

No. 24-5937

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

DO NO HARM, a nonprofit corporation
incorporated in the State of Virginia,

Plaintiff-Appellant,

v.

WILLIAM LEE, in his official capacity
as Governor of the State of Tennessee,

Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of Tennessee
Honorable Gregory F. Van Tatenhove, Judge
3:23-cv-01175

APPELLANT'S UNOPPOSED MOTION TO DISMISS APPEAL

ANASTASIA P. BODEN
Counsel of Record
JOSHUA P. THOMPSON
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, California 95814
Telephone: (916) 419-7111
Facsimile: (916) 419-7747
ABoden@pacificlegal.org
JThompson@pacificlegal.org
Counsel for Plaintiff-Appellant

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure and Sixth Circuit Rule 26.1, counsel for Appellant certifies that Appellant Do No Harm is a privately owned nonprofit incorporated in Virginia. No party to this appeal is a subsidiary or affiliate of a publicly owned corporation and no publicly owned corporation that is not a party to this appeal has a financial interest in the outcome.

Pursuant to Federal Rule of Appellate Procedure 42(b)(2), Plaintiff-Appellant moves to dismiss this appeal based on mootness. Appellant has conferred with Defendant-Appellee on this motion and all parties agree that this case is moot and should be dismissed.

Appellant respectfully asks this court to vacate the decision of the lower court under *United States v. Munsingwear*, 340 U.S. 36 (1950). *Munsingwear* is proper when mootness arises from actions by appellees or third parties, depriving an appellant of the opportunity to litigate the appeal. See *Arizonans for Official English v. Arizona*, 520 U.S. 43, 71–72 (1997) (“Vacatur is in order when mootness occurs through . . . ‘unilateral action of the party who prevailed in the lower court.’” (citation omitted); *U.S. Bancorp Mortg. Co. v. Bonner Mall P’ship*, 513 U.S. 18, 25 (1994) (“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.”).

Here, Do No Harm brought this lawsuit to challenge laws requiring that the Governor of Tennessee consider the race of candidates for seats on the Board of Tennessee Podiatric Medical Examiners. Compl., Doc. 1, PageID #1–7; First Am. Compl., Doc. 23, PageID # 82. See Tenn. Code

Ann. §§ 63-3-103(b); 8-1-111. The district court dismissed this case on August 8, 2024, based on standing, Judgment, Doc. 38, PageID # 217, and Plaintiff filed a Notice of Appeal on August 30, 2024. Notice of Appeal, Doc. 40, PageID # 219.

Since Appellant filed the appeal, Tennessee has introduced and passed bills repealing the challenged statutes, thereby mooting this case. *See* H.B. 1237, 114th Gen. Assemb., Reg. Sess. (TN 2025); S.B. 1235, 114th Gen. Assemb., Reg. Sess. (TN 2025); S.B. 1084, 114th Gen. Assemb., Reg. Sess. (TN 2025). Because Appellant did not have an opportunity to litigate the standing issue in this appeal, the equities favor vacating the lower court's decision based on lack of standing.

Defendant-Appellant does not oppose dismissing this action, and does not oppose vacatur. However, Defendant believes the proper course of action is to remand to the district court with instructions to dismiss the case as moot.

ACCORDINGLY, Plaintiff voluntarily dismisses this action without prejudice. *See* Federal Rule of Appellate Procedure 42(b)(2).

DATED: May 29, 2025.

Respectfully submitted,

/s/ Anastasia P. Boden

ANASTASIA P. BODEN

Counsel of Record

JOSHUA P. THOMPSON

Pacific Legal Foundation

555 Capitol Mall, Suite 1290

Sacramento, California 95814

Telephone: (916) 419-7111

Facsimile: (916) 419-7747

ABoden@pacificlegal.org

JThompson@pacificlegal.org

Counsel for Plaintiff-Appellant

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DATED: May 29, 2025.

/s/ Anastasia P. Boden

ANASTASIA P. BODEN

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ *Anastasia P. Boden*

ANASTASIA P. BODEN