

No. 21-2326

In the
United States Court of Appeals
for the **Seventh Circuit**

RYAN KLAASSEN, JAIME CARINI, DANIEL J. BAUMGARTNER,
ASHLEE MORRIS, SETH CROWDER, MACEY POLICKA,
MARGARET ROTH, AND NATALIE SPERAZZA,
Plaintiffs-Appellants

v.

THE TRUSTEES OF INDIANA UNIVERSITY,
Defendant-Appellee

Appeal from the United States District Court
for the Northern District of Indiana, South Bend Division
No. 1:21-cv-00238-DRL-SLC
The Honorable Damon R. Leichty, Judge

APPELLEE’S MOTION TO DISMISS

I. Introduction

None of the eight Plaintiffs who filed this lawsuit challenging Indiana University's requirement that students be vaccinated for COVID-19 are currently subject to that requirement. Seven of them have received an exemption based on their representation that the vaccination conflicts with their religious beliefs. And the eighth voluntarily withdrew from IU on August 8, 2021. As a result, there is no longer a justiciable controversy as to IU's vaccination requirement, and Plaintiffs' appeal on that basis should be dismissed as moot.

II. Background

At the time that this Court entered its order denying Plaintiffs' Motion for Emergency Injunction Pending Appeal, six of the eight plaintiffs had already obtained a religious exemption from IU's vaccine requirement. App. Dkt. 13 at 2. A seventh, Margaret Roth, was eligible for an exemption but had not yet requested it, and an eighth, Natalie Sperazza, was not eligible. *Id.*

Since that decision, the status of both Roth and Sperazza has changed. Roth obtained a religious exemption on August 7, 2021 (the day after Plaintiffs sought similar emergency relief in the Supreme

Court). Declaration of Lora Headdy-Fox (“Headdy-Fox Decl.”) ¶ 7, attached hereto as Exhibit A. And while Sperazza never applied for an exemption, on August 8, 2021, she voluntarily withdrew from her courses at IU. *Id.* ¶ 8; Declaration of Jeff Johnston (“Johnston Decl.”) ¶ 8, attached hereto as Exhibit B. Likewise, one of the exempt Plaintiffs, Ashlee Morris, is also no longer enrolled at IU. Johnston Decl. ¶ 7. IU’s fall semester is now underway, having begun on August 23, 2021, and neither Sperazza nor Morris is registered for any classes. *Id.* ¶ 9.

As a result, none of the eight Plaintiffs who have alleged that IU’s vaccine requirement violates their substantive due process rights will be required to receive a COVID-19 vaccination as a condition of attending IU—six because they are exempt and two because they are no longer IU students.

III. Argument

A. Standard

Under Article III of the Constitution, federal court jurisdiction is limited to “cases” or “controversies” where the litigant possesses a personal stake in the outcome of the action. Therefore, “[i]f an

intervening circumstance deprives the plaintiff of a ‘personal stake in the outcome of the lawsuit,’ at any point during the litigation, the action can no longer proceed and must be dismissed as moot.” *Wright v. Calumet City*, 848 F.3d 814, 816 (7th Cir. 2017) (quoting *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013)). An appeal that no longer presents a live controversy is moot and must be dismissed. *Henco, Inc. v. Brown*, 904 F.2d 11, 13 (7th Cir. 1990).

B. Plaintiffs’ appeal of IU’s vaccination requirement is moot.

Plaintiffs’ appeal of IU’s vaccination requirement is now moot because it no longer presents a “live” controversy as to which any of the Plaintiffs have “a legally cognizable interest in the outcome.” *Stotts v. Cmty. Unit Sch. Dist. No. 1*, 230 F.3d 989, 990 (7th Cir. 2000) (quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969)).

As this Court acknowledged in its order denying an injunction pending appeal, the only basis for a justiciable controversy in this case was the fact that Sperazza did not qualify for an exemption from the vaccination requirement. App. Dkt. 13 at 3; *see also* App. Dkt. 6-3 at 29-30 (declining to address standing of students other than Sperazza). In light of Sperazza’s voluntary decision to withdraw from IU, she can no

longer claim an injury that the Court could redress. That is, even if the Court were to reverse the district court's denial of the students' requested preliminary injunction, that decision would not affect Sperazza.

Sperazza's decision not to attend IU, which both this Court and the district court observed was her prerogative,¹ deprives her of standing to challenge IU's policy. *See City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 2885 (2001) (holding plaintiff's choice to voluntarily terminate conduct that was subject of litigation mooted appeal). This is because there is no "form of meaningful relief" that can be granted to Sperazza. *Flynn v. Sandahl*, 58 F.3d 283, 287 (7th Cir. 1995) (quoting *Church of Scientology v. United States*, 113 S. Ct. 447, 450 (1992)). Enjoining IU's vaccination policy would provide no benefit to Sperazza because she is no more bound by that policy than a student at another university. Accordingly, Plaintiffs' challenge to IU's vaccination requirement "no longer qualifies for judicial review." *City News*, 531 U.S. at 283; *see also, e.g., Stotts*, 230 F.3d at 990-91

¹ App. Dkt. 13 at 3 ("Plaintiffs have ample educational opportunities."); App. Dkt. 6-3 at 48 (noting students "can go to college elsewhere").

(explaining that “a case [must] have an actual, ongoing controversy . . . throughout the pendency of the action”).

This leaves for review only the district court’s decision denying a preliminarily injunction as to IU’s masking and testing requirements for unvaccinated students, should Plaintiffs wish to pursue that limited challenge.²

IV. Conclusion

IU respectfully requests that the Court dismiss Plaintiffs’ appeal from the district court’s decision denying a preliminarily injunction as to IU’s student vaccination requirement.

Date: August 27, 2021

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² This Court previously noted that these requirements “are not constitutionally problematic.” App. Dkt. 13 at 3. In addition, Plaintiffs never alleged that masking and testing alone gave rise to irreparable harm (Dist. Dkt 8-1 at 37, Dist. Dkt. 22 at 18-19), and the district court found that they in fact do not give rise to irreparable harm. App. Dkt. 6-3 at 91-94 (finding masking and testing “aren’t indicative of irreparable harm”).

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Date: August 27, 2021

/s/ Anne K. Ricchiuto
Anne K. Ricchiuto

*Attorney for Defendant-Appellee
Trustees of Indiana University*

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2021, a copy of the foregoing was filed electronically. Service of this filing will be made on all ECF-registered counsel of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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DECLARATION OF LORA HEADDY-FOX

Lora Headdy-Fox, declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746, as follows:

1. I am over 18 years of age and have personal knowledge of the matters described in this declaration.

2. I have been employed by Indiana University (“IU”) for 20 years. I currently serve as the Director of Enterprise Business Systems in University Information Technology Services.

3. My duties include providing strategic leadership for the ongoing support of technology and its evolution at Indiana University. My specific area of responsibility is overseeing and implementing administrative systems. Relevant to this litigation, I oversee the COVID-19 Vaccine Reporting System through which IU students submit their COVID-19 vaccination attestations and may request an exemption from the requirement that they receive a COVID-19 vaccination (“COVID-19 Vaccination Platform”).

4. As part of its standard practice and operations, IU creates and maintains the COVID-19 Vaccination Reporting System and the data it generates when IU students submit their COVID-19 vaccination attestation or request an exemption through it. The data that the COVID-19 Vaccination Platform generates in connection with student attestations and exemption requests is created at or near the time the student submits the attestation or corresponding exemption request.

5. I routinely access the COVID-19 Vaccination Reporting System and

the attestation and exemption data that it generates, which resides in a database, during the regular course of my employment.

6. In connection with this proceeding, I recently reviewed attestation and exemption data related to two plaintiffs in this lawsuit: Margaret Roth and Natalie Sperazza.

7. IU's attestation and exemption data records reflect that Margaret Roth requested and received a religious exemption from the COVID-19 vaccination requirement on August 7, 2021. IU generated this exemption data around the time it received Mr. Roth's exemption request and maintains this data in the usual course of its operations.

8. IU's attestation and exemption data records reflect that Natalie Sperazza did not attest that she has been fully vaccinated for COVID-19 and did not request any exemption from the vaccination requirement before August 8, 2021.

August 27, 2021

A handwritten signature in black ink, consisting of a series of loops and a horizontal line extending to the right, positioned above a solid horizontal line.

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DECLARATION OF JEFF JOHNSTON

Jeff Johnston declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746, as follows:

1. I am over 18 years of age and have personal knowledge of the matters described in this declaration.

2. I have been employed by Indiana University (“IU”) for 28 years. I currently serve as the University Registrar in the University Student Services and Systems Department.

3. My duties include overseeing student enrollment in and unenrollment from, as well as administrative enrollments in and withdrawals from, IU courses.

4. As part of its standard practice and operations, IU creates and maintains student enrollment data in a secure database. IU regularly updates this data at or around the time it receives any information about a particular student’s enrollment circumstances.

5. In the regular course of my employment, I oversee IU’s creation and maintenance of, and routinely access, this student enrollment data.

6. In connection with this proceeding, I have reviewed enrollment data for two plaintiffs in this lawsuit: Ashlee Morris and Natalie Sperazza. IU generated this data around the time it received any information about the plaintiffs’ enrollment status at IU, and it maintains this data in the usual course of its operations.

7. The IU student enrollment data that I reviewed reflects that Ashlee Morris is not presently enrolled in classes at IU. More specifically, Ms. Morris did

not meet the prerequisites for one or more of her classes, and she was administratively unenrolled from her fall 2021 classes on August 12, 2021.

8. The IU student enrollment data that I reviewed reflects that Natalie Sperazza voluntarily unenrolled from IU on August 8, 2021 and has not since re-enrolled at IU.

9. IU's fall 2021 semester commenced on August 23, 2021. Neither Ms. Morris nor Ms. Sperazza are enrolled in any courses at IU.

August 27, 2021


