

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MELINDA ANTONUCCI,
CASEY MATHIEU,
Plaintiffs-Appellants,

vs.

CHRISTOPHER WINTERS, et al.,
Defendants-Appellees.

Case No. 25-514

**JOINT STIPULATION OF DISMISSAL AND PLAINTIFFS-
APPELLANTS' UNOPPOSED MOTION TO VACATE THE DISTRICT
COURT JUDGMENT**

Pursuant to Federal Rule of Appellate Procedure 42(b)(1), the Parties hereby stipulate to dismiss this appeal. Plaintiffs-Appellants move to vacate the district court's preliminary-injunction Order (Dkt. 50). Defendants-Appellees do not oppose vacatur.

Background

This case arises from a prior Vermont Department of Children and Families' ("the Department") policy requiring foster parents to be "supporting and affirming" of a child's sexual orientation, gender identity, and gender expression. Joint App. ("JA") 342. This policy led the Department to revoke Appellants' foster-care licenses. JA288-91. Appellants then sued Department officials and sought a

preliminary injunction against Vermont’s policy. JA292–93. The district court denied that motion, and Appellants filed this appeal. *See* JA367–97.

On February 18, the Department issued new guidance for licensing foster parents. Ex. A. Under this guidance, “[a]pplicants’ sincerely held personal, cultural, religious, moral, or philosophical beliefs shall not be considered in the licensing process.” *Id.* at 3. Further, the Department does not require “endorsement or affirmation of specific identities,” *id.* at 5, or the “use of particular vocabulary, prescribed language, or preferred pronouns related to gender identity, sexual orientation, or identity expression,” *id.*

Appellees have also represented that the Department will rescind the decision to revoke Appellants’ foster-care licenses, that Appellants’ licenses will be reinstated, and that the previous grounds for revocation will no longer operate to exclude Plaintiffs. The Parties have agreed to file a Joint Stipulation and Final Judgment in the District Court (Ex. B) reflecting the substantive terms of the relief agreed to by the Parties. The Parties have also executed a settlement agreement reflecting Vermont’s commitment to carry out its policy changes, the Parties’ intent and understanding of their agreement and the releases of liability. Ex. C. The Parties agree that each party shall bear their own costs and fees.

In light of the Department’s new guidance and the settlement agreement, the Parties agree that this appeal is now moot and should be dismissed.

Motion

When an appeal becomes moot, “[t]he established practice ... is to reverse or vacate the judgment below.” *United States v. Munsingwear*, 340 U.S. 36, 39 & n.2 (1950). “In the ordinary run of cases . . . courts have been liberal in granting vacatur.” *Russman v. Bd. of Educ. of Enlarged City Sch. Dist. of City of Watervliet*, 260 F.3d 114, 121 (2d Cir. 2001). Courts will routinely vacate preliminary judgments that have become moot too. *See, e.g., Azar v. Garza*, 584 U.S. 726, 729–30 (2018) (per curiam) (vacating grant of temporary restraining order); *Harper ex. rel. Harper v. Poway Unified Sch. Dist.*, 549 U.S. 1262 (2007) (vacating denial of preliminary injunction).

This liberal rule applies with even more force “when mootness occurs through . . . the unilateral action of the party who prevailed in the lower court.” *Azar*, 584 U.S. at 729–30 (cleaned up). Because vacatur is “rooted in equity,” it would be unfair to let an adverse judgment stand because of circumstances beyond the appellant’s control. *Russman*, 260 F.3d at 121. So vacatur is appropriate when the government repeals a challenged policy thereby mooting the plaintiffs’ request for relief. *Chrysafis v. Marks*, 15 F.4th 208, 211 (2d Cir. 2021) (vacating dismissal and denial of preliminary injunction because “mootness [was] attributable to a change in the legal framework”); *see also Coll. Standard Mag. v. Student Ass’n of State of Univ.*

of New York at Albany, 610 F.3d 33, 35 (2d Cir. 2010) (vacating district court’s judgment because school’s repeal of challenged policy mooted the case).

This is just such a case. Vermont (commendably) changed the challenged policy to ensure that “[a]pplicants shall not be excluded based on [their religious] beliefs nor on an intent to live, parent, and make day-to-day caregiving decisions consistent with those beliefs.” Ex. A. By abandoning the previous policy that Plaintiffs sought to enjoin, the State’s “unilateral action” mooted this appeal. *Azar*, 584 U.S. at 729. And in that case, “a party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment.” *Russman*, 260 F.3d at 121 (cleaned up).

Because Vermont has repealed the challenged policy to moot this appeal, and because the Parties have reached a settlement, this Court should dismiss this appeal and vacate the lower court’s preliminary injunction order. In addition, the Parties respectfully request that this Court rule on this motion sufficiently in advance of the oral argument date, currently set for February 26, 2026, such that the Plaintiffs and the State need not expend additional resources traveling to New York.

February 20, 2026

Respectfully submitted,

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