NO. 24-38

IN THE

Supreme Court of the United States

BRADLEY LITTLE, in his official capacity as Governor of the State of Idaho; MADISON KENYON; MARY MARSHALL, ET AL.,

Petitioners,

v.

LINDSAY HECOX; JANE DOE, with her next friends Jean Doe and John Doe,

Respondents.

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

RESPONSE TO SUGGESTION OF MOOTNESS

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INTRODUCTION

Before cert was granted, Hecox stipulated to stay all district-court proceedings pending this Court's review. After cert was granted, Hecox tried to dismiss all district-court proceedings and stop this Court from deciding an issue of pressing nationwide importance.

The attempt should fail.

Hecox argues this case is moot because Hecox filed a voluntary-dismissal notice in the district court. But by agreeing to stay all proceedings so that "nothing will happen" in the district court, Hecox waived the right to voluntarily dismiss the action before this Court rules. Dismissing the district court proceedings while the stay remains in effect would violate the stay's plain terms.

What's more, this Court's decision in *City of Erie* v. *Pap's A.M.*, compels the conclusion that this case is not otherwise moot. 529 U.S. 277 (2000). Petitioners have "an ongoing injury" because they are "barred from enforcing" the Fairness in Women's Sports Act, Hecox has "a concrete stake in the outcome of this case" as a student at BSU who could still choose to play women's sports, and this Court has an "interest in preventing litigants from attempting to manipulate the Court's jurisdiction." *Id.* at 288.

As a result, "the case is not moot," and this Court should reach the merits. *Id.* at 289.

STATEMENT

During the five-year history of this case, Respondent's plans for college sports have been in constant flux and have rarely materialized as stated. Now, Hecox claims the latest change in those plans deprives the Court of jurisdiction to decide this case. The Court should not credit that claim.

Idaho enacted its Fairness in Women's Sports Act in 2020 to protect equal opportunities for female athletes by providing that female sports "shall not be open to students of the male sex." Idaho Code § 33-6203(2). Hecox testified against the Act,[1] calling it "blatantly transphobic and discriminatory towards trans women." Digital media audio at 1:40:12–18.

Sixteen days after the Act became law, Hecox sued to invalidate it. ER757, ER809–10. Hecox was a freshman at Boise State University. ER762. As a male who identifies as female, Hecox alleged an intent to try out for the women's track and cross-country teams the following school year. ER762, ER770.

Hecox prevailed in court, securing a preliminary injunction against the Act. JA53, Pet.App.261a–62a. On appeal, though, it was revealed that Hecox had tried out for the women's track and cross-country teams in the fall of 2020 "but did not make the team." COA.Dkt.65 at 17 n.4. Hecox then took "a temporary leave of absence from BSU." *Ibid.*

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[1] Audio of Hecox's testimony begins at 1:39:00 at this link: insession.idaho.gov/IIS/2020/Senate/Committee/State%20Affairs/200306_ssta_0800AM-Meeting.mp4.

At oral argument in May 2021, Hecox's counsel confirmed Hecox "took a leave of absence after not making the team" but was "training to go back" and "return to school in the fall and try out again," arguing the case was not moot because it was not "impossible" to grant Hecox relief. Oral argument audio at 25:50–26:01, 27:21–38, 27:57–28:06, www.youtube.com/watch?v=7CzqwTsGi_Q&t=1550s. After argument, Hecox submitted a declaration changing the timeline: actually, Hecox intended to reenroll "in January 2022" and "again try out for track and cross-country once I am back in school." COA.Dkt.140-2 at 4.

Hecox reenrolled in January, but the tryout was further delayed. On remand to determine whether the case was moot, COA.Dkt.143, Hecox said the plan was to try "out for the women's track and cross-country teams at the next available opportunity, in Fall 2022," D.Ct.Dkt.97-1 at 6. In the meantime, Hecox would "join the women's club soccer team." *Ibid.* Hecox had "reviewed the … women's club soccer team's web-page," emailed the team president, and learned the "only requirement to play was paying $275 in dues per semester." *Ibid.*

Ultimately, Hecox did play women's club soccer in the spring of 2022. D.Ct.Dkt.102 at 1. And that kept the case from becoming moot. D.Ct.Dkt.105 at 20–25. However, Hecox did *not* try out for track and cross-country in 2022 as promised. COA.Dkt.164-2 at 3. Hecox contracted COVID-19, and between that and "other stressors," Hecox thought it would be "unwise to try out." *Ibid.*

In lieu of running, Hecox kept playing women's club soccer, which Hecox intended to play "through the remainder" of Hecox's "time at BSU." *Id.* at 5. For a second time, that was enough to prevent the case from becoming moot. COA.Dkt.190 at 4–6; Pet.App.22a n.7. And the Ninth Circuit ultimately affirmed, barring Idaho from enforcing the Act "in its entirety" against anyone. Pet.App.130a n.22.

In the fall of 2023, Hecox finally tried out again for women's track and cross-country. COA.Dkt.233 at 3. Hecox "did not make the teams." *Ibid.* But Hecox was still playing women's club soccer, which "does not require try-outs," and which Hecox "could not do absent the preliminary injunction." *Ibid.*

After this Court's decision in *Labrador* v. *Poe*, 144 S.Ct. 921 (2024), the Ninth Circuit amended its prior opinion and remanded to reevaluate the injunction's scope. Pet.App.58a. The district court narrowed its injunction and granted the parties' joint request for a stay pending this Court's resolution of this appeal, choosing Hecox's requested stay of all proceedings over Petitioners' request for a narrower stay to allow a motion to intervene. D.Ct.Dkt.137 at 4; D.Ct.Dkt.138.

When Petitioners sought certiorari, Hecox did not say anything about potentially withdrawing from women's sports at BSU. Instead, Hecox's brief in opposition added that Hecox was "playing women's club soccer and running" in what was supposed to be Hecox's "final year of college." Br.in.Opp.1, 8, 21.

Once again plans changed, and the year the petition was pending was not Hecox's final year. At no point did Hecox warn the Court of any chance Hecox might stop playing women's sports before graduating.

Instead, Hecox waited until after this Court had granted the petition and ten days before Petitioners' merits brief was due before filing a notice of voluntary dismissal in the district court and a suggestion of mootness in this Court. D.Ct.Dkt.141.

Petitioners moved to strike the district-court filing as void because Hecox waived the right to file a voluntary dismissal while this case was stayed and induced Petitioners not to file an answer by agreeing to that stay. D.Ct.Dkt.147; D.Ct.Dkt.152. The district court has not yet ruled on that motion.

ARGUMENT

I. Hecox's attempt to unilaterally dismiss this case is barred by the stipulated stay of all proceedings that Hecox agreed to below.

Hecox's attempted notice of dismissal does not moot this case. The stipulated stay in the district court precludes Hecox's attempt to file that notice, just as it precluded Idaho from filing an answer or moving for summary judgment.

This Court has long held that a "party may waive any provision, either of a contract or of a statute, intended for his benefit." *Shutte* v. *Thompson*, 82 U.S. 151, 159 (1872). And courts enforce such waivers even when made well "before any dispute [between the parties] has arisen." *D. H. Overmyer Co. Inc., of Ohio* v. *Frick Co.*, 405 U.S. 174, 184 (1972). Otherwise, a party might rely on the waiver and then, if it is not enforced, the waiving party might "avail himself of what is substantially a fraud." *Shutte*, 82 U.S. at 159.

That is exactly what Hecox attempts here. In requesting a complete stay of "proceedings" pending this Court's review, Hecox insisted there would be "no activity in the district court while this matter is before the Supreme Court." D.Ct.Dkt.135 at 8–9. And "nothing [would] happen … while the stay [was] in place." *Id.* at 9.

Yet again, Hecox did not follow through on those assurances. By agreeing to a stay, Hecox induced Petitioners to delay filing an answer that would have ensured Hecox could not short-circuit this Court's review. Having gained that advantage, Hecox is estopped from "seeking a second advantage by taking an incompatible position." *Helfand* v. *Gerson*, 105 F.3d 530, 534 (9th Cir. 1997) (citation modified).

What's more, this Court's cases show that the district court's stay of "all proceedings" rendered Hecox's purported dismissal void. Just last Term, this Court held that the word "proceedings" in Rule 41 and Rule 60(b) includes "all further actions in the case," including voluntary dismissals. *Waetzig* v. *Halliburton Energy Servs., Inc.*, 604 U.S. 305, 316 (2025). And two Terms ago, the Court observed that a dismissal is inconsistent with a "stay" because a stay is a "'temporary suspension' of legal proceedings, not the conclusive termination of such proceedings." *Smith* v. *Spizzirri*, 601 U.S. 472, 477 (2024) (quoting Black's Law Dictionary 1109 (2d ed. 1910) ("Stay of proceedings")). Hecox's purported voluntary dismissal qualified as a proceeding and thus had no effect in light of the stay. See *USX Corporation* v. *Penn Central Corporation*, 130 F.3d 562, 568 (3d Cir. 1997). And that filing by itself does not make this case moot.

II. This case isn't moot given the parties' interests in the outcome and this Court's interest in preventing manipulation of its docket.

City of Erie controls in cases like this one where "it is the plaintiff who, having prevailed below, now seeks to have the case declared moot." 529 U.S. at 288. As the party asserting mootness, Hecox "bears the burden of coming forward with the subsequent events that have produced that alleged result." *Cardinal Chem. Co.* v. *Morton Int'l, Inc.*, 508 U.S. 83, 98 (1993). And a "case becomes moot only when it is impossible for a court to grant any effectual relief." *Gutierrez* v. *Saenz*, 145 S.Ct. 2258, 2269 (2025) (citation modified). Here, that effective relief includes an order upholding the Act in the event that Hecox's shifting intentions shift yet again.

A. Hecox still has an interest in preserving the decision below to keep open the option of playing women's sports.

First, this case is not moot simply because Hecox claims to have decided not to play women's sports. If that were enough, this Court would have reached the opposite conclusion in *City of Erie*. There, the plaintiff corporation "submitted an affidavit stating that it had 'ceased to operate a nude dancing establishment in Erie.'" 529 U.S. at 287. In its brief, the corporation went further, claiming it "had no remaining interest in either those premises or any other nude dancing establishment in Erie or elsewhere." Resp't's Br., *City of Erie* v. *Pap's A.M.*, 1999 WL 809553, at *3 (Sep. 30, 1999).

Despite those assertions, this Court held that the corporation had a "concrete stake in the outcome of [the] case because, to the extent [it had] an interest in resuming operations, it [had] an interest in preserving the [lower court's] judgment." 529 U.S. at 288. It was "still incorporated under Pennsylvania law, and it could again decide to operate a nude dancing establishment in Erie." *Id.* at 287. And that was true despite the "advanced age" of the corporation's owner because it was not "absolutely clear" he would remain in retirement. *Id.* at 288. Finally, the Court's "appraisal" of the corporation's "affidavit [was] influenced by [the corporation's] failure, despite its obligation to the Court, to mention a word about the potential mootness issue in its brief in opposition." *Ibid.*

All of that applies equally here. Hecox remains enrolled at BSU. App'x.A.1. And Hecox "could again decide" to play women's sports. *City of Erie*, 529 U.S. at 287. Indeed, there are even more reasons to credit that possibility here:

(1) Hecox previously expressed an intent to play women's club soccer "through the remainder" of Hecox's "time at BSU," COA.Dkt.164-2 at 5;

(2) Hecox has previously explained how easy it is to join the women's club soccer team, D.Ct.Dkt.97-1 at 6; COA.Dkt.233 at 3;

(3) Hecox says that "women's team sports have played" a "positive role" in Hecox's life and that choosing not to play is an "extremely difficult decision," Sugg.App.A.1a; and

(4) Hecox has repeatedly failed to follow through on statements about plans to reenroll, try out for certain teams, or graduate by a certain date.

Finally, like the corporation in *City of Erie*, Hecox did not mention the possibility Hecox might stop playing women's sports until "after this Court granted certiorari." *City of Erie*, 529 U.S. at 288. If those plans change again, like so many times before, the injunction and the decisions below will still give Hecox the right to play women's sports. As a result, Hecox has a sufficiently "concrete stake in the outcome of this case" to prevent the case from becoming moot. *Ibid.*

B. Idaho and BSU still have an interest in enforcing the Fairness in Women's Sports Act and in reversing the decision below.

In *City of Erie*, this Court also held that the city had "an ongoing injury because it [was] barred from enforcing the public nudity provisions of its ordinance." 529 U.S. at 288. If that ordinance was "found constitutional," the city could "enforce it, and the availability of such relief [was] sufficient to prevent the case from being moot." *Ibid.* So too here. If the Fairness in Women's Sports Act is "found constitutional," Petitioners can enforce it, and that's enough "to prevent the case from being moot." *Ibid.*

The availability of *Munsingwear* vacatur does not change that conclusion for two reasons. First, *Munsingwear* exists because a "party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance … ought not in fairness be forced to acquiesce in that ruling." *Camreta* v.

Greene, 563 U.S. 692, 712 (2011) (citation modified). Here, though, vacatur would change very little for Petitioners. They would still not be able to enforce the Fairness in Women's Sports Act because the decision below has already led to other binding Ninth Circuit precedent on the same questions. See *Doe* v. *Horne*, 115 F.4th 1083, 1093 n.2, 1095 & n.4, 1102, 1104–05, 1107 & n.12, 1108, 1110 (9th Cir. 2024) (citing *Hecox* a dozen times and repeating most of its key holdings in concluding that Arizona's Save Women's Sports Act likely violates the Equal Protection Clause); *Roe* v. *Critchfield*, 137 F.4th 912, 923 (9th Cir. 2025) (citing *Hecox* for the proposition that laws "discriminate[] on the basis of transgender status" if they fail to treat transgender-identifying individuals consistently with their gender identities). Unless the Court reaches the merits, Petitioners will be forced to "acquiesce in" *Hecox*'s key holdings now embedded in its Ninth Circuit progeny. *Camreta*, 563 U.S. at 712.

Second, *Camreta* shows that this Court assesses the parties' continued interest in the outcome without considering the availability of *Munsingwear* vacatur. In *Camreta*, the Court held that a petitioner had a sufficient "stake in the outcome" to keep the case from being moot because he "remain[ed] employed as a child protective services worker," and had "an interest in challenging the Ninth Circuit's ruling requiring him to obtain a warrant." 563 U.S. at 710. The Court ultimately found the case moot and granted vacatur because the *respondent* did not have a live stake—but the availability of vacatur did not defeat the *petitioner*'s interest. *Id.* at 712–14. To the contrary, if the petitioner had lacked a live interest, the Court would not have granted vacatur. *Id.* at 712 n.10.

C. This Court has an interest in stopping litigants from manipulating the docket to insulate favorable decisions from review.

This Court in *City of Erie* also explained that its "interest in preventing litigants from attempting to manipulate the Court's jurisdiction to insulate a favorable decision from review further counsel[ed] against a finding of mootness." 529 U.S. at 288. There, like here, the plaintiff who prevailed below sought "to have the case declared moot." *Ibid.* And the plaintiff had waited until "after this Court granted certiorari" to raise the issue. *Ibid.* "Such postcertiorari maneuvers designed to insulate a decision from review by this Court must be viewed with a critical eye." *Knox* v. *Serv. Emps. Int'l Union*, 567 U.S. 298, 307 (2012).

Gamesmanship concerns are even more pronounced here. Hecox fought tooth and nail for years to prevent this case from becoming moot in the lower courts. Hecox told the Ninth Circuit, "I intend to play for the BSU's Women's Club Soccer Team this semester, next semester, and through the remainder of my time at BSU." COA.Dkt.164-2 at 5. Hecox never wavered in that commitment until after this Court issued its decision in *United States* v. *Skrmetti*, 145 S.Ct. 1816 (2025), and granted cert.

What changed? Hecox has not been prevented from playing women's sports or lost interest in them; instead, Hecox claims the "extremely difficult decision" to stop playing is motivated by a desire to avoid "continu[ing] [this] lawsuit" and risking potential harassment. Sugg.App.A.2a.

This about-face after certiorari, justified by no external events beyond a general atmosphere of "increased intolerance" for transgender athletes, *ibid.*, raises concerns of counsel-assisted docket manipulation like those that other courts have confronted in the past. See, *e.g.*, *Boe* v. *Marshall*, 767 F. Supp. 3d 1226, 1249, 1279–80 (M.D. Ala. 2025). Against that backdrop, this Court's interest in preventing litigants from manipulating the Court's jurisdiction to avoid an unfavorable result "further counsels against a finding of mootness here." 529 U.S. at 288.

If Hecox is allowed to "manufacture mootness" in this manner, *Gutierrez*, 145 S.Ct. at 2269, then some of the most important cases the Court decides each Term will be placed in jeopardy while a plaintiff who won below weighs the risk of setting unfavorable nationwide precedent, see*, e.g.*, *Food & Drug Admin.* v. *R.J. Reynolds Vapor Co.*, 145 S.Ct. 1984 (2025); *Food & Drug Admin.* v. W*ages & White Lion Invs., L.L.C.*, 604 U.S. 542 (2025); *Bondi* v. *VanDerStok*, 145 S.Ct. 857 (2025); *Medina* v. *Planned Parenthood S. Atl.*, 145 S.Ct. 2219 (2025). "Article III mandates no such result." *Gutierrez*, 145 S.Ct. at 2269.

CONCLUSION

This Court should reject Hecox's suggestion of mootness and decide this case on the merits after full briefing and oral argument.

Respectfully submitted,

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SEPTEMBER 2025

APPENDIX

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APPENDIX A

DECLARATION OF AMANDA NELSON

I, Amanda Nelson, depose and say as follows:

1. In my role as the Registrar at Boise State University, I am the Registrar for Boise State University. I make this declaration based on the records of the Boise State registrar's office and my personal knowledge of Boise State's practices and procedures.

2. Lindsay Hecox is an undergraduate student at Boise State University, currently enrolled in 14 credits for Fall 2025 term.

3. Hecox is currently enrolled in Bachelor of Science in psychology and a sport coaching certificate program. Hecox's current courses fulfill requirements for both the Bachelor of Science in Psychology as well as the Sport Coaching Certificate program.

4. Hecox cannot complete the requirements for the Sport Coaching Certificate by May 2026 because one of the remaining required courses - Kinesiology 362 - will not be offered again until fall 2026.

5. Hecox could graduate in May 2026 with a Bachelor's of Science in psychology if she completes the required 13 credits - including 6 required for the Psychology Major and 7 electives - in Spring 2026, but unless the Kinesiology 362 requirement is waived or substituted, Hecox will not be able to graduate in May 2026 with a sports coaching certificate.

6. The registrar's office is not aware of Hecox expressing any intent to seek a waiver or withdraw from the certificate program.

I certify under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

/s/ 

Amanda Nelson

Executed on: September 25, 2025