No. 22-425

# In the Supreme Court of the United States

ROBIN CARNAHAN, ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION, PETITIONER

*v.*

CAROLYN MALONEY, ET AL.

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

**PETITIONER'S SUGGESTION OF MOOTNESS**

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Pursuant to this Court's Rule 21.2(b), the Solicitor General, on behalf of petitioner, respectfully submits this suggestion of mootness.

This Court granted certiorari to decide whether individual Members of Congress have Article III standing to sue an executive agency to compel it to disclose information that the Members have sought under 5 U.S.C. 2954. Three weeks after the Court granted review, respondents filed a notice of voluntary dismissal in district court. Although that notice does not of its own force terminate proceedings in this Court, respondents' abandonment of their claims does render this case moot. The Court should therefore vacate the court of appeals' judgment and remand with instructions to dismiss the case with prejudice.

**STATEMENT**

Respondents are current and former members of the House of Representatives Committee on Oversight and Accountability. See Pet. App. 144a-145a. In 2017, they sued the General Services Administration (GSA) to challenge its decision declining to produce certain records that respondents had sought under 5 U.S.C. 2954. See Pet. App. 140a-155a. The district court dismissed their complaint for lack of Article III standing. *Id.* at 91a-138a. The court of appeals reversed and remanded, holding that respondents do have standing. *Id.* at 1a-48a. The court then denied the government's petition for rehearing en banc. *Id.* at 49a-50a.

On May 15, 2023, this Court granted the government's petition for a writ of certiorari to resolve the following question: "Whether individual Members of Congress have Article III standing to sue an executive agency to compel it to disclose information that the Members have requested under 5 U.S.C. 2954." Pet. I.

On June 6, 2023—nearly six years after respondents filed this suit and three weeks after this Court granted review—respondents filed a "Notice of Voluntary Dismissal" in district court. D. Ct. Doc. 31 (June 6, 2023) (Notice). The notice states, in its entirety: "Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), [respondents] hereby dismiss this action. Because [petitioner] did not file an answer to the complaint or a motion for summary judgment, [respondents] are entitled to dismissal under Rule 41(a)(1)(A)(i)." *Ibid.*

**ARGUMENT**

Respondents' notice of dismissal appears designed to prevent this Court from reviewing the judgment that respondents secured in the court of appeals. "Such postcertiorari maneuvers designed to insulate a deci-

sion from review by this Court must be viewed with a critical eye." *Knox* v. *SEIU*, 567 U.S. 298, 307 (2012). Respondents' notice of dismissal does not, of its own force, terminate the proceedings in this Court. But their abandonment of their claims does render this case moot. The Court accordingly should vacate the judgment of the court of appeals and remand with instructions to dismiss the complaint with prejudice.

**A. Respondents' Notice Of Dismissal Does Not Of Its Own Force Terminate The Proceedings In This Court**

1. This Court's Rules prescribe two, and only two, methods for dismissing cases in the Court: (1) filing an agreement signed by all the parties and (2) filing a motion to dismiss. See Sup. Ct. R. 21.2(b), 46. Respondents have invoked neither procedure. The case is accordingly still pending before the Court.

Rather than seeking to invoke this Court's Rules, respondents have informed the Court by letter that they have filed a notice in district court under Federal Rule of Civil Procedure 41(a). See Resp. 6/6/23 Letter. Rule 41(a) allows a plaintiff to dismiss an action by filing a notice of dismissal before the opposing party has served an answer or motion for summary judgment. See Fed. R. Civ. P. 41(a)(1)(A)(i). Such a dismissal takes effect "without a court order." *Ibid.*

Whatever self-executing effect a notice of dismissal may have in the district court, however, respondents' notice does not automatically terminate the proceedings in this Court. Under the Rules Enabling Act, 28 U.S.C. 2071 *et seq.*, Federal Rules apply only in "district courts" and "courts of appeals." 28 U.S.C. 2072(a). The Federal Rules of Civil Procedure, in particular, apply only in "district courts." Fed. R. Civ. P. 1; see *International Union* v. *Scofield*, 382 U.S. 205, 217 n.10 (1965).

A dismissal under Federal Rule of Civil Procedure 41(a) thus does not in itself terminate the proceedings in this Court.

2. In this case, moreover, it is unclear whether the notice of dismissal is legally operative even in the district court. When the government filed its petition for a writ of certiorari, the district court, with respondents' consent, entered the following stay order: "Further proceedings in this matter are STAYED in this Court until the Supreme Court's disposition of this case." D. Ct. Doc. 29 (Nov. 23, 2022). The court renewed that stay after this Court granted the certiorari petition. See D. Ct. Minute Order (May 16, 2023). The stay may preclude respondents from filing a notice of dismissal—or, at least, may preclude such a notice from taking effect—while the case remains pending in this Court. But there is no need for the Court to resolve that issue because it does not affect the Court's ability to dispose of this case.

**B. Respondents' Abandonment Of Their Claims Moots This Case And Warrants Vacatur And Dismissal With Prejudice**

1. A suit becomes moot when it is "clear that the plaintiffs have unequivocally abandoned" their claims. *Pacific Bell Telephone Co.* v. *Linkline Communications, Inc.*, 555 U.S. 438, 446 (2009). In previous cases where plaintiffs have notified the Court that they have abandoned their claims, the Court has found those claims moot. See, *e.g.*, *Arave* v. *Hoffman*, 552 U.S. 117, 118 (2008) (per curiam); *Frank* v. *Minnesota Newspaper Ass'n*, 490 U.S. 225, 227 (1989) (per curiam); *Deakins* v. *Monaghan*, 484 U.S. 193, 200-201 (1988).

Here, respondents do not appear to have formally withdrawn their Section 2954 request or explicitly renounced any attempt to seek the disputed documents in

the future. But under the circumstances, their notice in the district court and letter to this Court should be regarded as a definitive abandonment of their claims. Because the notice and letter "amount[] to a decision to no longer seek" relief, the suit "is now moot." *Webster* v. *Reproductive Health Services*, 492 U.S. 490, 512 (1989).

2. This Court accordingly should hold that the case is moot, vacate the court of appeals' judgment, and remand the case with instructions to dismiss respondents' claims with prejudice. This Court has vacated and remanded for dismissal in several previous cases where respondents have abandoned their claims after grants of certiorari. See, *e.g.*, *United States Forest Service* v. *Pacific Rivers Council*, 570 U.S. 901 (2013); *Arave*, 552 U.S. at 117-119; *City of Cuyahoga Falls* v. *Buckeye Community Hope Foundation*, 538 U.S. 188, 199-200 (2003); *Deakins*, 484 U.S. at 199-201. In all the cited cases, except *Pacific Rivers Council*, the Court remanded with express instructions to dismiss the case with prejudice.

Vacatur ensures that respondents do not benefit from a judgment that their actions have insulated from review. "It would certainly be a strange doctrine that would permit a plaintiff to obtain a favorable judgment, take voluntary action that moots the dispute, and then retain the benefit of the judgment." *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 75 (1997) (brackets and citation omitted); see *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 40 (1950) (explaining that vacatur may be appropriate even when a case becomes moot "through happenstance"). And dismissal with prejudice prevents "the regeneration of the controversy by a reassertion of a right to litigate" the claims. *Deakins*, 484 U.S. at 200. The Court should follow that

course here—particularly because respondents themselves have not explicitly renounced an attempt to relitigate this dispute in the future.

3. In *Pacific Rivers Council*, the government explained that the respondent's decision to moot the case would not have prevented this Court from resolving the Article III standing question presented in the government's petition for a writ of certiorari, and stated that the option of doing so, rather than vacating the judgment below as moot, should not be foreclosed in a future case if the course of that litigation were repeated. See Gov't Response to Mot. to Vacate at 6 n.*, *Pacific Rivers Council*, *supra*, (No. 12-623). Similar considerations apply here.

At the outset, the fact that this suit has become moot would not prevent this Court from resolving the question on which it granted certiorari. Neither standing nor mootness is logically antecedent to the other. The Court thus has the discretion to resolve this suit on either ground. See *Sinochem Int'l Co.* v. *Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007) ("[A] federal court has leeway 'to choose among threshold grounds for denying audience to a case on the merits.'") (citation omitted). Moreover, the Court has an "interest in preventing litigants from attempting to manipulate the Court's jurisdiction to insulate a favorable decision from review." *City of Erie* v. *Pap's A.M.*, 529 U.S. 277, 288 (2000). The Court could thus choose to decide the standing question on which it granted certiorari rather than holding that respondents' postcertiorari abandonment of their claims renders the case moot. The government remains prepared to brief and argue the standing question if the Court wishes to resolve that question in this case. In all events, as the government urged in

*Pacific Rivers Council*, the Court should not foreclose the option of deciding a case such as this on standing grounds if future respondents engage in similar efforts to frustrate the Court's review.

**CONCLUSION**

This Court should vacate the court of appeals' judgment and remand the case with instructions to dismiss respondents' claims with prejudice.

Respectfully submitted.

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JUNE 2023