No. 22-31

IN THE
Supreme Court of the United States

STATE OF ARIZONA,
Petitioner,

v.

BRIAN MECINAS; CAROLYN VASKO; DNC SERVICES CORPORATION, D/B/A DEMOCRATIC NATIONAL COMMITTEE; DSCC; PRIORITIES USA; PATTI SERRANO; AND KATIE HOBBS, ARIZONA SECRETARY OF STATE,
Respondents.

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

BRIEF FOR ARIZONA SECRETARY OF STATE KATIE HOBBS IN OPPOSITION

JESSICA RING AMUNSON
Counsel of Record
SAM HIRSCH
JONATHAN J. MARSHALL*
JENNER & BLOCK LLP
1099 New York Ave., NW
Suite 900
Washington, DC 20001
(202) 639-6000
jamunson@jenner.com

**Not admitted in the District of Columbia; practicing under direct supervision of members of the D.C. Bar*

QUESTIONS PRESENTED

1. Whether this Court has jurisdiction to vacate a lower court's ruling under *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), if the party requesting vacatur would lack appellate standing to seek plenary review of the ruling.

2. Whether this Court has jurisdiction to review the denial of a motion to intervene as a defendant after the underlying action has been dismissed and before any court has ruled on the merits, leaving no relief available to the putative intervenor.

3. Whether the Ninth Circuit abused its discretion in ruling that the State of Arizona's motion to intervene as a defendant in a suit challenging an Arizona election law was untimely where the suit had already been dismissed and intervention was sought solely for the purpose of obtaining review of an interlocutory jurisdictional decision that did not reach the validity of the challenged law.

4. Whether, assuming the State of Arizona is permitted to intervene and seek vacatur under *Munsingwear*, such vacatur is appropriate under the circumstances.

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INTRODUCTION

Respondent Katie Hobbs was elected by the people of the State of Arizona to serve as the State's 21st Secretary of State, the second-highest position in Arizona's executive branch. *See* Ariz. Const. art. 5, §§ 1(A), 6. In that role, Secretary Hobbs serves as the "chief state election officer," Ariz. Rev. Stat. § 16-142(A)(1), and is entrusted with administration and oversight of the State's elections. *See, e.g.*, *id.* §§ 16-128, -151, -650.

This case began when several individuals and organizations affiliated with the Democratic Party (Mecinas Respondents, or Plaintiffs) sued Secretary Hobbs in her official capacity, alleging that an Arizona election law governing the order in which candidates appear on ballots is unconstitutional because it favors Republican candidates. Secretary Hobbs, herself a Democrat, defended the statute pursuant to her duties as an elected state official.

After Secretary Hobbs won a dismissal of the suit on jurisdictional grounds in the district court, a panel of the Ninth Circuit reversed and remanded for further proceedings on the merits. At that point, Secretary Hobbs negotiated a dismissal of the suit, ensuring that Plaintiffs would not renew any challenge to the ballot-order statute prior to the November 2022 general election. That resolution protected the common goal all parties shared in ensuring an orderly and predictable election process. As a result of that dismissal, the challenged provision of Arizona law remained, and still remains, fully enforceable.

Most would have called that a win for the State. The Arizona Attorney General, however, directed the State to seek to intervene to request en banc review of the Ninth Circuit's interlocutory jurisdictional holding. The State then continued to seek intervention even after Plaintiffs dismissed their suit, leaving no threat to Arizona law or its election procedures. In short, the State tried to keep fighting after the bell in a match it had already won.

The State now continues its shadowboxing bout by asking this Court for an extraordinary and unprecedented form of relief—permission to intervene solely to seek vacatur of an appellate decision that has no concrete effect on the State or any state official. The State musters no example of a case in which a party has been permitted to intervene as a defendant after a suit has been voluntarily dismissed without plaintiffs having received any relief or any court having ruled on the parties' rights. Nor does the State provide an example of a case in which a party has been permitted to intervene solely for the purpose of seeking vacatur of a decision with which it disagrees. These failures are unsurprising, as what the State asks for—allowing a dead suit to be resurrected for the sole purpose of attempting to kill it differently—flouts bedrock principles governing the jurisdiction of the federal courts and the propriety of intervention.

Moreover, the State's theory in this case would open the gates for intervenors and vacatur-seekers to flood the courts of appeals and this Court with motions to intervene and petitions for rehearing and certiorari. The State cannot explain why, if its generalized

interest in justiciability doctrine in the Ninth Circuit were enough for it to obtain the relief it seeks here, any precedential appellate opinion would be safe.

The State's primary argument is an invocation of last Term's decisions in *Cameron v. EMW Women's Surgical Center, P.S.C.*, 142 S. Ct. 1002 (2022), and *Berger v. North Carolina State Conference of the NAACP*, 142 S. Ct. 2191 (2022). But in those cases, the state official initially defending the challenged law *acquiesced in a judgment that the law was unconstitutional*, leaving the law unenforceable unless a different state party could take up the defense. Here, by contrast, there has been no ruling on the challenged law's validity, and Secretary Hobbs has never indicated that she would acquiesce in such a ruling. Instead, she has consistently maintained that the ballot-order statute is valid, and she successfully negotiated a *dismissal* of the suit challenging it. That critical difference undermines the State's case for review, as the State simply has no concrete interest that has been left unvindicated in this litigation.

In its effort to continue the fight, the State has delivered an enormously complex jurisdictional morass to this Court's doorstep. Resolving the questions presented in the State's petition—not to mention determining whether the Court even has *jurisdiction* to resolve them—would require this Court to sift through a "mare's nest" of difficulties regarding the relationship among intervention, standing, mootness, appellate jurisdiction, and equitable vacatur. *Arizona v. City & County of San Francisco*, 142 S. Ct. 1926, 1928 (2022) (Roberts, C.J., concurring). What is more,

the Court will have to go at these questions alone, since none was briefed or decided below. All this in a case in which no existing party wishes to continue litigating—and all just to wipe away an appellate precedent that broke no new ground within the Ninth Circuit and that remains ripe for en banc or certiorari review in an appropriate case. This Court should deny the petition.

STATEMENT

This case involves an Arizona election law that dictates the order in which candidates' names appear on the general-election ballot. Pet. App. 6-7; *see* Ariz. Rev. Stat. § 16-502(E). Under the statute, the order in which candidates' names are listed in a particular county depends on the results in that county of the most recent gubernatorial election. Pet. App. 8. Candidates whose political parties received more countywide votes in that election are listed before candidates whose parties received fewer votes. *Id.* Accordingly, the order in which the names of candidates for statewide office appear may vary from county to county.

A. District Court Proceedings

In 2019, Plaintiffs (three individuals and three organizations affiliated with the Democratic Party) sued Secretary Hobbs in her official capacity, alleging that the ballot-order statute violates the First and Fourteenth Amendments by favoring Republican candidates. Pet. App. 6-7. Plaintiffs asserted that a candidate whose name appears first on the ballot "receives an unfair electoral advantage." *Id.* at 8-9. And they claimed that as a result of the State's ballot-

order provision, "in all but a handful of general elections since the statute was enacted the vast majority of Arizona's voting population received a ballot with the Republican Party's candidates in the top position." *Id.* at 8.

In November 2019, Plaintiffs sought a preliminary injunction suspending the ballot-order statute for the November 2020 general election. Pet. App. 9; *see* Mecinas Resp'ts Br. in Opp. 3. Secretary Hobbs, represented by the Arizona Attorney General's Office, opposed the injunction and moved to dismiss the suit on several grounds. Pet. App. 9. She argued that the district court lacked subject-matter jurisdiction because no plaintiff had standing, that the complaint presented a nonjusticiable political question, and that she was immune from suit under the Eleventh Amendment. *Id.* at 7, 38; *see* Fed. R. Civ. P. 12(b)(1). Secretary Hobbs also argued that Plaintiffs' complaint failed to state a claim. Pet. App. 38; *see* Fed. R. Civ. P. 12(b)(6).

In June 2020, the district court dismissed the suit, concluding that Plaintiffs lacked Article III standing and that the case presented a nonjusticiable political question. Pet. App. 32-68. The court did not opine on the merits of Plaintiffs' claim that the ballot-order statute is unconstitutional. *Id.* at 9.

Plaintiffs subsequently sought an injunction pending appeal in both the district court and the court of appeals. Pet. App. 10. Secretary Hobbs successfully opposed both motions. D. Ct. Doc. 80 (July 9, 2020); C.A. Doc. 7 (July 17, 2020).

B. Court of Appeals Proceedings

1. Secretary Hobbs's principal brief in the court of appeals was filed in May 2021 by the Arizona Attorney General's Office. *See* C.A. Doc. 28 (May 27, 2021). The following month, acting at the request of the Attorney General, the Arizona Legislature enacted Senate Bill 1823, which terminated the Attorney General's representation of Secretary Hobbs and her office in litigation for the remainder of her term. C.A. Doc. 37, at 2 (July 12, 2021); *see* S. 1823, 55th Leg., 1st Sess. § 11 (2021). The statute also barred the Secretary from making any expenditures to obtain counsel from outside the state government. S. 1823 § 84.[1] The Secretary therefore had to seek a stay of proceedings in the court of appeals so that she could obtain outside, pro bono counsel. C.A. Doc. 37, at 1-4. Pro bono counsel then presented oral argument on the Secretary's behalf, pressing the same jurisdictional arguments advanced in the brief authored by the Attorney General's Office. C.A. Doc. 53 (Jan. 14, 2022); *see* C.A. Doc. 52 (Dec. 17, 2021).

2. A panel of the court of appeals reversed and remanded for further proceedings. Pet. App. 3-31.

The court of appeals first concluded that one of the Plaintiff organizations—the Democratic National Committee (DNC)—had standing. Pet. App. 12-21. The court found that under the doctrine of "competitive

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[1] The statute allowed the Secretary to hire a full-time attorney in her office, but it made no appropriation for that position. S. 1823 § 84; *see* C.A. Doc. 37, at 2.

standing" that was well established in both the Ninth Circuit and other circuits, a plaintiff can demonstrate "the requisite concrete, non-generalized harm to confer standing" by alleging that an "election regulation makes the competitive landscape worse for a candidate or that candidate's party than it would otherwise be." *Id.* at 13-15; *see id.* at 15-16 (collecting cases). The court further found that the DNC's injury was traceable to the Secretary's role in overseeing election procedures, *id.* at 18-20, and that the injury could be redressed by a favorable decision, *id.* at 20-21. For related reasons, the court also rejected the Secretary's argument that Plaintiffs' suit was barred by the Eleventh Amendment. *Id.* at 26-28.

The court of appeals additionally held that Plaintiffs' suit did not fall within the political-question doctrine. Pet. App. 21-26. The court explained that "adjudicating a challenge to a ballot order statute does not present the sort of intractable issues that arise in partisan gerrymandering cases" like *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), Pet. App. 23, particularly given the Ninth Circuit's and other courts' (including this Court's) extensive experience applying the "*Anderson-Burdick* test" to "'evaluate and adjudicate disputes regarding the lawfulness of state [election] statutes, including ballot-order statutes,'" *id.* at 24-25 (alteration in original) (quoting *Nelson v. Warner*, 12 F.4th 376, 387 (4th Cir. 2021)); *see Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992).

Finally, the court of appeals held that Plaintiffs' complaint stated a claim under the First and

Fourteenth Amendments. Pet. App. 28-30. The court observed that many courts—including the Ninth Circuit, this Court, and the Arizona Supreme Court—had held that ballot-order statutes could be unconstitutional under certain circumstances. *Id.* at 29-30 (citing *Soltysik v. Padilla*, 910 F.3d 438, 445 (9th Cir. 2018); *McLain v. Meier*, 637 F.2d 1159, 1165-67 (8th Cir. 1980); *Sangmeister v. Woodard*, 565 F.2d 460, 467 (7th Cir. 1977), *appeal dismissed and cert. denied*, 435 U.S. 939 (1978); *Mann v. Powell*, 314 F. Supp. 677, 679 (N.D. Ill. 1969) (three-judge court) (per curiam), *aff'd mem.*, 398 U.S. 955 (1970); and *Kautenburger v. Jackson*, 333 P.2d 293, 295 (Ariz. 1958)). The validity of Arizona's ballot-order statute would therefore turn on "the magnitude of the asserted injury" and the extent to which "'alternative methods would advance the proffered governmental interests,'" both of which were "factual questions that cannot be resolved on a motion to dismiss." *Id.* at 30 (quoting *Soltysik*, 910 F.3d at 445).

C. Subsequent Proceedings

1. On April 22, 2022—the final day to seek rehearing—the State moved to intervene and petitioned for rehearing en banc. C.A. Doc. 58 (Mot. to Intervene); C.A. Doc. 60-1 (Pet. for Reh'g).[2] Although

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[2] "Under Federal Rule of Appellate Procedure 35(b), only a party to a matter before th[e] court may petition for rehearing or rehearing en banc. The [State's] petition [could] therefore only be considered if its Motion to Intervene [were] granted." *Day v. Apoliona*, 505 F.3d 963, 964 (9th Cir. 2007) (per curiam).

both documents were filed by private counsel, the motion to intervene stated that it was "brought at the direction of the Attorney General." Mot. to Intervene 4; *see* Pet. 6, 7.

The State's intervention motion acknowledged that Secretary Hobbs had indicated that "she will continue to defend the Ballot Order Statute." Mot. to Intervene 2. But because she had "declined to say whether she will seek further appellate review" of the court of appeals' interlocutory ruling, *id.*, the State argued that its "interest in defending the constitutionality of Arizona's laws," *id.* at 6, warranted intervention as of right. *Id.* at 3-7; *cf.* Fed. R. Civ. P. 24(a). The State also requested permissive intervention. Mot. to Intervene 8-9; *cf.* Fed. R. Civ. P. 24(b).

The State's petition for rehearing argued that the panel had erred in its conclusions that the DNC had Article III standing and that Plaintiffs' challenge was not a nonjusticiable political question. Pet. for Reh'g 6-14. The State did not object to the panel's analysis as to the Eleventh Amendment or as to whether, assuming jurisdiction, Plaintiffs' complaint alleged sufficient facts to state a claim that the ballot-order statute is unconstitutional.

2. Secretary Hobbs and Plaintiffs settled the case and filed a notice of stipulated dismissal in the district court on May 2, 2022. D. Ct. Doc. 87; Mecinas Resp'ts Br. in Opp. Suppl. App. 1-5 (Suppl. App.); *see* Fed. R. Civ. P. 41(a)(1)(A)(ii).

The parties' settlement agreement noted that Secretary Hobbs continued to "dispute[] Plaintiffs' allegations" that the ballot-order statute is unconstitutional. Suppl. App. 2. It further noted that without settlement, "Plaintiffs may have sought to continue to prosecute this action and the Secretary may have sought further review of the Ninth Circuit's decision," leading to the need for "additional resources and expense" on both sides. *Id.* The parties stated their "mutual desire for resolution of this matter expeditiously so that there is no doubt concerning the rules governing the ordering of Arizona's general election ballot in the November 2022 general election." *Id.*

Under the terms of the settlement agreement, Secretary Hobbs agreed that she would "seek no further review" of the Ninth Circuit's ruling and that she would "not seek vacatur" of its opinion. Suppl. App. 3. For their part, Plaintiffs agreed that they would dismiss their suit voluntarily without prejudice and that they would not bring a new challenge to the ballot-order statute before the November 2022 general election. *Id.*

The same day, both Secretary Hobbs (still represented by pro bono outside counsel) and Plaintiffs filed briefs in the court of appeals opposing the State's motion to intervene. C.A. Docs. 61-62 (May 2, 2022). The Secretary argued that intervention was unwarranted because she and the State "share exactly the same ultimate objective": to "defend" the ballot-order statute and "ensure it is not invalidated." C.A. Doc. 62, at 4. She also pointed out that the

Ninth Circuit's decision "did not decide the merits of Plaintiffs' constitutional claim," making "the decision whether to seek rehearing or . . . certiorari" a "discretionary litigation tactic." *Id.* at 5. She explained that she was "confident that she would [have] successfully defend[ed] the constitutionality of the ballot order statute on remand," and therefore "chose to avoid the unnecessary delay and expense of seeking highly discretionary en banc or Supreme Court review" of jurisdictional arguments that had been rejected by the court of appeals. *Id.* at 6. Secretary Hobbs further pointed out that "[i]f the State believed [she] didn't adequately represent its interests," it ought to have "sought to intervene any time during [the previous] year after the [Attorney General] stopped representing [her]," rather than wait until after "the appeal was argued, submitted, and decided." *Id.* at 7.

Also that same day, the State filed a notice in the district court asserting that the court lacked jurisdiction to dismiss the case because the notice of appeal had divested the court of its jurisdiction. D. Ct. Doc. 89 (May 2, 2022). It asked the district court "to ensure that the case does not get dismissed, despite the stipulation for dismissal by the current parties." *Id.* at 2.

A week later, the State filed an "Alternative Motion to Vacate" in the court of appeals, C.A. Doc. 64 (May 9, 2022), as well as a reply in support of its motion to intervene, C.A. Doc. 63 (May 9, 2022). The State insisted that the case could not be dismissed until the Ninth Circuit issued its mandate, *id.* at 3-5, but argued that if the parties' stipulated dismissal were to be given

effect, the panel's opinion "should also be vacated," C.A. Doc. 64, at 2, positing that it would otherwise "become[] an advisory opinion that is nevertheless binding precedent in the circuit, even though it is not subject to further appellate review," *id.*

3. In a summary order, the panel majority denied the State's motion to intervene, "whether permissive or as of right," as "untimely made." Pet. App. 2. In light of that denial, the panel also denied the State's petition for rehearing and its motion to vacate. *Id.*[3]

The State subsequently filed a document styled as a "Petition for Rehearing and Rehearing En Banc of Order Denying the State of Arizona's Motion to Intervene." C.A. Doc. 69 (May 17, 2022). Three days later, the State filed a further "Motion to Have Motion for Reconsideration of the Denial of the State of Arizona's Motion to Intervene Circulated to and Heard by En Banc Court." C.A. Doc. 70 (May 20, 2022). The panel construed the former filing as a motion for reconsideration of its order denying intervention and, so construed, denied it. Pet. App. 71-72. The panel also denied the State's request to circulate that motion to the full court. *Id.* at 72.[4]

The State did not seek to stay the Ninth Circuit's mandate, which issued on June 1, 2022. C.A. Doc. 73.

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[3] Judge Watford noted that he would have granted the motion to intervene. Pet. App. 2.

[4] Judge Watford noted that he would have granted the motion for reconsideration. Pet. App. 72.

The next day, the district court entered an order that "the case be administratively dismissed and closed" pursuant to the stipulated dismissal. D. Ct. Doc. 92 (June 2, 2022).

REASONS FOR DENYING THE WRIT

The State's positions in this case ultimately all founder for the same central reason. Regardless of the propriety of the State's attempt to intervene while the suit remained live, once Secretary Hobbs and Mecinas Respondents stipulated to a dismissal—leaving the ballot-order statute fully enforceable—the State lost any concrete stake in this litigation.

That unavoidable fact raises several jurisdictional barriers to this Court's review. First, the State cannot seek vacatur of the panel's decision because it lacks appellate standing. And second, the State cannot ask this Court to review the denial of its motion to intervene because that motion became moot when the litigation ended.

That fact also undermines any plausible basis for this Court's discretionary review. It renders the panel's intervention ruling inescapably correct, as there was no reason for the State to intervene after the suit was dismissed—nor in all likelihood would Article III have allowed it. It serves to distinguish each precedent the State invokes as in conflict with the panel's intervention ruling, including last Term's decisions in *Cameron v. EMW Women's Surgical Center, P.S.C.*, 142 S. Ct. 1002 (2022), and *Berger v. North Carolina State Conference of the NAACP*, 142 S. Ct. 2191 (2022). And it makes equitable vacatur wholly inappropriate,

as the State suffers no practical consequence whatsoever from the panel's interlocutory jurisdictional ruling.

I. THIS COURT LACKS JURISDICTION OVER ANY ISSUE RAISED IN THE PETITION.

This Court should deny review because it lacks jurisdiction to address either question presented by the petition. While the State initially sought intervention in order to seek rehearing of the panel's decision, it now disclaims (*see* Cert. Reply 1, 10) any purpose for its intervention other than to seek vacatur of that decision. But because the State lacks appellate standing to challenge that decision, this Court lacks jurisdiction to consider the State's request to vacate it. There is therefore no basis for intervention, and hence no basis for certiorari. And even aside from that problem, the Court independently lacks jurisdiction to review the denial of the State's intervention motion because that motion is moot.

A. This Court Lacks Jurisdiction to Grant Vacatur.

1. "Although rulings on standing often turn on a plaintiff's stake in initially filing suit, Article III demands that an actual controversy persist throughout all stages of litigation." *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1950-51 (2019) (internal quotation marks omitted). Accordingly, "[t]he requirement of standing 'must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance.'" *West Virginia v. EPA*, 142 S. Ct. 2587, 2606 (2022) (quoting

Arizonans for Off. Eng. v. Arizona, 520 U.S. 43, 64 (1997)).

In particular, to have "[s]tanding to defend on appeal in the place of an original defendant," a party must "possess 'a direct stake in the outcome.'" *Arizonans for Off. Eng.*, 520 U.S. at 64 (quoting *Diamond v. Charles*, 476 U.S. 54, 62 (1986)). The party must "demonstrate that it has suffered an actual or imminent injury that is 'fairly traceable' to the judgment below and that could be 'redress[ed] by a favorable ruling.'" *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2362 (2019) (alteration in original) (quoting *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149-50 (2010)).

2. The principle that a party seeking appellate review must demonstrate its standing is no less true where, as here, the party requests summary vacatur of a decision rather than plenary review.

In *Camreta v. Greene*, 563 U.S. 692 (2011), this Court noted that in some cases, a party (like the State here) that has ultimately prevailed in the litigation may still have standing to appeal. *Id.* at 702. The Court explained that the "critical question" is "whether the litigant retains the necessary personal stake in the appeal," such as "because the judgment may have prospective effect" on it. *Id.* Under the circumstances of *Camreta*—in which the court of appeals had ruled that state officials violated the Fourth Amendment but were entitled to qualified immunity—the Court held that one of two petitioners had standing to appeal because the court of appeals' ruling impelled him (but not the other petitioner, who had left state service) to

"either change the way he performs his duties or risk a meritorious damages action." *Id.* at 699-700, 703. In other words, "[o]nly by overturning the ruling on appeal" could he "gain clearance to engage in the conduct in the future." *Id.* at 703.

Having held that one petitioner had standing sufficient to confer jurisdiction, this Court proceeded to vacate the court of appeals' decision under *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950). *Camreta*, 563 U.S. at 709-14. Though that decision would have a concrete effect on one defendant's conduct, the plaintiff's circumstances had changed and she was no longer "in need of any protection from the challenged practice." *Id.* at 710-11. The controversy was therefore moot, *id.* at 709-12, and the Court vacated the decision below so that the official with appellate standing would not "'be forced to acquiesce in' [a] ruling" of which he "'ha[d] been prevented from obtaining the review to which [he was] entitled,'" *id.* at 712 (first quoting *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 25 (1994); and then quoting *Munsingwear*, 340 U.S. at 39).

This Court made clear, however, that its authority to vacate under *Munsingwear* turned on its antecedent conclusion that one petitioner had appellate standing. The Court explained that its "discussion of reviewability [wa]s critical to [its] ultimate disposition of th[e] suit." *Camreta*, 563 U.S. at 710 n.8; *see id.* at

712 n.10.[5] The Court further explained that appellate standing did not arise simply because of the risk that the adverse precedent might be applied in a future case; rather, it rested on the concrete effect the court of appeals' ruling would have on the one petitioner's real-world conduct. *See id.* at 703 & n.4. Indeed, even the dissent agreed on that point. *See id.* at 726 (Kennedy, J., dissenting) ("The conclusion that precedent of general applicability cannot in itself create standing to sue or appeal flows from basic principles.").[6]

3. The State lacks appellate standing to seek review of the panel's decision that the district court had jurisdiction over Mecinas Respondents' erstwhile suit. Accordingly, this Court lacks jurisdiction to consider the State's request to vacate that decision.

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[5] Indeed, two Justices declined to join the Court's opinion precisely because they disagreed with the majority's view that "we must decide whether [petitioner] has a 'right to appeal' in order to vacate the judgment below" under *Munsingwear*. *Camreta*, 563 U.S. at 715 (Sotomayor, J., joined by Breyer, J., concurring in the judgment).

[6] The State argues (Cert. Reply 2) that this Court's decision in *Arizonans for Official English* supports its position that vacatur is available regardless of its standing. Not so. The reason the Court did not need to "definitively resolve" petitioners' appellate standing in *Arizonans for Official English* was because the Court concluded that the appealed-from decision must be vacated due to a *different* jurisdictional defect—namely, that the court of appeals itself lacked jurisdiction because the case had become moot before it issued its decision. 520 U.S. at 66-67.

There is no conceivable injury here that would confer appellate standing on the State. In seeking to explain how it is harmed by the panel's decision, the State trumpets (Pet. 12-15) its sovereign interest in defending its laws from constitutional challenge. While there is no doubting the State's interest in the validity of its own laws, the underlying suit threatens no "actual or imminent" harm to that interest because that suit has been dismissed. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 423-24 (2013) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). Thus, the fact that the decision below permitted Mecinas Respondents' suit to go forward no longer aggrieves the State in any way, even if it once did.

To the extent the State argues (*see, e.g.*, Pet. 9-10, 20; Cert. Reply 7-9) that the decision below harms the State because it creates unfavorable precedent on justiciability in the Ninth Circuit, that injury does not give rise to appellate standing because it is in no way specific to the State. Article III demands a "particularized" injury, meaning one that "affect[s] the plaintiff in a personal and individual way." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting *Defs. of Wildlife*, 504 U.S. at 560 n.1). But outside the context of a specific challenge to a specific provision of Arizona law, precedents on standing or the political-question doctrine do not affect the State in any way that differs from how they affect every other State, county, and municipality within the Ninth Circuit. This Court has made clear that a party lacks standing if the relief it seeks "no more directly and tangibly benefits [it] than it does the public at large." *Defs. of Wildlife*, 504 U.S.

at 573-74. And the State offers no explanation for why, if it has standing under these circumstances, countless others with generalized interests—such as the State of California; Treasure County, Montana; or the City of Coeur d'Alene, Idaho—would not similarly be entitled to seek vacatur of the decision below.

To the extent the State argues (*see, e.g.*, Pet. 11, 14) that the decision below harms the State because it specifically threatens Arizona's ballot-order statute, that injury does not support Article III standing because it is far too speculative. The State acknowledges (Cert. Reply 7) that this supposed injury would be realized only on the hypothetical assumption that Mecinas Respondents challenge the ballot-order statute once again following the November 2022 election. Not only does that render the State's purported injury a quintessentially "conjectural or hypothetical" one, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 344 (2006) (quoting *Defs. of Wildlife*, 504 U.S. at 560), it also implicates the oft-repeated principle that "when the existence of an element of standing 'depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict,' a party must present facts supporting an assertion that the actor will proceed in such a manner." *Massachusetts v. EPA*, 549 U.S. 497, 545-46 (2007) (Roberts, C.J., dissenting) (quoting *Defs. of Wildlife*, 504 U.S. at 562); *see, e.g.*, *United States v. Windsor*, 570 U.S. 744, 757 (2013); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 134 (2011). The State has not even attempted to carry its burden to

show that such a suit is forthcoming, either by Mecinas Respondents or any other party.

In its reply, the State doubles down (Cert. Reply 7-9) on its position that it is injured by the panel's opinion because "if the DNC reinstates its suit, absent vacatur, it will be directly-on-point, binding precedent on the State" even though "the State had no opportunity to challenge that opinion." *Id.* at 7. The State's attempt to reinforce its injury theory only underscores that theory's dual flaws. First, the State explicitly admits that its purported injury will manifest only in the event Mecinas Respondents' suit is reinstated. And second, the State is far from the only entity that will be bound by the panel's opinion despite not having had an opportunity to challenge it.

In suggesting an injury, the State also emphasizes (Cert. Reply 8) that in a future suit, a Ninth Circuit panel will be bound to apply the decision below. But the State fails to recognize that in that future, hypothetical suit, the State will be in no worse position than the one it tried to occupy by intervening below—it will remain free to seek a fresh look from either the Ninth Circuit sitting en banc or from this Court. *Contra id.* at 8-9 (asserting "the State's inability to seek further, en banc or Supreme Court review of the panel's decision").

In short, because the State suffers no concrete, imminent, and particularized injury traceable to the

decision below, it lacks appellate standing to seek vacatur.[7]

B. This Court Lacks Jurisdiction to Review the Petition's First Question Presented.

After the State filed its motion to intervene (and before the Ninth Circuit ruled on it), Secretary Hobbs negotiated a settlement with Mecinas Respondents, and the parties filed a notice of stipulated dismissal in the district court. The State was attempting to intervene as a defendant—that is, to defend the challenge to the ballot-order statute. But once that challenge was dropped, there was nothing more for the State to do. That mooted the State's motion to intervene, and its request that this Court review the denial of that motion is likewise moot.

As Mecinas Respondents observe (Br. in Opp. 11), there is unevenness in the lower courts as to how to address an appeal from a motion to intervene when the underlying action (in which intervention is sought) has been dismissed. *See CVLR Performance Horses, Inc. v. Wynne*, 792 F.3d 469, 474 (4th Cir.) (collecting cases),

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[7] The State has never argued—not in its motion to intervene, in the petition, or in its reply in support of certiorari—that it is injured by the panel's brief discussion of the merits of Plaintiffs' constitutional claims, Pet. App. 28-31. That argument is therefore forfeited. *See Caspari v. Bohlen*, 510 U.S. 383, 388 (1994). In any event, the argument lacks force, as the court of appeals' opinion merely stated that under settled Ninth Circuit precedent, the success of Plaintiffs' claims hinged on factual determinations, making dismissal at the pleading stage inappropriate. Pet. App. 29-30.

cert. denied, 577 U.S. 1051 (2015). Some courts, for instance, have allowed intervention even after a suit is dismissed on the theory that if intervention were granted, "then the [intervenor] would have standing to appeal the district court's judgment." *DeOtte v. Nevada*, 20 F.4th 1055, 1067 (5th Cir. 2021) (quoting *DBSI/TRI IV Ltd. P'ship v. United States*, 465 F.3d 1031, 1037 (9th Cir. 2006)). But all circuits appear to agree that dismissal of the underlying action moots a motion to intervene where, as here, "th[at] subsequent disposition of the case . . . provide[s] the relief sought by the would-be intervenors." *CVLR*, 792 F.3d at 475. The State points to no contrary authority.

Here, there was no relief for the State to obtain once Secretary Hobbs and Mecinas Respondents stipulated to a dismissal of the suit. The effect of that dismissal was that the State's asserted interest in the suit—defending the validity of Arizona laws—had been successfully vindicated. And as explained, the State's vague and generalized interest in justiciability doctrine was not sufficient to support an appeal. With no pending suit in which to fight and no appellate relief to be had from any ruling in that suit, the State lacked a "personal stake in the outcome" of any subsequent proceedings. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 478 (1990)). Accordingly, its motion to intervene became moot at the moment the existing parties stipulated to dismissal. That motion remains moot, and this Court thus lacks jurisdiction to review the Ninth Circuit's denial of it.

The State argues (Cert. Reply 3-7) that even if a case is moot, this Court still has the authority to vacate a lower court's decision under *Munsingwear*. It is of course a truism that because *Munsingwear* vacatur is an equitable remedy applicable in some cases that become moot pending appeal, the authority to vacate is exercised in the face of mootness. But that fact does not avail the State here.

As the State implicitly acknowledges, it cannot properly request vacatur unless and until it becomes a party to this litigation. *See, e.g.*, Cert. Reply 10 (requesting certiorari "for the limited purpose of allowing intervention and vacating the Opinion"); *see also Karcher v. May*, 484 U.S. 72, 83 (1987). But to become a party, the State would first need this Court to exercise its jurisdiction to vacate the court of appeals' ruling that the State may not intervene. The State provides no authority for the proposition that the Court may take that antecedent step in a case in which it otherwise lacks jurisdiction.

II. REVIEW IS UNWARRANTED EVEN ASIDE FROM THE JURISDICTIONAL BARRIERS.

Even if this Court determined that it had jurisdiction over the issues raised in the petition, it should nonetheless deny review. At the very least, the petition raises complex threshold questions that a grant of certiorari would either implicitly resolve or require the Court to explicitly address. There is no basis in any event for summarily reversing the Ninth Circuit's denial of the State's intervention motion because that ruling was correct and does not conflict with any

decision of this Court or any other court. And even if the question of intervention were worthy of review, there is no reason for this Court to grant the petition because *Munsingwear* vacatur—the only reason for intervention—would be inappropriate under the circumstances.

A. The Petition's First Question Presented Does Not Warrant Summary Reversal or This Court's Plenary Review.

1. This case is plagued by difficult threshold questions not addressed below.

As explained above, this Court lacks jurisdiction over the petition's first question presented because the motion to intervene became moot when Secretary Hobbs and Mecinas Respondents stipulated to a dismissal. But at the very least, the petition's first question presented raises complex jurisdictional issues. And it may well implicate a circuit split as to whether an appeal from the denial of a motion to intervene can continue after the underlying action has been dismissed. *See CVLR*, 792 F.3d at 474. If this Court were to summarily reverse or vacate the decision below, that could implicitly resolve this split. Nor should this Court grant plenary review, which would tee up the issue without it ever having been briefed or argued in the lower courts.

The petition's first question presented also implicates difficult questions about intervenor standing more generally. These questions, too, have not to this

point been briefed by any party or addressed by the courts below.

To start, this Court has not resolved the question whether an intervenor as of right must always have Article III standing. *See Town of Chester v. Laroe Ests., Inc.*, 137 S. Ct. 1645, 1650 (2017) (acknowledging "a division among the Courts of Appeals" on this issue). And the unusual circumstances of this case make it a particularly poor vehicle for settling that question.

Further, granting review as to the State's motion to intervene would also require this Court to examine two other potential barriers to intervention. First, this Court has held that "an intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought" by the other parties. *Town of Chester*, 137 S. Ct. at 1651; *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2379 n.6 (2020). While that is likely a barrier here given that the State sought both rehearing and vacatur of the panel's decision—both forms of relief no other party sought—the Court has not yet elucidated the scope of this principle when a party moves to intervene as a defendant. Second, it is likely that intervention was impermissible here under the rule that "an 'intervenor cannot step into the shoes of the original party' (here, the [Secretary of State]) 'unless the intervenor independently "fulfills the requirements of Article III."'" *Wittman v. Personhuballah*, 578 U.S. 539, 544-45 (2016) (quoting *Arizonans for Off. Eng.*, 520 U.S. at 65); *see also Windsor*, 570 U.S. at 803 n.1 (Alito, J., dissenting) (collecting cases). As explained, the State suffered no

Article III injury that could support its participation after the existing parties settled the suit.

2. The court of appeals' ruling was correct.

Even setting aside the substantial jurisdictional complications, this Court should deny review of the petition's first question presented. The State seeks fact-bound error correction, but there is no error to correct. The Ninth Circuit panel did not abuse its discretion in denying the State's motion to intervene.[8]

The court of appeals' order denying the State's motion to intervene noted only that the motion was "untimely made." Pet. App. 2. The State focuses its energy (Pet. 11-17) on objecting to that determination, asserting (Pet. 11-12) that it intervened at the soonest possible moment.

There is much to doubt about the State's account. Pursuant to Senate Bill 1823, the Attorney General withdrew from representing Secretary Hobbs about

[8] The State sought intervention in the court of appeals both as of right and permissively. Pet. App. 2. This Court has held that denials of permissive intervention are reviewed for abuse of discretion. *See Cameron*, 142 S. Ct. at 1011-12. While this Court has left open what standard of review applies to denials of intervention as of right, *see Berger*, 142 S. Ct. at 2206 n.*, the lower courts generally review those decisions for abuse of discretion too. *See, e.g.*, *Benjamin ex rel. Yock v. Dep't of Pub. Welfare*, 701 F.3d 938, 947 (3d Cir. 2012); *see also McHenry v. Comm'r*, 677 F.3d 214, 223 (4th Cir. 2012) (collecting cases); *cf. United States v. Alisal Water Corp.*, 370 F.3d 915, 918-19 (9th Cir. 2004) (denial of intervention as of right is reviewed de novo but question as to timeliness is reviewed for abuse of discretion).

nine months prior to the panel's decision. Had the State believed its interests would no longer be adequately represented once the Secretary was forced to obtain private counsel to present oral argument in the Ninth Circuit, it should have moved to intervene at that point. It is therefore difficult to say that the State acted with the requisite dispatch by waiting until the last possible moment after the panel's decision to move to intervene, or that the panel abused its discretion in so determining.

But even if the State were correct that it acted with sufficient speed, that question speaks to only part of the timeliness inquiry, and timeliness is just one of four elements the State had to establish to show its right to intervene. Timeliness is a holistic concept in the Ninth Circuit that, in addition to "the reason for and length of the delay," speaks also to "the stage of the proceeding at which an applicant seeks to intervene" and "the prejudice to other parties." *W. Watersheds Project v. Haaland*, 22 F.4th 828, 835-36 (9th Cir. 2022) (internal quotation marks omitted). And in addition to showing the timeliness of its motion, a putative intervenor must also show (1) that it "ha[s] a significantly protectable interest relating to the property or transaction which is the subject of the action"; (2) that it is "so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest"; and (3) that its interest is "inadequately represented by the parties to the action." *Freedom from Religion Found. v. Geithner*, 644 F.3d 836, 841 (9th Cir. 2011) (internal quotation marks omitted); *cf.* Fed. R. Civ. P. 24(a)(2).

None of these other requirements was met here. As to timeliness, when the panel ruled on the State's motion, a notice of stipulated dismissal had already been filed, ending the suit. And because that dismissal was pursuant to a settlement agreement between the existing parties, the State's effort to continue the litigation would have prejudiced those parties.

Even if the State's motion were timely, it still suffered from fatal flaws. While the State undoubtedly has a strong interest in the constitutionality of the ballot-order statute, by the time its motion to intervene was considered, the validity of the statute was no longer a live issue. Instead, the only remaining concern was the status of justiciability doctrine within the Ninth Circuit, and, as demonstrated, the State has no protectable interest in the general status of the law. And even if that interest were protectable, nothing impeded the State's ability to protect it because the justiciability questions on which the panel ruled remained (and still remain) subject to review by the en banc Ninth Circuit and this Court in any future suit in which they become relevant. In that future suit, the State would occupy exactly the position it sought to occupy by intervening here—no better, no worse.

In considering the State's rationale for intervention, it is also important to emphasize the drastic implications of its position. To illustrate, suppose the panel in this case had affirmed the district court's jurisdictional dismissal of the suit, and Mecinas Respondents had opted not to seek further review. Under the State's vision of intervention, every voter in the State of Arizona—not to mention Alaska,

California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, American Samoa, and Guam, *cf.* Pet. 20 & n.4—would have the right to intervene to vindicate his or her vision of election-law justiciability. And if the court of appeals were to deny those motions, this Court would (in the State's view) have jurisdiction over the subsequent petitions for certiorari, even long after the original suit had been dismissed. That cannot be the law.

For these reasons, the panel's decision to deny the State's intervention motion was correct—and certainly not an abuse of its discretion.

3. The court of appeals' ruling was not contrary to any decision of this Court or any other court.

The State claims (Pet. 11-17) that the decision below denying intervention was contrary to this Court's precedents as well as prior decisions of the Ninth Circuit. The State is incorrect.

The State first suggests (Pet. 11-15) that the court of appeals' denial of the motion to intervene was contrary to this Court's decisions last Term in *Cameron*, 142 S. Ct. 1002, and *Berger*, 142 S. Ct. 2191. Both cases involved state officials' efforts to intervene after the officials who had previously been defending the validity of the challenged state laws acquiesced in adverse rulings. *Cameron*, 142 S. Ct. at 1007-08; *Berger*, 142 S. Ct. at 2198-200. But that is as far as the similarities go.

Both *Cameron* and *Berger*—unlike this case—involved acquiescence *after a court had ruled on the*

merits that the challenged state law was unconstitutional. *Cameron*, 142 S. Ct. at 1008; *Berger*, 142 S. Ct. at 2199-200. The status quo before intervention, therefore, was that the law would be unenforceable. Here, by contrast, Secretary Hobbs stopped litigating only because she was able to negotiate a dismissal of the suit challenging the ballot-order statute, thereby leaving the statute in effect. Further, both *Cameron* and *Berger* involved state officials who had stopped defending the constitutionality of the challenged law, but Secretary Hobbs has never given up on the position that Arizona's ballot-order statute is valid. Put simply, Secretary Hobbs *won* her suit, whereas the state officials in *Cameron* and *Berger* had *lost* theirs. The issue before the court of appeals here was not whether the state law would be enforceable absent intervention, but only the timing for challenging a precedent on justiciability. *Cameron* and *Berger* therefore do not dictate the outcome here.

The State also cites (Pet. 12) *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021), as an analogous case in which state intervention was appropriate. But as the State acknowledges, in that case "Arizona's secretary of state and attorney general took opposite sides" on the merits. Pet. 12 (quoting *Berger*, 142 S. Ct. at 2201). Again, that is not the case here: Secretary Hobbs has never wavered in

her defense of the validity of Arizona's ballot-order statute.[9]

The State's claim (Pet. 15-17) of an intracircuit conflict is similarly unavailing. As Mecinas Respondents explain (Br. in Opp. 18), there is no such conflict, as the cases the State cites involved concrete state interests that were jeopardized by ongoing litigation. And even if the tension the State identifies were real, there is no realistic concern that the panel's nonprecedential summary order will cause confusion in the Ninth Circuit.

In the end, the State musters no case—none—in which a State has been permitted to intervene in a suit challenging a state law even after the suit has been dismissed, leaving the law as enforceable as it was before the suit was ever filed. That is no surprise, as there is no plausible reason for state intervention under these circumstances.

B. There Is No Basis for *Munsingwear* Vacatur.

In any event, there is no basis for this Court to vacate the panel's decision.

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[9] The State additionally argues (Pet. 13) that *United Airlines, Inc. v. McDonald*, 432 U.S. 385 (1977), required its intervention motion to be granted. *United Airlines* involved neither a state intervenor nor a party seeking to intervene as a defendant for the sole purpose of continuing a suit that had already been voluntarily dismissed. *See id.* at 387-90. It therefore has no bearing on this case. *See* Mecinas Resp'ts Br. in Opp. 20 n.4.

1. First, the petition by its own logic provides no avenue for reaching its second question presented—whether to vacate under *Munsingwear*. The State does not suggest that this Court may grant *Munsingwear* vacatur at the request of a non-party. And for good reason: if that were the case, this Court would be flooded by petitions for certiorari every time the parties seek no further review of a precedential appellate decision. Instead, the State acknowledges (*e.g.*, Cert. Reply 1, 10) that allowing it to intervene is a prerequisite for vacatur under *Munsingwear*. Thus, if the Court were to deny review with respect to the petition's first question presented, it would not reach the second question.

Moreover, the State's first question presented asks only "[w]hether the [State's] motion to intervene *was timely*." Pet. i (emphasis added). As noted above, timeliness is just one piece of a multifaceted inquiry when ruling on an intervention motion. *See* p. 27, *supra*. The State's primary contention (Pet. 11-17), in line with its formulation of the first question presented, is that the panel's determination that its motion was untimely was contrary to precedent of the Ninth Circuit and this Court. But even if this Court were to decide that the court of appeals erred as to the timeliness of the State's motion, that would not answer the broader question whether the State should have been permitted to intervene. All the State would be fairly entitled to is a remand for the panel to consider the State's motion under the proper timeliness standard. As the State acknowledges (*see* Pet. 8 n.3), however, that avenue is closed now because the State

failed to move to stay the Ninth Circuit's mandate, thereby allowing the parties' stipulated dismissal to take effect.[10]

The upshot is that the State seeks a windfall, asking this Court to vacate the panel's decision without ever needing to demonstrate that decision's error. That is more than the State requested from the court of appeals, which was simply the opportunity to seek en banc (and then certiorari) review of the panel's decision. Having been required to show more than just the timeliness of its motion to get the relief it sought in the court of appeals, the State does not persuasively explain why that mere showing should entitle it to the far broader relief it seeks from this Court.

2. Even putting this issue aside, *Munsingwear* vacatur would be inappropriate under the circumstances.

Munsingwear vacatur is an equitable doctrine designed to prevent a party that has lost in the lower courts from "be[ing] forced to acquiesce in the judgment" it has no opportunity to appeal. *U.S. Bancorp*, 513 U.S. at 25. But here, there is no "judgment" in which *anyone* has to acquiesce, *id*; nor will the State be in any way "treated as if there had been a review" despite "hav[ing] been prevented from

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[10] The State does sporadically argue as to the other elements of the test for intervention, but those questions are not "subsidiary" to the question the State has actually articulated. *See Yee v. City of Escondido*, 503 U.S. 519, 535 (1992).

obtaining" it, *Camreta*, 563 U.S. at 712 (quoting *Munsingwear*, 340 U.S. at 39). There is just an appellate ruling that, by its own terms, did little more than apply the Ninth Circuit's (and other courts') longstanding precedents on "competitive standing" and the political-question doctrine. Thus, the usual equitable rationale for *Munsingwear* vacatur is absent here.[11]

Moreover, vacatur would be sorely unfair to the existing parties in this case. With respect to Mecinas Respondents, that unfairness is clear: they agreed to dismiss their suit on the understanding that neither vacatur nor reversal of the panel's opinion would be sought. *See* Mecinas Resp'ts Br. in Opp. 25. With respect to Secretary Hobbs, although vacatur in theory would vindicate the position she took on jurisdiction in this litigation, vacatur in practice would not be in the broad interests of the Office of the Arizona Secretary of State. These include the important interests in fair dealing with opposing litigants and in protecting the order and predictability of Arizona elections—interests that would be severely undermined both in this case

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[11] The State claims a "right to obtain vacatur" to "'prevent an unreviewable decision from spawning any legal consequences.'" Pet. 2 (quoting *Camreta*, 563 U.S. at 713). As explained above, however, *Camreta* was clear that a precedent's potential application in a future case is not the sort of "legal consequence[]" that either confers standing or justifies vacatur. *See* 563 U.S. at 703 & n.4 (explaining that the injury giving rise to standing and vacatur "occur[ed] independent of any future suit"); *see also id.* at 726 (Kennedy, J., dissenting).

and in the future if other state parties could belatedly override the Secretary's management of election-related litigation.

Further, it would also be inappropriate to reward the State's request for vacatur given the circumstances relating to Secretary Hobbs's representation in this case. As noted, the Arizona Attorney General represented Secretary Hobbs through most of this litigation—and in particular, the Attorney General's Office authored the Secretary's appellate brief on jurisdiction that the Ninth Circuit panel ultimately found unpersuasive. The Attorney General then withdrew after the State—acting through its Legislature, and indeed at the Attorney General's own behest—decided that he should no longer represent the Secretary in this (or any) litigation. Now, the State—acting through the Attorney General—claims it would be unfair for it to have to live with the panel's opinion as Ninth Circuit precedent because the Secretary supposedly does not represent the State's interests (and even though the Attorney General's Office authored her appellate brief). The Secretary disagrees with that view, but in any event, neither the State's nor the Attorney General's complaints of unfairness and inadequacy can be taken seriously given their respective roles in the history of this litigation.[12]

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[12] Though the State is nominally represented by private outside counsel, the State admits (*e.g.*, Pet. 6, 7) that the Attorney General has directed this representation throughout. *See* Mot. to Intervene 4. This fact raises additional questions relating to the equities, such as how the Attorney General can take

For these reasons, there is no basis for *Munsingwear* vacatur here. Because the State seeks to intervene solely to seek vacatur, this Court should deny review altogether.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JESSICA RING AMUNSON
Counsel of Record
SAM HIRSCH
JONATHAN J. MARSHALL*
JENNER & BLOCK LLP
1099 New York Ave., NW
Suite 900
Washington, DC 20001
(202) 639-6000
jamunson@jenner.com

**Not admitted in the District of Columbia; practicing under direct supervision of members of the D.C. Bar*

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positions contrary to Secretary Hobbs's in a suit in which he previously represented her. *See Mi Familia Vota v. Hobbs*, 977 F.3d 948, 951-52 (9th Cir. 2020) (noting "[q]uestions" about the Attorney General's authority to represent the State under similar circumstances); *see also* Jonathan J. Cooper, *Arizona Attorney General, State Bar Reach Diversion Deal*, AP News (Feb. 5, 2022), https://apnews.com/article/arizona-bd95d6603fa5ac766c3ac286c3436575.