No. 25-162

IN THE
Supreme Court of the United States

STATE OF TENNESSEE

Petitioner,

v.

ROBERT F. KENNEDY, JR., in his official capacity as Secretary of the U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR TENNESSEE

JONATHAN SKRMETTI
Attorney General

J. MATTHEW RICE
Solicitor General
Counsel of Record

HARRISON GRAY KILGORE
Senior Assistant Attorney General for Strategic Litigation

OFFICE OF TENNESSEE ATTORNEY GENERAL
P.O. Box 20207
Nashville, TN 37202
(615) 741-3491
Matt.Rice@ag.tn.gov

Counsel for Petitioner

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The federal government agrees that the Sixth Circuit's judgment should be vacated—either pursuant to this Court's "established practice" under *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950), or in line with this Court's GVR in *Oklahoma v. HHS*, 145 S. Ct. 2837 (Mem.) (2025). That acquiescence is well founded. As the federal government acknowledges, because HHS unilaterally mooted this otherwise certworthy appeal, this is a textbook case for *Munsingwear* vacatur. Br. 12-14. And the federal government is right that "if the Court were to reject the parties' view" about mootness, the "disposition in *Oklahoma* would be equally applicable here" since "this case is similarly situated in all material respects." *Id.* at 15-16. Given these concessions, Tennessee makes four brief points in reply:

1. *Munsingwear* vacatur is appropriate here, notwithstanding the Court's GVR in *Oklahoma*. *Munsingwear* vacatur requires mootness, *see* 340 U.S. at 39, and *Oklahoma* didn't present a moot appeal. The federal government in March 2025 committed to restoring only "*partial* funding" for Oklahoma's previously stripped Title X grant. Resp't Letter at 1, *Oklahoma v. HHS*, No. 24-437 (Apr. 15, 2025) (emphasis added). Of course, "a partial restoration of funding is just that—partial." Pet'r Letter at 1, *Oklahoma v. HHS*, No. 24-437 (Apr. 17, 2025). And "[w]ithout written assurance that its Title X funding [would] be restored in full," *id.*, Oklahoma maintained a "legally cognizable interest in the outcome" of its preliminary-injunction appeal, *see Already, LLC v. Nike*, 568 U.S. 85, 91 (2013) (quotation omitted). With *Munsingwear*

vacatur off the table, this Court rightly GVR'd Oklahoma's challenge to allow the Tenth Circuit to reconsider its Spending-Clause analysis in light of *Medina v. Planned Parenthood South Atlantic*, 606 U.S. 357 (2025).

But Tennessee's appeal is moot. Like Oklahoma, Tennessee received a notice in March 2025 that HHS would partially restore the State's Title X funding. C.A.Doc. 80-1. But HHS later confirmed that it would restore Tennessee's Title X funding prospectively at *full funding* (minus a small, unrelated reduction necessitated by congressional appropriations). *See* Pet.App.159a. HHS simultaneously made clear that it will "declin[e] to enforce" the 2021 Rule's abortion-related mandates against Tennessee, and the State can "rely" on that position going forward. Pet.App.160a. So, Tennessee has received key assurances that Oklahoma lacked. The parties thus agree that there is no longer a "need for preliminary relief reinstating Tennessee's Title X funding." Br. 10-11 (emphasis omitted); Pet. 15-16.

This Court's "normal practice when mootness frustrates a party's right to appeal" is to vacate the judgment below and remand with a direction to dismiss. *Camreta v. Greene*, 563 U.S. 692, 713 (2011) (citation omitted). There is no reason for a different approach here.

2. The federal government confirms that HHS took "unilateral action" to restore Tennessee's funding, which mooted this appeal. Br. 12 (quotation omitted). As the Brief acknowledges, HHS's initial notice

of restored funding "erroneously stated that the award was being restored 'pursuant to a settlement agreement with the recipient.'" *Id.* at 8 (quoting Pet.App.166a). No settlement agreement existed. *Id.*; Pet. 32; Pet.App.159a. And HHS later clarified that it had restored Tennessee's funding on its own initiative. *See* Br. 8. Since all agree that "Tennessee lost the chance to seek further review through no fault of its own," *id.* at 12, this Court's "principal" equitable consideration under *Munsingwear* favors vacatur, *see U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 24 (1994).

3. The federal government also agrees that this appeal was certworthy—just for one reason, instead of three. As the federal government highlights, this Court "has several times granted certiorari to address" HHS's authority to mandate referrals under Section 1008, most recently to resolve "squarely conflicting decisions" by "the en banc Fourth and Ninth Circuits." Br. 13-14 (collecting citations); *see* Pet. 22-23. And this appeal would have presented a clean vehicle for the Court to answer that question free from "*Chevron*'s now-defunct framework." *See* Pet. 22; Br. 14. Vacatur of the Sixth Circuit's decision is thus the proper course here, because HHS prevented Tennessee "from obtaining the review to which [it was] entitled." *Camreta*, 563 U.S. at 712 (quoting *Munsingwear*, 340 U.S. at 39).

Since being denied review of one certworthy issue is plenty to merit *Munsingwear* vacatur, the federal government's drive-by dismissal of the two other is-

sues Tennessee raised should not deter that disposition. That's particularly true because the federal government provides basically no analysis for why those issues would not have warranted review. *See* Br. 14 n.1.

The federal government baldly denies the existence of a circuit split on the Spending-Clause issue. *Id*. But, as Tennessee demonstrated, the Fourth, Fifth, Ninth, and Eleventh Circuits have all recognized that spending conditions must come from the statute, not regulations like the Sixth Circuit allowed here. Pet. 26-29. And this Court's GVR in *Oklahoma* proves that the Spending-Clause issue deserved further review. 145 S. Ct. at 2838.

The federal government also claims "there is no square circuit split" on "the proper application of *stare decisis* under *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369 (2024)." Br. 14 n.1. Whatever the status of the split, *see* Pet. 21-22, the circuits need guidance on this "question[] of importance," *Magnum Imp. Co. v. Coty*, 262 U.S. 159, 163 (1923). As Tennessee explained, Pet. 19—and as Judge Kethledge highlighted in dissent, Pet.App.39a-40a—by conflating "specific agency action[s]" entitled to stare decisis with an agency's "particular construction of a statute," Pet.App.23a, the panel majority neutered this Court's efforts to inter *Chevron* deference. And that is to say nothing of the Pandora's Box of analytical problems that the panel majority opened but left unaddressed regarding the stare decisis effect of circuit-level *Chevron* cases. Pet. 19. Ensuring that one of this Court's most important administrative-law decisions is not

hobbled out of the gate would have warranted review. *Id.* at 16-22.

4. While Tennessee and the federal government agree that *Munsingwear* vacatur is most appropriate, the Court should GVR if it "reject[s] the parties' view" on mootness, because "this case is similarly situated [to *Oklahoma*] in all material respects." Br. 15-16; Pet. 34-36. Indeed, the Sixth Circuit borrowed heavily from the Tenth Circuit's now-vacated Spending-Clause decision. *See* Pet.App.9a-12a. Tennessee's Petition is thus "similarly situated" to Oklahoma's concerning whether federal agencies may lawfully impose spending conditions found nowhere in the statute through rulemaking. Br. 15-16. So, if this Court disagrees with the parties that this appeal is moot, vacating and remanding this appeal in light of *Medina* is appropriate, just like in *Oklahoma*.

CONCLUSION

The Court should grant the petition for certiorari, vacate the judgment of the court of appeals, and remand with instructions to dismiss the appeal as moot under *Munsingwear*. In the alternative, consistent with *Oklahoma*, 145 S. Ct. at 2838, the Court should grant the petition for certiorari and remand for further consideration in light of *Medina*.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General

J. MATTHEW RICE
Solicitor General
Counsel of Record

HARRISON GRAY KILGORE
Senior Assistant Attorney General for Strategic Litigation

OFFICE OF TENNESSEE ATTORNEY GENERAL
P.O. Box 20207
Nashville, TN 37202
(615) 741-3491
Matt.Rice@ag.tn.gov

Counsel for Petitioner

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