No. 26-22

In the Supreme Court of the United States

DOUGLAS B. MOYLAN, ATTORNEY GENERAL OF GUAM,

Petitioner,

v.

GUAM SOCIETY OF OBSTETRICIAN AND GYNECOLOGISTS, ET AL.,

Respondents.

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

BRIEF IN OPPOSITION OF GOVERNOR LOURDES A. LEON GUERRERO

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QUESTION PRESENTED

In 1990, the Guam Legislature passed Public Law No. 20-134, "outlaw[ing] almost all abortions" in Guam. Pet. App. 14a. A district court promptly enjoined enforcement of the law, the Ninth Circuit affirmed, and this Court declined review.

After this Court overturned *Roe* v. *Wade*, petitioner (Guam's attorney general) moved the district court under Rule 60(b)(5) to vacate the injunction. The district court denied relief on Guam-specific grounds. While petitioner's appeal was pending, the Guam Supreme Court determined that Public Law 20-134 had been "repealed by implication." *In re Leon Guerrero*, 2023 Guam 11, ¶ 60, *cert. denied sub nom*. *Moylan* v. *Guerrero*, 145 S. Ct. 136 (2024). The court of appeals thus dismissed petitioner's appeal as moot, because—as Judge VanDyke explained in agreeing with that outcome on denial of en banc review—the Guam Supreme Court's judgment means that "under Guam law," the statute in question "does not exist." Pet. App. 70a.

The question presented is:

Whether the court of appeals correctly dismissed as moot an appeal from the denial of a motion to dissolve an injunction against enforcement of a particular territorial statute, after the territory's highest court held that the statute had been repealed.

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INTRODUCTION

Petitioner, Guam's Attorney General, has moved to vacate a 1990 federal injunction barring enforcement of a territorial statute restricting access to abortions. During his appeal from the district court's denial of his motion on the merits, the Guam Supreme Court held in a different proceeding that the underlying Guam statute has been impliedly repealed by subsequent Guam abortion legislation—it has no force or effect and for all intents and purposes no longer exists. Petitioner sought review of that Guam-law determination from this Court and was denied. The court of appeals below therefore dismissed petitioner's appeal of his effort to vacate the injunction as moot.

That an appeal concerning an injunction becomes moot when the law the injunction prohibits enforcing ceases to exist is both plainly correct and deeply uncontroversial. The result follows straightforwardly from well-established mootness principles: If there is no law to enforce, an injunction barring enforcement of that nonexistent law does not stop petitioner from doing anything. An appellate ruling in his favor would therefore not afford him any meaningful relief, and there is no live case or controversy. Even petitioner does not claim there is any disagreement on this fundamental point; all courts to have considered similar situations, including the Fifth and Eighth Circuits on materially identical facts, have come out the same way as the Ninth Circuit here.

Turning a blind eye to this clear jurisdictional defect, petitioner seeks to recast this case as implicating nationwide questions concerning *Dobbs*, *Roe*, and historical injunctions. But just as the Guam Supreme Court explained in holding the underlying territorial

statute repealed, "this case is not really about *Dobbs*." *In re Leon Guerrero*, 2023 Guam 11, ¶ 60. The district court rejected petitioner's Rule 60(b)(5) motion because he failed to respond to respondents' Guam-specific arguments (and therefore failed to carry his burden as the movant), not because *Dobbs* could not justify relief. And the Ninth Circuit dismissed petitioner's appeal because the Guam Supreme Court authoritatively held, as a matter of local law, that the statute in question no longer exists, without ruling on the merits of his appeal or his Rule 60(b)(5) motion.

While there is no doubt that *Dobbs* was a seismic shift in abortion regulation, this case is about something much more mundane: quotidian application of basic mootness principles. As Judge VanDyke explained in the very opinion petitioner exhaustively cites, dismissal was therefore "the right call" despite the weightiness of the subject matter. Pet. App. 61a. This Court's approach should be the same: "While this Court decides questions of public importance, it decides them in the context of meaningful litigation." *The Monrosa* v. *Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959). And here, the court of appeals' mootness dismissal was correct precisely because petitioner's appeal could no longer provide meaningful relief.

The petition should be denied.

STATEMENT

1. In 1990, the Guam Legislature enacted Public Law 20-134, which banned nearly all abortions and outlawed the solicitation of abortions. Guam Pub. L. No. 20-134, §§ 1, 4-5 (1990); Pet. App. 14a-17a. That same year a district court ruled that the law was unconstitutional under the First Amendment and *Roe* v.

Wade—and that it violated the Guam Organic Act, 48 U.S.C. § 1421. Pet. App. 48a-49a n.9, 55a.

The district court in 1990 therefore permanently enjoined the relevant Guam officials and their successors from "enforcing and/or executing any portion of Public Law 20-134." Pet. App. 55a. The Guam government appealed only the portion of the injunction concerning *Roe* v. *Wade* (*id.* at 17a n.2) and the Ninth Circuit affirmed (*id*. at 14a-31a). This Court denied certiorari. *Ada* v. *Guam Soc'y of Obstetricians & Gynecologists*, 506 U.S. 1011 (1992).

After the district court enjoined enforcement of Public Law 20-134, the Guam Legislature passed four statutes regulating abortion, including parental-consent requirements, informed-consent rules, a partial-birth abortion ban, and reporting requirements. See Parental Consent for Abortion Act, Guam Pub. L. No. 31-155, § 2 (2012) (codified at 19 Guam Code Ann. §§ 4A101-4A111); Women's Reproductive Health Information Act of 2012, Guam Pub. L. No. 31-235, § 2 (2012) (codified at 10 Guam Code Ann. § 3218.1); Partial-Birth Abortion Ban Act of 2008, Guam Pub. L. No. 29-115, § 1 (2008) (codified at 10 Guam Code Ann. §§ 91A101 et seq.); and Guam Pub. L. No. 22-130, § 2 (1994) (codified as amended at 10 Guam Code Ann. § 3218).

2. In 2022, this Court overruled *Roe* in *Dobbs* v. *Jackson Women's Health Organization*, 597 U.S. 215, 231-232 (2022), holding that the Constitution does not confer a right to abortion and "return[ing] the issue of abortion to the people's elected representatives."

Petitioner Douglas Moylan took office as Attorney General of Guam in 2023 and filed a Rule 60(b)(5) motion to vacate the injunction against enforcement of

Public Law 20-134 on the ground that it rested on *Roe*. See Motion to Vacate, *Guam Soc'y of Obstetricians & Gynecologists* v. *Moylan*, No. 1:90-cv-13 (D. Guam Feb. 1, 2023). He sought vacatur of the permanent injunction in its entirety and dismissal of the case with prejudice. Pet. App. 4a.

Rule 60(b)(5) permits relief from a judgment or an order when "applying it prospectively is no longer equitable." The party seeking relief bears the burden of establishing "that a significant change in facts or law warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstance." *Rufo* v. *Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 393 (1992).

The district court applied that framework to petitioner's motion and denied relief. Pet. App. 7a. The court first based its holding on petitioner's failure to answer plaintiffs' argument that Public Law 20-134 exceeded the Guam Legislature's congressionally granted authority. *Id.* at 6a-8a.[1] Under the Guam Organic Act, the "legislative power of Guam shall extend to all rightful subjects of legislation not inconsistent with * * * the laws of the United States applicable to Guam." *Id.* at 6a n.4; 48 U.S.C. § 1423a. The plaintiffs argued that because "the abortion ban violated the laws of the United States applicable to Guam, the Guam Legislature lacked the authority to enact such a ban," and the law therefore was "void *ab initio*" as exceeding the Legislature's powers at the moment of

[1] The Governor and the Guam Memorial Hospital Administrator separately opposed the motion, including on the ground that the original First Amendment ruling concerning Sections 4 and 5 was unaffected by *Dobbs*; the Governor also argued implied repeal. *Id.* at 5a.

enactment. Pet. App. 6a. The district court found that the "Defendant AG [had] not refuted this argument" and thus had "not met his burden under Rule 60(b)(5)." *Id.* at 7a-8a.

3. Petitioner appealed. While that appeal was pending, the Supreme Court of Guam decided the Governor's separate declaratory judgment action concerning the status of Public Law 20-134. On October 31, 2023, the court held that the law had been impliedly repealed by subsequent legislation, and thus that Public Law 20-134 "no longer possesses any force or effect in Guam." *In re Leon Guerrero*, 2023 Guam 11, ¶ 3.

The Guam Supreme Court recognized that repeal by implication is disfavored, but it held that the near-total ban in Public Law 20-134 could not be reconciled with the later enactments. *In re Leon Guerrero*, 2023 Guam 11, ¶¶ 38, 52-56. Its conclusion rested on the overlap and conflict between the statutes' texts. "In establishing guidelines and requirements for the performance of abortion, including conditions surrounding reporting and consent, the statutes enacted after P.L. 20-134 provide a scheme for regulating abortion care in Guam." *Id.* ¶ 52. Public Law 20-134, which was nearly an outright abortion ban, "cannot be harmonized with these other abortion-care statutes." *Ibid.*

Petitioner sought this Court's review of the Guam Supreme Court's decision, but the Court denied certiorari in 2024. *Moylan* v. *Guerrero*, 145 S. Ct. 136 (2024).

4. Following the territorial high court's decision, the Ninth Circuit ordered supplemental briefing on mootness. It then dismissed petitioner's appeal from

the denial of Rule 60(b)(5) relief "as moot in light of *In Re Leon Guerrero*." Pet. App. 2a.

The court subsequently denied rehearing en banc. Pet. App. 59a-60a. Judge VanDyke wrote separately to note that, while *Roe* "continues to have a momentous *practical* effect on the law and culture" that he viewed as problematic as a policy matter, the panel had made "the right call" in dismissing the appeal as moot. Pet. App. 61a. Petitioner's appeal could not afford meaningful relief because "even if Moylan prevailed on the merits (and [the Ninth Circuit] instructed the district court to dissolve the permanent injunction), the declaratory judgment in *In re Leon Guerrero* would still completely eliminate Moylan's ability to enforce the now-repealed abortion ban." *Id.* at 67a. That is, "Moylan is not effectively bound by the injunction, which applies *only* to a statute that, under Guam law, does not exist." *Id.* at 70a.

REASONS FOR DENYING THE PETITION

This Court should deny the petition. The Ninth Circuit correctly dismissed the appeal as moot under an unremarkable application of well-established principles, and petitioner identifies no conflicting appellate holding. A change in constitutional precedent surely *can* justify relief from an operative injunction in appropriate circumstances. But it *cannot* restore authority to enforce a statute that the territory's highest court has held repealed. The injunction imposes no concrete present consequences—the law petitioner purportedly is interested in enforcing no longer exists as a matter of local law. And the Ninth Circuit's refusal to credit petitioner's speculation that the territorial court might someday reverse its interpretation

is fully consistent with the uniform approach of the courts of appeals.

Petitioner suggests that the Ninth Circuit ought to have vacated the injunction under *Munsingwear* once it determined that the appeal was moot. But if it applied at all, a *Munsingwear* vacatur could only encompass the 2023 denial of Rule 60 relief, not the original injunction, which was affirmed in 1992. And even a ruling on petitioner's misguided question presented would not eliminate the additional Organic Act and First Amendment bases that would support the district court's denial of petitioner's Rule 60(b) motion. This case therefore supplies no occasion to announce a broader rule about injunctions founded on overruled constitutional precedent.

A. The court of appeals' straightforward application of mootness principles presents no conflict deserving of review.

Petitioner identifies no conflict among the lower courts concerning the mootness ruling below—because there is none. Instead, he invokes this Court's supervisory authority, portraying the decision as a refusal to reconsider an operative injunction after this Court overruled the precedent supporting it. Pet. 9-12. But in doing so, petitioner consistently obscures the dispositive fact that the Guam Supreme Court has conclusively determined that the particular statute petitioner seeks to enforce *no longer exists*.

In other words, the Ninth Circuit did not hold that a *Roe*-based injunction may continue to constrain enforcement of an operative law notwithstanding *Dobbs*. It dismissed an appeal concerning enforcement of a statute that Guam's highest court had determined—in a final judgment over which this Court declined

review—no longer possessed any force or effect. Pet. App. 2a. That conclusion follows ordinary mootness principles and, to the extent other courts have faced materially similar circumstances, those cases have come out exactly the same way.

1. The petition overlooks that there is no longer any law to enforce.

Petitioner's argument begins and largely ends with *Dobbs*. But whatever effect *Dobbs* had on the underlying injunction petitioner challenges, it certainly did not restore the law he purports to seek to enforce to existence. In the decades following entry of the original injunction, Guam enacted additional abortion legislation, including parental-consent requirements, informed-consent rules, a partial-birth abortion ban, and reporting requirements. *In re Leon Guerrero*, 2023 Guam 11, ¶ 52. After *Dobbs*, the Supreme Court of Guam determined that those enactments could not be reconciled with Public Law 20-134's near-total prohibition. *Id.* ¶¶ 52-56. The court thus declared that the law had been impliedly repealed and "no longer possesses any force or effect in Guam." *Id.* ¶ 61.

a. The Guam court was explicit that it was not perpetuating the constitutional rule the Court overruled in *Dobbs*. *In re Leon Guerrero*, 2023 Guam 11, ¶ 60. It observed that "*Dobbs* was a landmark case, changing the law on the ability of governments to regulate abortion." *Ibid.* In "answering the implied-repeal Question," it "dealt only with statutory interpretation of local law." *Ibid.* It remains "up to the political

branches of government to set the policy for Guam" going forward. *Ibid.*[2]

As the Guam Supreme Court observed in its declaratory judgment ruling, "this case is not really about *Dobbs*" (*In re Leon Guerrero*, 2023 Guam 11, ¶ 60)—and the same is true here. As it comes to the Court, this case is about whether a proceeding for relief from an injunction presents a live controversy when the statute whose enforcement the injunction forbids has been authoritatively repealed. Once that premise is recognized, the mootness question is straightforward. Article III requires a continuing, concrete interest that a favorable judicial decision can redress. *Lewis* v. *Cont'l Bank Corp.*, 494 U.S. 472, 477-478 (1990). That requirement persists "through all stages of federal judicial proceedings, trial and appellate." *Id*. at 477. The question is whether the court can grant "any effectual relief," not whether petitioner has identified a purportedly important legal proposition on which he would like a ruling. *Church of Scientology of California* v. *United States*, 506 U.S. 9, 12 (1992) (citation omitted).

Here, the injunction is directed specifically at Public Law 20-134. Its operative terms prohibit "operating, administering, enforcing or executing all

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[2] Petitioner cannot relitigate the Guam Supreme Court's holding in this case. He participated in the territorial proceeding and sought this Court's review of the resulting judgment, challenging the territorial court's authority to issue it. Pet. i-ii, *Moylan* v. *Leon Guerrero*, No. 23-828. This Court denied review. *Moylan* v. *Leon Guerrero*, 145 S. Ct. 136 (2024). The declaratory judgment thus remains undisturbed. And, of course, federal courts owe respect to the judgment's final effect. 28 U.S.C. § 1738 (requiring full faith and credit to judgments of territorial courts).

provisions of Public law 20-134." Pet. App. 57a. It does not regulate abortion enforcement generally or impose the constitutional framework of *Roe* on every future legislative choice. *In re Leon Guerrero*, 2023 Guam 11, ¶ 60. And the implied repeal—and the Guam Supreme Court's recognition of it—independently forecloses the enforcement petitioner sought to resume. That is, even if petitioner obtained a ruling that *Dobbs* required dissolution of the injunction, the territorial judgment would remain intact, and Public Law 20-134 would remain repealed. Dissolving the federal injunction would therefore have no practical effect—it would not supply petitioner with the ability to enforce a nonexistent statute.

b. Petitioner responds that the territorial judgment did not itself dissolve the federal decree. Pet. 19-20. Of course it did not, and respondents have never suggested otherwise. Nor do they dispute that an official cannot disregard an applicable judicial order merely because its legal foundation has changed. See *GTE Sylvania, Inc.* v. *Consumers Union of the United States, Inc.*, 445 U.S. 375, 386-387 (1980). But the question is whether this *particular* decree continues to impose a restraint whose removal would give petitioner a concrete benefit, notwithstanding that the only thing the injunction prohibits—enforcing Public Law 20-134 (see Pet. App. 57a)—is something he now lacks the power to do for the independent reason that that statute no longer exists.

The petition identifies no such restraint. It points to no affirmative reporting, funding, or administrative obligation; no dispute over enforcement of another enactment; and no pending contempt proceeding arising from the decree. The only conduct addressed by the

injunction is implementation of Public Law 20-134, and the Guam Supreme Court's judgment independently establishes that, as a matter of local law, petitioner lacks any authority to implement that now-repealed statute. The abstract possibility of contempt does not identify a presently contested application of the decree apart from an attempt to enforce the repealed enactment. Petitioner's insistence that the injunction remains formally binding therefore does not establish a continuing controversy over the merits of his original motion. Pet. App. 57a; Pet. 19-20.

The distinction between an extant order and a concrete dispute over its application is familiar. For example, in *Fleet Feet, Inc.* v. *NIKE, Inc.*, 986 F.3d 458, 463-464 (4th Cir. 2021), a preliminary injunction remained in place after the challenged advertising campaign ended. The court nevertheless rejected the contention that the injunction's continuing restriction on speech preserved the appeal because Nike "hasn't identified any actual speech threatened by the preliminary injunction." *Id*. at 464. Even stronger than Nike's disavowal of further use of the challenged slogan, here, an authoritative judgment has established that the only enactment identified in the decree *cannot* be enforced because the law has been repealed. The order's continued formal existence does not substitute for a concrete controversy over what it presently restrains (*i.e.*, nothing).

c. Indeed, petitioner's own account indicates that the only practical consequences depend entirely on hypothetical future developments. He posits that "if the Supreme Court of Guam were ever to revisit *Leon Guerrero*" and restore Public Law 20-134's force, the injunction would again become the principal obstacle

to enforcement. Pet. 20. That conditional premise supplies the answer. Petitioner identifies no concrete impending development that would restore the statute's force. The possibility that a court *might* someday revisit its precedent does not empower a federal court to decide now what relief would be appropriate under a different legal framework.

That is, Article III requires an actual controversy, not a ruling premised on a "hypothetical state of facts." *Lewis*, 494 U.S. at 477 (citation omitted); accord, *e.g.*, *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 410 (2013) (for Article III standing, "threatened injury must be certainly impending," and cannot "rel[y] on a highly attenuated chain of possibilities."); *Friends of the Earth, Inc.* v. *Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (absent one of the "long-recognized exceptions to mootness" like voluntary cessation or capable of repetition yet evading review, mootness is essentially "the doctrine of standing set in a time frame.") (quoting *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 68 n.22 (1997)). The entirely speculative possibility that the Guam Supreme Court might someday reverse its recent, unanimous decision in *In re Leon Guerrero*, thereby un-mooting the dispute over the injunction, does not make that a live dispute now.

Nor does petitioner identify any reason that a controversy arising from an actual revival would inherently evade review (*Lewis*, 494 U.S. at 481-482); if the Guam Supreme Court were to actually overrule itself, *then* there would be a live controversy, and *then* the Attorney General could move for relief under Rule 60(b).

Enactment of a new statute presents a different question, but likewise does not preserve jurisdiction over this appeal. As Judge VanDyke explained, the existing injunction by its terms would not restrain petitioner from enforcing a different, future abortion law. Pet. App. 70a. A new enactment might generate a new constitutional challenge, but this injunction does not prospectively invalidate legislation that has not been enacted. See Pet. App. 57a (injunction, limited to enforcement of "Public law 20-134"). Its limited scope is a reason the present enforcement controversy is moot, not a reason to adjudicate the original Rule 60 motion despite repeal.

That is also why petitioner's repeated reliance on Judge VanDyke's separate statement is seriously misplaced. Judge VanDyke *agreed* with the Ninth Circuit panel "that this case is moot," and that dismissal was therefore "the right call." Pet. App. 61a, 70a. He explained that even a decision directing dissolution would provide no practical redress, given the territorial judgment independently foreclosing enforcement of the repealed law. *Id*. at 67a. Judge VanDyke's discussion of *Roe*'s historical consequences was not disagreement with the panel's jurisdictional conclusion—to the contrary, he supported that conclusion with several pages of legal analysis that expanded on the basis for the panel's brief per curiam order. *Id.* at 66a-70a.

That is, the judge whose statement petitioner centrally invokes *rejected* the premise that this appeal continues to present a live controversy over which a federal court may exercise jurisdiction. That is reason enough to deny the petition.

2. The circuits agree on the proper result.

Petitioner has not identified any court that would disagree with the Ninth Circuit's mootness holding below. Indeed, the closest authorities all agree. And the petition's invocation of supervisory authority does nothing to suggest review is warranted.

a. Petitioner acknowledges that the decision below "resembles the Fifth Circuit's approach" in *McCorvey* v. *Hill*, 385 F.3d 846 (5th Cir. 2004). Pet. 16; see Pet. App. 67a-68a (Judge VanDyke, explaining that *McCorvey* supports the panel's decision here). There, the original plaintiff in *Roe* sought to revisit the judgment in the *Roe* v. *Wade* litigation as a vehicle to overturn *Roe*. The district court incorrectly denied relief as untimely. *McCorvey*, 385 F.3d at 849 n.4. But the Fifth Circuit dismissed the appeal as moot. It treated justiciability as "necessarily antecedent" to the request for reconsideration of the judgment and held that later Texas abortion regulations had impliedly repealed the underlying criminal prohibitions. *Id.* at 849-850. The court therefore concluded that "because the statutes declared unconstitutional in *Roe* have been repealed, McCorvey's 60(b) motion is moot." *Id*. at 849.

That is just what the Ninth Circuit held here. And petitioner's proposed distinction (at 16)—that *McCorvey* preceded *Dobbs*—does not identify a disagreement about mootness. *Dobbs* changes the merits of an argument for reconsidering a *Roe*-based judgment; it does not eliminate the need for a live controversy in which to adjudicate that argument.

If possible, *Epp* v. *Kerrey*, 964 F.2d 754 (8th Cir. 1992), supplies an even closer comparison. Nebraska

officials sought relief from a permanent abortion injunction on the ground that intervening Supreme Court decisions had expanded the States' regulatory authority. While their appeal was pending, the legislature repealed the underlying statute. The Eighth Circuit held that repeal had "mooted the State's contention" that "recent Supreme Court decisions require us to reconsider the 1983 Injunction." *Id*. at 755. It therefore did not adjudicate the merits argument—notwithstanding the injunction's continued existence.

Weeks v. *Connick*, 733 F. Supp. 1036 (E.D. La. 1990), applied the same reasoning to implied repeal. Louisiana officials moved under Rule 60(b)(5) to dissolve an abortion injunction, arguing that *Webster* v. *Reproductive Health Services* had changed the controlling constitutional legal framework. *Id*. at 1037. A three-judge district court concluded that subsequent regulatory enactments had impliedly repealed the relevant criminal prohibitions. It held that "[t]he motion to dissolve the injunction restraining enforcement * * * is, therefore, moot." *Id*. at 1039. The court separately considered the Rule 60 merits concerning advertising restrictions that had not been repealed. *Ibid*. *Weeks* thus illustrates precisely the distinction petitioner obscures: A court may consider changed-law arguments concerning a *continuing* statutory controversy while declining to adjudicate the same arguments concerning *repealed* prohibitions.

b. Petitioner identifies no appellate decision adopting a contrary mootness rule. His reliance on this Court's changed-circumstances decisions does not supply the missing conflict. Respondents do not dispute that Rule 60(b)(5) allows relief based on "a significant change either in factual conditions or in law."

Agostini v. *Felton*, 521 U.S. 203, 215 (1997) (citation omitted). But *Agostini* concerned an injunction that continued to restrict an operating educational program and required costly alternative arrangements for delivering services. *Id*. at 209-213. Similarly, *Rufo*, 502 U.S. at 374-376, concerned a decree constraining jail operations despite an asserted increase in the detainee population. Neither case held that a changed-law argument may be adjudicated after the particular controversy to which it relates has become moot.

Horne v. *Flores*, 557 U.S. 433 (2009), likewise involved continuing orders governing a State's educational obligations. *Id*. at 438-445. The Court observed that "the current injunction runs against" the superintendent in explaining his personal stake in obtaining relief. *Id*. at 445. But the injunction's continuing practical operation was not in doubt; the dispute concerned which officials could seek relief from those obligations. Nothing in *Horne* holds that naming an official in a decree necessarily preserves a controversy after an independent legal development eliminates the particular enforcement dispute. Indeed, the Court expressly addressed Article III standing before proceeding to the Rule 60 merits. *Id*. at 445-447. *Horne* thus confirms the need to examine jurisdiction, rather than supporting petitioner's demand that the merits be decided first.

c. Nor does petitioner's invocation of this Court's supervisory responsibility alter the analysis. Pet. 9-10. Supervisory authority does not authorize adjudication of moot merits questions. This Court has explained that "a case must exist at all the stages of appellate review" before a federal court may decide the merits. *U.S. Bancorp Mortg. Co.* v. *Bonner Mall*

P'ship, 513 U.S. 18, 21 (1994). The Ninth Circuit's adherence to that requirement is not a departure warranting supervisory intervention.

B. Petitioner's misguided request for vacatur does not warrant review.

Petitioner invokes *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950), and *Lewis* to argue that mootness should not leave the injunction in place. Pet. 14-16. Those authorities concern the proper disposition of litigation after mootness, not an exception permitting adjudication of moot merits questions. They also require precision in identifying the judgment whose review was frustrated by mootness, and that therefore may be vacated in the appellate court's equitable discretion. Here, that was the district court's 2023 denial of Rule 60 relief, not the previously reviewed and long-final 1990 judgment and injunction.

1. Article III does not prohibit *all* judicial action once the merits controversy becomes moot. *Bancorp*, 513 U.S. at 21-22 ("Article III does not prescribe such paralysis."). A court may make an appropriate disposition of litigation even though it may not decide the moot substantive question. *Ibid.* Thus, the correctness of the mootness determination does not, by itself, answer which orders should remain in place.

The purpose of vacatur in light of mootness is nevertheless different from the substantive relief petitioner sought under Rule 60(b)(5). *Munsingwear* protects against the future legal consequences of a judgment whose appellate review has been frustrated by mootness. 340 U.S. at 39-41. As this Court later explained, the object is to eliminate "a judgment the loser was stopped from opposing on direct review." *Arizonans for Official English* v. *Arizona*, 520 U.S. 43,

71 (1997). It is not to award, without merits adjudication, all the affirmative relief requested in the proceeding that became moot.

The original injunction was appealed and affirmed in 1992. Pet. App. 31a. The ensuing denial of certiorari left that judgment intact. *Ada*, 506 U.S. 1011. The current appeal arises from the denial of a motion filed three decades later. An appeal from a Rule 60 denial "does not bring up the underlying judgment for review." *Browder* v. *Director, Department of Corrections*, 434 U.S. 257, 263 n.7 (1978).

Vacating the 2023 denial order would remove that order's potential legal consequences without adjudicating whether petitioner was entitled to dissolution. Vacating the original injunction would instead grant the relief petitioner sought and was denied. The petition moves between those remedies as though they were interchangeable. Pet. 14-16. They are not. Whatever his arguments about the impacts of the original injunction, petitioner identifies no meaningful, ongoing legal consequences of the district court's denial of his Rule 60(b)(5) motion. Even assuming that the circumstances producing mootness otherwise favor equitable relief under *Bancorp*, they do not transform the original, previously reviewed judgment into the unreviewed order now at issue.

2. The closest appellate decisions are consistent with the distinction petitioner attempts to elide. In *Paulson* v. *City of San Diego*, 475 F.3d 1047, 1048-1049 (9th Cir. 2007), an appeal from an order enforcing an earlier injunction became moot when federal legislation transferred the relevant property from the city to the United States. The Ninth Circuit vacated the later enforcement order, but not the original

injunction. Because the original injunction had previously been upheld on appeal, "a more extensive vacatur is inappropriate." *Id.* at 1049. *Paulson* thus rejects the premise that mootness in a later proceeding necessarily requires erasure of the antecedent, reviewed decree.

Epp draws the same remedial distinction in the Rule 60 context. After repeal mooted the officials' Rule 60(b) motion, the appellate court vacated the later orders denying relief but expressly declined to vacate the original injunction. 964 F.2d at 755-756. So too here: If anything were eligible for the discretionary remedy of *Munsingwear* vacatur, it would be the order denying Rule 60(b)(5) relief, not the long-final judgment from 1990.

C. This case does not cleanly present petitioner's broader question and has limited practical significance.

Even apart from mootness, this case would be a poor vehicle for deciding whether *Dobbs* requires dissolution of an injunction resting entirely on *Roe*. The district court denied petitioner's motion on a distinct ground concerning his failure to answer respondents' Guam Organic Act argument concerning the unique legislative power of the Guam Legislature. And the original judgment included a separate, unappealed First Amendment ruling. A ruling on appellate mootness would not resolve either issue or establish petitioner's entitlement to the categorical relief he requested.

1. Guam's Legislature receives its authority from Congress, which limits that authority to "rightful subjects of legislation not inconsistent with the provisions of [the Organic Act] and the laws of the United States

applicable to Guam." 48 U.S.C. § 1423a. Congress also provided that territorial laws inconsistent with the constitutional guarantees it extended to Guam "are repealed to the extent of such inconsistency." 48 U.S.C. § 1421b(u); see Pet. App. 43a.

Respondents relied on those provisions to argue below that, because Public Law 20-134 conflicted with federal law applicable to Guam when enacted, the Guam Legislature lacked authority to pass it. Pet. App. 6a. On that view, the statute "was a legal nullity the moment it was passed and can have no force or effect today." *Id.* at 7a.

In the district court proceedings, petitioner never responded to this void-*ab-initio* contention. The district court presumed that he was "not contesting" it. Pet. App. 6a. The court then reviewed the relevant statutes and concluded that, because petitioner had not refuted the argument, he had "not met his burden under Rule 60(b)(5)." *Id.* at 7a-8a. That ruling preceded the territorial court's implied-repeal decision; it was not a holding that *Dobbs* could never justify relief from a *Roe*-based injunction.

Petitioner's repeated assertion (at 3, 10-12, 18-19) that no federal court ever addressed his request omits that ruling. The district court considered the merits of his motion under the appropriate changed-circumstances framework and found his argument insufficient for a reason petitioner had not answered. Pet. App. 7a-8a. Whether that ground was correct and whether petitioner's failure to respond foreclosed his merits position were the narrow questions the Ninth Circuit would have resolved had the appeal not become moot.

Those issues could therefore block relief even if petitioner were to prevail on appellate mootness. Resolving to what extent *Dobbs* requires reconsideration of *Roe*-based injunctions would not resolve the separate question about Congress's grant of legislative authority to Guam or petitioner's failure to meet his burden on the motion actually filed. The Court need not endorse the ultimate void-*ab-initio* theory to recognize that the petition does not cleanly present an injunction supported solely by a legal proposition that *Dobbs* rejected.

2. The question presented also assumes an injunction resting entirely on *Roe*, but the record reveals an additional constitutional ground—the First Amendment. Petitioner's request sought vacatur of the entire injunction and dismissal with prejudice, not merely a decision that *Roe* no longer governs. Pet. App. 4a. His failure to challenge the independent First Amendment holdings supporting portions of the injunction means that the district court was certainly correct to deny the categorical relief petitioner requested.

When the district court enjoined Public Law 20-134 in 1990, it held not only that the statute was invalid under *Roe*, but also that Sections 4 and 5, which made it a crime to "solicit" an abortion, violated the First Amendment. Pet. App. 48a-49a n.9. Guam never appealed that holding, as the Ninth Circuit noted when it affirmed. *Id.* at 17a n.2.

And when petitioner sought vacatur, both the Governor and the Guam Memorial Hospital Administrator argued that *Dobbs* "neither impacted nor affected the unconstitutionality of these sections" and thus did not touch the First Amendment holding. Pet. App. 5a. The Administrator further argued that

Guam's failure to appeal that holding foreclosed any renewed challenge to it. *Ibid*. The district court denied relief on the distinct Organic Act ground, without expressly resolving those speech arguments. *Id.* at 6a-8a. But the speech ruling remains part of the judgment petitioner asks to eliminate, and the petition does not acknowledge it.

Rule 60(b)(5) relief must be "suitably tailored to the changed circumstance." *Rufo*, 502 U.S. at 393. The Ninth Circuit held Sections 4 and 5 severable, so the additional First Amendment ground does not necessarily preserve the entire injunction. Pet. App. 18a-20a. Conversely, the fact that *Dobbs* overruled *Roe* does not establish entitlement to all the relief petitioner requested because *Dobbs* did not change the relevant First Amendment framework. The petition's premise that the judgment rested exclusively on *Roe* overlooks, rather than resolves, that issue. Petitioner offers no defense for how his request for categorical relief can be squared with his partial challenge.

Review is thus unwarranted—even on petitioner's mistaken framing of the question presented—because petitioner leaves unchallenged an independent ground sufficient to sustain the result, regardless of how this Court resolves the question presented. The existence of this alternative basis for affirmance at a minimum "complicate[s]" the Court's review. *Schock* v. *United States*, 586 U.S. 1183, 1183 (2019) (Sotomayor, J., respecting the denial of certiorari).

3. In any event, petitioner's discussion of longstanding injunctions and institutional reform decrees does not establish a recurring problem requiring this Court's intervention. Pet. 15, 17-18. The decision below did not reject *Agostini*, *Rufo*, or *Horne*. It merely

held that an appeal concerning relief from an injunction against a challenged law becomes moot when the challenged law is repealed. Rule 60 relief remains available in controversies involving continuing practical restraints, and separate procedures for addressing an obsolete decree are not displaced by a mootness determination.

Indeed, the Ninth Circuit has applied *Dobbs* to vacate a preliminary injunction against a different Guam abortion law in an opinion petitioner himself cites. *Raidoo* v. *Moylan*, 75 F.4th 1115 (9th Cir. 2023). *Raidoo* demonstrates the practical distinction: an injunction against an operative informed-consent requirement presents a live controversy worthy of intervention after *Dobbs*, whereas this appeal concerns an enactment that Guam's highest court has held repealed. Nor does the decree here govern a newly enacted abortion law. Pet. App. 70a. Petitioner identifies no institutional departure or conflicting appellate holding that warrants this Court's intervention.

Finally, it bears repeated emphasis that even if there were some pressing issue of public importance here—there is not—review would still be unwarranted. "While this Court decides questions of public importance, it decides them in the context of meaningful litigation." *The Monrosa* v. *Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959). Because there is no longer a Guam law for petitioner to enforce, the injunction does not prevent him from doing anything. Relief will not change any individual's rights or obligations. It is difficult to imagine less "meaningful litigation." *Ibid.* "Resolution" of any academically interesting questions described in the petition "can await a day when the issue is posed less abstractly." *Ibid.*

CONCLUSION

The Court should deny the petition.

Respectfully submitted.

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