No. 14-884

In the

Supreme Court of the United States

ROBERT ROSEBROCK,

Petitioner,

v.

BARTON HOFFMAN, ACTING POLICE CHIEF FOR THE VA OF GREATER LOS ANGELES, *et al.*,

Respondents.

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

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, INSTITUTE FOR JUSTICE AND CATO INSTITUTE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

This Court has made it clear that the government's voluntary cessation of unconstitutional conduct does not moot a case unless its actions make it absolutely clear that the wrongful behavior could not reasonably be expected to recur. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007). In this case, the Ninth Circuit found that the government's voluntary cessation rendered the case moot even though it acknowledged that there were no "safeguards in place preventing [it] from changing course," because the court chose to apply a "presum[ption] that a government entity is acting in good faith when it changes its policy." *Rosebrock v. Mathis*, 745 F.3d 963, 971-74 (9th Cir. 2014). Did the Ninth Circuit err in applying this presumption so as to relieve the government of its burden of proving that its unconstitutional actions cannot reasonably be expected to recur?

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

Page

Federal Regulation

Rules

TABLE OF AUTHORITIES—Continued

Page

Miscellaneous

INTEREST OF AMICI CURIAE

Pursuant to Supreme Court Rule 37.2(a), Pacific Legal Foundation (PLF), the Institute for Justice (IJ), and the Cato Institute[1] respectfully submit this brief amicus curiae in support of Petitioner.

PLF was established in 1973, and litigates for limited government, private property rights, a balanced approach to environmental regulations, equality under the law, and free enterprise. Frequently, questions about justiciability, particularly questions regarding the "voluntary cessation" aspect of mootness, arise in their cases. *See, e.g.*, *Town of Nags Head v. Toloczko*, 728 F.3d 391 (4th Cir. 2013); *Rothe Dev. Corp. v. Dep't of Defense*, 413 F.3d 1327 (Fed. Cir. 2005); *Coral Const. Co. v. King Cnty.*, 941 F.2d 910 (9th Cir. 1991); *McLean v. City of Alexandria*, No. 1:14CV1398 JCC/IDD, 2015 WL 427166 (E.D. Va. Feb. 2, 2015); *Pac. Legal Found. v. Watt*, 539 F. Supp. 1194 (D. Mont. 1982).

Founded in 1991, IJ is a nonprofit, public-interest legal center dedicated to defending the essential foundations of a free society: private property rights, economic and educational liberty, and the free

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[1] Pursuant to this Court's Rule 37.2(a), all parties have consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of Amici's intention to file this brief. Letters evidencing such consent have been filed with the Clerk of the Court.

Pursuant to Rule 37.6, Amici affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici, their members, or their counsel made a monetary contribution to its preparation or submission.

exchange of ideas. Questions about mootness arise in many of its cases. *See, e.g.*, *Earl v. Smith*, No. 4:14-CV-00358-JLH, Defs.' Br. Supp. Mot. to Dismiss 4-6, ECF No. 16 (E.D. Ark. July 8, 2014).

The Cato Institute was established in 1977 as a nonpartisan public policy research foundation dedicated to advancing individual liberty and free markets. Cato's Center for Constitutional Studies promotes the principles of limited constitutional government by filing amicus briefs in courts nationwide, producing the annual *Cato Supreme Court Review*, and other activities.

Amici are interested in ensuring that government defendants are held to a robust burden of proof when they rely on the voluntary cessation doctrine to moot challenges to their actions. Diluting the substantial burden of proving mootness through voluntary cessation would empower government entities across the country to evade judicial scrutiny in many of the types of cases in which Amici are involved.

INTRODUCTION AND SUMMARY OF REASONS FOR GRANTING THE PETITION

This Court should grant the petition for two reasons. First, the decision below exacerbates a nationwide circuit split regarding the scope of the voluntary cessation doctrine in cases involving government defendants. The "presumption that a government entity is acting in good faith when it changes its policy" that the Ninth Circuit applied here, *Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014), is also applied by four other courts of appeals, while three other circuits apply a stricter standard more in

line with this Court's precedents regarding voluntary cessation. The First, Eighth, and D.C. Circuits require all defendants to make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur before they will conclude that voluntary cessation has rendered a case moot. *See Am. Civil Liberties Union of Massachusetts v. U.S. Conference of Catholic Bishops*, 705 F.3d 44, 56 & n.10 (1st Cir. 2013); *Americans United for Separation of Church and State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 421 (8th Cir. 2007); *American Iron & Steel Inst. v. EPA*, 115 F.3d 979, 1006-07 (D.C. Cir. 1997).

Second, this question is critically important. Government entities often try to moot cases through "predictable protestations of repentance and reform." *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 67 (1987) (internal quotations omitted). For example, this month, the City of Alexandria, Virginia, sought to moot a First Amendment challenge to a city ordinance by issuing a press release declaring a temporary suspension in enforcing the ordinance—but without actually taking any binding action to repeal or modify that ordinance. *See McLean v. City of Alexandria*, No. 1:14CV1398 JCC/IDD, 2015 WL 427166, at **2-4 (E.D. Va. Feb. 2, 2015).[2] This is just one of the many instances in which state and city governments have attempted to dismiss cases on voluntary cessation grounds, in cases involving everything from the free speech rights of lawyers to the religious liberties of prisoners. The petition should be granted so that plaintiffs can either

[2] Amicus Pacific Legal Foundation represents the plaintiff in McLean.

be assured of definitive cessation by the government, or can obtain judicial resolution on the merits. Government defendants should not be empowered to "manipulate the Court's jurisdiction to insulate a favorable decision from review." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 288 (2000).

REASONS FOR GRANTING THE PETITION

I

A PRESUMPTION OF GOOD FAITH FOR GOVERNMENT DEFENDANTS IS INCONSISTENT WITH DECISIONS OF OTHER CIRCUITS AND WITH THIS COURT'S PRECEDENTS

A. Circuit Courts Are Hopelessly Split on This Issue

Confusion abounds among circuit courts regarding whether trial courts should accord a presumption in favor of a government defendant that promises to cease its allegedly illegal actions. The Ninth Circuit, along with the Third, Fifth, Eleventh, and Federal Circuits, says the answer to that question is "yes." *See Rosebrock*, 745 F.3d at 971; *Marcavage v. Nat'l Park Serv.*, 666 F.3d 856, 861 (3d Cir. 2012) ("[G]overnment officials are presumed to act in good faith.") (citations omitted); *DeMoss v. Crain*, 636 F.3d 145, 150-51 (5th Cir. 2011) (government defendants entitled to a "presumption of good faith"); *Chapman Law Firm Co. v. Greenleaf Constr. Co.*, 490 F.3d 934, 940 (Fed. Cir. 2007); *Troiano v. Supervisors of Elections*, 382 F.3d 1276, 1283 (11th Cir. 2004) ("when the defendant is not

a private citizen but a government actor, there is a rebuttable presumption that the objectionable behavior will *not* recur.") (emphasis in the original). The Second, Sixth, and Seventh Circuits do not accord a formal presumption in favor of government voluntary cessation, but still treat government defendants with more deference than they do private defendants who voluntarily cease illegal activity. *Ammex, Inc. v. Cox*, 351 F.3d 697, 705 (6th Cir. 2003) ("[C]essation of the allegedly illegal conduct by government officials has been treated with more solicitude by the courts than similar actions by private parties."); *Ragsdale v. Turnock*, 841 F.2d 1358, 1365 (7th Cir. 1988) (same); *see also Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo*, 981 F.2d 50, 59 (2d Cir. 1992) ("Some deference must be accorded to a [legislative body's] representations that certain conduct has been discontinued.").

By contrast, the First, Eighth, and D.C. Circuits continue to place a significant burden of demonstrating mootness squarely on all defendants equally. *Am. Civil Liberties Union of Massachusetts v. U.S. Conference of Catholic Bishops*, 705 F.3d 44, 56 & n.10 (1st Cir. 2013) (declining to "join the line of cases holding that when it is a government defendant which has altered the complained of regulatory scheme, the voluntary cessation doctrine has less application unless there is a clear declaration of intention to re-engage"); *Americans United for Separation of Church and State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 421 (8th Cir. 2007) ("The [government] defendant faces a heavy burden of showing that the challenged conduct cannot reasonably be expected to start again.") (quotations omitted). *American Iron & Steel Inst. v. EPA*, 115 F.3d 979, 1006 (D.C. Cir. 1997)

(case challenging standard issued by agency not mooted by agency statement modifying application of standard because statement could be withdrawn, struck down by the reviewing court, or ignored by local EPA officials). This Court should grant this petition to resolve the disagreement among circuit courts.

The presumption in favor of government's voluntary cessation is without legal foundation and conflicts with decisions of this Court. Such favoritism toward government defendants clashes with this Court's consistent rulings that all defendants face a "heavy" and "formidable" burden to show that they have rendered a case moot by voluntarily ceasing the illegal act. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189-90 (2000).

This Court has repeatedly applied the general rule that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982). It has acknowledged that any lower standard would enable a defendant to "engage in unlawful conduct, stop when sued to have the case declared moot, then pick off where he left off, repeating this cycle until he achieves all his unlawful ends." *Already, LLC v. Nike, Inc.*, 133 S. Ct. 721, 727 (2013).

This Court has accordingly emphasized that voluntary cessation of illegal conduct is not alone sufficient to render a case moot; the cessation must also be of such a form that it is "*absolutely clear* that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth*, 528 U.S. at 189 (emphasis added). And this Court has put the burden squarely on the defendant to "demonstrate that

there is no reasonable expectation that the wrong will be repeated." *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953) (internal quotations omitted).

This Court's voluntary cessation mootness doctrine is colored by the fact that mootness is jurisdictional, not prudential. A case is rendered moot only where the court is incapable of rendering relief. Thus a court has no authority to act if it finds that a case is moot. *See Genesis Healthcare Corp. v. Symcyzk*, 133 S. Ct. 1523, 1528 (2013). But in many cases in which a defendant voluntarily ceases illegal activity, the court can still provide a remedy, by enjoining future illegal conduct, by awarding exemplary damages, or in other ways. *W.T. Grant Co.*, 345 U.S. at 633. The Ninth Circuit's presumption of good faith for government defendants takes no account of the fundamental jurisdictional question in mootness cases: the question of whether the court can grant relief. Thus its decision elided "the distinction between two principles: the jurisdictional requirements of Article III and the prudential limits on its exercise." *United States v. Windsor*, 133 S. Ct. 2675, 2685 (2013). Yet that distinction is crucial with respect to mootness doctrine. Because dismissing a case after courts have already spent scarce resources on it "may prove more wasteful than frugal," *Friends of the Earth*, 528 U.S. at 192, this Court has always required defendants to satisfy a"formidable" burden when asking a court to declare a case moot. *Id.* at 189-90.

In *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), for example, a group of parents sued the Seattle School District, alleging that the district's use of racial classifications to allot slots in oversubscribed high

schools violated the Equal Protection Clause. *Id.* at 709-11. The school district argued that the case was moot, because it had ceased using the racial tiebreaker pending the outcome of litigation. *Id.* at 719. But the Court held that the defendant still had to make "absolutely clear" that its allegedly unconstitutional activities could not be reasonably expected to recur. *Id.* The defendant did not satisfy this high burden of proof by temporarily stopping its race-based school assignments on the eve of litigation. This Court therefore proceeded to the merits.

B. There Is No Reason to Treat Government and Private Defendants Differently with Regard to the Burden of Establishing Mootness in Cases of Voluntary Cessation

There is no sound basis for treating government and private defendants differently with regard to the burden of establishing mootness in cases of voluntary cessation. First, there is no foundation for presuming that government defendants will act with any lesser degree of self-interest than private defendants in such circumstances. Government agencies have interests adverse to their litigation opponents, and, like private parties, will take legal positions and actions in defense of their prerogatives. *Cf. Wilkie v. Robbins*, 551 U.S. 537, 557-58 (2007) (government "may stand firm on its rights" and "drive a hard bargain" "[j]ust [like] a private landowner."). Indeed, they are *obliged* to do this: government agents acting on behalf of the public have a fiduciary duty to defend the public trust that constitutes their authority, so long as they act responsibly and within constitutional boundaries. But for that very reason, it is necessary to enforce those

constitutional boundaries. Thus there is no basis for according government defendants a presumption that is not given to private defendants in voluntary cessation cases. Without strict enforcement of the standards for proving mootness, the government—no less than private litigants—would have an incentive to shield any colorable claim to authority from judicial review by "ceas[ing] a challenged practice to thwart the lawsuit, and then return[ing] to old tricks once the coast is clear." *Kikumura v. Turner*, 28 F.3d 592, 597 (7th Cir. 1994) (quoting *Magnuson v. City of Hickory Hills,* 933 F.2d 562, 565 (7th Cir. 1991)). If courts have "rightly refused to grant [private] defendants such a powerful weapon against public law enforcement," *W. T. Grant*, 345 U.S. at 632, they should also refuse to grant government defendants such a powerful weapon against *constitutional* enforcement.

Kikumura is a case quite similar to this one. It involved a prisoner lawsuit alleging that a prison policy barring foreign-language publications for prisoners violated the First Amendment. After the lawsuit was filed, prison staff drafted a "supplemental" policy liberalizing rules for foreign-language publications. 28 F.3d at 595. The warden did not approve this policy, but signed another, more vaguely worded policy which was more stringent than the proposed "supplement," but which was still more open than the policy challenged in the case. *Id.* at 595-96. The court rejected the argument that these actions rendered the case moot, and declined to presume good faith on the part of the prison. The prison's policies "have apparently ebbed and flowed throughout the course of the litigation," which made it impossible to conclude "that the government has satisfied its 'heavy burden' of proving that there is no reasonable

likelihood that it will reinstitute the challenged policy." *Id.* at 597.

City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999), though a ripeness case, not a mootness case, demonstrates how government entities can adopt "shifting and sometimes inconsistent positions" to avoid judicial review of its unconstitutional conduct. *Id.* at 699. There, city officials repeatedly rejected, revised, and delayed a land-use permit application over the course of five years, only to assert when they were later sued for a taking that the case was unripe because the city had not yet made a final determination. This Court at last put a stop to such "repetitive and unfair procedures," *id*. at 698, out of its well-founded concern that a myopic fixation on "procedural rigidities" and "technical rule[s] of law" would force property owners "to resort either to piecemeal or to premature litigation to ascertain the just compensation" to which they are entitled. *United States v. Dickinson*, 331 U.S. 745, 749 (1947).

Second, not only are public entity defendants likely to act in a self-interested manner just as private defendants are, but there is also "a public interest in having the legality of the [government's] practices settled" which "militates against a mootness conclusion." *W. T. Grant*, 345 U.S. at 632. Indeed, the public interest in determining the constitutionality of the government's conduct is often greater than the public interest in the resolution of a private dispute involving private defendants.

Third, the imbalance of power in litigation between the government and a private litigant like Rosebrock also counsels in favor of the same high burden that this Court has always applied in voluntary

cessation cases. A private party like Rosebrock, unlike the government, does not live a perpetual life. And while government defendants have "unlimited resources" to defend themselves in litigation, and to "litigate[] for principle or policy," a private litigant typically cannot afford to pursue litigation on principle in the face of a defendant stopping and starting an illicit activity. Loren A. Smith, *Why a Court of Federal Claims?*, 71 Geo. Wash. L. Rev. 773, 782 (2003). Those circumstances make it more, not less, likely that the government can cease illegal conduct, outwait a private litigant, and then engage again in the offending conduct. Also, to the extent that the Ninth Circuit's presumption is premised on democratic values—that officials responsible for the offending conduct will cease it because they are answerable to the public, *cf. Troiano v. Supervisor of Elections in Palm County, Fla.*, 382 F.3d 1276, 1283 (11th Cir. 2004) (predicating presumption fact that government defendants "may be replaced in office with new individuals")—such a rationale cannot apply to an administrative agency such as the Veteran's Administration, which is not answerable to voters. *Cf. City of Arlington, Tex. v. F.C.C.*, 133 S. Ct. 1863, 1877 (2013) (Roberts, C.J., dissenting).

Fourth, the risk that government policies may "ebb[] and flow[] throughout the course of the litigation," *Kikumura*, 28 F.3d at 597, counsels against according government a presumption that voluntary cessation is alone sufficient to render a case moot. Government personnel are constantly being replaced, so there is always the chance that a new director in charge of enforcing the regulation might have a different view of that regulation's legality or applicability. *See, e.g.*, *Levin v. United States*, 133 S.

Ct. 1224, 1234 (2013) (noting that the government "now disavows" its previous litigation position); Transcript of Oral Argument at 32, *US Airways, Inc. v. McCutchen*, 133 S. Ct. 1537 (2013) (No. 11-1285) (Roberts, C.J.) ("It's perfectly fine if you want to change your position, but don't tell us it's because the Secretary has reviewed the matter further, the Secretary is now of the view. Tell us it's because there is a new Secretary."). In this case, the government official serving as the named defendant was different at every stage of the litigation. *See Rosebrock v. Beiter*, 788 F. Supp. 2d 1127 (C.D. Cal. 2011), *aff'd sub nom.*, *Rosebrock v. Mathis*, 745 F.3d 963 (9th Cir. 2014), *pet. for cert. filed sub nom.*, *Rosebrock v. Hoffman* (U.S. Jan. 13, 2015) (No. 14-884).

The danger that a new director may have a different view of the legal issues than did his or her predecessor is all the more pronounced in this case, where the internal email that the Ninth Circuit considered sufficient to moot the case does not make it "absolutely clear" that the challenged conduct is a thing of the past. Far from it: for all that appears, the government could chose to reinstate its old policy at a moment's notice. *See* 38 C.F.R. § 1.218(a)(9) (banning distribution or display of materials on VA property "except as authorized by the head of the facility"). As Justice Scalia noted, statutory text is susceptible of many interpretations, and an administrative agency "is free to move from one [interpretation] to another, so long as the most recent interpretation is reasonable." *Barnhart v. Walton*, 535 U.S. 212, 226 (2002) (Scalia, J., concurring).

Finally, ordinary rules of evidence counsel against presuming that the government's voluntary cessation

suffices to ensure that wrongful conduct will not recur. It is generally unfeasible for a party to make a negative showing, which is why this Court usually places the burden of persuasion on the party that is in the better position to satisfy it. *See Shinseki v. Sanders*, 556 U.S. 396, 410 (2009). In litigation between an individual and the government, the latter can typically access "vast stores of information—including police reports, personnel, and disciplinary files, court records, and the ability to withhold or seriously delay litigants' access to that information." Susan Bandes, *Patterns of Injustice: Police Brutality in the Courts*, 47 Buff. L. Rev. 1275, 1336 (1999). None of this is available to private litigants in most cases. Thus where the question in dispute is whether the government is going to abide by the law, the burden should rest with the government, which has better access to the information necessary to prove that it will comply, and not on the individual plaintiff to prove that the government will not resume its illegal conduct. The latter can be an impossible task.

II

THE ISSUE PRESENTED IN THIS PETITION IS IMPORTANT AND FREQUENTLY ARISES IN LITIGATION

This petition presents the Court with a crucial issue that frequently arises in litigation. Different governments in different states are attempting to use the same tool to dismiss a losing case: voluntary cessation. Just this month, a federal district court rejected the City of Alexandria, Virginia's effort to moot a case through a pretext of voluntary cessation. *McLean v. City of Alexandria*, No. 1:14CV1398

JCC/IDD, 2015 WL 427166, at **2-4 (E.D. Va. Feb. 2, 2015). That case challenges the constitutionality of a city ordinance that bans "for sale" signs on cars parked on city streets. After the plaintiff brought a First Amendment challenge, the City quickly issued a press release announcing that it was suspending enforcement of the statutory provision at issue to allow the city to study the ordinance and decide whether to amend or repeal it. *Id.* at *1. But months later, the city had taken no action on the ordinance—neither amending, nor repealing it. Instead, the City filed a motion to dismiss, arguing that the case had been rendered moot by voluntary cessation. *Id.* at **1-2. The District Court applied no "good faith" presumption to the government's claims, but on the contrary, properly found the case was still live because there was "a possibility that the City Council will not repeal the Ordinance and resume enforcement in the future," *id.* at *2, and because "the Court does still have effective relief to offer—mainly, a declaration that the . . . Ordinance . . . abridges the freedom of speech." *Id.* at *3 (citation omitted).

In *Wall v. Wade*, 741 F.3d 492 (4th Cir. 2014), a Muslim inmate challenged a state prison's policy conditioning an inmate's request for religious accommodation on his possession of physical indicia of faith. *Id.* at 494. After the plaintiff filed suit, the prison changed its policy in a memorandum, which permitted inmates to participate in Ramadan if they have borrowed religious material from the Chaplain's office. *Id.* at 496. The Fourth Circuit rejected the prison's attempt to moot the case, pointing out that nothing in the memorandum suggests that the defendant, like the defendant in this case, "is actually barred—or even considers itself barred—from

reinstating the [unconstitutional policy] if it so chooses." *Id.* at 497. And the frailty of government policies not incorporated in a statute was on full display in *Wall*: The defendants in that case utilized "three different policies" in just the last five years. *Id.*

In *Jackson v. United States Parole Com'n*, 806 F. Supp. 2d 201 (D.C. Cir. 2011), the government sought to have a prisoner's case dismissed as moot on the basis of a single "declaration from a [Parole Commission] administrator stating that she 'does not expect' the parole officer supervising [Plaintiff] to request that the special parole restrictions be reimposed." *Id.* at 208. The prisoner alleged that special restrictions placed on his parole deprived him of his Fifth Amendment right to due process and First Amendment right to freedom of speech and freedom of association. The court rejected the government's attempt to moot the case, noting that defendants have not altered their procedures for imposing the allegedly unlawful special parole restrictions. *Id.* The government, the court warned, "cannot escape the pitfalls of litigation by simply giving in to a plaintiff's individual claim without renouncing the challenged policy, at least where there is a reasonable chance of the dispute arising again between the government and the same plaintiff." *Id.* at 206 (quoting *Legal Assistance for Vietnamese Asylum Seekers v. Dep't of State, Bureau of Consular Affairs*, 74 F.3d 1308, 1311 (D.C. Cir. 1996), *vacated on other grounds*, 519 U.S. 1 (1996)).

In *Harrell v. Florida Bar*, 608 F.3d 1241 (11th Cir. 2010), an attorney sued the Florida Bar after it rejected several of the attorney's proposed advertising slogans, such as "Don't settle for anything less." *Id.* at

1249. The Bar moved to dismiss the case as moot after its Board of Governors declared that the slogan was permissible after all. *Id.* at 1265. The Bar characterized its actions as "an honest and unremarkable effort to correct an erroneous judgment by the Standing Committee[.]" *Id.* The Eleventh Circuit held that the case was not moot, noting that the Bar "acted in secrecy, meeting behind closed doors and, notably, fail[ed] to disclose any basis for its decision." *Id.* at 1267. Thus it could easily violate the First Amendment a second time by taking an equally secretive and unaccountable action.

These cases demonstrate the need for this Court to resolve the conflict raised by the decision below. That need is all the more pressing in light of the presumption's broad application to elected and unelected officials at all levels of state and federal government. That the government is the defendant does not justify a departure from the normal rule that the plaintiff should be the master of his own case. *Cf. Caterpillar Inc. v. Williams*, 482 U.S. 386, 398-99 (1987) ("[T]he plaintiff is the master of the complaint."). Since this Court disfavors attempts to "manipulate the Court's jurisdiction to insulate a favorable decision from review," *Pap's A.M.*, 529 U.S. at 288, it should not be in the hands of the defendant to eliminate a case either by a trick, or worse, by the vicissitudes of inter-office policy determinations that are not even promulgated in the form of an official office policy.

CONCLUSION

This Court has repeatedly emphasized the "deep-rooted historic tradition that everyone should have his own day in court" so that he will have a "full and fair opportunity to litigate" the issues in his case. *Taylor v. Sturgell*, 553 U.S. 880, 892-93 (2008) (quoting *Richards v. Jefferson Cnty.*, 519 U.S. 793, 798 (1996)). Accordingly, the petition for certiorari should be *granted*.

DATED: February, 2015.

Respectfully submitted,

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