No. 22-312

In the Supreme Court of the United States

MICHELLE CHAPMAN,
Petitioner,

v.

JANE DOE, BY NEXT FRIEND ANTHONY E. ROTHERT,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

SUGGESTION OF MOOTNESS AND UNOPPOSED MOTION TO VACATE THE JUDGMENT OF THE COURT OF APPEALS

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Pursuant to Rule 21.2(b) of the Rules of this Court, Petitioner Michelle Chapman, Clerk of the Circuit Court for Randolph County, Missouri, respectfully moves that the Court vacate the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

Clerk Chapman filed her petition for writ of certiorari on October 4, 2022. This Court called for a response to the petition on November 4, 2023. Respondent received an extension of time to respond to the petition to January 4, 2023. On December 9, 2022, Respondent filed a stipulation dismissing the case by stipulation pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) stating "all of

Plaintiff's claims against Defendant and this action are dismissed" and that "Plaintiff will not object to vacatur of the judgment on appeal pursuant to *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950)."

The dismissal of all claims and the action while Petitioner challenges the interlocutory order of the district court renders the petition for a writ of certiorari moot. Only after the petition was filed and this Court called for a response did Respondent agree that the underlying case should be dismissed. This dismissal deprives Petitioner of the opportunity to obtain review of the Eighth Circuit's decision that implicates important questions of quasi-judicial immunity for circuit court clerks and whether questions that this Court has expressly declined to decide can satisfy the clearly established prong to deny qualified immunity. The effect of this decision has adverse implications not just for Petitioner but similarly situated state court clerks. This Court should follow its "established practice" to "vacate the judgment below and remand with a direction to dismiss," *Munsingwear*, 340 U.S. at 39, when, as here, a case merits review but becomes moot while on its way to this Court, *see id.* at 39 n.2.

STATEMENT

1. As described in the petition (Pet. 2–4), this case arose when Respondent, as a pregnant unemancipated minor, went to her local courthouse to have an abortion without the consent of her parents. She never filed for a judicial bypass under § 188.028

of Missouri's Revised Statutes because Clerk Chapman informed her that filing a judicial bypass petition would require notifying a parent. Pet. 3. Respondent filed suit claiming that Clerk Chapman violated her Fourteenth Amendment right to obtain an abortion without parental consent under 42 U.S.C. § 1983. Pet. 4.

2. The district court denied Clerk Chapman's motion for summary judgment invoking quasi-judicial and qualified immunity. Pet. 5–6; App. 34a–39a. The Eighth Circuit affirmed that decision. App. 3a.

3. On September 30, 2022, Clerk Chapman timely filed her petition for a writ of certiorari. The petition asked the Court to review whether quasi-judicial immunity was properly denied, whether a court of appeals can hold that a question of law is clearly established when this Court has reserved that question, and whether the case should be remanded in light of the Court's intervening decision in *Dobbs* v. *Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022). Pet. i. Respondent initially waived her response to the petition, but this Court called for a response on November 4, 2022.

After the Court's request, Respondent's counsel asked if Petitioner would stipulate to dismissal of the underlying action under Federal Rule of Civil Procedure 41(a)(1)(A)(ii), permitting the plaintiff to dismiss an action without a court order. On December 9, 2022, Respondent filed a stipulation stating "all of Plaintiff's claims against Defendant and this action are dismissed." Resp. Sugg. Mootness App. 1a. The district court separately ordered the dismissal on December 12, 2022. *Id.* at 3a.

The parties agree that the case no longer presents a live controversy. Respondent separately filed her Suggestions of Mootness on January 11, 2023.

ARGUMENT

1. For a federal court to exercise jurisdiction, "an 'actual controversy' must exist not only 'at the time the complaint is filed,' but through 'all stages' of the litigation." *Already, LLC* v. *Nike, Inc.*, 568 U.S. 85, 90–91 (2013) (quoting *Alvarez* v. *Smith*, 558 U.S. 87, 92 (2009)). A case generally presents no live controversy after a court can no longer grant the relief the plaintiff seeks. *Kingdomware Techs., Inc.* v. *United States*, 579 U.S. 162, 169 (2016). Respondent's unilateral dismissal of her case in its entirety under Rule 41(a)(1)(A)(ii) has mooted the petition for certiorari by eliminating the underlying controversy. *See Gray* v. *Bd. of Trustees of Univ. of Tenn.,* 342 U.S. 517, 518 (1952) (per curiam) (action by appellees during pendency of the petition mooted appeal). No actual controversy exists over Clerk Chapman's actions and no liability may be assessed against her. That "dispute is no longer embedded in any actual controversy about the plaintiff['s] particular legal rights." *Alvarez*, 558 U.S. at 93. No exception to mootness applies, in part because Respondent is no longer a minor, and there is "no special circumstance here that might warrant" continuing to hear the case. *Id.* at 93–94.

2. This Court has authority to vacate the judgment of the court of appeals and "may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances." 28 U.S.C. §

2106. Under this "flexible" statute, "we normally do vacate the lower court judgment in a moot case because doing so 'clears the path for future relitigation of the issues between the parties,' preserving 'the rights of all parties,' while prejudicing none 'by a decision which ... was only preliminary.'" *Alvarez*, 558 U.S. at 94 (quoting *Munsingwear*, 340 U.S. at 40). "Vacatur is in order when mootness occurs through happenstance—circumstances not attributable to the parties—or, relevant here, the 'unilateral action of the party who prevailed in the lower court.'" *Arizonans for Off. Eng.* v. *Arizona*, 520 U.S. 43, 71–72 (1997).

3. Vacatur is warranted here because mootness arose in this case through "'happenstance'—that is [it] has 'become moot due to circumstances unattributable to any of the parties.'" *U.S. Bancorp Mortg.* v. *Bonner Mall P'ship.*, 513 U.S. 18, 23 (1994) (quoting *Karcher* v. *May*, 484 U.S. 72, 82, 83 (1987)). Petitioner sought review of a denial of quasi-judicial and qualified immunity. On the merits, this Court's recent decision in *Dobbs* v. *Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022), established that Petitioner did not, in fact, violate Doe's rights. *See id.* at 2284 (noting the "strong presumption of validity" of abortion regulations that require "a rational basis" to sustain them); *Bellotti* v. *Baird*, 443 U.S. 622, 639 (1979) *(Bellotti II)* (plurality opinion) (noting "the special interest of the State in encouraging an unmarried pregnant minor to seek the advice of her parents in making the important decision whether or not to bear a child"); *see also* Pet. 24–25.

The Court's decision in *Dobbs* conclusively resolved the case on the yet-to-be-decided merits. When asked to stipulate to dismissal, Petitioner

agreed, consistent with her position at all stages in this case. App. 3a, 22a. Thus, *Dobbs*, not Petitioner, "caused the mootness . . . ." *U.S. Bancorp Mortg. Co.*, 513 U.S. at 24.

It is therefore "'most consonant to justice' in view of the nature and character of the conditions which have caused the case to become moot" to vacate the Eighth Circuit's decision. *Ibid.* (quoting *United States* v. *Hamburg-Amerikanische Packetfahrt-Actien Gesellschaft*, 239 U.S. 466, 477–78 (1916) (alterations omitted) (quoting another source)). Beyond *Dobbs*, Petitioner has vigorously argued for application of qualified and quasi-judicial immunity. *See, e.g.*, App. 3a ("Chapman moved for summary judgment, invoking quasi-judicial and qualified immunity."); App. 22a ("Defendant now moves for dismissal of plaintiff's claim for damages on the grounds that she enjoys either quasi-judicial or qualified immunity for her actions."). Though Petitioner stipulated to the dismissal, the Rule expressly provides that such a dismissal is a mechanism for plaintiffs. Fed. R. Civ. P. 41(a)(1)(A)(ii) ("[T]he plaintiff may dismiss an action without a court order by filing … a stipulation of dismissal signed by all parties who have appeared."); *see also* Fed. R. Civ. P. 41(b) ("[A] defendant may move to dismiss the action or any claim against it."). Indeed, in light of *Dobbs*, no good-faith basis existed for Petitioner to oppose a motion to dismiss under Rule 41(a)(2). Mootness therefore did not "result[] from settlement," but from a fundamental change in the legal landscape, and so vacatur is appropriate. *U.S. Bancorp. Mortg. Co.*, 513 U.S. at 25.

4. Vacatur by this Court is further warranted because, as explained in the petition, the case presents important questions on the extent of judicial immunity for court clerks and whether a principle of law this Court has expressly declined to decide can be "clearly established" for the purposes of qualified immunity. Pet. 16, 23. This Court recognizes that "a constitutional ruling in a qualified immunity case is a legally consequential decision" that makes review of the underlying case appropriate. *Camreta* v. *Greene*, 563 U.S. 692, 713 (2011). "When happenstance prevents that review from occurring, the normal rule should apply" stripping the decision of its binding effect. *Id.* This prevents an "unreviewable decision from spawning any legal consequences," arising out of a "preliminary adjudication." *Id.* (quotations omitted).

As explained in the petition, the quasi-judicial immunity question merits review in part because the Court has not recently or clearly addressed the extent of quasi-judicial immunity as applied to court clerks. Pet. 11. The Eighth Circuit's decision erroneously concluded that there was a genuine dispute over whether Petitioner had followed the judge's directions—essentially holding that quasi-judicial immunity only applies when the clerk is correctly following a judge's directions. App. 9a. It overlooked that such immunity would mean little if it did not apply to mistaken actions. *Cleavinger* v. *Saxner*, 474 U.S. 193, 199–200 (1985) (Judicial "immunity applies however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff.") (quotations omitted); *see Butz* v. *Economou*, 438 U.S. 478, 507 (1978) (noting qualified immunity applies to "mere mistakes in

judgment, whether the mistake is one of fact or one of law."). Petitioner's instruction on what filing a petition for judicial bypass would require was clearly within the court's jurisdiction, as "[t]he filing of complaints and other documents is an integral part of the judicial process[.]" *Smith* v. *Erickson*, 884 F.2d 1108, 1111 (8th Cir. 1989). Thus even in the absence of a judge's recollection that he directed Petitioner's actions explicitly, Petitioner was entitled to quasi-judicial immunity.

On the qualified immunity question, the Court of Appeals held that Respondent's "constitutional right to apply for a judicial bypass without notifying her parents is clearly established by Supreme Court precedent." App. 15a (relying in part on *Bellotti* v. *Baird*, 443 U.S. 622, 625 (1979) (*Bellotti II*)). This resulted from the Eighth Circuit concluding that Petitioner's actions "implemented the prior version of § 188.028" that court had previously found unconstitutional under *Bellotti II*. *Id.* But the decision did not fully appreciate how this Court treats parental notification requirements. For example, "a statute setting out a 'mere requirement of parental notice' does not violate the constitutional rights of an immature, dependent minor." *H. L.* v. *Matheson*, 450 U.S. 398, 409 (1981). And this Court has expressly reserved whether "a parental notification statute must include some sort of bypass provision to be constitutional." App. 12a (quoting *Lambert* v. *Wicklund*, 520 U.S. 292, 295 (1997)). Instead, the decision largely relied on Eighth Circuit case law preceding *Lambert*. App. 13a–14a.

Yet this cannot serve as clearly established law when this Court has "not decided whether parental

notice statutes must contain [bypass] procedures." *Ohio* v. *Akron Ctr. for Reprod. Health*, 497 U.S. 502, 510 (1990). The petition also pointed out that the question of whether notice requirements must contain a bypass for a mature minor is subject to disagreement among the circuits. Pet. 22–23 (citing decisions in the Fourth, Fifth, Seventh, and Eighth Circuits). And this Court has consistently doubted whether circuit precedent may provide the "clearly established" law required to hold individuals liable under Section 1983. *City of Escondido* v. *Emmons*, 139 S. Ct. 500, 503 (2019) (per curiam) ("Assuming without deciding that a court of appeals decision may constitute clearly established law for purposes of qualified immunity[.]"); *Kisela* v. *Hughes*, 138 S. Ct. 1148, 1153 (2018) (per curiam) ("[E]ven if a controlling circuit precedent could constitute clearly established law in these circumstances, it does not do so here.") By holding that Petitioner's acts were proscribed by "clearly established" law, the decision's holding carries legal significance on parental notification requirements that this Court has not passed on.

The Eighth Circuit's decision is more widespread than the confines of these parties. The constitutional ruling on the clerk's actions and the quasi-judicial immunity ruling apply to all court clerks in the circuit, of which Missouri alone has 45 judicial circuits and 4 appellate courts, each with their own clerk. Unless the decision is vacated, those clerks may face suit and discovery for cases where judicial memories cannot be refreshed or for simple mistakes of fact or law. The qualified immunity ruling reinforces that the courts of appeals may find clearly established law on questions for which this Court has reserved judgment. Vacatur

prevents the decision from spawning legal consequences for similarly situated persons.

Additionally, this Court should vacate the "preliminary adjudication" that may cast doubt on Petitioner's actions. Shortly after the Eighth Circuit denied rehearing, this Court overruled the only basis for Respondent's claim. Pet. 24–25 (citing *Dobbs*, 142 S. Ct. at 2242). Because Petitioner cannot show a deprivation of a constitutional right, vacatur disperses any potential cloud of constitutional infirmity that might otherwise linger.

CONCLUSION

In short, the Eighth Circuit made a decision on an interlocutory question before *Dobbs* that cannot stand after *Dobbs*. Consistent with Petitioner's positions and to preserve judicial resources, she stipulated to a Rule 41 dismissal of the underlying case. That moots this case and, because the reason for the mootness is an intervening decision of the Court, justifies vacatur. This request is not extraordinary or inequitable; it is, rather, essentially the same result as if the Court had granted, vacated, and remanded the case to the Eighth Circuit—something that it likely would have done given the intervening *Dobbs* decision. *See Webster* v. *Cooper*, 558 U.S. 1039, 1039 (2009) (Scalia, J., dissenting) (quotations omitted).

For the foregoing reasons, the Court should vacate the judgment of the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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