afford to defend against.

Also, I sought help from the Maryland Attorney General regarding **systemic constitutional concerns**—impartiality/appearance issues (e.g., former officials presiding without a meaningful cooling-off period), **phantom-income** data driving garnishments and collateral benefit denials, and **impossible mandates** (e.g., full-time work while completing a degree) that mask due-process defects. The AG **declined to investigate**. I now decided to not seek for the AG to act. Instead, my intent is **through phased discovery I will document the facts and share substantiated findings with Maryland and the AG**—effectively a public-interest audit. The named officials likewise remain free to **voluntarily** correct practices or resolve my claims; nothing in this motion prevents settlement or prospective fixes that reach beyond this courthouse.

The district court **never addressed Eleventh-Amendment immunity or the damages in my complaint.** If my original emphasis on prospective relief were buried, opponents could later miscast the damages section in isolation. This motion therefore **preserves the truth of my posture**: I prioritized forward-looking compliance and quiet resolution (**¶¶ 12(a), (c), 13–15, 19–20, 41–42, 187**), while **reserving**—*if discovery warrants*—a later request for leave to add individual-capacity or policy/custom claims. See Mot. §§ 1, 4 (reservation).

Respectfully submitted,

/s/ Marvin D. Tutt

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