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

REPLY IN SUPPORT OF SUGGESTION OF MOOTNESS

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INTRODUCTION

This case is moot, and petitioners provide no basis to conclude otherwise. Lindsay Hecox filed this action more than five years ago, when she was a freshman at Boise State University and hoped to try out for BSU's women's track and cross-country teams. But her life has changed in the years since, and she has faced significant challenges—from illness to her father's passing to the negative public scrutiny this case has invited—that have affected her both personally and academically. Now at age 25, after carefully considering the risk of harassment, her mental health, her safety, and her desire to graduate as soon as possible, she decided to end her efforts to play collegiate women's sports and to formally abandon her claims in this case. Accordingly, she has permanently ceased playing any women's sports in Idaho covered by H.B. 500. She will not try out for or participate in any school-sponsored women's sports covered by H.B. 500 again. And she will never bring another lawsuit challenging H.B. 500.

Because there is no live case or controversy left, Ms. Hecox filed a notice of voluntary dismissal in the district court dismissing her claims with prejudice. And she agrees that the preliminary injunction issued in her favor should be vacated, giving petitioners the precise relief that they would receive if they prevailed in this Court. *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 23 (1994); *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39-40 (1950); *see Carnahan v. Maloney*, 143 S. Ct. 2653 (2023).

Petitioners advance no persuasive justification to keep this case alive. They do not dispute that Ms. Hecox has abandoned her lawsuit and disclaimed all

future lawsuits against H.B. 500. They do not deny that she has stopped playing sports that are subject to H.B. 500. And they cannot contest that vacatur of the preliminary injunction would give them a complete victory in this case. Instead, petitioners rely on inapposite case law, cast baseless aspersions on Ms. Hecox's sworn statement, and assert that it would be more convenient for them if this Court reached the merits even though no live controversy remains. None of those arguments are a basis to hear a moot case—particularly where, as here, the Court is already reviewing a parallel case raising the same issues this Term. *See West Virginia v. B.P.J.*, No. 24-43.

ARGUMENT

I. This Court Need Decide Only the Article III Question.

Petitioners principally argue (at 5-6) that Ms. Hecox's notice of voluntary dismissal with prejudice is not valid because the district court stayed proceedings pending this Court's review. That is wrong, as Ms. Hecox has explained to the district court.[1] But for this Court's purposes, it is entirely irrelevant.

The Article III mootness issue does not depend on

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[1] Contrary to petitioners' contention, Hecox's notice of dismissal was effective in the district court upon filing, as the text of Fed. R. Civ. P. 41(a)(1) "contains no exceptions"—including the presence of a stay—"that call for the exercise of judicial discretion by any court." *Gardiner v. A.H. Robins Co.*, 747 F.2d 1180, 1190 (8th Cir. 1984); *see also Am. Soccer Co. v. Score First Enters.*, 187 F.3d 1108, 1110 (9th Cir. 1999) (explaining "the court has no role to play" when a voluntary dismissal notice is filed, and "[t]here is not even a perfunctory order of the court closing the file" (citation omitted)).

whether Ms. Hecox's voluntary dismissal is effective now or later. It hinges on her decision to permanently cease playing sports covered by H.B. 500 and her sworn, unequivocal abandonment of her present and future claims against Idaho. Those facts mean that there is no "actual case or controversy" under Article III. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983); *see* Sugg. of Mootness, at 5-6. And that Article III defect prevents further proceedings regardless of whether the voluntary dismissal with prejudice is immediately effective.

II. There Is No Article III Case or Controversy.

Ms. Hecox has abandoned her case, ceased all activity covered by H.B. 500, and committed to never filing another lawsuit against H.B. 500. Sugg. of Mootness, App. A ¶¶ 6, 8-10. She therefore no longer has a "personal stake" in the outcome of this action, and this case is moot. *United States v. Sanchez-Gomez*, 584 U.S. 381, 385-86 (2018) (quoting *Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013)); *see also Deakins v. Monaghan*, 484 U.S. 193, 200 (1988) (case is "rendered moot" where plaintiff expresses "willingness permanently to withdraw [her] . . . claims"). Petitioners' contrary arguments are without merit.

1. Petitioners contend (at 7-9) that *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000) "controls in cases like this one" and demonstrates that Ms. Hecox has "an interest in preserving the [lower court's] judgment." Petitioners' reliance on *City of Erie* is misplaced for two reasons.

First, the Court in *City of Erie* found on the distinct facts there that the respondent had a live stake in the

case given its potential "interest in resuming operations." 529 U.S. at 288. The Court reached that conclusion in part because the relevant mooting events had occurred before the respondent filed its brief in opposition, yet "despite its obligation to the Court," the respondent had not "mention[ed] a word about the potential mootness issue" at that time. *Id.* Here, there is no analogous continued "interest in resuming operations" given that Ms. Hecox has sworn that she will never again play sports covered by H.B. 500 and will never again challenge the Idaho law. And Ms. Hecox immediately informed this Court of the mootness issue after she determined to permanently cease participation in sports covered by H.B. 500—a decision she had not yet made when she filed her brief in opposition nearly a year ago at a much different point in her life and college career.

Second, *City of Erie* arose in a distinct posture—review from a *state* court judgment—that bore on the mootness analysis. *See* 529 U.S. at 288. When the Court dismisses a petition for certiorari from state court, it does not vacate the judgment below. *ASARCO Inc. v. Kadish*, 490 U.S. 605, 621 n.1 (1989). "Acceptance of the mootness plea" would thus have left "intact the judgment below." *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 279 (2001). Not so for a case like this one, arising from federal court: As this Court explained when it distinguished *City of Erie* in a case in a similar posture to this one, the Court's ability to vacate the judgment below under *Munsingwear* means that Ms. Hecox would leave "the fray a loser, not a winner." *Id.* Thus, "[d]ismissal of the petition will not keep [Idaho] under the weight of an adverse judgment, deprive the [State] of its . . .

victory, or reward" any supposed "manipulation." *Id.*

2. Petitioners assert (at 8-9) that Ms. Hecox "could again decide" to play sports covered by H.B. 500. But Ms. Hecox has submitted a sworn declaration otherwise, and petitioners' groundless speculation second-guessing her future plans cannot revive a moot case. *See, e.g.*, *DeFunis v. Odegaard*, 416 U.S. 312, 320 n.5 (1974) ("Speculative contingencies afford no basis for our passing on the substantive issues . . . in the absence of evidence that this is a prospect of immediacy and reality" (internal quotations and citations omitted)). Moreover, even if Ms. Hecox wanted to resume participating in women's sports covered by H.B. 500 in the future, she could not do so because she submitted a binding declaration committing to never bring a lawsuit challenging H.B. 500 again. Sugg. of Mootness, App. A ¶ 8; *see Whole Women's Health v. Jackson*, 595 U.S. 30, 48 (2021) (finding that "petitioners lack standing to sue" an individual because he has "supplied sworn declarations" attesting that he "possesses no intention to file a[] . . . suit against them").

Petitioners' attacks on Ms. Hecox's credibility, moreover, are factually baseless. Petitioners claim (at 9) that Ms. Hecox "has repeatedly failed to follow through on statements about plans to reenroll, try out for certain teams, or plans to graduate by a certain date." But the district court and the Ninth Circuit have already rejected that precise criticism. In 2020, Ms. Hecox temporarily withdrew from BSU due to personal and financial difficulties. *See* 9th Cir. Doc. 135-2 ¶¶ 10-13. Petitioners claimed that the case was moot as a result and challenged Ms. Hecox's representations about her circumstances—questioning the

reliability of her stated intention to return to BSU and to continue participating in women's sports. *See, e.g.*, D. Ct. Doc. 96, at 12 ("Hecox may plan to do everything needed to try out in Fall 2022, but as her actions have revealed, plans can change.").

But after reviewing the facts, the district court rejected petitioners' characterizations. *See* D. Ct. Doc. 105. The district court found that Ms. Hecox's stated plans were "concrete" and that she had "steadfastly" followed through with them. *Id.* at 15, 17 ("[T]he Court finds Hecox not only had concrete plans to re-enroll, but in fact followed through with such plans."); *see id.* at 15, 22 (similar). The court thus found that the suggestion that Ms. Hecox "may change her mind" was "belied by the record." *Id.* at 17; *see also* 9th Cir. Doc. 190, at 4 ("Not only did Hecox demonstrate a concrete plan to re-enroll and try out for women's sports, but she followed through on those plans by establishing state residency, re-enrolling at BSU with significant savings for tuition and other expenses, and training to participate in women's sports teams."). This history forcefully refutes petitioners' efforts to cast doubt on Ms. Hecox's sworn statements.

3. Petitioners finally claim (at 9-10) that vacatur of the court of appeals' judgment is not enough because they dislike the outcome of a different Ninth Circuit case that cited to this one, *Doe v. Horne*, 115 F.4th 1093 (9th Cir. 2024), *petition for cert. pending sub nom. Petersen v. Doe*, No. 24-449. That argument fails.

If the decision below is vacated and the case is dismissed, petitioners will have received all the relief they could have received from this Court. Petitioners do not dispute that "a decision that has been vacated

has no precedential authority whatsoever" in the Ninth Circuit. *Marley v. United States*, 567 F.3d 1030, 1038 (9th Cir. 2009), *overruled on other grounds by Kwai Fun Wong v. Beebe*, 732 F.3d 1030 (9th Cir. 2013). But petitioners nonetheless urge this Court to issue a ruling in a moot case as a way to collaterally challenge a different decision involving different parties. That misbegotten invitation to issue an advisory opinion should be rejected. *See, e.g.*, *Diffenderfer v. Cent. Baptist Church of Miami, Fla., Inc.*, 404 U.S. 412, 414 (1972) ("'The case has therefore lost its character as a present, live controversy of the kind that must exist if we are to avoid advisory opinions on abstract propositions of law.'" (quoting *Hall v. Beals*, 396 U.S. 45, 48 (1969)).

Regardless, any "interest" petitioners may have in the issues presented in *Horne* are likely to be answered by *Horne* itself, which is currently pending on a petition for certiorari, or by *West Virginia v. B.P.J.*, No. 24-43, a case that will be heard this Term that involves similar issues and remains live. Petitioners do not dispute that *B.P.J.* presents nearly identical questions to those presented here (and in *Horne*). There is no plausible basis to proceed with a moot case on the basis of petitioners' abstract interests, given that the Court will consider the issues in a live case that poses no justiciability concerns regardless.

Petitioners' accusation (at 11-12) that Ms. Hecox is seeking to "manipulat[e]" the Court's docket through "[g]amesmanship" is therefore unfounded. As Ms. Hecox's sworn statement makes clear, her "extremely difficult decision" to permanently cease playing women's sports covered by H.B. 500 and to dismiss her

case with prejudice was a deeply personal one. Sugg. of Mootness, App. A ¶¶ 4, 6-7. She explained that she has "come under negative public scrutiny from certain quarters" since commencing this case, has "observed increased intolerance generally for people who are transgender and specifically for transgender women who participate in sports," and fears that if she continues this lawsuit she "will personally be subjected to harassment that will negatively impact [her] mental health, [her] safety, and [her] ability to graduate as soon as possible." *Id.* ¶ 7. Ms. Hecox did not decide to stop playing sports covered by H.B. 500 and dismiss her case to prevent the Court from deciding the equal-protection question presented—indeed, she could not have made the decision on that basis because that question will be decided by this Court in *B.P.J.* regardless. Petitioners have no tenable argument to keep this case on the Court's docket; instead, the Court should dismiss this case as moot.

CONCLUSION

This Court should vacate the court of appeals' judgment on mootness grounds and remand with instructions to dismiss the appeal.

Respectfully submitted,

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