

25-352 YOUNGE V. FULTON JUDICIAL CIRC. DIST. ATTORNEY'S OFFICE

DECISION BELOW: 2025 WL 974309

LOWER COURT CASE NUMBER: 23-11418

QUESTION PRESENTED:

Rule 8(c)(1) of the Federal Rules of Civil Procedure provides that a party "must" plead "any" affirmative defense. The question presented is:

Where a defendant has filed an answer without pleading an affirmative defense, may the defendant nonetheless assert that affirmative defense as the basis for a summary judgment motion, without amending or seeking to amend its answer to plead that affirmative defense, and may a defendant do so even if an amendment adding that affirmative defense would be barred by Rule 16(b)(4)?

CERT. GRANTED 3/30/2026