

(ORDER LIST: 601 U.S.)

MONDAY, DECEMBER 11, 2023

CERTIORARI -- SUMMARY DISPOSITIONS

22-1225 PAYNE, JASON V. BIDEN, PRESIDENT OF U.S., ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the District of Columbia Circuit with instructions to dismiss the case as moot. See *United States v. Munsingwear, Inc.*, 340 U. S. 36 (1950). Justice Jackson, concurring: Although I would require that the party seeking vacatur establish equitable entitlement to that remedy, I accede to vacatur here based on the Court's established practice when the mootness occurs through the unilateral action of the party that prevailed in the lower court. See *Acheson Hotels, LLC v. Laufer*, 601 U. S. ____ (2023) (Jackson, J., concurring in the judgment).

23-60 BIDEN, PRESIDENT OF U.S., ET AL. V. FEDS FOR MEDICAL FREEDOM, ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit with instructions to direct the District Court to vacate as moot its order granting a preliminary injunction. See *United States v. Munsingwear, Inc.*, 340 U. S. 36 (1950). Justice Jackson, dissenting: In my view, the party seeking vacatur has not established equitable entitlement to that remedy. See *Acheson Hotels, LLC v. Laufer*, 601 U. S. ____ (2023) (Jackson, J.,

concurring in the judgment).

23-154 KENDALL, SEC. AIR FORCE, ET AL. V. DOSTER, HUNTER, ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Sixth Circuit with instructions to direct the District Court to vacate as moot its preliminary injunctions. See *United States v. Munsingwear, Inc.*, 340 U. S. 36 (1950). Justice Jackson, dissenting: In my view, the party seeking vacatur has not established equitable entitlement to that remedy. See *Acheson Hotels, LLC v. Laufer*, 601 U. S. ____ (2023) (Jackson, J., concurring in the judgment).

ORDERS IN PENDING CASES

23M36 DARDAGAN, SUVAD V. TRUITT, WARDEN

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

23M37 SEALED V. SEALED

The motion for leave to file a petition for a writ of certiorari under seal with redacted copies for the public record is granted.

23M38 DOWNEY, MARK V. JOHN H. LANGE PLUMBING

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

23M39 D. E. V. RUSSELL CTY. DEPT. OF HR

The motion for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is granted.

23M40 I. M. V. JORGENSEN, JUSTICE

The motion for leave to file a petition for a writ of certiorari under seal is denied.

23M41 ELLINGTON, AZARIAH M., ET AL. V. STRATTON, MARIA J., ET AL.
The motion to direct the Clerk to file a petition for a writ of certiorari out of time under Rule 14.5 is denied.

23M42 HALL, DANIEL E. V. BROCHU-REYNOLDS, DEVON
The motion for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is granted.

23M43 LAZA, JERRY V. PALESTINE, TX
The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

23M44 AKERMAN, MARTIN V. NEVADA NATIONAL GUARD
The motion for leave to proceed as a veteran is granted.

22-899 SMITH, JASON V. ARIZONA
The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

22-915 UNITED STATES V. RAHIMI, ZACKEY
The motion of Professor Lorianne Updike Toler for leave to file out of time a brief as *amicus curiae* is denied.

22-7488 ADAMS, ALEX V. DAVIS, LORIE, ET AL.
The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

23-217 E.M.D. SALES, INC., ET AL. V. CARRERA, FAUSTINO S., ET AL.
The Solicitor General is invited to file a brief in this case expressing the views of the United States.

23-467 GARCIA, BENANCIO V. HOBBS, SEC. OF STATE OF WA
The motion of Susan Soto Palmer, et al. for leave to intervene is denied.

23-5438 SALERNO, FOX J. V. THORNELL, DIR., AZ DOC, ET AL.

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

23-5681 WEIBLE, JUSTIN V. PROVOST, KEVIN, ET AL.

23-5957 BRONSON, KHADIJAH V. D.C. DEPT. OF BUILDINGS

23-5990 SIMMONS, KIRK A. V. SCARANTINO, THOMAS

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until January 2, 2024, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI DENIED

22-601 LAKE, PETER, ET AL. V. NEXTERA ENERGY, ET AL.

22-1107 GREGORY, MATTHEW, ET AL. V. BROWN, ELISE

22-1202 SPIRIT OF THE EAST, LLC V. YALE PRODUCTS INC., ET AL.

22-7769 MORANT, TYRONE D. V. STANGE, WARDEN

23-6 BRICKMAN, COLIN R. V. UNITED STATES, ET AL.

23-7 HAMLET, LYNN V. HOXIE, OFFICER

23-61 O'BOYLE, MARTIN E., ET AL. V. GULF STREAM, FL

23-74 VITAGLIANO, DEBRA A. V. COUNTY OF WESTCHESTER, NY

23-95 ESFORMES, PHILIP V. UNITED STATES

23-98 LEMELSON, GREGORY, ET AL. V. SEC

23-107 CLEMENTS, LOUIS M. V. FLORIDA, ET AL.

23-115 ELLDAKLI, FATHI E. S. ET AL. V. GARLAND, ATT'Y GEN., ET AL.

23-166 HILTON HOTELS RETIREMENT PLAN V. WHITE, VALERIE, ET AL.

23-183 E. PAC. SHIPPING PTE, LTD. V. GANPAT, KHOLKAR VISHVESHWAR

23-195 HASHIM, AARON, ET AL. V. COHEN, MALIA M., ET AL.

23-198 LEWIS, JAMAR M. V. UNITED STATES

23-255 JOHNSON, COOPER D. V. COHEN, MALIA M., ET AL.

23-271 LYNCH, RYAN V. CONDOMINIUMS OF BUENA VISTA, INC
 23-272) WINTERVILLE POLICE DEPT., ET AL. V. SHARPE, DIJON
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 23-276) SHARPE, DIJON V. WINTERVILLE POLICE DEPT., ET AL.
 23-277 KARRI, USHA S. V. GARLAND, ATT'Y GEN., ET AL.
 23-281 FUSTOLO, STEVEN C. V. PATRIOT GROUP, ET AL.
 23-284 H. C. V. NYC DEPT. OF EDUCATION
 23-296 KISER, MICHAEL L., ET AL. V. DUKE ENERGY CAROLINAS, LLC, ET AL.
 23-299 KHALID, ATM SHAFIQU V. CITRIX SYSTEMS, INC.
 23-305 RICE, LARRY V. INTERFOOD, INC., ET AL.
 23-311 CONNOLE, KEITH M. V. GARBARINO, JUDGE, ET AL.
 23-313 DeBOSE, ANGELA V. UNIV. OF S. FL, ET AL.
 23-316 DAVIS, CURTISS V. BONILLA, PEDRO, ET AL.
 23-338 BUSH, BYRON V., ET UX. V. RELIANT BANK, ET AL.
 23-340 PEREZ, ALEJANDRO E. V. WALT DISNEY CO.
 23-346 WALPOOL, TORRIANO V. TEXAS
 23-347 MARTIN, ROWLAND J. V. BRAVENEC, EDWARD, ET AL.
 23-349 ESSLINGER, DONALD, ET UX. V. BASS, SHAWN, ET UX.
 23-352 ROGALSKI, CHRISTOPHER A. V. LAUREATE ED., INC.
 23-355 KERN, DONNIE T. V. BD. OF SUPERVISORS ALLEGHANY CTY
 23-356 KERN, DONNIE T. V. VIRGINIA
 23-358 ANDREWS, KEITH V. KINNETT, JARRED B., ET AL.
 23-359 WRIGHT, KELVIN L. V. USDC WD TX
 23-360 SHARIF, RICHARD, ET AL. V. FOX, HORACE
 23-372 JARRETT, TOREY V. SEIU LOCAL 503, ET AL.
 23-379 BARTH, JOHN S. V. DEPT. OF JUSTICE, ET AL.
 23-385 HULBERT, CLAYTON, ET AL. V. POPE, BRIAN T.
 23-398 HOWE, HENRY H. V. GILPIN, STEVEN, ET AL.
 23-408 ASTRAZENECA PHARMACEUTICALS LP V. IVIE, SUZANNE

23-412 ENGEL, SENECA L. V. ENGEL, DEREK, ET AL.
23-418 CONCERNED HOUSE. ELEC., ET AL. V. EPA
23-422 SHERROD, SHIRLEY T., ET AL. V. SU, ACTING SEC. OF LABOR
23-435 McNEIL, MINOR L. V. SANDERS, GOV. OF AR, ET AL.
23-438 CLARK, AUSTIN R. V. BENDAPUDI, NEELI, ET AL.
23-439 BOYDSTON, JIM, ET AL. V. WEBER, CA SEC. OF STATE, ET AL.
23-453 SPEC. RISK INS. SERVICES, INC. V. GLAXOSMITHKLINE, LLC
23-458 DE COLA, THOMAS V. STARKE CTY. COUNCIL, ET AL.
23-459 IBRAHIM, MARK S. V. UNITED STATES
23-464 BOERMEESTER, MATTHEW V. CARRY, AINSLEY, ET AL.
23-469 WITT, ANDREW P. V. UNITED STATES
23-483 GONZALEZ, MAURICIO V. UNITED STATES
23-487 VASHISHT-ROTA, APARNA V. HOWELL MANAGEMENT SERVICES, LLC
23-490 JEVONS, ENRIQUE, ET AL. V. INSLEE, GOV. OF WA, ET AL.
23-494 MACNEIL IP LLC V. YITA LLC
23-499 ESQUIVEL-CARRIZALES, JESUS L. V. UNITED STATES
23-502 EZUKANMA, NOBLE U. V. UNITED STATES
23-511 BELL, TERRENCE R. V. SUN WEST MORTGAGE CO., INC.
23-513 SMITH, SHERIFF, ET AL. V. ROGERS, JERRY
23-5090 BROWN, TRAVIS J. V. CALIFORNIA
23-5209 POLING, KELLY V. KIJAKAZI, COMM'R, SOCIAL SEC.
23-5275 NOLASCO-ARIZA, AMBROSIO V. UNITED STATES
23-5310 FAVORITE, JOSEPH T. V. UNITED STATES
23-5367 WU, REBECCA V. TWIN RIVERS UNIFIED SCH. DIST.
23-5381 HARPER, DAVID L. V. ADAMS, WILLIAM P., ET AL.
23-5383 DUPRIEST, RAMHAM V. NEW JERSEY
23-5502 HERNANDEZ-LOPEZ, JUAN A. V. UNITED STATES
23-5513 HAMILTON, RICKEENA V. TENNESSEE

23-5630 SLINEY, JACK R. V. FLORIDA

23-5646 JAH EL, ABRAHAM K. V. PALM BEACH, FL, ET AL.

23-5650 PANGHAT, LIJO P. V. DEPT. OF VA, ET AL.

23-5652 DORSEY, BRIAN J. V. VANDERGRIFF, WARDEN

23-5657 DEERE, ARTHUR R. V. GRAY, CLERK, USDC CD CA

23-5660 HONIE, TABERON D. V. POWELL, WARDEN

23-5661 MARTINEZ, ARNALDO V. FLORIDA

23-5664 SINDACO, ROBERT E. V. FLORIDA

23-5670 DARRIES, WILLIE V. CORNELIUS, R. P.

23-5679 STEPHENSON, JOSHUA V. MAY, WARDEN, ET AL.

23-5684 DAHL, WILLIAM J. V. WISCONSIN

23-5690 LAL, AZHAR V. UNITED STATES, ET AL.

23-5693 THOMPSON, LAWRENCE E. V. TEXAS

23-5697 FAROOQ, ASEM V. MANHEIM REMARKETING, ET AL.

23-5702 MILASKI, IAN A. V. FLORIDA

23-5703 OHAN, FESTUS O. V. ABN AMRO, ET AL.

23-5712 GWEN, GERALD V. V. MAYES, ATT'Y GEN. OF AZ, ET AL.

23-5723 WEST, JAMES D. V. DIXON, SEC., FL DOC, ET AL.

23-5729 HENDERSON, TITUS V. BOUGHTON, WARDEN, ET AL.

23-5731 PANZLAU, REBEKAH V. ADAMS CTY. HOUSING AUTH.

23-5737 WILSON, ROGER V. DEPT. OF JUSTICE, ET AL.

23-5741 GRANT, HEWITT A. V. DIXON, SEC. FL DOC

23-5745 HAMMOND, ZEPHYRN V. UNIV. OF VT MEDICAL CENTER

23-5753 LATHAM, BEN J. V. ALASKA

23-5757 RAMIREZ-FORT, MARIGDALIA K. V. MEDICAL UNIV. OF SC, ET AL.

23-5760 LOMAX, MATTIE T. V. UNITED STATES

23-5761 MORSE, TIMOTHY V. CLERK, CLINTON DIST. CT.

23-5769 JEFFERSON, BRANDON M. V. FORD, ATT'Y GEN. OF NV, ET AL.

23-5792 CHANDLER, KEVIN V. NEAL, WARDEN
23-5801 DUCOTE, JEFFERY V. HOOPER, WARDEN
23-5808 JENNINGS, RODNEY V. PHILLIPS, WARDEN
23-5814 LAMOUREUX, JUSTIN A. V. FLORIDA
23-5822 RUSSOMANNO, GINA V. SUNOVION PHARMACEUTICALS, ET AL.
23-5833 ROULO, SEAN W. V. MINNESOTA
23-5843 BELGRAVE, CLEON V. PUBLIX SUPER MARKET, INC.
23-5847 NGUYEN, MAI-TRANG T. V. UNITED STATES
23-5849 BROWN, BRYAN H. V. NEW HAMPSHIRE
23-5861 PIERRE, JOSEPH V. DIXON, SEC., FL DOC
23-5867 BRYANT, ANITA V. DELAWARE CTY. TREASURER, ET AL.
23-5868 KEO, NICKY S. V. MASSACHUSETTS
23-5872 EL, AUBREY J. V. DEPT. OF COMMERCE
23-5873 ROSS, BENJAMIN R. V. UNITED STATES
23-5876 PORTER, CHRISTIAN L. V. UNITED STATES
23-5878 JOHNSTON, ANDREW J. V. UNITED STATES
23-5879 JOHNSON, RICHARD W. V. UNITED STATES
23-5880 MARTINEZ-HERNANDEZ, JOSE F. V. UNITED STATES
23-5882 MERRITTE, WALTER L. V. CIRCUIT COURT OF IL
23-5886 GIBBS, PHILLIP C. V. CARL, WARDEN
23-5889 WILLIAMS, CHRISTOPHER M. V. SHOOP, WARDEN
23-5891 HIDALGO, LUIS A. V. GARRETT, WARDEN, ET AL.
23-5893 ZMRUKHTYAN, TIGRAN V. UNITED STATES
23-5894 BRANDON, MYRON L. V. UNITED STATES
23-5896 RICHARDSON, FRANK V. UNITED STATES
23-5898 HAYWARD, CHRISTIAN V. UNITED STATES
23-5899 ISABELLA, RANDE B. V. UNITED STATES
23-5902 COLE, KALEB J. V. UNITED STATES

23-5906 ACKIES, CAREY V. UNITED STATES
23-5907 JONES, BRIAN V. UNITED STATES
23-5909 ZEVELY, ERIC A. V. UNITED STATES
23-5910 DAMERI, STUART A. V. UNITED STATES
23-5912 CATHEY, DARRELL V. UNITED STATES
23-5913 ROLON, JULIO V. UNITED STATES
23-5917 DIAZ-DIAZ, SALVADOR V. UNITED STATES
23-5919) THOMAS, WILKINSON O. V. UNITED STATES
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23-5975) CAPISTRANO, CAESAR M. V. UNITED STATES
23-5920 RAMIREZ-MORENO, LEOPOLDO V. UNITED STATES
23-5921 SARKISS, VAHE V. UNITED STATES
23-5922 EZENWA, MAXWELL C. V. UNITED STATES
23-5925 JOHNSON, ISAAC V. UNITED STATES
23-5926 SPRINGFIELD, JAHVARIS L. V. UNITED STATES
23-5927 MARTINEZ-ALBERTO, KATERIN V. UNITED STATES
23-5928 BEITER, MICHAEL D. V. UNITED STATES
23-5933 LYNCH, SAMUEL L. V. UNITED STATES
23-5934 JENKINS, WALTER L. V. UNITED STATES
23-5936 SANTOS-FLORES, HECTOR F. V. UNITED STATES
23-5939 NORTHINGTON, BRETT V. UNITED STATES
23-5940 LOPEZ, JOHN P. V. UNITED STATES
23-5941 RANDLE, GREGORY L. V. UNITED STATES
23-5942 SINGLETARY, CHRISTOPHER R. V. UNITED STATES
23-5944 JOHNSON, KAYLIN E. V. UNITED STATES
23-5947 TROTTER, KRAIG M. V. UNITED STATES
23-5949 WRIGHT, RAMONE L. V. UNITED STATES
23-5952 WILLIAMS, SEMAJ L. V. UNITED STATES
23-5955 PARKS, KYLE M. V. UNITED STATES

23-5956 McCORKLE, ERIQ R. V. ROBINSON, NORM
23-5959 EDWARDS, JASON C. V. LEMON, WARDEN
23-5960 WRIGHT, BRANDON K. V. UNITED STATES
23-5962 ECKFORD, LEON C. V. UNITED STATES
23-5966 ERICKSEN, JONATHAN V. UNITED STATES
23-5969 MAKDISSI, SEMAAN V. FLORIDA
23-5971 FEZIA, KEVONDRIC V. UNITED STATES
23-5973 DUERSON, RICHARD C. V. UNITED STATES
23-5978 PERSON, BRIAN K. V. UNITED STATES
23-5979 VARGAS-HERNANDEZ, DANIEL V. UNITED STATES
23-5980 ARELLANO, EDGAR V. CALIFORNIA
23-5981 LEON, NESTOR V. UNITED STATES
23-5982 SMALL, GARNET V. UNITED STATES
23-5986 RUIZ, FRANCISCO R. V. WIERENGA, JORDAN
23-5995 MESSER, JAKE V. UNITED STATES
23-5997 BAXTON, JAMES V. UNITED STATES
23-5998 CHAVEZ, GILBERTO A. V. UNITED STATES
23-5999 CHI, ANSON V. UNITED STATES
23-6018 CURRICA, CALVIN F. V. MILLER, WARDEN
23-6022 LIU, KEVIN V. POLLARD, WARDEN
23-6026 REHWALD, PHILLIP V. PENNSYLVANIA, ET AL.

The petitions for writs of certiorari are denied.

22-7652 JONES, MARK A. V. DIXON, SEC., FL DOC

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is granted. The order entered October 2, 2023, is vacated. The petition for a writ of certiorari is denied.

23-186 NV DOC, ET AL. V. GALANTI, PHILIP R.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

23-457 CATES, TERRANCE N. V. ZELTIQ AESTHETICS, INC.

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

23-5651 WILLIBY, HARRY J. V. BRIN, SERGEY, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8.

23-5683 SMITH, MARY L., ET AL. V. SANDERS, GOV. OF AR, ET AL

The motion of petitioner Tiffany Smith for leave to proceed *in forma pauperis* is denied. Petitioner Tiffany Smith is allowed until January 2, 2024, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court. The petition for a writ of certiorari as to petitioner Mary Smith is denied.

23-5705 SAMPSON, MICHAEL V. UNITED STATES, ET AL.

The petition for a writ of certiorari before judgment is denied.

23-5715 GULLETT-EL, TAQUAN R. V. IRS, ET AL.

23-5888 THOMPSON, HOWARD L. V. FLORIDA, ET AL.

23-5929 ANDREWS, ANTHONY V. UNITED STATES

23-5961 ROBINSON, MARTIN V. OH CIVIL RIGHTS COMM'N, ET AL.

The motions of petitioners for leave to proceed *in forma pauperis* are denied, and the petitions for writs of certiorari

are dismissed. See Rule 39.8.

HABEAS CORPUS DENIED

23-5937 IN RE JOHN L. TAYLOR
23-5989 IN RE KEVIN McKENNA
23-5992 IN RE JOHN BAILEY
23-6054 IN RE CHRISTOPHER THIEME

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

23-345 IN RE JEFFRY THUL
23-5674 IN RE DONNELLY J. LeBLANC
23-5881 IN RE DAVID JAH

The petitions for writs of mandamus are denied.

REHEARINGS DENIED

22-977 BRUNS, JENNY, ET VIR V. USAA, ET AL.
22-1245 RISTOW, BRENT A. V. PETERSON, DOUGLAS R., ET AL.
22-1252 LI, DONGMEI V. CONNECTICUT, ET AL.
22-7031 DIEHL, DAVID A. V. UNITED STATES
22-7392 CLARK, MOSES V. PRATT, GLEN E.
22-7642 TORREZ, JULIO A. V. CALIFORNIA
22-7705 KWONG, MATTHEW J. V. CHESWOLD, LLC, ET AL.
22-7782 MORGAN, STEPHANIE V. PRIME WIMBLEDON LLC, ET AL.
22-7786 YIN, LEI V. BIOGEN INC.
23-8 HUNT, CHRISTOPHER M. V. NATIONSTAR MORTGAGE, ET AL.
23-16 RIETSCHIN, AXEL V. RIETSCHIN, DOMINIKA
23-54 SCOTT, ROBERT M. V. FORCHT BANK, N.A.
23-112 McELROY, IAN A. V. CORVALLIS, OR
23-126 BLESSETT, JOE V. ABBOTT, GOV. OF TX, ET AL.
23-159 PEREZ, ANTONIO V. CITY OF MIAMI, CODE ENFORCEMENT

23-190 BONDYOPADHYAY, PROBIR K. V. UNITED STATES
23-268 KEENAN, CAROLYN F. V. RIVER OAKS PROPERTY OWNERS, INC.
23-5013 JURY, BRIAN V. OHIO
23-5037 MARTINEZ, PATRICK L. V. LUMPKIN, DIR., TX DCJ
23-5050 KNIGHT, NICKHOLAS V. BIDEN, PRESIDENT OF U.S., ET AL.
23-5082 RICHTER, WILLIAM V. TRUITT, WARDEN
23-5109 LINDSEY, CARL V. JENKINS, WARDEN
23-5117 IN RE JEFFREY A. SIMMS
23-5142 COUNTS, JOSEPH V. MAINE
23-5215 WRIGHT, AISHA V. UNION PACIFIC R. CO.
23-5333 RAMZIDIN, ABUSSAMAA R. V. ONOFRI, ANGELO J., ET AL.
23-5385 KNOLL, ADAM V. FLORIDA
23-5406 PORTER, KECIA V. USAA CASUALTY INSURANCE CO.
23-5442 JOHNSON, WAYNE J. V. CALIFORNIA
23-5485 POUPART, PAUL M. V. LOUISIANA
23-5680 VILLA, DANIEL V. CIR

The petitions for rehearing are denied.

22-5518 LUCAS, SANDRA Y. V. KIJAKAZI, COMM'R, SOCIAL SEC.

The motion for leave to file a petition for rehearing is denied.

THOMAS, J., dissenting

SUPREME COURT OF THE UNITED STATES

BRIAN TINGLEY *v.* ROBERT W. FERGUSON, ATTORNEY
GENERAL OF WASHINGTON, ET AL.

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

No. 22–942. Decided December 11, 2023

The petition for a writ of certiorari is denied. JUSTICE KAVANAUGH would grant the petition for a writ of certiorari.

JUSTICE THOMAS, dissenting from the denial of certiorari.

This petition asks us to consider whether Washington can censor counselors who help minors accept their biological sex. Because this question has divided the Courts of Appeals and strikes at the heart of the First Amendment, I would grant review.

I

There is a fierce public debate over how best to help minors with gender dysphoria. The petitioner, Brian Tingley, stands on one side of the divide. He believes that a person’s sex is “a gift from God, integral to our very being.” Pet. for Cert. 7. As a licensed marriage and family counselor, Tingley seeks to assist minors who suffer from gender dysphoria but “want to become comfortable with their biological sex.” *Ibid.* Tingley does so through “talk therapy”—*i.e.*, therapy conducted solely through speech. The State of Washington is on the other side of the divide. Its view is that the State should “protec[t] its minors against exposure to serious harms caused by” counseling to change a minor’s gender identity, Note, Wash. Rev. Code §18.130.180 (2018), and, as a result, that counselors should only affirm a minor’s chosen gender identity.

Washington silenced one side of this debate by enacting S.B. 5722, 65th Leg., Reg. Sess. (2018) (SB 5722). SB 5722

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prohibits licensed healthcare providers from “[p]erforming conversion therapy on a patient under age eighteen.” §18.130.180(26). According to Washington, “[c]onversion therapy” is “a regime that seeks to change an individual’s sexual orientation or gender identity.” §18.130.020(4)(a). Washington excludes from the definition of “[c]onversion therapy” counseling “that provide[s] acceptance, support, and understanding of clients or the facilitation of clients’ coping, social support, and identity exploration and development that do[es] not seek to change sexual orientation or gender identity.” §18.130.020(4)(b). In other words, helping a minor become comfortable with his biological sex is prohibited “conversion therapy,” while encouraging a minor to change his “outward, physical traits” to “alig[n] . . . with [his] gender identity” is not. Dept. of Health and Human Services, Office of Population Affairs, Gender-Affirming Care and Young People 1 (Aug. 2023). Violations of SB 5722 are punishable by fines up to \$5,000, “remedial education,” suspension from practice, and license revocation. Wash. Rev. Code §18.130.160.

After Washington enacted SB 5722, Tingley filed suit, arguing that SB 5722 violates the First Amendment by restricting his speech based on its viewpoint and content. The Ninth Circuit, however, held that SB 5722 does not regulate speech at all. It reasoned that counseling is a type of medical treatment and qualifies as only professional conduct. 47 F. 4th 1055, 1080 (2022). In the alternative, the Ninth Circuit held that counseling is unprotected by the First Amendment because there is a “tradition of regulation governing the practice of those who provide health care within state borders.” *Ibid.* The Ninth Circuit denied rehearing en banc over the statement of Judge O’Scannlain, joined by three others, and Judge Bumatay’s dissent. See 57 F. 4th 1072 (2023).

The Ninth Circuit’s opinion created a Circuit split. Two years earlier, the Eleventh Circuit concluded that near-

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identical Florida municipal ordinances *did* regulate speech. *Otto v. Boca Raton*, 981 F. 3d 854, 859, 865 (2020). The Eleventh Circuit held the ordinances unconstitutional because they prohibited speech based on content and viewpoint, and could not satisfy strict scrutiny. *Id.*, at 864–870. The Third Circuit has also held that laws restricting talk therapy designed to change a client’s sexual orientation regulate speech, not conduct. *King v. Governor of New Jersey*, 767 F. 3d 216, 224 (2014), abrogated on other grounds by *National Institute of Family and Life Advocates v. Becerra*, 585 U. S. 755 (2018). Tingley asks us to resolve this Circuit split and review whether SB 5722 violates the First Amendment. We should have.

II

There is little question that SB 5722 regulates speech and therefore implicates the First Amendment. True, counseling is a form of therapy, but it is conducted solely through speech. “If speaking to clients is not speech, the world is truly upside down. [SB 5722] sanction[s] speech directly, not incidentally—the only ‘conduct’ at issue is speech.” *Otto*, 981 F. 3d, at 866; see *King*, 767 F. 3d, at 228 (noting that “it would be strange indeed to conclude” talk therapy is conduct when “the same words, spoken with the same intent” by a student is speech).

It is a “fundamental principle that governments have ‘no power to restrict expression because of its message, its ideas, its subject matter, or its content.’” *National Institute of Family and Life Advocates*, 585 U. S., at 766 (quoting *Reed v. Town of Gilbert*, 576 U. S. 155, 163 (2015); some internal quotation marks omitted). A law that restricts speech based on its content or viewpoint is presumptively unconstitutional and may be upheld only if the state can prove that the law is narrowly tailored to serve compelling state interests. *Ibid.*

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Under SB 5722, licensed counselors can speak with minors about gender dysphoria, but only if they convey the state-approved message of encouraging minors to explore their gender identities. Expressing any other message is forbidden—even if the counselor’s clients ask for help to accept their biological sex. That is viewpoint-based and content-based discrimination in its purest form. As a result, SB 5722 is presumptively unconstitutional, and the state must show that it can survive strict scrutiny before enforcing it.

The Ninth Circuit attempted to sidestep this framework by concluding that counseling is unprotected by the First Amendment because States have traditionally regulated the practice of medicine. See 47 F. 4th, at 1080. The Court has already made clear its “reluctan[ce] to ‘exemp[t] a category of speech from the normal prohibition on content-based restrictions.’” *National Institute of Family and Life Advocates*, 585 U. S., at 767 (quoting *United States v. Alvarez*, 567 U. S. 709, 722 (2012) (plurality opinion)). Accordingly, the Court has instructed that states may not “impose content-based restrictions on speech without ‘persuasive evidence . . . of a long (if heretofore unrecognized) tradition’ to that effect.” 585 U. S., at 767 (quoting *Brown v. Entertainment Merchants Assn.*, 564 U. S. 786, 792 (2011); some internal quotation marks omitted). Despite this instruction, the Ninth Circuit did not offer a single example of a historical regulation analogous to SB 5722, which targets treatments conducted solely through speech. See 57 F. 4th, at 1082 (O’Scannlain, J., statement respecting denial of rehearing en banc) (explaining the panel’s “citations are not merely insufficient evidence—they are not even relevant evidence”).

This case is not the first instance of the Ninth Circuit restricting medical professionals’ First Amendment rights, and without the Court’s review, I doubt it will be the last. This Court recently reversed the Ninth Circuit’s decision to

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uphold a law compelling crisis pregnancy centers to disseminate government-drafted notices. *National Institute of Family and Life Advocates*, 585 U. S., at 765–66. The Ninth Circuit declined to apply strict scrutiny because it concluded that the law regulated only “professional speech.” *Id.*, at 767. As we explained, however, “[s]peech is not unprotected merely because it is uttered by ‘professionals.’” *Ibid.* And, we warned that “regulating the content of professionals’ speech ‘pose[s] the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information.’” *Id.*, at 771 (quoting *Turner Broadcasting System, Inc. v. FCC*, 512 U. S. 622, 641 (1994)). That warning has proved prescient.

* * *

“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624, 642 (1943). Yet, under SB 5722, licensed counselors cannot voice anything other than the state-approved opinion on minors with gender dysphoria without facing punishment. The Ninth Circuit set a troubling precedent by condoning this regime. Although the Court declines to take this particular case, I have no doubt that the issue it presents will come before the Court again. When it does, the Court should do what it should have done here: grant certiorari to consider what the First Amendment requires.

ALITO, J., dissenting

SUPREME COURT OF THE UNITED STATES

BRIAN TINGLEY *v.* ROBERT W. FERGUSON, ATTORNEY
GENERAL OF WASHINGTON, ET AL.

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

No. 22–942. Decided December 11, 2023

JUSTICE ALITO, dissenting from the denial of certiorari.

Like JUSTICE THOMAS, I would grant the petition for a writ of certiorari. This case presents a question of national importance. In recent years, 20 States and the District of Columbia have adopted laws prohibiting or restricting the practice of conversion therapy. It is beyond dispute that these laws restrict speech, and all restrictions on speech merit careful scrutiny.

There is a conflict in the Circuits about the constitutionality of such laws. Compare, 47 F. 4th 1055 (CA9 2022), with *Otto v. Boca Raton*, 981 F. 3d 854 (CA11 2020). And the Ninth Circuit’s holding is based on the highly debatable view that its prior decision in *Pickup v. Brown*, 740 F. 3d 1208 (2014), survived at least in part our decision in *National Institute of Family and Life Advocates v. Becerra*, 585 U. S. ___, ___ (2018) (slip op., at ___) which singled out *Pickup* for disapproval.

For these reasons, this case easily satisfies our established criteria for granting certiorari, see this Court’s Rule 10(a), and I would grant review.

ALITO, J., dissenting

SUPREME COURT OF THE UNITED STATES

VIVEK H. MURTHY, SURGEON GENERAL, ET AL. *v.*
MISSOURI, ET AL.

ON MOTION FOR LEAVE TO INTERVENE

No. 23–411. Decided December 11, 2023

The motion of the Kennedy Plaintiffs for leave to intervene is denied.

JUSTICE ALITO, dissenting from the denial of the motion to intervene.

Although intervention in this Court is reserved for unusual circumstances, see S. Shapiro, K. Geller, T. Bishop, E. Hartnett, D. Himmelfarb, *Supreme Court Practice* § 6.16(c), p. 6–62 (11th ed. 2019), I would grant the motion now before us. Allowing intervention would not unduly prejudice the parties, but the denial of intervention may cause irreparable harm to the movant.

This case concerns what two lower courts found to be a “coordinated campaign” by high-level federal officials to suppress the expression of disfavored views on social media platforms that now serve as the primary source of news about important public issues for many Americans. *Missouri v. Biden*, 83 F. 4th 350, 392 (CA5 2023). One of the alleged victims of this campaign is Robert F. Kennedy, Jr., who is a candidate for President of the United States. The District Court found that Government officials have asked social media platforms to block Mr. Kennedy’s efforts to communicate with the public and that the platforms have complied. See *Missouri v. Biden*, ___ F. Supp. 3d ___, ___, 2023 WL 4335270, *5, *9, *40 (WD La., July 4, 2023). Mr. Kennedy brought a suit similar to the one now before us, but his case is stuck in the District Court, which will not rule on his motion for a preliminary injunction until we decide this case. See *Missouri v. Biden*, 2023 WL 4721172, *2

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(WD La., July 24, 2023). Mr. Kennedy has therefore moved to intervene here to protect his rights.

Because Mr. Kennedy's arguments on the merits are essentially the same as respondents', allowing intervention would not significantly affect petitioners' burden with regard to that issue. But the denial of intervention is likely to prevent Mr. Kennedy from vindicating the rights he claims until the spring of 2024 and perhaps as late as June of that year. And by that time, several months of the Presidential campaign will have passed.

In fact, denying intervention may prevent Mr. Kennedy from obtaining redress for an even longer period. In successfully arguing that we should stay the preliminary injunction entered below, the Government contended strenuously that respondents lack standing. If the Court ultimately agrees with that argument and orders that this case be dismissed, our decision will provide little guidance for deciding Mr. Kennedy's case, and Mr. Kennedy will be required to wait until the District Court separately assesses his claims.

In addition, allowing Mr. Kennedy to intervene would ensure that we can reach the First Amendment issues, notwithstanding the Government's contention that respondents lack standing. Indeed, because Mr. Kennedy has been mentioned explicitly in communications between the Government and social media platforms, he has a strong claim to standing, and the Government has not argued otherwise.

Our democratic form of government is undermined if Government officials prevent a candidate for high office from communicating with voters, and such efforts are especially dangerous when the officials engaging in such conduct are answerable to a rival candidate. I would allow him to intervene to ensure that we can reach the merits of respondents' claims and to prevent the irreparable loss of his First Amendment rights.