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 POST-ARGUMENT JURISDICTIONAL MEMORANDUM

I. Introduction

Plaintiffs' appeal should be dismissed because, based on their own individual admissions, their appeal is moot.

Seven of the plaintiffs—Baumgartner, Carini, Crowder, Klaassen, Morris,[1] Policka, and Roth[2] (collectively, "Exempt Plaintiffs")—have received an exemption from IU's vaccination requirement based on their representation that the vaccination conflicts with their religious beliefs. App. Dkt. 13 at 2; App. Dkt 16-1 at 2-3.[3] And the sole remaining plaintiff—Sperazza—has recently told the Court that she has no intention of returning to IU because she is attending another institution. *See* App. Dkt. 45-2, ¶ 4. Finally, as a member of the panel noted at oral argument, none of the Plaintiffs challenged the masking and testing requirements in their appellate briefing.

Consequently, Plaintiffs' appeal no longer presents a justiciable controversy and should be dismissed as moot.

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1 Plaintiffs contend that Morris has deferred her attendance at IU, whereas IU's records reflect that she was administratively unenrolled for failure to meet prerequisites for enrollment at the McKinney School of Law. App. Dkt. 49 at 3, 5; App. Dkt. 16-3 at 2-3, ¶ 7.

2 Plaintiffs make conflicting representations about Roth's exemption status. App. Dkt. 49 at 3, 6. But they previously acknowledged that she is exempt, and that is in fact the case. App. Dkt. 20-1 at 5 n.4; App. Dkt 16-2 at 3, ¶ 7.

3 Crowder also has since attested that he has no plans to return to IU because he has graduated. App. Dkt. 45-3, ¶ 4.

II. Argument

A. Standard

Under Article III of the Constitution, federal jurisdiction is limited to "cases" or "controversies" where the litigant possesses a personal stake in the outcome of the action. "This requirement for jurisdiction remains throughout the pendency of an action, not just at the time a case is filed." *In re Bullock*, 986 F.3d 733, 736 (7th Cir. 2021) (quotations and citation omitted). For this reason, counsel must be vigilant about continuously analyzing the propriety of the Court's jurisdiction as a case proceeds, so that they and the Court may deal with any jurisdictional concerns before "the court's time, and their clients' money" is wasted. *Heinen v. Northrop Grumman Corp.*, 671 F.3d 669, 670 (7th Cir. 2012); *see also, e.g.*, *Espinueva v. Garrett*, 895 F.2d 1164, 1166 (7th Cir. 1990) ("Every litigant has an obligation to bring jurisdictional problems to the court's attention."); *Mortg. Elec. Registration Sys., Inc. v. Estrella*, 390 F.3d 522, 524 (7th Cir. 2004) (finding counsel failed "in his duty to alert this court to a jurisdictional problem"). "If 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)).

B. Plaintiffs' appeal 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)).

The justiciability of this appeal has always depended on Sperazza's intention of returning to IU if and when the vaccination requirement were either lifted or enjoined. In contrast, the Exempt Plaintiffs have never stood to suffer any potential injury as a result of IU's vaccination requirement—precisely because they are exempt from the requirement—and, thus, have always lacked standing to challenge it. *See, e.g.*, *Parvati Corp. v. City of Oak Forest, Ill.*, 630 F.3d 512, 516 (7th Cir. 2010) (explaining that to have standing, a plaintiff must allege an injury in fact that can be redressed by the relief sought). As this Court previously recognized, the only basis for a justiciable controversy

in this case was the fact that Sperazza had not obtained an exemption from IU's 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). As the lone plaintiff who had not received an exemption from the requirement, Sperazza alone had standing to challenge it.

And when IU previously asserted that Plaintiffs' appeal was moot because Sperazza had voluntarily withdrawn from IU, Plaintiffs defeated IU's motion to dismiss by submitting a declaration from Sperazza attesting that she intended to return to IU when and if it no longer had an enforceable vaccination requirement. App. Dkt. 20-2. So, up to that point, before any briefs on the merits had been filed, Plaintiffs had demonstrated both standing and a continuing stake in the controversy sufficient to keep their appeal alive.

Since then, the facts have materially changed. Despite IU having previously raised the possibility of mootness, and despite Plaintiffs' obligation to alert IU and the Court to any circumstances that might affect the Court's jurisdiction, only upon the Court's request at oral argument did Plaintiffs disclose that Sperazza has no intention of returning to IU. App. Dkt. 45-2, ¶ 4; *see also* App. Dkt. 16-1 (IU's

motion to dismiss appeal premised on Sperazza's voluntarily withdrawing from IU). Accordingly, like the Exempt Plaintiffs, Sperazza can no longer claim an injury that the Court could redress.

Enjoining IU's vaccination policy would provide no benefit to Sperazza because she is no more bound by that policy than any other student at any other university. Consequently, Sperazza, like the Exempt Plaintiffs, now lacks standing to challenge IU's vaccination policy; for there is no "form of meaningful relief" that can be granted to her. *Flynn v. Sandahl*, 58 F.3d 283, 287 (7th Cir. 1995) (quoting *Church of Scientology v. United States*, 113 S. Ct. 447, 450 (1992)); *see also 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).

And because Sperazza voluntarily elected to study at another institution and affirmatively denies that she has any plan to return to IU, no exception to the mootness doctrine exists. *See, e.g.*, *Jones v. Sullivan*, 938 F.2d 801, 807 (7th Cir. 1991) (rejecting application of voluntary cessation and capable of repetition yet evading review exceptions to mootness doctrine when voluntary actions taken by

plaintiffs, rather than any procedural changes by defendants, rendered appeal moot with "no reasonable expectation" they would "again be subject to the [challenged] policy" (quotations omitted)). 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 (explaining that "a case [must] have an actual, ongoing controversy . . . throughout the pendency of the action").[4]

The district court's decision denying a preliminarily injunction as to IU's masking and testing requirements for students exempt from the vaccination requirement does not provide a separate basis for exercising jurisdiction. Though Plaintiffs characterize these requirements as penalties, they are perhaps more fairly deemed alternative measures to vaccination. At any rate, this Court has already dismissed out of hand any notion that the masking and testing requirements are "constitutionally problematic." App. Dkt. 13 at 3. And as the Court noted at oral argument, Plaintiffs did not make any arguments to the

[4] It bears mention that Plaintiffs' counsel's failure to timely advise the Court of Sperazza's status change resulted in substantial burden on IU, which was required to brief and argue a case that had become moot, apparently at some point after September 8, 2021.

contrary in their appellate briefing. *See generally* App. Dkt. 24 (Pls.' Br.); App. Dkt. 34 (Pls.' Reply). Accordingly, even if this part of their case had any merit (which it doesn't), Plaintiffs have waived any challenge to the district court's denial of their preliminary injunction motion as to that part of IU's policy. *See, e.g.*, *United States v. Berkowitz*, 927 F.2d 1376, 1384 (7th Cir. 1991) ("[P]erfunctory and undeveloped arguments, and arguments that are unsupported by pertinent authority, are waived (even where those arguments raise constitutional issues).").[5]

III. Conclusion

Because Plaintiffs' appeal from the district court's decision denying a preliminarily injunction as to IU's student vaccination requirement is moot, IU respectfully requests that the Court dismiss the appeal. Furthermore, given that there is no point in this case continuing, the Court should remand with instructions to enter

[5] Plaintiffs also never alleged below or argued to this Court 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. App. Dkt. 6-3 at 91-94 (finding masking and testing "aren't indicative of irreparable harm"). So this argument too was waived on appeal. *See, e.g.*, *Homoky v. Ogden*, 816 F.3d 448, 455 (7th Cir. 2016) ("[A] party waives the ability to make a specific argument for the first time on appeal when the party failed to present that specific argument to the district court, even though the issue may have been before the district court in more general terms." (citation omitted)).

judgment for IU without further ado. *Saukstelis v. City of Chicago*, 932 F.2d 1171, 1174 (7th Cir. 1991) (directing such relief in a substantive due process case on appeal from an order denying a preliminary injunction).

Date: January 21, 2022

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Date: January 21, 2022

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