No. 19-127

In the Supreme Court of the United States

Anmarie Calgaro,

Petitioner,

vs.

St. Louis County, Linnea Mirsch, Individually and in her Official Capacity as Interim Director of St. Louis County Public Health and Human Services, Fairview Health Services, A Minnesota Nonprofit Corporation, Park Nicollet Health Services, A Nonprofit Corporation, St. Louis County School District, Michael Johnson, Individually and in His Official Capacity as Principal of the Cherry School, St. Louis County School District and E.J.K.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS ST. LOUIS COUNTY SCHOOL DISTRICT AND PRINCIPAL MICHAEL JOHNSON

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Question Presented

Whether Petitioner has presented compelling reasons to grant the Petition for Writ of Certiorari where the lower courts' decisions did not consider a federal constitutional question, the majority of Petitioner's claims are moot, and the trial court granted a motion to dismiss based on Petitioner's failure to state a claim pursuant to the Federal Rules of Civil Procedure.

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Introduction

Petitioner Anmarie Calgaro ("Petitioner") has presented no compelling reason for this Court to grant her Petition for a Writ of Certiorari ("Petition"). This matter does not present important questions regarding due process. Rather, this case was dismissed because Petitioner failed to include sufficient facts in the Complaint to "state a claim to relief that is plausible on its face," and as such, no lower court has considered the issues Petitioner now raises to this Court. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Furthermore, Petitioner cites no cases in which the identified issues have been decided by a court, and this Court lacks jurisdiction to review this matter because the majority of the claims are now moot.

Statement of the Case

I. Factual Background

It is axiomatic on a motion to dismiss that a court may rely only on the facts pled in the Complaint. However, the Petition defies this requirement and instead relies on facts that are outside the Complaint and not in the record. With respect to the St. Louis County School District ("School District") and Principal Johnson ("Principal") (collectively "School District Respondents"), the relevant facts are as follows.

E.J.K. was a student enrolled in the School District. Doc. 1, ¶14. She reached the age of majority on July 6, 2017. *Id.* ¶42. On an unspecified date in

2016,[1] Petitioner "requested the School District to allow her to participate in [E.J.K.]'s educational decisions and to have access to [E.J.K.]'s educational records." *Id.* ¶134. The School District Respondents denied Petitioner's requests. *Id.* ¶¶135, 137.

II. Procedural Background

This matter arises out of a Complaint filed on November 16, 2016. Doc. 1. The Petitioner asserted that the School District Defendants violated her Fourteenth Amendment Due Process Rights by denying her request to participate in educational decisions and access E.J.K.'s education records (Doc. 1 ¶211); sought a declaratory judgment stating her due process rights had been violated (*Id.* ¶224); sought an injunction enjoining Defendants from providing further services to E.J.K. (*Id.* ¶227); and sought an injunction requiring the School District Respondents to provide her with E.J.K.'s education records (*Id.* ¶228). The School District Respondents filed a motion to dismiss. *See* Doc. 32.

The District Court granted the School District Respondents' motion to dismiss and held that Petitioner failed to plead facts that supported her claim that the School District's actions were based on a policy or custom, as required under *Monell v.*

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[1] The importance of relying only on the facts contained in the pleadings is on full display here as Petitioner incorrectly asserts that she requested E.J.K.'s records from the School District for "two years." Even if the "two year" characterization had occurred anywhere in the pleadings, which it did not, it is clear that E.J.K. turned 18 in 2017, less than two years after the date Petitioner asserts she made the request.

Department of Social Services of the City of New York, 436 U.S. 658 (1978), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *See* App. at 17. The District Court also granted the Principal's motion to dismiss based on qualified immunity. *Id.*

It is equally important to note what the District Court did *not* conclude. Petitioner asserts that the District Court "concluded that each entity was well within their authority to end [Petitioner's] parental control over E.J.K. without a court order of emancipation, without parental waiver, and without parental notice." Pet. at 19. A plain reading of the District Court's decision confirms Petitioner's claim is a gross misstatement of the court's ruling, as that court made no rulings on the substance of Petitioner's claims.

The Eighth Circuit affirmed the District Court's grant of the School District Respondents' motion to dismiss. App. at 9. With respect to the School District, the Court agreed that Petitioner "alleged only a legal conclusion" with respect to the School District's purported policy or custom and noted the "complaint identified no actual policy or established custom of the District about making emancipation determinations."[2] App. at 7.

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[2] In the Petition, Petitioner objects to this conclusion stating "[s]ince [Petitioner] was denied educational involvement in E.J.K.'s school life for over two years as if E.J.K. were emancipated, there are sufficient facts under *Monell* to satisfy the 'custom or practice' requirement." Pet. at 22. It is telling that, rather than rely on allegations in the Complaint to support the custom or practice claim, Petitioner asks this Court to rely on a purported fact that is not only absent from the Complaint, but flatly contradicted by it. *See* FN 1, *supra.*

With respect to the Principal, the Eighth Circuit affirmed the District Court's conclusion that there is no "clearly established" parental right to access educational records, nor is there one to "manage all details of their children's education or to obtain consultation with school officials on everyday matters." App. at 7-8. Thus, the Principal was entitled to qualified immunity. *Id.*

Petitioner now asks this Court to review decisions not rendered by lower courts on issues that have never before been considered by any court.

Reasons for Denying the Petition

I. Petitioner raises no compelling reason why this petition should be granted.

A. The lower courts did not decide the issues Petitioner seeks to have reviewed.

Petitioner has failed to raise a compelling reason for the Court to grant the requested Writ of Certiorari. Petitioner repeatedly mischaracterizes the decisions of the lower courts by claiming that the Eighth Circuit decided an important question of federal law when it held that a parent's due process rights do not apply to local governmental entities, such as school districts. Pet. at 5-6. However, the decisions of both the District Court and Eighth Circuit only addressed Petitioner's failure to meet the pleading standards and the mootness of her claim. Neither court reached the merits of this purported due process claim. Thus, there is no important federal

question that has been decided in this case, and no conflict between circuit courts.

It is well established that a local governmental entity, such as a school district, "may not be sued under § 1983 for an injury inflicted solely by its employees or agents." *Monell*, 436 U.S. at 694. Liability for a Section 1983 claim is only present when "execution of a government's policy or custom" causes the injury. *Id.* Petitioner failed to satisfy her burden to plead facts that support her claim that the School District's actions were based on a policy or custom. *See* App. at 17. Instead, the Complaint contained only conclusory assertions that the School District had such a policy or custom. *Twombly* stands for the proposition that "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). The District Court correctly concluded that Petitioner's use of the phrase "policies, customs, practices, or procedures (or lack of procedures)" was conclusory and insufficient to support a *Monell* claim against the District. App. at 17.

The District Court also correctly granted the Principal's motion to dismiss based on qualified immunity. Qualified immunity protects government officials unless the official's conduct "violated a clearly established constitutional right." *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). Petitioner continues to cite no cases establishing that the ability of a parent to make day-to-day educational decision and access educational records are clearly established rights. In fact, of the only two circuits to consider

whether parents have a liberty interest in accessing educational records, one concluded there was no such right (*Crowley v. McKinney*, 400 F.3d 965, 968-71 (7th Cir. 2005)) and one left the question open (*Schmidt v. Des Moines Pub. Sch.*, 655 F.3d 811, 819 (8th Cir. 2011)). Without a clearly established right, the Principal was plainly entitled to qualified immunity, as the District Court concluded. App. at 18.

Thus, the lower courts have not considered or ruled on the issues Petitioner has now asked this Court to consider. With respect to the School District Respondents, Petitioner seeks review of the following issues: 1) "Whether parents' Due Process Clause rights apply to local governments. . . ending parental rights, responsibilities, or duties over their minor children's . . . educational. . . decisions without a court order of emancipation;" and 2) "Whether the Eighth Circuit erred in affirming dismissal of Calgaro's Due Process Clause claims for damages and equitable relief because, without a court order of emancipation, without parental waiver, and without parental notice: . . . a school district in Minnesota has a custom and practice of barring a parent for more than two years from involvement in the child's education after a child is deemed by the school principal, not a court order, to be emancipated." Pet. at ii.

As outlined above, the first issue is one that was not addressed by the District Court or Eighth Circuit. Ordinarily, the Court does "not decide in the first instance issues not decided below." *Nat'l Collegiate Athletic Ass'n v. Smith*, 525 U.S. 459, 470 (1999); *see also Roberts v. Galen of Va., Inc.*, 525 U.S.

249, 253-54 (1999) (declining to address claims that "do not appear to have been sufficiently developed below"); *U.S. v. Bestfoods*, 524 U.S. 51, 72-73 (1998) (declining to decide "in the first instance an issue on which the trial and appellate courts did not focus"). The lower courts did not address the issue because the matter was dismissed due to Petitioner's failure to include required elements in her pleadings, and as such, this issue is not properly before the Court.

The second issue misrepresents the facts pled in the Complaint and *assumes* the School District had a "custom and practice" of violating Constitutional rights. However, the basis for the dismissal and affirmation of the dismissal relied upon Petitioner's failure to do more than merely state a legal conclusion with respect to *Monell* liability. Additionally, the second issue relies on the "two year" timeframe, a purported fact that appeared for the first time in this Petition and contradicts the pleadings. Petitioner's framing of the second issue essentially asks the Court to ignore the decisions made below and rewrite the Complaint in order to be the first court to consider this issue.

Not only did the lower courts in *this* matter not consider the questions asserted by Petitioner, but Petitioner has not identified a single decision in any jurisdiction that has considered the issues she now presents. Because the issues on which Petitioner seeks review are not properly before this Court, certiorari should be denied.

B. Petitioner's claims for injunctive and declaratory relief are moot.

As the Eighth Circuit correctly held, Petitioner's claims for declaratory and injunctive relief are moot because there is no ongoing case or controversy after E.J.K. reached the age of majority. An actual case or controversy must "be extant at all stages of review." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 45 (1997). "When 'subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur,' [the Court] [has] no live controversy to review." *Camreta v. Greene*, 563 U.S. 692, 711 (2011) (alterations in original) (quoting *U.S. v. Concentrated Phosphate Export Assn., Inc.*, 393 U.S. 199, 203 (1968)). E.J.K. reached the age of majority while this case was pending, which resulted in a termination of Petitioner's parental rights by law. Petitioner has no right to access E.J.K.'s education records and therefore any declaratory or injunctive relief ordering the same would be improper.

Petitioner's submission to this Court attempted to invoke an exception to the mootness doctrine, specifically, that her claims are capable of repetition, yet evade review. Pet. at 22. Petitioner asserts this exception applies because parents do not receive notice of alleged emancipation decisions and because she has three minor children who she asserts could be subject to the same circumstances. *Id*. at 22-23. But, the Court requires more than just "physical or theoretical possibility" of repetition. *Murphy v. Hunt*, 455 U.S. 478, 482 (1982). Rather, "there must be a 'reasonable expectation' or a 'demonstrated probability' that the same controversy will recur

involving the same complaining party." *Id*. (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975)).

Petitioner has provided absolutely no "reasonable expectation" or "demonstrated probability" that she will encounter similar circumstances with any of her three minor children. Absent this requirement, the requests for injunctive and declaratory relief are moot and may not be considered.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted this August 22, 2019.

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