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**IN THE UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF TENNESSEE**

State of Tennessee, et al.,  Plaintiff,  v.  United States Department of Education, et al.,  Defendants.
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No: 3:21-cv-00308-CEA-DCP

**PLAINTIFF STATE OF ARIZONA’S  
REPLY IN SUPPORT OF MOTION TO  
DROP STATE OF ARIZONA AS A  
PARTY  
(UNOPPOSED BY DEFENDANTS)**

A plaintiff is the master of his or her complaint. In an ordinary case, if a plaintiff no longer wishes to press his or her claims and the defendant does not object to withdrawal, the plaintiff may simply withdraw.

Here, Arizona is a plaintiff and no longer wishes to press its claims. Arizona has been spending resources (including paying outside counsel) to monitor this case and the concurrent appeal from this Court’s preliminary injunction ruling. No defendant objects to Arizona’s withdrawal. The Court should therefore drop Arizona as a party under Rule 21, which is “governed under a liberal standard.” *Cosby v. KPMG, LLP*, No. 3:16-CV-121-TAV-DCP, 2020 WL 3529659, at \*3 (E.D. Tenn. June 29, 2020) (citation omitted).<sup>1</sup>

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<sup>1</sup> Arizona filed a motion to drop itself as a party under Rule 21, rather than a motion for voluntarily dismissal under Rule 41(a), because this Court has expressed that Rule 21 is the appropriate vehicle. *Cosby*, 2020 WL 3529659, at \*2.

1 Yet, in a strange twist, the other plaintiff states want to force Arizona to remain, at  
2 least for a while. It is difficult to understand why. Arizona has made clear that it does not  
3 seek to disrupt the other states' claims; it simply wants out.

4 The other plaintiff states offer various rationales for their position in their response.  
5 (Dkt. 131.) But each rationale collapses under scrutiny.

6 **First**, the other plaintiff states cite (at 1–2) the familiar rule that an appeal divests  
7 the district court of jurisdiction over the matter that is on appeal. But that rule does not  
8 apply to an interlocutory appeal of a preliminary injunction ruling:

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10 As a general rule, an effective notice of appeal divests the district court of  
11 jurisdiction over the matter forming the basis for the appeal.” *N.L.R.B. v.*  
12 *Cincinnati Bronze, Inc.*, 829 F.2d 585, 588 (6th Cir.1987). **However, “an**  
13 **appeal from an order granting or denying a preliminary injunction does**  
14 **not divest the district court of jurisdiction to proceed with the action on the**  
15 **merits.”** *Moltan Co. v. Eagle–Picher Indus., Inc.*, 55 F.3d 1171, 1174 (6th  
16 Cir.1995) (quoting 9 M. Moore, B. Ward & J. Lucas, *Moore's Federal*  
17 *Practice* ¶ 203.11, at 3–54 (2d ed. 1989)). The district court retains some  
jurisdiction to continue deciding other issues during the pendency of an  
interlocutory appeal. *Weaver v. Univ. of Cincinnati*, 970 F.2d 1523, 1528–29  
(6th Cir.1992) (citing *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470  
U.S. 373, 379, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985)).

18 *Zundel v. Holder*, 687 F.3d 271, 282 (6th Cir. 2012) (emphasis added). Because this Court  
19 retains “jurisdiction to proceed with the action on the merits,” it can do something as simple  
20 as grant a plaintiff’s request to drop itself.<sup>2</sup>

21 **Second**, the other plaintiff states cite (at 2) the rule that a district court may not alter  
22 or enlarge its “judgment” pending appeal. But there is no judgment here. There is only a  
23 preliminary injunction ruling.

24 **Third**, the other plaintiff states assert (at 2–3) that Arizona “has failed to address  
25 how dropping it as a party would affect the Court’s preliminary injunction order [ECF No.  
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<sup>2</sup> Arizona quoted *Zundel* in its motion to drop itself as a party. The other plaintiff  
states did not address *Zundel* in their response.

1 89]<sup>3</sup> that is currently on appeal at the Sixth Circuit.” Arizona does not think it is obliged  
2 to address this issue but will do so anyway for clarity.

3 The Court’s preliminary injunction order need not be modified to drop Arizona as a  
4 party. Rather, the preliminary injunction would simply end as to Arizona once Arizona is  
5 dropped. After all, the point of a preliminary injunction is to prohibit a defendant from  
6 taking certain actions against a plaintiff *while the plaintiff’s case is pending*. If a plaintiff  
7 drops its case, the preliminary injunction naturally ends. Here, if the other co-plaintiff  
8 states continue with their case (which Arizona is not disrupting), the preliminary injunction  
9 would remain in effect as to those states.

10 To be more specific: This Court has preliminarily enjoined Federal Defendants  
11 from implementing certain documents “against Plaintiffs,” and this injunction is to “remain  
12 in effect pending the final resolution of this matter, or until further orders from this Court”  
13 or the Sixth Circuit or the Supreme Court. (Dkt. 86, pg. 46.) If the Court drops Arizona  
14 as a party, that would be “the final resolution of this matter” as to Arizona, thus ending the  
15 preliminary injunction as to Arizona. Alternatively, dropping Arizona as a party would be  
16 a “further order[] from this Court” that would likewise end the preliminary injunction as to  
17 Arizona.  
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19 None of this will have any meaningful effect on the Sixth Circuit appeal. Arizona  
20 has already made clear that it is not opposing the Federal Defendants on appeal. For  
21 example, the States’ Answering Brief on appeal was expressly on behalf of all plaintiff  
22 states *except* Arizona. (6th Cir. Case No. 22-5807, Dkt. 39, at cover page and pg. 1 n.1.)

23 ***Fourth***, the other plaintiff states argue (at 3) that there is a “circuit split regarding  
24 the extent to which a district court can modify a preliminary injunction while the injunction  
25 is on appeal.” But that is a red herring, because no modification of the preliminary  
26 injunction is necessary here. If Arizona is dropped as a party, the preliminary injunction  
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28 <sup>3</sup> This appears to be a typo by the other plaintiff states. They presumably intended  
to refer to ECF No. 86.

1 simply ends as to Arizona by its own terms.

2 The other plaintiff states rely heavily on an opinion from the Western District of  
3 Kentucky, but that opinion (1) is not binding, (2) did not mention *Zundel*, and (3) did not  
4 involve a plaintiff who sought to withdraw—instead, it involved whether to substantively  
5 modify the terms of a preliminary injunction. *Planned Parenthood Great Nw., Hawaii,*  
6 *Alaska, Indiana, & Kentucky, Inc. v. Cameron*, No. 3:22-cv-198-RGJ, 2022 WL 5200186  
7 (W.D. Ky. Oct. 5, 2022). The opinion therefore offers no guidance here.

8 The other plaintiff states then say (at 4) that “if the effect of dropping the State of  
9 Arizona as a party is to eliminate it from this Court’s preliminary injunction, that would  
10 constitute a modification that goes beyond the scope of permissible modification” under  
11 Rule 62. But again, dropping Arizona as a party would not *modify* the Court’s preliminary  
12 injunction. The injunction would simply end as to Arizona by its own terms, because  
13 Arizona will have dropped its case.

14 ***Fifth***, the other plaintiff states argue (at 4–5) that dropping Arizona would violate  
15 the Court’s stay order and would “unfairly prejudice” them.

16 As for the stay order: As already noted, Arizona does not believe the stay was  
17 intended to prevent the Court from doing something as simple as dropping a plaintiff that  
18 wishes to withdraw, given that the Court has already granted withdrawal of counsel without  
19 lifting the stay. (Mot. at pg. 2, n.1.) But Arizona recognized that the other states might  
20 disagree and therefore made the following request in the alternative: “Arizona asks the  
21 Court to lift the stay to the extent needed to drop itself as a party.” (*Id.*) Thus, if the Court  
22 believes the stay must be lifted to drop Arizona as a party, the Court can simply say in its  
23 order dropping Arizona that the stay is lifted for this limited purpose.

24 As for “unfair prejudice”: The other plaintiff states identify no prejudice they will  
25 suffer if Arizona withdraws. They say (at 4) they are “busy preparing for oral argument”  
26 on appeal, but that is not prejudice. If a busy schedule amounted to prejudice, virtually any  
27 order affecting attorneys in the modern world would be prejudicial.  
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1 The other plaintiff states then say (at 5) that dropping Arizona would require them  
2 to “file an amended complaint.” Arizona did not ask the Court to order an amended  
3 complaint and does not believe one is necessary. But even if the Court orders an amended  
4 complaint, it would be very easy to file a new complaint that simply removes references to  
5 Arizona. The existing complaint makes only three passing references to Arizona, and all  
6 are in the context of listing the twenty plaintiff states. (Dkt. 1, ¶¶ 7, 15, 16.)

7 **Sixth**, the other plaintiff states assert (at 5) that Arizona’s “asserted prejudices are  
8 minor and a consequence of the State of Arizona’s voluntary decisions to join this lawsuit  
9 and to seek a preliminary injunction.” But Arizona need not make *any* showing of  
10 prejudice to drop itself as a party. *See* Fed. R. Civ. P. 21; *Cosby*, 2020 WL 3529659, at  
11 \*3. The fact that Arizona no longer wishes to press its claims, combined with the absence  
12 of any objection from defendants, is reason enough. Otherwise the basic principle that a  
13 plaintiff is the master of his or her complaint would hold little meaning.

14 **Seventh**, the other plaintiff states suggest (at 6–7) that the Court should  
15 “alternatively” treat Arizona’s motion as seeking an indicative ruling under Rule 62.1 and  
16 “defer or deny” it. But there is no need to resort to Rule 62.1, because that rule applies  
17 only to “relief that the court lacks authority to grant because of an appeal.” Fed. R. Civ. P.  
18 62.1(a). And here the appeal is an interlocutory appeal of a preliminary injunction ruling,  
19 which “does not divest the district court of jurisdiction to proceed with the action on the  
20 merits.” *Zundel*, 687 F.3d at 282. The Court need not resort to Rule 62.1.

## 22 CONCLUSION

23 Arizona no longer wishes to press its claims in this case. It is regrettable that the  
24 other plaintiff states are attempting to force their fellow state to remain longer than it  
25 wishes. The Court should drop Arizona as a party under Rule 21 and, if necessary, should  
26 lift the stay order for this limited purpose.

27 RESPECTFULLY SUBMITTED this 20th day of April, 2023.

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**CERTIFICATE OF SERVICE**

On this 20th day of April, 2023, the foregoing was filed with the Eastern District of Tennessee’s Court Clerk’s Office using the CM/ECF System for filing, which will provide a Notice of Electronic Filing to all CM/ECF registrants.

By: /s/ Shelly Curry