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Abstaining From Declaratory Judgment Claims: 'Wolff v. Trump'

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In the high-profile clash between journalist Michael Wolff and First Lady Melania Trump, Southern District Judge Mary Kay Vyskocil recently reminded litigants that the Declaratory Judgment Act, 28 U.S.C. §2201, is not a weapon for preemptive strikes.

The Declaratory Judgment Act "confer[s] on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995). Although federal courts generally have an obligation to adjudicate claims within their jurisdiction, claims brought under the Declaratory Judgment Act are different, as the Declaratory Judgment Act "confers a discretion on the courts rather than an absolute right upon the litigant." *Wilton*, 515 U.S. at 287-88. Courts may abstain from adjudicating declaratory judgment claims based on "considerations of practicality and wise judicial administration." *Wilton,* 515 U.S. at 288.

For example, courts routinely decline to exercise jurisdiction over claims seeking a declaration of non-liability for past conduct, reasoning that those claims can be resolved on the merits in any future lawsuit the declaratory judgment defendant may bring based on the same conduct.

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As courts in the Southern District have recognized, "the [Declaratory Judgment Act] is not intended to be used by parties who seek a declaration of non-liability to preemptively defeat tort claims already accrued by past wrongful conduct." *John Wiley & Sons, Inc. v. Visuals Unlimited, Inc.*, 2011 WL 5245192, at *4 (S.D.N.Y. Nov. 2, 2011).

Judge Vyskocil's recent decision in *Wolff v. Trump*, 2026 WL 1453606 (S.D.N.Y. May 22, 2026), applies these principles to abstain from deciding a preemptive declaratory judgment action filed by journalist Michael Wolff against

First Lady Melania Trump. The decision is a sharp illustration of how Wilton abstention operates to prevent a would-be defamation defendant from bringing a declaratory judgment claim as a means to short-circuit the ordinary litigation process. (Wolff is appealing the abstention order.)

'Wolff v. Trump'

In *Wolff,* the plaintiff, a chronicler of the Trump family, received a demand letter from the First Lady's counsel, in which counsel identified allegedly defamatory statements that Wolff had made regarding the First Lady, demanded a retraction and apology, and threatened a lawsuit seeking one billion dollars in damages if Wolff failed to comply by Oct. 21, 2025.

The demand letter was sent pursuant to Florida Statute §770.01, which requires that such a letter be sent before commencing a libel action. Wolff responded by filing a complaint in New York state court on the Oct. 21, 2025 deadline, seeking (1) a declaration that the challenged statements are not actionable libel, (2) a declaration that if the First Lady pursued her claims she would be liable under New York's anti-SLAPP law (N.Y. Civ. Rights Law §§70-A, 76-A), and (3) an award of costs, fees, and damages. As Vyskocil put it, Wolff was asking for "a declaration that, if the First Lady sues him, he deserves to win."

The First Lady removed the state court action to federal court on the basis of diversity jurisdiction and moved to dismiss the complaint, or in the alternative, have the case transferred to the Southern District of Florida. The First Lady contended that the Southern District of New York lacked personal jurisdiction over her, she had not properly been served, and Wolff failed to state a claim. Wolff opposed the motion and moved to remand the case to state court, or in the alternative, for jurisdictional discovery.

After determining that the court *could* hear the case under Article III (i.e., that the jurisdictional arguments raised by Wolff lacked merit), Vyskocil turned to the question of whether the court *should* hear it. Although Wolff's complaint presented an "ordinary dispute over alleged speech-torts" that federal courts "routinely adjudicate," Vyskocil determined that because Wolff's claims were all for declaratory relief, she had discretion to decline to adjudicate the claims.

The Court's Discretion to Abstain

Vyskocil explained that "[w]hether or not to entertain a declaratory judgment action is a matter of discretion left to the court." See *Dow Jones & Co., Inc. v. Harrods Ltd.,* 346 F.3d 357, 359 (2d Cir. 2003) (The Declaratory Judgment Act "vests a district court with discretion to determine whether it will exert jurisdiction over a proposed declaratory action or not."). Courts may abstain from adjudicating a declaratory judgment action when "their jurisdiction yields to considerations of practicality and wise judicial administration." *Wilton*, 515 U.S. at 288.

Courts typically may not abstain, however, if the plaintiff "also seeks damages caused by the defendant's conduct." *Kanciper v. Suffolk Cty. SPCA, Inc*., 722 F.3d 88, 93 (2d Cir. 2013), or the declaratory judgment claim calls for resolution of "novel questions of federal law." *Youell v. Exxon Corp.*, 74 F.3d 373, 376 (2d Cir. 1996).

The Second Circuit recognizes a limited exception to the general rule that a court may not abstain if the declaratory judgment plaintiff also seeks damages where "the plaintiff's purported damages claims are, in substance, wholly derivative of the requested declaratory relief." *Buss ChemTech AG v. PCS Phosphate Co., Inc.* 2026 WL 35380, at *3 (S.D.N.Y. Jan. 6, 2026).

Vyskocil explained that in deciding whether to exercise jurisdiction over declaratory judgment claims, courts in the Second Circuit consider the six factors identified by the Supreme Court in *Wilton*: "(1) whether the declaratory judgment sought will serve a useful purpose in clarifying or settling the legal issues involved; (2) whether such a judgment would finalize the controversy and offer relief from uncertainty; (3) whether the proposed remedy is being used merely for procedural fencing or a race to res judicata; (4) whether the use of a declaratory judgment would increase friction between sovereign legal systems or improperly encroach on the domain of a state or foreign court; (5) whether there is a better or more effective remedy; and (6) whether concerns for judicial efficiency and judicial economy favor declining to exercise jurisdiction." *Admiral Ins. Co. v. Niagara Transformer Corp*., 57 F.4th 85, 96 (2d Cir. 2023). Vyskocil noted that a court need not consider each of these six factors to properly abstain.

Vyskocil also pointed out an "established norm": when a plaintiff seeks declaratory relief concerning past torts, "courts generally decline to exercise their jurisdiction over his claim." She observed that "declaratory relief is intended to operate prospectively," and thus "[t]here is no basis for declaratory relief where only past acts are involved."

Application

As an initial matter, Vyskocil noted that it was not clear from the pleading or briefing whether Wolff presently was seeking an award of damages, or merely a declaration that at some point he will become entitled to damages under New York's anti-SLAPP law.

Even if the court were to credit the damages request, however, Vyskocil found the exception to *Kanciper* applied, permitting the court to abstain, because the damages request was "tactical" and speculative, and any such relief would "follow[] directly from [the] declaration" that Wolff sought. Accordingly, and to prevent future litigants from engaging in similar tactical conduct—appending damages claims to declaratory actions as a shield against *Wilton* abstention—Vyskocil treated the complaint as seeking purely declaratory relief.

Having found that she had discretion to abstain from adjudicating Wolff's declaratory judgment claims, Vyskocil went on to apply the *Wilton* abstention factors to determine whether she should abstain, explaining that she had "endeavored to consider every [Wilton] factor" as "guideposts along the analytical way." Vyskocil's analysis focused primarily on the third factor concerning "procedural fencing" and a "race to res judicata."

Principally, Vyskocil disagreed with Wolff's framing of his claims as seeking "prospective" relief, specifically, his assertion that the First Lady's demand letter was intended to "chill, intimidate, and silence... not just speech, but significantly, future speech." Vyskocil found that "[f]undamentally, [Wolff] is asking the court to adjudicate the tortiousness of specific statements that he has already made, and to do so in a forum other than the one in which litigation is already threatened (or, perhaps, pending)." That Wolff may have wished to repeat the same or similar allegedly defamatory statements in the future did not entitle him to "short-circuit" the threatened Florida suit by the First Lady.

Vyskocil was particularly troubled by what she identified as "textbook bad-faith forum shopping." After receiving the First Lady's demand letter, Wolff filed his preemptive action in New York, where the anti-SLAPP statute might afford him fees and damages, to avoid litigation in Florida,

where the First Lady's defamation claim would proceed under Florida law.

Vyskocil characterized this as a "rush to file first in anticipation of litigation in another tribunal, thereby enabling [him] to choose the forum and governing law by which to adjudicate the dispute, and otherwise to interfere with or frustrate the [First Lady's] pursuit of claims elsewhere."

Vyskocil further noted that because the filing of the declaratory judgment action here was "triggered by a notice letter," the court "presume[d]" "anticipatory conduct," which is "an 'equitable consideration' that may 'factor in the decision to allow the later filed action to proceed to judgment in the plaintiffs' chosen forum.'" Wolff's "apparent victory in the race to the courthouse does not retroactively mitigate his blatant forum shopping."

Ultimately, Vyskocil concluded that Wolff's action amounted to nothing more than gamesmanship. A declaration would not finalize the controversy because the underlying defamation dispute would still need to be litigated, and exercising jurisdiction risked generating contradictory fact-finding between the courts which could create unnecessary friction between sovereign legal systems in New York and Florida.

Vyskocil explained that there existed a "better or more effective remedy": Wolff could assert his defenses and counterclaims in the Florida action where the same issues between the same parties are in dispute. Because of Wolff's anticipatory conduct and forum shopping, Vyskocil was not troubled that Florida law might not be as favorable to his potential defenses or counterclaims as New York law.

Conclusion

Vyskocil's decision in *Wolff v. Trump* reinforces that the Declaratory Judgment Act is not a vehicle for would-be defamation defendants—or other defendants accused of a tort based on past conduct—to preemptively litigate their defenses and try to avail themselves of what they perceive as more favorable law in another forum.

Vyskocil observed that despite the "prominence of the personalities involved" and "the scandalizing content of the underlying statements," this is "a garden-variety dispute over alleged defamation" that must be litigated "according to the same procedures as everyone else."

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