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

On Appeal from the U.S. District Court for the Northern District of Indiana, Case No. 1:21-cv-00238-DRL-SLC, Honorable Damon R. Leichty, District Judge

Appellant Students' Supplemental Brief

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Introduction

Appellant Students ("**Students**") challenge the constitutionality of Indiana University's ("**IU**") COVID-19 Vaccination Mandate (the **"IU Mandate**"), under the Fourteenth Amendment to the United States Constitution, which requires students to take COVID vaccinations, despite their objections. Student's refusal is based on legitimate concerns including underlying medical conditions, having natural antibodies, and the risks associated with the vaccine, as well as religious objections. Students are free adults and are entitled to the protections the U.S. Constitution affords related to forced medical treatments.

The Mandate presents an unconstitutional condition because IU cannot directly force medical treatments upon its students directly without their consent. Thus, it cannot do so indirectly, by threatening virtual expulsion unless the Students "agree" to give up their right to refuse medical treatment.

This case is still a justiciable matter before the Court. The Students still have standing to sue. The Students have been harmed by IU's Mandate, and that harm will be redressed if it is enjoined. Further, this case is not moot. Even if it where moot, then it would fall within the exception of 'capable of repetition, but evading review.' The case is also ripe for review.

Therefore, this case is justiciable, and this Court should decide the issues presented for review.

Statement of Facts

A. The IU Mandate

On May 21, 2021, IU announced that faculty, staff, and students would be required to take a COVID vaccine. Dist. Ct. Prelim. Inj. Op. ("**Dist. Op.**"), App. 66a-67a. If a student refuses

to take the vaccine, IU has promised the student will suffer strong consequences which amount to virtual expulsion, including: canceled class registration, terminated IU identification cards, and restrictions from participation in any on-campus activity. Dist. Op., App. 67a.

IU students can apply for an exemption to the IU Mandate under extremely limited criteria, which originally only included a religious exemption, a documented allergy to the vaccine, medical deferrals, and an online-only student exemption.[1] Dist. Op., App. 67a. It does not include an exemption for those with natural immunity, including those who have previously been infected and fully recovered, or for many other medical contra-indications. *See generally, id.*

Those who qualify for and are granted an exemption are still subject to additional requirements ("**Extra Requirements**"), including *inter alia* participating in twice a week COVID testing, wearing a mask,[2] quarantining if exposed to someone who has tested positive for COVID-19, and returning to their permanent address or moving to quarantine/isolation housing if there is a serious outbreak. Dist. Op., App. 68a; *see also* Compl., App. 5a-6a. IU does not allow for any exemptions from these Extra Requirements. Compl., App. 6a.

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[1]On or about July 20, 2021, IU added an "ethical exemption" to their website but has given no other information about this new exemption or stated who qualify.

[2]On August 30, 2021, IU changed its policy, requiring every fully vaccinated person to where a mask in order to "help prevent the spread help prevent the spread of SARS-CoV-2, the virus that causes COVID-19, by decreasing the spread of respiratory droplets produced during talking, sneezing, and coughing." Indiana University, *Interim Guidance on Masks (Face Coverings) for Individuals Fully Vaccinated for COVID-19 (Based on Current CDC Reccomendations),* https://docs.google.com/document/d/1yQGlGi9fMEt7999bH-WAr1Inguk0f9j9/edit.

IU will continue most, if not all, of the Extra Requirements from the fall into the Spring Semester, including masking, testing, and other requirements. *FAQ Spring 2022*, https://www.iu.edu/covid/faq/index.html#spring-2022. The vaccination requirement also continues from the fall to the spring semester. ("Vaccination or an approved exemption is required at all IU campuses in order to interact with the IU community in any way, including being on campus, taking courses, being employed and/or participating in activities.") *Id.*

B. Students

Students range from those pursuing undergraduate courses of study to masters and doctorate courses of study. Dist. Op., App. 58a-59a; *see also* Compl., App. 40a-46a. Five Students are currently enrolled and taking classes at IU (Klaassen, Carini, Baumgartner, Policka, and Roth). Those five Students have received a religious exemption from the IU Mandate, but all have objections to the Extra Requirements (some for religious reasons and some for general reasons).Three of the students (Baumgartner, Carini, and Roth) have specific medical conditions or histories that make it unreasonable and unsafe for them to get the vaccine and, in one case, against their attending physician's advice. *Id.* Nevertheless, they do not qualify for IU's medical exemption. *Id.* One Student (Morris) has chosen to defer her start dates and intends to attend IU in the Fall 2022 semester, if the IU Mandate is lifted. *See* Oppn Mot. to Dismiss, ECF 20-1, 3-4.

1. Ryan Klaassen

Mr. Klaassen is a Sophomore at IU. Compl. at ¶ 180. He has a sincerely held religious objection to receiving the COVID vaccine. *Id.* He sought and was granted a religious exemption to the vaccine. *Id.* Mr. Klaassen also objects generally to the extra requirements of masking and testing applied to him. *Id.* at 181.

2. Jaime Carini

Ms. Carini is currently pursuing two doctorates at IU–a Doctor of Music (D.M.) in organ performance and literature, and a Ph.D. in musicology. *Id.* at 182. She has a sincerely held religious objection to receiving the COVID vaccine, and sought and was granted a religious exemption. *Id.* Ms. Carini also objects generally to IU's Mandate. *Id.* at 183. Specifically, she does not feel safe taking the vaccine since it has not been around long enough to know the long-term side effects. *Id.*

Ms. Carini suffers from multiple chronic illnesses. *Id.* at 184. Because of these illnesses, she was treated by a world-renowned infectious disease doctor. *Id.* Ms. Carini's physician provided a letter stating that "Due to the inflammatory nature of [her] illness it's our strong medical opinion that she not receive any immunization at this time." *Id.* at 186. Despite this, Ms. Carini was unable to receive a medical exemption from the Mandate. *Id.* at 187.

Further, after being notified by her physician that due to the medication she was on that she was protected against COVID, Ms. Carini sought an exemption from the mandatory testing. *Id.* at 193. IU denied her request, despite her not being at risk for COVID. *Id.*

Ms. Carini does not have the option to simply transfer universities to one which wouldn't require the vaccine or the extra requirements, due to her significant time investment in the IU doctoral programs and the fellowships she has been awarded at IU. *Id.* at 195.

3. Daniel Baumgartner

Mr. Baumgartner is a freshman at IU and has a sincere religious objection to the COVID vaccine. *Id.* at 196. He also has a sincerely held religious objection to the extra requirements applied to him. *Id.* at 197. He sought an exemption but was refused with IU stating;

> Exemptions from IU's vaccine mandate for religious reasons are only available to those individuals who attest that their sincerely held religious beliefs prevent them from receiving a vaccination. Anyone who is granted an exemption on this basis is required to wear a mask at all times on IU property and is subject to routine mitigation testing. There are no exemptions from these masking and mitigation testing requirements. Failure to comply with masking and mitigation testing requirements will result in disciplinary action up to and including dismissal or termination from the university. *Id.*

After an antibody test revealed that Mr. Baumgartner still had antibodies he sought a medical exemption IU's Mandate which was also refused. *Id.* at 198. IU responded stating "there are no exemptions from masking and mitigation testing requirements at Indiana University unless fully vaccinated." *Id.* at 199.

4. Ashlee Morris

Ashlee Morris has been admitted to the McKinney School of Law. *Id.* at 201. She has a sincerely held religious objection to receiving the COVID vaccine and sought and received a religious exemption to the virus. *Id.* She also has a sincerely held religious objection to the Extra Requirements applied to her. *Id.* at 202. When trying to apply for an exemption to the masking and testing requirements, IU refused her request responding much the same way they did to Mr. Baumgartner's request. *Id.* She has deferred her start date until the fall of 2022.

5. Seth Crowder

At this time, Seth Crowder has completed his course of study for an MBA at IU and has graduate and is no longer a student. He has no plans to return as a student at IU. ECF No. 45-1.

6. Macey Policka

Ms. Policka is a senior at IU with a sincerely held religious objection to receiving the COVID vaccine. *Id.* at 207. She sought and was granted a religious exemption to the vaccine.

Id. Ms. Policka also objects generally to the extra requirements of masking and testing. *Id.* at 208.

7. Margaret Roth

Ms. Roth is a freshman at IU and objects generally to the Mandate. *Id.* at 209. Ms. Roth has a significant family history of cancer and other health conditions. *Id.* at 210. Her mother passed away from cancer at 35, her sister is being treated for Hodgkin's Lymphoma, two of her aunts suffered from early-onset breast cancer, and her great-aunt passed away from breast cancer. *Id.* Ms. Roth also suffers skin reactions from cosmetics, moisturizers, hygiene products, and often has hives/skin rashes that appear without known cause. *Id.* This makes it all the more likely that she would suffer an adverse reaction from the vaccine. *Id.* As a result, she is not willing to take the vaccine for medical reasons. *Id.* However, she did not qualify for a medical exemption. *Id.*

Further, asthma runs in Ms. Roth's family so masks are also not an acceptable alternative. *Id.* at 211. Nor is repeated exposure to the carcinogenic chemicals on the nasal testing swabs, especially with her family history of cancer. *Id.* Ms. Roth also has a sincerely held religious objection to the Mandate. *Id.* at 213. However, she has not filed for such an exemption since she does not believe that it adequately protects her from IU's Mandate. *Id.*

8. Natalie Sperazza

At this time, Natalie Sperazza is taking classes online at the University of Arizona and has no plans to return to IU. ECF No. 45-1.

Argument

The judicial power of the United States extends only to "Cases" and "Controversies." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016). "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Id.* (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997)). In order to maintain a lawsuit in federal court, a litigant must seek redress for a legal wrong. *Id.* at 338.

As will be stated in the following sections, this case is still a justiciable matter properly before this Court and this Court should exercise jurisdiction and decide this case in favor of the Students.

I. Students have standing to sue.

Standing is a doctrine "rooted in the traditional understanding of a case or controversy. *Id.* "[T]he law of Article III standing . . . serves to prevent the judicial process from being used to usurp the powers of the political branches." *Id.* (quoting *Clapper v. Amnestly Int'l USA*, 568 U.S. 398, 407 (2013)). "[T]he irreducible constitutional minimum of standing consists of three elements." *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). There must be (1) an injury in fact, (2) fairly traceable to the challenged conduct, and (3) is likely to be redressed by a favorable judicial decision. *Id.*

A. Students suffer a particular and concrete injury.

First and foremost of standing's three elements is injury in fact. *Spokeo*, 578 U.S. at 338. "To establish injury in fact, [Students] must show that [they] suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural

or hypothetical." *Id.* at 339 (quoting *Lujan*, 504 U.S. at 560). "An injury is particularized if it "affect[s] the [Students] in a personal and individual way." *Pennell v. Global Trust Management, LLC* 990 F.3d 1041, 1044 (7th Cir. 2021) (quoting *Lujan*, 504 U.S. at 560 n.1). An injury is concrete when it is real and not abstract. *Id.* (citing *Spokeo*, 136 S.Ct. at 1548).

In *Pennell*, the harm alleged was that the letter caused "stress and confusion." *Pennell*, 990 F.3d at 1045. However, "the state of confusion is not itself an injury." *Id.* In order for confusion to be a concrete injury, "a plaintiff must have acted to her detriment on that confusion." *Id.* Pennell failed to show that the letter caused her to change her course of action or put her in harm's way. *Id.* As such, the Court found that Pennell failed to allege a concrete injury in her complaint.

Prosser brought suit looking for steady and consistent Medicare coverage for TTF therapy. *Prosser v. Becerra*, 2 F.4th 708, 712 (7th Cir. 2021). Since being prescribed TTF therapy, Prosser had received both favorable and unfavorable coverage decisions. *Id.* The final unfavorable decision left the bill with Novocure (the TTF therapy providor). *Id.* The Secretary moved for summary judgment arguing that Prosser lack standing to sue. *Id.* at 713. "Prosser received TTF therapy for the relevant period of January through April 2018 at no cost to herself." *Id*. at 714. Nor was any personal liability for past therapy imminent. *Id.* Because of this, the Court found that Prosser did not allege a concrete injury. *Id.*

In the present case, the Mandate itself is the injury. If Students were exempted from the vaccine, but didn't have to comply with the Extra Requirements, then there would be no injury and no standing. The Extra Requirements are, however, a concrete injury as a result of being

exempted, comparable to the fine Jacobson had to pay in an often-cited case involving a vaccine mandate.

Jacobson involved a law requiring those over 21 to be vaccinated or to pay a $5 fine. *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11, 12 (1905). This is equivalent to about $160 today. *See* CPI Inflation Calculator, available at https://www.in2013dollars.com/us/inflation/1905?amount=5. Jacobson was found guilty under the relevant statute and was committed until the $5 fine was paid. Once that fine was paid, Jacobson suffered no additional requirements and was not forced to take the vaccine. *See Jacobson*, 197 U.S. at 21.

Jacobson challenged the Massachusetts statute under the Fourteenth Amendment, arguing his liberty was invaded "when the state subject[ed] him to fine or imprisonment for neglecting or refusing to submit to vaccination . . . and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person." *Id.* at 25. Even though Jacobson suffered no concrete injury other than the fine, the Court still decided the merits of whether the state could impose a vaccine requirement, at all. *Id.* at 25-39. Thus, Jacobson had standing to challenge the statute as it related to the vaccine, even though he would not be forced to take the vaccine once he paid the fine.

Here, the Extra Requirements are imposed if one is exempted for the vaccination requirement similar to the fine in *Jacobson.* In fact, the Extra Requirements are even more severe then the fine in *Jacobson*. All Jacobson had to do was pay a $5 fine ($160 today) whereas Students need to follow the Extra Requirements on an ongoing basis. The only Extra Requirement that both vaccinated and unvaccinated students have to follow is masking—and that was not a requirement for vaccinated students for a period last year. These Extra Requirements

seemingly go on without end. IU has not indicated the Extra Requirements will end these any time soon—IU's goal seems to be zero new COVID cases.

These Extra Requirements cause disruption to the Students education, single them out on campus, and force them to commit significant time and resources they would not otherwise need to commit. The twice a week testing especially forces Students to disrupt their time. Students are forced to take time out of their week to go and get tested—time that would be better spent studying, in class, or working. Further, that time could be anywhere from half and hour to several hours depending on when and where they are to get tested.

The Extra Requirements affect each of the students in a personal and individual way and is comparable to the fine in *Jacobson*. Thus, Students suffer a particular and concrete injury.

B. The injury is as a direct result of IU's Mandate.

The second element of Standing requires there to be "a causal connection between the injury and the conduct complained of." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Such that it is "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." In *Sweeney*, the Court found that the alleged injury was not traceable to the defendants. *Sweeney v. Raoul*, 990 F.3d 555, 560 (7th Cir. 2021). There, a local union named as defendants the Illinois Attorney General and Executive Director of the Illinois Labor Relations Board. *Id.* While Illinois law empowers the Attorney General to prosecute violations of Board orders, the local union "ha[d] not alleged any threatened or brought any post-*Janus* enforcement proceedings against any unions." *Id.* As result, any alleged injury was not the result of any defendant action.

In the instant case, the harm is the direct result of IU's action. Without the Mandate, there would be no vaccination requirement and Extra Requirements to complain about. If it were not in place, Students would be able to attend IU without fear of medical treatments being forced upon them, or having to comply with burdensome Extra Requirements, if exempted from that treatment. Instead, because IU has issued this Mandate, Students, in order to attend IU, either have to get this medical treatment or follow the Extra Requirements. Therefore, the Students injury is a direct result of IU's Mandate.

C. The Injury will be redressed if the Mandate is revoked.

The final element of standing is that it is "likely as opposed to merely speculative that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561. In *Lujan*, the possibility of the injury being redressed by a favorable decision was fairly speculative. *Id.* at 568. Such that while the Secretary could be ordered to revise a regulation requiring consultation for foreign projects, it would only remedy the alleged injury unless "the funding agencies were bound by the Secretary's regulation." *Id.* "The short of the matter is that redress of the only injury in fact respondents complain of requires action . . . by the individual funding agencies; and any relief the District Court could have provided in this suit against the Secretary was not likely to produce that action." *Id.* at 571.

In the present case, a favorable decision will redress all the injuries. A favorable decision would enjoin the IU Mandate. That would rid the Students of the IU Mandate in its entirety. That is what the Students are seeking. Unlike *Lujan*, where the possibility of the injury being redressed by a favorable decision was less than speculative, here a favorable decision would heal the injuries of Students.

II. The case is not moot.

"To invoke federal jurisdiction, a plaintiff must show a personal stake in the outcome of the action." *Loertscher v. Anderson*, 893 F.3d 386, 392 (2018) (quoting *U.S. v. Sanchez Gomez*, 138 S.Ct. 1532, 1537 (2018)). This must be met "at all stages of review." *Id.* "[A] suit becomes moot, when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Id.* (quoting *Chafin v. Chafin*, 568 U.S. 165, 172 (2013)).

A. The Students claims are not moot.

"A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Stotts v. Community Unit Sch. Dist. No. 1*, 230 F.3d 989, 990 (7th Cir. 2000) (quoting *Powell v. McCormack*, 295 U.S. 486, 496 (1969)). The requirement is that there must be an actual, ongoing controversy extend throughout the case. *Id. See also Board of Educ. of Downer's Grove Grade Sh. Dist. No. 58 v. Steven L.,* 89 F.3d 464, 467 (7th Cir. 1996).

In *Stotts*, Stotts was challenging the appearance guidelines for basketball players at his school. 230 F.3d at 990. After being suspended pursuant to those guidelines, Stotts petitioned the District Court for a preliminary injunction. *Id.* While the denial was on appeal, Stotts had graduated from high school and thus no longer able to play basketball. *Id.* at 991. Because of that, the Court found that "Stotts' case lack[ed] a live controversy," and was thus moot. *Id.*

Stotts differs from the case at bar where students are either *current* students or *incoming* deferred students, and continue to be subject to IU's Mandate. Indeed, while courts have held that students who have graduated can no longer expect to be subject to the same action again, others have held, like here, that Students who will continue to be harmed because there is "a reasonable

expectation . . . that the school . . . could 'reinflict' the asserted injury[,]" have live cases or controversies. *Compare Bd. of Educ. of Downers Grove Grade Sch. Dist. No. 58 v. Steven L.*, 89 F.3d 464, 468 (7th Cir. 1996) (finding no reasonable expectation of same alleged injury because injury was from the grade school, but the Student had "successfully completed grade school and [was] on his way to high school.") *with Honig v. Doe*, 484 U.S. 305, 321 (1988) ("We think it equally probable that . . . respondent will again be subjected to the same unilateral school action for which he initially sought relief.") and *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 186 n. 9 (1982) (finding that although the school year in which the alleged injury took place had ended, it was capable of repetition yet evading review.)

The Students' claims are continuing and ongoing. While one student has since graduated and another has decided to seek an educated elsewhere, ECF D. 45-1, the other six students are still subject to IU's Mandate. The Mandate has been extended into the Spring Semester. Further, the administration has not released any explicit end date other then when COVID cases reach "0." So long as the Mandate is in place, the Students continue to be subject to the provisions of the Mandate. Because of that, Students have an ongoing injury and legal interest in the case.

B. Even if the claims were moot, they would fall within the exception of 'capable of repetition yet evading review.'

Even if Students' claims were moot, their claims would fit into the "capable of repetition, yet evading review" exception. While Article III's "case-or-controversy requirement subsists through all stages of federal judicial proceeding[]" (*FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 461 (2007)) and "[i]t is not enough that a dispute was very much alive when suit was filed[,]"

(*id.*), this case fits squarely into the "established exception to mootness for disputes capable of repetition, yet evading review," (*id.* at 462 (citations omitted)). This exception applies where **(1)** "the challenged action is in its duration too short to be fully litigated prior to cessation or expiration," and **(2)** "there is a reasonable expectation that the same complaining party will be subject to the same action again." *Id.* (citation omitted); *see also Loertscher v. Anderson*, 893 F.3d 386, 394 (7th Cir. 2018). The second prong requires a "reasonable expectation or a demonstrated probability that the same controversy will recur involving the same complaining party." *Wisconsin Right to Life*, 551 U.S. at 463 (internal quotes and citations omitted). Cases have found "the same controversy sufficiently likely to recur when a party has a reasonable expectation that it 'will again be subjected to the alleged illegality[.]'" *Id.* (citation omitted). But "repetition of every 'legally relevant' characteristic" is not necessary. *Id.* Here, both prongs are satisfied.

First, the challenged action could not be fully litigated before school started. On May 21, 2021, IU announced IU's Mandate, mandating that students receive the COVID vaccine or suffer "strong consequences," including having their class registration canceled, their university-issued IDs terminated, and being restricted from any on-campus activity. *See* ECF 20, Resp. to Mot. to Dis. Part I.A. Even those that receive an exemption (religious, medical, or ethical) are subject to Extra Requirements—which impose a substantial burden on the Students for exercising their constitutional rights to bodily integrity and autonomy, and of medical treatment choice. *Id.*

Despite efforts to litigate this case in an expeditious manner, the challenged action was unable to be fully litigated prior to school starting. On June 21, 2021, Students filed their complaint and immediately filed a *Motion for Preliminary Injunction* (Dist. Ct. ECF 7) and a

Motion to Expedite (Dist. Ct. ECF 9) that same day. Students subsequently filed a *Motion for Injunction Pending Appeal* (Dist. Ct. ECF 37) two days after the district court's Order denying injunctive relief; an Emergency Motion for Injunction Pending Appeal (ECF 6-1) two days after the district court's denial of the same; and an Emergency Application for Writ of Injunction (S. Ct. Case No. 21A15) just four days after the Seventh Circuit denial. But despite these significant efforts to expedite resolution of this case, school started the week of August 16, 2021—thereby allowing no time to fully resolve this case prior to the start of the school year. Accordingly, the first prong is satisfied.

Second, there is a reasonable expectation that Students will be subject to the same illegality again. Students continue to want to (and plan to) attend IU, but do not want to receive the vaccine, and nor be subject to the Extra Requirements for exercising their constitutional rights to bodily integrity and autonomy, and of medical treatment choice. *See* Morris Decl.; *see also* Verified Complaint, Dist. Ct. ECF 1, ¶¶ 180-221.) So they are still currently subject to the same unconstitutional actions and penalties. Additionally, with IU seeming to claim authority to impose IU's Mandate so long as any COVID cases exist,[3] and even regardless of whether a COVID pandemic exists at all,[4] it is likely, if not certain, that IU will extend the Mandate for

[3]Dr. Cole Beeler, M.D. Dep., attached to Resp. to Mot. to Dis. as Exhibit 4, 35:6-13 (stating that IU's Mandate was necessary "[b]ecause there's still COVID out there . . . . [and that they were] still seeing infections, still seeing transmissions").

[4]*See* Reply in Support of Emergency Motion for Injunction Pending Appeal, ECF 12, p. 1 (detailing IU's claim that its plenary power to impose the Mandate "does not depend on the existence of a pandemic").

future semesters.[5] In any event, it is up to IU, not the Students, to show that they will never again issue its Mandate,[6] indeed they have extended the IU Mandate into the Spring Semester. And any future Mandate will effect one or more of the Students. For example, Plaintiff Ryan Klaassen is a Sophomore and will be at IU for three more years, including the current year. Verified Complaint, Dist. Ct. ECF 1, ¶ 180. Plaintiff Daniel Baumgartner is a freshman and will be at IU for four more years, including the current year. *Id*. at ¶ 196. Plaintiff Ashlee Morris will be an incoming 1L fall of 2022 and will be at IU for at least three years. *See* n. 3; *see also* Morris Decl. Plaintiff Roth is a freshman and will be at IU for four more years, including the current year. Verified Complaint, Dist. Ct. ECF 1, ¶ 209.

Again, *Stotts* differs from the case at bar where students are either *current* students or *incoming* deferred students, and continue to be subject to IU's Mandate. Indeed, while courts have held that students who have graduated can no longer expect to be subject to the same action again, others have held, like here, that Students who will continue to be harmed because there is "a reasonable expectation . . . that the school . . . could 'reinflict' the asserted injury[,]" have live cases or controversies. *See supra* p. 13.

Students are still subject to the unconstitutional mandate—suffering substantial burdens simply for exercising their constitutional rights—and its almost certain that the Mandate will either be extended, or another materially similar mandate will be announced for future semesters

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[5]It is not required that the extended mandate be identical to the challenged mandate. *See Wisconsin Right to Life*, 551 U.S. at 463 (finding that "repetition of every 'legally relevant' characteristic" is not necessary).

[6]*See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 174 (2000) ("a defendant claiming [mootness] bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.")

(and IU cannot meet its formidable burden of showing that voluntary cessation has occurred, *see infra* Part II.C.). Accordingly, the only way to prevent Students from being subjected to the same unconstitutional mandate is to fully litigate the challenges and enjoin IU's Mandate. So Students' claims are not moot.

C. IU cannnot prove voluntary cessation.

The U.S. Supreme Court has held that the voluntary cessation of unconstitutional activity does not moot a lawsuit. In *City of Mesquite v. Aladdin's Castle*, the Court held that "[i]t is well settled 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." 455 U.S. 283, 289 (1982). In that case, the Court held that "the city's repeal of the objectionable language would not preclude it from reenacting precisely the same provision if the District Court's judgment were vacated." *Id.* *See also United States v. Concentrated Phosphate Exp. Ass'n*, 393 U.S. 199, 203 (1968) ("The test for mootness in cases such as this is a stringent one. Mere voluntary cessation of allegedly illegal conduct does not moot a case; if it did, the courts would be compelled to leave 'the defendant . . . free to return to his old ways.'") (internal citations omitted); *Knox v. SEIU, Local 1000*, 567 U.S. 298, 307 (2012) ("The voluntary cessation of challenged conduct does not ordinarily render a case moot because a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed."); *Friends of the Earth, Inc.*, 528 U.S. at 174 ("A defendant's voluntary cessation of allegedly unlawful conduct ordinarily does not suffice to moot a case.").

To prove mootness by voluntary cessation—if IU were to claim that they will never impose the Mandate again—IU must meet "the formidable burden of showing that it is absolutely

clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of Earth, Inc.*, 528 U.S. at 174. IU cannot meet this burden.

First, IU had not ceased imposition of its Mandate. Second, IU has not stated that it will not extend the mandate to future semesters, nor that it will not impose a new mandate for future semesters. On the contrary, IU has indicated that such mandates may continue so long as any cases of COVID exist[7]—something that is likely to occur indefinitely. This never-ending authority proves that IU has not shown (and may never be able to show) voluntary cessation. So IU cannot satisfy its formidable burden of proving that the conduct will not recur.

Additionally, IU has taken no steps to completely and irrevocably eradicate the effects of the unconstitutional mandate. The only remedy capable of doing so is an injunction, preventing IU from ever implementing the unconstitutional mandate again. So Plaintiffs' claims are not moot under the voluntary cessation doctrine.

III. Students claims are ripe.

"Ripeness is a justiciability doctrine designed to the courts, from entangling themselves in abstract disagreements." *National Park Hospitality Ass'n v. Dept. of Interior*, 538 U.S. 803, 808 (2003). "The difference between an abstract question calling for an advisory opinion and a ripe case or controversy is one of degree, not discernible by any precise test." *Wis. Environmental Decade, Inc. v. State Bar of Wisconsin*, 747 F.2d 407, 410 (7th Cir. 1984). The question is "whether there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Id.* at 411.

[7] *See* n. 3.

In *Wisconsin's Environmental Decade*, one of the two co-founders appeared on behalf of Decade, filing petitions, motions, briefs, and other pleadings in numerous Public Service Commission hearings. *Id.* at 409. This co-founder was not an attorney licensed to practice law. *Id.* The unauthorized practice committee advised him that his activities constituted the unauthorized practice of law. *Id.* The State Bar later approved a recommendation that legal action be brought, the matter was then referred to the state attorney general for prosecution. *Id.* at 410. A declaratory action was then filed to declare that the State Bar's action violates the plaintiffs First and Fourteenth Amendments. *Id.* However, the Court found that there was no case or controversy stating that "we cannot say that legal action against Anderson and Decade is certainly impending." *Id.* at 412. Thus, leaving the Court with nothing but an advisory opinion. *Id.*

Similarly, in *Sweeny* a local union brought suit alleging the duty of fair representation in Illinois law without the corresponding ability to collect fair share fees infringe their rights of speech and association. *Sweeny v. Raoul*, 990 F.3d 555, 558 (7th Cir. 2021). The defendants argued that the lawsuit was premature, as the union was suing to resolve a legal question rather than in response to a recognizable injury. *Id.* The Court agreed. *Id.* at 561. Finding that the complaint was premature, filed anticipating *Janus's* outcome, leaving them with an advisory opinion with no case or controversy.

Unlike the two cases mentioned, the instant matter is ripe for review. The Students have a concrete and particularized injury, Part I.A, and the claims are not moot, Part II. Further, IU isn't about to implement or contemplating implementing the Mandate, as the contemplated actions in

Decade and *Sweeny* were. Rather, IU has already implemented the Mandate for the last six months.

IU and the Students have opposing legal interests in the Case. Students want the Mandate to be declared unconstitutional and outside the authority of IU to implement. While IU wants their authority to force students to take a medical treatment without their consent affirmed. While this case and the Mandate are ongoing, Students are suffering an injury in fact from the Mandate. *See* Part I.A. As such, it is an actual case or controversy ripe for review.

Conclusion

IU's Mandate places an unconstitutional condition on Students by threatening virtual expulsion unless the Students "agree" to give up their right to refuse medical treatment. This goes directly against the holding of *Cruzan* which found that competent individuals have a "constitutionally protected liberty interest in refusing unwanted medical treatment." *Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261, 278 (1990). Because the COVID "vaccine" is effective at mitigating symptoms, hospitalizations and deaths, but does not prevent individuals from either getting or transmitting the virus, it is better classified as a medical treatment, not a public health measure. As such, it is an unconstitutional condition placed on Students by IU in violation of *Cruzan*.

For this reason and the foregoing reasons, the Students have standing to sue, their claims are not moot, and their claims are ripe for review. The Students claims are justiciable.

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Respectfully submitted,

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