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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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CITY NEWS & NOVELTY, INC. v. CITY OF WAUKESHA

CERTIORARI TO THE COURT OF APPEALS OF WISCONSIN

No. 99–1680. Argued November 28, 2000– Decided January 17, 2001

The City of Waukesha, Wisconsin (City), requires sellers of sexually explicit materials to obtain and annually renew adult business licenses. When petitioner City News and Novelty, Inc. (City News), applied for a renewal of its adult business license, then due to expire in two months, Waukesha's Common Council denied the application, finding that City News had violated the City's ordinance in various ways. The denial was upheld in administrative proceedings and on judicial review in the state courts. Petitioning for certiorari, City News raised three questions, including whether the guarantee of a prompt judicial review that must accompany an adult business licensing scheme, see *Freedman v. Maryland*, 380 U. S. 51, 59; *FW/PBS, Inc. v. Dallas*, 493 U. S. 215, 229, means a prompt judicial determination on the merits of a permit denial, as some Federal Circuits have held, or simply prompt access to judicial review, as the Wisconsin Court of Appeals, below, and other courts have ruled. Because this Court granted the petition only on this question, City News cannot now contend that any of the substantive requirements governing adult business licenses in Waukesha conflict with the First Amendment. Nor does City News contend that the evidence failed to substantiate the charged violations.

Held: Because City News is not properly situated to raise the question on which this Court granted review, the petition is dismissed and the judgment of the Wisconsin court is left undisturbed. Pp. 3–7.

(a) This case has become moot. After petitioning for certiorari, City News withdrew its renewal application and ceased to operate as an adult business. City News no longer seeks to renew its license and currently expresses no intent to pursue a license. Accordingly, City News no longer has a legally cognizable interest in the outcome. *E.g.*, *County of Los Angeles v. Davis*, 440 U. S. 625, 631. Neither of City

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News's arguments that the case remains fit for adjudication is persuasive. The Court rejects City News's contention that, because it never promised not to reapply for a license, a live controversy remains under *Erie v. Pap's A. M.*, 529 U. S. 277. *Erie* differs critically from this case. In *Erie*, as in the instant case, the Court confronted an adult business' challenge to a city ordinance. There, the Court held that the controversy persisted, even after the adult business shut down, in part because the business could again decide to operate. *Id.*, at 287. That speculation standing alone, however, did not shield the case from a mootness determination. Another factor figured prominently. The nude dancing entrepreneur in *Erie* sought to have the case declared moot after the business had prevailed below, obtaining a state-court judgment that invalidated *Erie*'s ordinance. *Id.*, at 288. Acceptance of the mootness plea would have resulted in dismissal of the petition, leaving intact the judgment below. See *ASARCO Inc. v. Kadish*, 490 U. S. 605, 621, n. 1. As a result, *Erie* would have been saddled with an ongoing injury, *i.e.*, the judgment striking its law, and the adult business arguably would have prevailed in an attempt to manipulate the Court's jurisdiction to insulate a favorable decision from review, 529 U. S., at 288. Here, in contrast, City News left the fray a loser, not a winner. Dismissal of the petition will not keep Waukesha under the weight of an adverse judgment, deprive the City of its state-court victory, or reward an arguable manipulation of the Court's jurisdiction. The Court also rejects City News's contention that it experiences ongoing injury because it is conclusively barred by Waukesha's ordinance from reopening as an adult business until 2005. It is far from clear whether City News actually suffers that disability. And a live controversy is not maintained by speculation that City News might be temporarily disabled from reentering a business that it has left and currently asserts no plan to reenter. See *Spencer v. Kemna*, 523 U. S. 1, 15–16. Pp. 3–6.

(b) City News's contention that it remains a qualified complainant also fails on another ground. Full briefing and argument have revealed that the *Freedman* question City News tendered, and which the Court took up for review, is not now and never was accurately reflective of City News's grievance. Unlike the initial license applicant whose expression cannot begin prepermission, City News was already licensed to conduct an adult business and sought to fend off a stop order. Swift judicial review is the remedy needed by those held back from speaking. The Court does not doubt that an ongoing adult enterprise facing loss of its license to do business may allege First Amendment injuries. Such an establishment's typical concern, however, is not the speed of court proceedings, but the availability of a

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stay of adverse action during the pendency of judicial review, however long that review takes. Unlike the *Freedman* petitioner, who sought, through swift court review, an end to the status quo of silence, City News sought to maintain, *pendente lite*, the status quo of speech (or expressive conduct). This Court ventures no view on the merits of an argument urging preservation of speech (or expressive conduct) as the status quo pending administrative and judicial review proceedings. That question is not the one on which the courts have divided or on which certiorari was granted here. Pp. 6–7.

Certiorari dismissed. Reported below: 231 Wis. 2d 93, 604 N. W. 2d 870.

GINSBURG, J., delivered the opinion for a unanimous Court.