No. 23-1203

In the
Supreme Court of the United States

TERPSEHORE MARAS,
Petitioner,
v.

MAYFIELD CITY SCHOOL DISTRICT
BOARD OF EDUCATION, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Is Terpsehore Maras's ("Petitioner") appeal regarding a public school mask policy moot where Petitioner's daughter graduated from the School District, the policy had been repealed, the School District confirmed it had no intention of reinstating the policy, and the Amended Complaint sought only injunctive relief in the District Court?

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STATEMENT OF THE CASE

Petitioner Terpsehore Maras's dispute with the Respondents[1] is stale. Petitioner's daughter is a former student in the Mayfield County School District. During the height of Ohio's COVID-19 pandemic-related state of emergency, the Mayfield City School District Board of Education adopted a policy addressing when students, teachers and visitors would be required to wear masks on school premises. Petitioner, on behalf of her minor daughter, opposed the policy and thereafter instituted the underlying litigation to challenge it, *pro se*, on behalf of her daughter.

However, the masking policy was rescinded over two years ago and Petitioner's daughter is no longer a student in the School District because she has since graduated. (Pet. App. 5a.) Thus, as the Sixth Circuit correctly determined, there is no live controversy for the Court to consider – whether pled on behalf of Petitioner's daughter or in Petitioner's own name. Petitioner has not identified any conflicts or significant issues of law to be decided – she merely asks the Court to change what she believes to be an erroneous decision by the lower courts. The Petition should be denied.

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[1] Respondents are the Mayfield City School District Board of Education (the "School Board"), its Superintendent Dr. Michael J. Barnes (the "Superintendent"), and its members Ron Fornaro, Sue Grozek, Al Hess, George Hughes, and Jimmy Teresi (collectively, the "Mayfield Parties").

A. The Mayfield Parties Enacted A Masking Policy During The Surge In Covid-19 Transmission In The Fall Of 2021, Which It Has Since Rescinded.

On August 20, 2021, consistent with then current and evolving guidance from various sources, including the CDC and American Academy of Pediatrics, the Superintendent recommended a masking requirement for all students, staff, and visitors (the "Masking Policy"). (Pet. App. 18a.) The Masking Policy specified exemptions for students with health and developmental reasons for not wearing them. (Pet. App. 18a.)

The Superintendent's recommendation was submitted to the School Board for approval and was included on the agenda for the August 25, 2021 School Board meeting (the "August 25 Meeting"). (Pet. App. 2a-3a, 18a.) Parents were given an opportunity to, and did, address it during open discussion. (Pet. App. 3a.) Petitioner was one of those parents. She expressed her strong disagreement for approximately 5 minutes, asserted the Board lacked authority, and informed the Board members that she was going to "remove them all." (R. 1, ¶ 48, Page ID # 15-16.) After discussion, the School Board voted to approve the recommendation and implemented the Masking Policy. (Pet. App. 3a, 18a.)

By early 2022, the COVID-19 landscape had changed significantly. Local cases of COVID-19 had fallen significantly. Vaccines for all school age children had become available the prior November and the prevailing guidance from government and

medical sources no longer recommended maintaining masking policies. Based on the changes, the Board lifted the Masking Policy for the District effective February 7, 2022. (Pet. App. 5a, 7a-8a.) Since then, the Board has not taken any action to reinstate the masking policy or implement any new mask and the Superintendent confirmed that he has no plans to reinstate the masking policy or implement any new masking policy in the future. (Pet. App. 10a.)

B. The District Court Litigation.

1. Petitioner Seeks A Temporary Restraining Order.

On September 2, 2021, Petitioner filed a Complaint (the "First Complaint") and a Motion for a Temporary Restraining Order asking the Court to vacate, and enjoin the Mayfield Parties from enforcing, the Masking Policy. (Pet. App. 19a.)[2] She asserted claims *pro se* on behalf of her daughter ("P.M.") that the Masking Policy violated her daughter's right to an education in a safe and healthy environment in violation of 42 U.S.C. § 1983 and Ohio Constitution Art. I, § 16. (Pet. App. 19a.) Petitioner did not assert any claims on her own behalf. (Pet. App. 25a-26a.) The Prayer for Relief only sought an injunction. (Pet. App. 9a-10a.)

The Mayfield Parties opposed the Motion for a TRO and simultaneously moved to dismiss the First Complaint, arguing (consistent with established law

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[2] Ms. Maras never asserted that she sought or was refused an exemption for her daughter. Nor did she assert that her daughter actually complied with the Mask Policy.

in the Sixth Circuit) that Petitioner could not assert claims *pro se* on her daughter's behalf. (Pet. App. 24a.)

The District Court held a hearing on the TRO on September 9, 2021. (Pet. App. 84a.)[3] Petitioner explained that the First Complaint was based on a violation of her Due Process Rights and a violation of Article I, Section 21 of the Ohio Constitution. In an effort to obtain a TRO, Petitioner confirmed that the Complaint did not seek money damages. (Pet. App. 9a-10a, 116a.) The Court took Petitioner's argument under consideration.

On September 13, 2021, the District Court denied Petitioner's Motion for a TRO, finding she had not satisfied any of the elements for obtaining an injunction and reserved ruling on the Motion to Dismiss to allow Petitioner time to respond. (Pet. App. 19a.)

2. Petitioner Filed an Amended Complaint.

On October 1, 2021, Petitioner filed an amended Complaint (the "Amended Complaint"), again seeking to assert claims *pro se* on behalf of her daughter. (Pet. App. 19a.) Petitioner pled the same claims on behalf of her daughter and added claims for (1) violation of the Ninth Amendment to the U.S. Constitution, arguing that the Masking Policy violates her right as a parent to protect the health and safety of her

[3] In that hearing, Ms. Maras stated that she could not afford counsel, but that she was "in the process of obtaining legal counsel who is attempting to file pro hac vice" so that she would have representation. (Pet. App. 134a.)

daughter; and (2) violation of the Tenth Amendment to the U.S. Constitution and Ohio Constitution Art. I, § 21, arguing that the Masking Policy violates the rights of parents and students to choose their health care and coverage. (Pet. App. 19a.)

The Mayfield Parties renewed their Motion to Dismiss, arguing that Petitioner's additional claims did not solve the fundamental problem that, as a non-attorney, Petitioner could not represent her daughter *pro se*, requiring dismissal of all claims asserted on her daughter's behalf. (Pet. App. 19a; R. 21, Page ID # 530, 553-554.) The Mayfield Parties also argued that the Amended Complaint Remained silent on what rights of her own Petitioner claimed the Masking Policy violated as well as how it injured her directly. (Pet. App. 23a; R. 21, Page ID # 530-531, 535-539.) Finally, the Mayfield Parties argued that the Amended Complaint should be dismissed for lack of subject matter jurisdiction because there was no allegation of any recognized Constitutional violation or injury and because Petitioner could not plausibly allege that the Masking Policy violated any provision of the U.S. or Ohio Constitutions. (*Id.*, Page ID # 531, 540-543.)

In her opposition to the renewed motion to dismiss, Petitioner represented she was attempting to drop her daughter as a party and proceed solely in her own name, (Pet. App. 26a), and specifically noted that she was *not* seeking appointment of counsel for her daughter as that would not move the case forward. (R. 22, ¶2, Page ID # 546; R. 23, Page ID # 577.)

3. Petitioner Sought Leave To File A Second Amended Complaint, Adding In Governor Michael DeWine.

On December 16, 2021, before the Court could rule on the Mayfield Parties' Second Motion to Dismiss, Petitioner sought leave to file another amended Complaint (the "Proposed Second Amended Complaint") solely in her name and asked the Court to appoint counsel to represent her. (Pet. App. 26a, 29a.)[4] The Mayfield Parties opposed both requests, arguing that none of Petitioner's proposed changes rendered her purported constitutional claims viable as there were neither factual nor legal grounds to support them and appointment of counsel was not warranted.

4. The District Court Dismissed The Lawsuit.

On September 30, 2022, the District Court dismissed the action and denied Petitioner's Motions to File a Second Amended Complaint and to appoint counsel. (Pet. App. 16a-32a.) The District Court reasoned that under Sixth Circuit precedent, parents cannot represent their minor children *pro se* and held that all of Petitioner's claims were asserted in her capacity as a *pro se* parent. (Pet. App. 23a-26a.) The District Court denied Petitioner's Motion to Amend, reasoning that this was her third attempt to assert

[4] In the Proposed Second Amended Complaint, Petitioner sought to add Ohio Governor Michael DeWine as a party and sought to cure her pleading deficiencies as to the Mayfield Parties. (Pet. App. 26a.)

actionable claims and that she appeared to be playing "cat and mouse" with the Mayfield Parties, changing her claims and fact allegations in response to deficiencies that the Mayfield Parties identified in their various responses to her pleadings. (Pet. App. 26a-28a.) The District Court further reasoned that Petitioner's proposed amendments were futile. (Pet. App. 28a-29a.) Finally, the District Court denied Petitioner's request to have counsel appointed, finding that "the case does not present exceptional circumstances because plaintiff's chances of success are extremely slim." (Pet. App. 29a-31a.)

C. The Sixth Circuit Court of Appeals Dismissed Petitioner's Appeal as Moot.

Less than 30 days from the District Court's decision, Petitioner had apparently found counsel, who entered his appearance on October 28, 2022 and filed a Notice of Appeal. (Pet. App. 142a-143a.)

After merits briefing, but prior to oral argument, the Sixth Circuit asked the parties to be prepared to address at argument whether Petitioner's appeal was moot based on its decision in *Resurrection Sch. v. Hertel*, 35 F.4th 524, 543-44 (6th Cir. 2022). Following argument, on October 31, 2023, the Sixth Circuit asked the parties to file supplemental briefs addressing whether the case was moot. (Pet. App. 5a.) The parties filed simultaneous briefs. In her brief, Petitioner argued that the claims were not moot because (1) she had stated a claim for damages and (2) the Masking Policy could be reinstated. (Pet. App. 9a-10a.)

Appellees contended that the appeal was moot because (1) Petitioners' daughter had graduated and would not be returning to the school system; (2) the masking policy had been rescinded and because COVID vaccines had been created, approved become widely available since its original implementation, there was no reason to believe it would be reimplemented; and (3) Petitioner did not plead any individual claims that would survive.[5]

The Sixth Circuit issued its decision on February 2, 2024, affirming dismissal of the lawsuit on the alternative ground of mootness. (Pet. App. 1a-11a.) The court held that the combination of P.M.'s graduation and the repeal of the masking policy rendered the case moot. (Pet. App. 5a-9a.) The Court further found that none of the exceptions to the mootness doctrine applied: (1) the Amended Complaint did not seek damages; (2) there was no objective evidence that the School Board would reinstate the policy; and (3) Petitioner lacked the ability to sue the Mayfield Parties based on her status as a "concerned citizen." (Pet. App. 9a-11a.)

[5] In their initial briefing at the Sixth Circuit, Respondents argued that Petitioner's alleged personal claims failed because she had not identified any particularized harm or injury to herself.

REASONS FOR DENYING THE PETITION

I. THIS CASE IS MOOT.

Pursuant to Article III, §§1, 2 of the United States Constitution, federal courts have jurisdiction to decide "Cases" or "Controversies." This Court has "repeatedly held that 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)). Thus, "[n]o matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute 'is no longer embedded in any actual controversy about the plaintiffs' particular legal rights.' *Id.* (quoting *Alvarez*, 568 U.S. at 93). The Court should deny the Petition because there is no live case or controversy.

Petitioner admits that the masking policy that prompted her lawsuit has been rescinded and offered no evidence to suggest that the Mayfield Parties will reinstate it. And, even if it did, Plaintiff admits that her daughter is neither a student in the School District nor a minor. Whether the claims belonged to Petitioner's minor daughter or, as Petitioner claims, herself personally,[6] all claims in the Amended Complaint are moot. (Pet. App. 1a-11a.)

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[6] The Mayfield Parties strenuously disagree with Petitioner's argument that she pled any claims in her personal capacity in either the Complaint or Amended Complaint. Under either scenario, the claims are moot.

II. THIS CASE DOES NOT WARRANT REVIEW BY THIS COURT.

Petitioner has not identified any reason why this Court should review the Sixth Circuit's decision, which was nothing more than a routine application of the mootness doctrine to the specific facts before it.

A. The Sixth Circuit's Opinion Was Limited To Mootness – It Did Not Rule On Any Issue Of Federal Law Pertaining To Parents' Rights.

Most of Petitioner's argument in support of granting her Petition addresses an issue that the Sixth Circuit did not reach. Petitioner seeks *certiorari* to attack the long-standing rule in the Sixth Circuit announced in *Shepherd v. Wellman*, 313 F.3d 963 (6th Cir. 2002), that non-lawyer parents cannot bring actions *pro se* on behalf of their minor children. But the Sixth Circuit was clear that it affirmed dismissal of the Amended Complaint because Petitioner's appeal was moot. The Sixth Circuit did not reach or issue any ruling on the substantive issue that Petitioner identified in her Petition (*i.e.*, whether minors and parents share enforceable rights under 28 U.S.C. § 1654).[7]

[7] It is unclear whether Petitioner is even the proper party to raise this issue as the claims would belong to her daughter, P.M., and not to Petitioner, but P.M. has not appealed any of the relevant decisions in this matter, and has not argued that her right to bring claims has been impacted.

While Petitioner may disagree with the policy issues underlying *Shepherd* and subsequent cases applying it, because dismissal here was affirmed solely on the basis of mootness, there is no Sixth Circuit ruling or decision relating to the ability of a parent to represent their child *pro se* for this Court to consider.[8]

B. The Sixth Circuit's Decision Does Not Conflict With This Court's Precedent.

Petitioner admits that the Sixth Circuit's mootness analysis "appears properly decided," acknowledging that Petitioner's daughter is no longer a student in the School District, is no longer a minor, and the masking policy has been rescinded. (Petition at 19.) Petitioner nonetheless seeks review, however, claiming that the Sixth Circuit failed to address Petitioner's own claims. A grant of certiorari is unwarranted.

The Sixth Circuit's decision does not conflict with this court's precedent. Petitioner claims that pursuant to *Craig v. Boren*, 429 U.S. 190 (1976), her own claims could remain viable even if her daughter's claims were moot. (Petition at 22-23.) But the Sixth Circuit's decision is entirely consistent with *Craig*. Contrary to Petitioner's suggestion otherwise, the Sixth Circuit expressly considered whether Plaintiff could maintain claims on her own behalf in light of her daughter's graduation from the School District and

[8] Petitioner did not reference 28 U.S.C. § 1654 in any of her briefing in the District Court or Sixth Circuit Court of Appeals.

the repeal of the masking policy that formed the basis of the lawsuit (whether considered Petitioner's claims or those of her daughter). (Appx. 9a-11a.)

The Sixth Circuit identified multiple reasons that Petitioner's claims, if any, were moot, including that the Amended Complaint did not seek or plead a request for money damages and that Petitioner could not bring claims based on her status as a citizen who is interested in the School District's policies. (*Id.*)

While Petitioner generically references her own claims based on alleged "violations of the Federal and Ohio Constitutions," she does not explain how any such claims remain justiciable. They do not. Every claim in the Amended Complaint was inexorably entwined with, and based on, the School District's masking policy. Without such a policy, or a child who was a student subject to the masking policy in the School District, Petitioner had no possible viable claims as correctly recognized by the Sixth Circuit.

Petitioner argues that the Sixth Circuit should not have found her appeal moot because her damages were not moot. But her claim that she should be allowed to proceed with her individual claims despite mootness ignores the fact that she had not pled such damages. The lower courts rejected her claim that she had adequately pled individual damages. (Pet. App. 9a-10a.) Thus, what Petitioner is really asking this Court to do is grant review of the lower courts' conclusions as to the state of her pleadings, which is not an adequate basis for granting review.

Recognizing this, Petitioner asserts for the first time that, if she succeeded on her Section 1983 claims,

she would be entitled to attorneys' fees. That was not an issue that she raised below, including in the supplemental briefing specifically addressing mootness, and cannot be raised now. *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 434 (1940) ("It is also the settled practice of this Court, in the exercise of its appellate jurisdiction, that it is only in exceptional cases…that it considers questions urged by a petitioner or appellant not pressed or passed upon in the courts below."). There are no exceptional circumstances suggesting the Court should accept jurisdiction to rule upon Petitioner's new argument.

Accordingly, this case involves a run-of-the-mill application of law to the specific facts before the Sixth Circuit. The court properly analyzed the case and affirmed dismissal based on a straight-forward application of the mootness doctrine. This case does not involve an important issue that this Court should address. Rather, the Petitioner is simply asking this Court to review the application of settled law to the facts of her case. That is not sufficient grounds to grant her Petition.

CONCLUSION

For the foregoing reasons, Respondents Mayfield City School District Board of Education, Its Superintendent Dr. Michael J. Barnes, and Its Members Ron Fornaro, Sue Grozek, Al Hess, George Hughes, and Jimmy Teresi request that this Court deny the Petition for a Writ of Certiorari to the Sixth Circuit Court of Appeals.

Respectfully submitted,

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