

No. _____

In the
Supreme Court of the United States

KATIE SZCZESNY, MARIETTE VITTI,
DEBRA HAGEN, AND JAIME RUMFIELD,

Petitioners,

v.

PHILIP MURPHY, NEW JERSEY GOVERNOR IN HIS OFFICIAL AND
PERSONAL CAPACITY AND THE STATE OF NEW JERSEY,

Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit**

PETITION FOR A WRIT OF CERTIORARI

Dana Wefer
Counsel of Record
LAW OFFICES OF DANA WEFER, ESQ.
P.O. Box 374
290 Hackensack Street
Wood-Ridge, NJ 07075
(973) 610-0491
DWefer@WeferLawOffices.com

QUESTIONS PRESENTED

1. Does the voluntary cessation doctrine require a defendant to provide affirmative assurance that the challenged conduct will not recur, particularly when the conduct was enacted and repealed by executive fiat and the only basis for repeal was variable public health statistics?
2. Does a complaint seeking declaratory judgment on the constitutionality of a governor-imposed booster vaccine mandate remain an active controversy after the mandate's repeal when the plaintiffs were terminated due to noncompliance and now have this adverse termination in their employment record?

PARTIES TO THE PROCEEDINGS

Petitioners (Plaintiffs-Appellants below):

- Katie Sczesny
- Mariette Vitti
- Debra Hagen
- Jaime Rumfield
- Note: There are no corporate parties

Respondents (Defendants-Appellees below):

- Philip Murphy, Governor of New Jersey, in his official and personal capacity
- State of New Jersey

LIST OF PROCEEDINGS

Sczesny v. Murphy, No. 24-1676 (3d Cir., Mar. 14, 2025) (opinion affirming dismissal of amended complaint as moot, subject of this petition).

Sczesny v. Murphy, No. 3:22-cv-02314 (D.N.J., Mar. 11, 2024) (order dismissing amended complaint with prejudice).

Sczesny v. Murphy, No. 23-265 (petition for a writ of certiorari denied, November 13, 2023).

Sczesny v. Murphy, No. 22-2230 (3d Cir., June 14, 2023) (order dismissing interlocutory appeal as moot).

Sczesny v. Murphy, Civ. No. 22-2314 (D.N.J., June 7, 2022) (order denying temporary restraining order and/or preliminary injunction).

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit in *Sczesny v. Murphy*, No. 24-1676 (3d Cir. Mar. 14, 2025) is unreported and is reproduced in the Appendix (App.) at 1a-8a. The dissenting opinion by Circuit Judge Phipps is reproduced at App.9a-13a. The order of the United States District Court for the District of New Jersey dismissing the amended complaint with prejudice is unreported and reproduced at App.14a.



JURISDICTION

The Third Circuit entered its judgment on March 14, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely filed within 90 days of the judgment, pursuant to Supreme Court Rule 13.1.



CONSTITUTIONAL PROVISIONS, STATUTES AND EXECUTIVE ORDERS INVOLVED

U.S. Const. art. III, § 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . .

U.S. Const. amend. XIV, § 1

No State shall . . . deprive any person of life, liberty, or property, without due process of law

28 U.S.C. § 2201

In a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration whether or not further relief is sought . . .

Executive Order 283 (App.27a)

Executive Order 290 (App.40a)

Executive Order 294 (App.50a)

Executive Order 322 (App.59a)



STATEMENT OF THE CASE

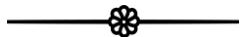
Petitioners, four nurses formerly employed by Hunterdon Medical Center (HMC) in New Jersey, challenged three executive orders issued by Governor Philip Murphy in 2022 that required private healthcare employers to enact and enforce COVID-19 vaccination policies, including booster shots, with disciplinary consequences up to termination for noncompliance. App.2a. Each petitioner was fully vaccinated but declined booster doses due to medical concerns, including prior adverse reactions and pregnancy. App. 3a. As a result of the booster mandate, three petitioners were terminated by their employer, and one resigned to avoid termination. *Id.*

In April 2022, petitioners filed suit in the District of New Jersey alleging that the executive orders violated their Fourteenth Amendment rights under 42 U.S.C. § 1983 and seeking declaratory judgment under 28 U.S.C. § 2201. The requested relief was a declaratory judgment that the orders were unconstitutional as applied, attorneys' fees, and equitable relief. *Id.* The district court denied a preliminary injunction and petitioners appealed. In June 2023, while the interlocutory appeal was pending, Governor Murphy issued Executive Order 332, rescinding the mandate. *Id.* Rescission was based on improved public health statistics, including hospitalization rates, number of cases, and increased vaccination levels. App. 6a, 35a. The Third Circuit dismissed the interlocutory appeal as moot. App. 3a. In announcing the repeal to its own employees, the New Jersey Department of Health expressly reserved the right to reinstate “a new COVID-19 vaccine require-

ment in the future depending on health guidance.” App. 73a.

On remand, the district court dismissed the complaint with prejudice, finding it moot. App. 3a. The Third Circuit affirmed, holding that the case is “facially moot” because the orders were rescinded and no exception applied. App. 8a. The court also held that petitioners’ ongoing employment harms were not redressable, as declaratory relief would not compel the hospital to rehire them or amend their records. App. 5a at n.3. The court declined to vacate the district court’s preliminary injunction denial, finding no legal consequences. App. 8a.

Circuit Judge Phipps dissented, arguing that respondents failed to meet the “formidable burden” of the voluntary cessation doctrine as Governor Murphy provided no affirmative assurance against reinstating the orders, and the rescission was tied to mutable conditions. App. 12a.



REASONS FOR GRANTING THE PETITION

This case presents critical questions about mootness, redressability, and the voluntary cessation doctrine in the context of executive actions impacting individual liberty. The Third Circuit’s decision conflicts with this Court’s precedent on voluntary cessation and redressability. It also conflicts with the Fifth Circuit on the issue of redressability. Because these are jurisdictional questions, inconsistency between the circuits creates an inequality among citizens of different geo-

graphic areas on issues of fundamental liberty and access to the federal courts to vindicate that liberty.

Certiorari is warranted for the following reasons:

I. The Third Circuit’s Mootness Holding Conflicts with This Court’s Voluntary Cessation Precedent

The Third Circuit erred in holding that the case is moot and that respondent met the “heavy burden” of showing that the challenged conduct “could not reasonably be expected to recur” when no legislative or judicial action abrogated the mandate, the government vigorously defended the mandate at all times, and neither the governor nor the state made any representation that the mandate would not be reinstated. *See West Virginia v. EPA*, 597 U.S. 697, 719, 720 (2022) (holding that case was justiciable when government made no suggestion that it would not reinstate the challenged policy and had vigorously defended the legality of the policy throughout litigation) (citing *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U. S. 701, 719, (2007)) and *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 288-89 (1982) (holding that case remained justiciable despite city’s repeal of the challenged ordinance due to city’s vigorous defense of legality and possibility of reinstatement). Here, as the dissent noted, the governor’s history of reinstating COVID-19 measures and the fact that the repeal was tied to variable metrics fatally undermines the “absolute clarity” against recurrence required by this Court’s precedent. App. 12a. Specifically, in *FBI v. Fikre*, 601 U.S. 234, 242 (2024), this Court rejected mootness based on assurances tied to “currently available information” because the possibility remained for reinstatement if circumstances

shifted, just as they could here with new variants or public health conditions. App. 11a.

II. The Third Circuit's Redressability Ruling Conflicts with This Court's Precedent and the Fifth Circuit

This Court has expressly recognized that harms “traditionally recognized as providing a basis for a lawsuit in American courts,” including “various intangible harms,” such as reputational harm, are concrete and redressable. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 417, 425 (2021). The Fifth Circuit has specifically held that in the context of employment consequences arising from a repealed COVID-19 vaccine mandate, declaratory judgment can redress lingering employment-related harms. In *Jackson v. Noem*, 132 F4th 790 (5th Cir. Mar. 20, 2025) and *Crocker v. Austin*, 115 F.4th 660, 668 (5th Cir. 2024), the Fifth Circuit held that the constitutionality of rescinded military COVID-19 vaccine mandates remained justiciable because declaratory relief could redress ongoing harms from the mandate’s lingering effects, such as potential use of vaccination status in future personnel actions, in *Jackson*, and harms arising from the manner of termination (less than an honorable discharge), in *Crocker*.

Petitioners were involuntarily terminated and coerced to resign from HMC due to noncompliance with vaccination policies and discipline mandated by the challenged executive orders. Like the plaintiffs in *Jackson* and *Crocker*, the nurses suffered adverse employment actions due to a government mandate that they contend was unconstitutional. The concrete harm of involuntary termination and residual effects of the disciplinary termination on their employment record are a continuing active controversy that warrant

judgment on the constitutionality of the mandate because they impair the nurse's job prospects and stigmatize them as risky hires in an industry subject to potential future mandates.

The Third Circuit held that the nurses' claims are not redressable because the court could not order HMC to rehire them or amend their employment records; however the nurses did not seek that relief and the fact that that a court may "not be able to return the parties to the *status quo ante*" does not preclude effectual relief. *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992). The relief petitioners seek was, and is, a declaratory judgment that the executive orders unconstitutionally burdened their liberty.

Without anything further, a declaration that the mandate violated petitioner's constitutional rights would:

- Nullify the basis for terminations: A declaration that the orders were unconstitutional would invalidate the legal foundation for HMC's policy, providing a basis for petitioners to challenge the characterization of their terminations. This could prompt HMC or future employers to reconsider their records, mitigating stigma and improving job prospects.
- Mitigate ongoing harm and throw new light onto continuing policies: EO 332's express permission for employers to maintain policies enacted pursuant to the mandate perpetuates the executive orders' effects, as petitioners necessarily face continued career barriers due to their noncompliance. A declaratory judg-

ment would counteract the presumption of validity and remove the government imprimatur for continuing policies.

- Acknowledge constitutional harm: In *Uzuegbunam v. Preczewski*, 592 US. 279 (2021), this Court held that nominal damages, which are declaratory in function, for past constitutional violations satisfy redressability. Similarly, a declaratory judgment here would acknowledge the unconstitutionality of the orders, redressing petitioners' reputational and professional harms and informing both parties' future conduct.
- Declaratory judgment in the nurses' favor would establish a known constitutional violation, which is likely to have a practical effect on future policy decisions and would have a legal effect on the defense of qualified immunity if unconstitutional conduct recurs.

Declaratory relief would be effectual relief and the fact that the court can provide such relief continues the live controversy.



CONCLUSION

The petition should be granted to correct the Third Circuit's errors, which contradict this Court's precedent on voluntary cessation and redressability, and to ensure judicial review of significant constitutional questions regarding executive power and individual liberty.

Respectfully submitted,

Dana Wefer
Counsel of Record
LAW OFFICES OF DANA WEFER, ESQ.
P.O. Box 374
290 Hackensack Street
Wood-Ridge, NJ 07075
(973) 610-0491
DWefer@WeferLawOffices.com

Counsel for Petitioners

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