No. 25-765

IN THE

Supreme Court of the United States

HEALTH FREEDOM DEFENSE FUND, INC., A WYOMING NOT-FOR-PROFIT CORPORATION, ET AL.,
Petitioners,

v.

ALBERTO CARVALHO, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF THE LOS ANGELES UNIFIED SCHOOL DISTRICT, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioners challenge a school district's long-rescinded policy requiring its employees to be vaccinated against COVID-19. They claim a substantive due process right to refuse to be vaccinated as a condition of employment during a global pandemic.

The questions presented are:

1. This Court held in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), that a governmental entity may impose a vaccination requirement so long as it has a rational basis for concluding that the requirement is necessary to protect public health. Did the Ninth Circuit, aligning with all six other circuits to consider the issue, correctly hold that this standard governs Petitioners' substantive due process claim?

2. Is Petitioners' case moot because Petitioners sought only injunctive relief against enforcement of the policy and the school district rescinded the challenged policy over two and a half years ago?

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INTRODUCTION

The Petition asks this Court to weigh in on a COVID-19-related claim that the circuits uniformly agree is foreclosed by this Court's precedent, all to review the legality of a policy that was rescinded more than two years ago. This case is not worthy of this Court's review.

The Petition contends that the Ninth Circuit erred in holding that *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), controls Petitioners' substantive due process challenge. But Petitioners admit that six other circuits agree—with no disagreement from any court anywhere. This Court should reject Petitioners' attempt to overrule or narrow this longstanding precedent. *Jacobson* is consistent with this Court's more recent cases applying modern constitutional scrutiny, none of which recognize a fundamental right to refuse to be vaccinated as a condition of employment during a global pandemic. This Court has consistently declined invitations to reconsider *Jacobson*. It should once again do so here.

Even if this Court were interested in revisiting *Jacobson* or its application to a government employer's COVID-19 vaccine policy, the Court lacks jurisdiction to do so here because the case is moot. LAUSD rescinded its policy requiring employees to be vaccinated against COVID-19 more than two years ago. There is nothing left to enjoin and no relief sought in the lawsuit can still be obtained. There is no reasonable expectation that LAUSD would impose the same policy again, especially since the unique COVID-19 public health emergency that prompted

the policy has long passed. There is accordingly no longer a live controversy for this Court to address. And addressing this case now will have no broader impact because the case arises from a once-in-a-century pandemic that is effectively over.

This Court should deny review.

STATEMENT OF THE CASE

LAUSD Is Faced With A Global Pandemic Endangering Its Students, Staff, Teachers, And Community

In January 2020, the World Health Organization and the U.S. Secretary of Health and Human Services both declared that COVID-19 was a public health emergency. Pet. App. 7a. By March 2020, federal, state, and local governments had responded by issuing emergency declarations and orders. Pet. App. 69a. Many schools, including LAUSD, responded to the emerging global pandemic by shifting to remote learning for students and remote work for employees. *See* Pet. App. 69a-70a. By the end of 2020, the pandemic continued to be "extraordinarily serious and deadly," and vaccines were not "readily available." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 29 (2020) (Kavanaugh, J., concurring).

By March 2021, vaccines were finally becoming more broadly available, including to teachers and educational staff. Employers all across the country began to consider how to use those vaccines to keep their employees and communities safe.

In early March 2021, LAUSD's Chief Human Resources Officer circulated a memorandum titled "Human Resources COVID-19 Employee Vaccination Information and Resources." First Amended Complaint, *Cal. Educators for Med. Freedom v. Los Angeles Unified Sch. Dist.*, No. 21-cv-02388, Dkt. 25, Ex. G (C.D. Cal. May 24, 2021). That document stated that all LAUSD employees "are eligible to receive the COVID-19 vaccination doses" and provided information about how employees could go about scheduling their vaccinations and demonstrating proof of vaccination. *See id.* It did not state that employees were required to be vaccinated. *See id.* Nor did it threaten to terminate employees who opted not to get vaccinated. *Id.*

California Educators for Medical Freedom (CEMF), one of the Petitioners in this case, responded to LAUSD's March 2021 memorandum by suing LAUSD and its leadership. The complaint alleged that LAUSD had threatened to terminate employees who were not vaccinated, *id.* ¶ 85, although the March 2021 memorandum said no such thing, *see id.* Ex. G. The complaint sought only declaratory and injunctive relief against that purported policy. *Id.* ¶¶ 108, 117.

Shortly after CEMF sued, LAUSD circulated an updated memorandum that clarified that employees had a choice between getting vaccinated and getting tested for COVID-19. *Id.* ¶ 86. In May 2021, CEMF filed an amended complaint that noted that LAUSD had circulated an updated memorandum. *Id.*

In June 2021, LAUSD moved to dismiss CEMF's suit. It argued that the suit was not ripe, as LAUSD

had not implemented the mandatory vaccination policy the complaint had alleged. *See* Order, *Cal. Educators for Med. Freedom v. Los Angeles Unified Sch. Dist.*, No. 21-cv-02388, 2021 WL 1034618, Dkt. 44 (C.D. Cal. July 27, 2021).

The district court dismissed CEMF's suit, agreeing that the case was not ripe. *See id.* at 6. The district court reasoned that according to CEMF's First Amended Complaint, which had acknowledged LAUSD's updated memorandum regarding COVID-19 vaccinations, LAUSD had not required vaccinations for employees. *See id.* at 5. And the court also rejected CEMF's assertion that its case was ripe based on the original policy and that LAUSD had tried to moot out the case by issuing the updated memorandum. The court explained that, even before LAUSD issued its updated memorandum clarifying its vaccine policy, CEMF's case had not been ripe: CEMF had failed to allege that LAUSD had ever required vaccination or threatened its employees with an adverse employment action. *See id.* at 6. The court accordingly dismissed CEMF's case on the ground that CEMF had filed suit too early. CEMF did not appeal.

The Lower Courts Uphold LAUSD's August 2021 COVID-19 Vaccination Policy

Several weeks after the district court granted LAUSD's motion to dismiss, and just before the start of a new school year, LAUSD adopted a new COVID-19 vaccination policy (the "Policy") on August 13, 2021. *See* C.A. App. ER-4 at ¶ 4; Pet. App. 71a-73a. At the time, public health experts were recommending

that individuals get vaccinated against COVID-19 and reporting that COVID-19 vaccinations were effective in preventing the spread of the disease. *See* Pet. App. 8a. LAUSD's Policy required employees to receive their first dose of the COVID-19 vaccine by October 15, 2021, or else be terminated effective November 1, 2021. C.A. App. ER-4 at ¶¶ 4-5. The Policy allowed employees to apply for religious or medical exemptions, but explained that employees who received an accommodation could still be excluded from the workplace if their presence posed an undue danger to the health and safety of others. *See* C.A. App. ER-40-41.

1. In November 2021—some three months after LAUSD issued the Policy, and after the date on which the Policy stated employees who did not comply would be terminated—Petitioners filed this lawsuit. Pet. App. 9a. Petitioners now alleged that LAUSD had either terminated or threatened to terminate employees who did not comply with the Policy. *See* C.A. App. ER-21-22 at ¶¶ 72-77.

Petitioners' operative complaint alleged that the Policy violated their Fourteenth Amendment right to substantive due process. Pet. App. 9a. Specifically, Petitioners alleged that the Policy violated their fundamental right to bodily integrity by subjecting them to required medical treatment. Pet. App. 9a-10a. They alleged that COVID-19 vaccines are not vaccines at all, but rather medical treatments, as the vaccines "only reduce symptoms of those who are infected by COVID-19" and do not impact the transmissibility of the virus. Pet. App. 10a. Petitioners requested

"injunctive relief restraining [LAUSD] from enforcing" the Policy. *See* C.A. App. ER-27, 33; Pet. App. 10a.

LAUSD moved for judgment on the pleadings. Pet. App. 79a. The district court granted LAUSD's motion. Pet. App. 76a. It invoked this Court's decision in *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905), which upheld a law requiring Cambridge residents to be vaccinated against smallpox. The district court held that *Jacobson* controlled its analysis of Petitioners' substantive due process claim. Pet. App. 85a-86a. Specifically, under *Jacobson*, LAUSD needed only a rational basis for adopting the Policy. Pet. App. 87a. The court concluded that LAUSD had a rational basis: LAUSD enacted the Policy in an effort to ensure the safety of its students and employees. Pet. App. 87a-88a. So the court rejected Petitioners' substantive due process claim.

2. Petitioners appealed. During the briefing process before the Ninth Circuit in spring 2023, the Policy remained effective, and LAUSD defended it. *See* Pet. App. 51a-52a. In the fall of 2023, however, circumstances began to change: COVID-19 rates started to decline, and other governments responded by withdrawing their policies requiring employees to be vaccinated against COVID-19. *See* Pet. App. 52a-53a, 74a. On the recommendation of LAUSD's Superintendent, LAUSD's Board of Education voted to rescind the Policy. *See* Pet. App. 11a, 53a. LAUSD then moved to dismiss Petitioners' appeal on the ground that it was moot, as the Policy was no longer in effect. *See* Pet. App. 54a.

In June 2024, a split panel of the Ninth Circuit revived Petitioners' substantive due process claim, holding that the district court had misapplied this Court's decision in *Jacobson*. The panel majority began by rejecting LAUSD's mootness argument. It applied the voluntary cessation exception to mootness, concluding that LAUSD had engaged in a "pattern of withdrawing and then reinstating its vaccination policies." Pet. App. 55a. On the merits, the panel majority held that *Jacobson* did not "directly control." Pet. App. 59a. The panel characterized *Jacobson* as focusing on the government's interest in preventing the spread of disease; because Petitioners' complaint alleged that COVID-19 vaccines did not prevent the spread of disease, but rather only lessened symptoms for individuals who contracted it, the panel concluded that *Jacobson* was distinguishable. *See* Pet. App. 59a-60a. The panel accordingly vacated the district court's order and remanded the case to the district court. Pet. App. 61a.

Judge Hawkins dissented, arguing that the case was moot. He explained that the "sole relief sought by the Plaintiffs, an injunction against enforcement of the school district's now rescinded COVID-19 vaccination policy," was no longer available: LAUSD had rescinded the policy, so there was "no longer any policy for our court to enjoin." Pet. App. 69a. And he argued that the panel majority's reliance on the voluntary cessation exception to mootness "ignore[d] the practical realities surrounding LAUSD's adoption and rescission of the Policy." *Id.* He reasoned that LAUSD's policy decisions were logically explained by the evolution of the pandemic and the realities of the school year calendar. Pet. App. 69a-75a. When CEMF first

filed suit in March 2021, it did so too early—CEMF's "pleadings and attached documents reflect that LAUSD simply had not formalized or implemented a vaccination policy at the time the plaintiffs" filed suit. Pet. App. 72a-73a. And he read the record as revealing that LAUSD's subsequent choice to require vaccination for employees after the district court dismissed CEMF's lawsuit months later was not litigation gamesmanship: LAUSD had announced its new COVID-19 policy just before "the unrestricted reopening of LAUSD schools for in-person instruction" for the first time since the beginning of the pandemic, and just "three days before students would be returning to the classrooms." Pet. App. 71a. Further, although LAUSD had rescinded the Policy just after the Ninth Circuit held oral argument, it had done so "after several key developments in 2023, including the end of local, state, and federal emergency COVID-19 orders." Pet. App. 73a-74a. Because there was "no longer any policy for the court to enjoin or declare unlawful" and LAUSD's actions were better explained by real-world events than litigation gamesmanship, Judge Hawkins would hold that the case was moot. Pet. App. 75a.

3. The Ninth Circuit granted LAUSD's petition for rehearing en banc.

In July 2025, the en banc Ninth Circuit issued an opinion reversing the panel and affirming the district court. Pet. App. 7a. The en banc majority first held that the case was not moot—but it did so on a different ground than the panel had. *See* Pet. App. 13a-14a. Rather than relying on the voluntary cessation exception to mootness, the en banc majority concluded that

effective relief was still available to Petitioners. *Id.* Although the individual employee Petitioners had not requested reinstatement to their former positions in their operative complaint, the court held that the possibility of reinstatement meant the case was not moot. *See* Pet. App. 14a. In the en banc majority's view, the complaint's "broad request for *any* proper injunctive relief, along with the allegations that individual Plaintiffs ha[d] been terminated under the Policy and ha[d] not been reinstated to their prior positions" could be read to "fairly encompass[] a request for reinstatement." Pet. App. 13a-14a.

On the merits, the en banc majority affirmed the district court. Pet. App. 28a. The Ninth Circuit held that this Court's decision in *Jacobson* "control[ed]" the analysis of Petitioners' claim, noting that its conclusion was in accord with "all our sister circuits that have considered substantive due process challenges to COVID-19 vaccine mandates." Pet. App. 18a. The Ninth Circuit reasoned that *Jacobson* was "materially indistinguishable" from Petitioners' case, which, like *Jacobson*, involved "a bodily integrity substantive due process challenge to a vaccine mandate imposed to protect the public's health and safety in response to a health emergency." Pet. App. 22a-23a. The Policy accordingly was subject to rational basis scrutiny, a hurdle the Policy "easily" cleared. Pet. App. 23a. The en banc majority also rejected Petitioners' "attempt to limit *Jacobson* to only those vaccines that prevent the spread of a disease and provide immunity," observing that in *Jacobson*, the Court had dealt with precisely the same arguments. Pet. App. 23a-24a.

Judge Owens dissented on mootness grounds, arguing that the en banc court was wrong to conclude that the case was not moot. He noted that he agreed with Judge Hawkins's conclusion at the panel stage of the case that the voluntary cessation exception to mootness did not apply, as "[n]othing in the record (or the world) even hints at the possibility that [LAUSD] would resurrect" the Policy. Pet. App. 29a. And he opined that the en banc majority's mootness reasoning was an "attempt[] to grow a magic Article III jurisdiction beanstalk from boilerplate language" in Petitioners' complaint. Pet. App. 30a. Judge Owens reasoned that the mootness inquiry hinges on the relief explicitly requested by Petitioners in their complaint. Petitioners had not requested reinstatement; their complaint requested only "injunctive relief restraining Defendants from enforcing their vaccine policy." Pet. App. 29a. Because that relief was no longer available, as the Policy was no longer in effect, Petitioners' case was moot. Pet. App. 31a. Judge Owens emphasized that in deciding otherwise, the en banc court had effectively gone against the Ninth Circuit's "sister circuits," which "routinely reject attempts" to avoid mootness by pointing to catchall prayers for relief in a complaint. *See* Pet. App. 30a.

Judge Lee dissented in part, joined by Judge Collins. Judge Lee agreed with the majority that Petitioners' case was not moot. Pet. App. 34a n.1. But he disagreed with the majority's conclusion that *Jacobson* governed Petitioners' claim. In his view, *Jacobson* applies "only if a vaccine prevents transmission and contraction of a disease." Pet. App. 34a. Judge Lee argued that if *Jacobson* extends to vaccine mandates for vaccines that merely "lessen[] the severity of

symptoms," then such a mandate "may well implicate" Petitioners' fundamental right to "refus[e] unwanted medical treatment." Pet. App. 41a.

REASONS TO DENY CERTIORARI

I. Petitioners Concede There Is No Circuit Split.

As Petitioners concede, all seven circuits to consider the issue have agreed that *Jacobson*'s rational-basis standard governs COVID-19 vaccination policies. *See* Pet. 16. Petitioners do not identify a single court, at any level, that has disagreed. This Court has denied three recent petitions for certiorari on this issue; Petitioners offer no reason why this Petition should fare any differently.

The circuit's uniform view is exemplified by the Sixth Circuit's decision in *Norris v. Stanley*, 73 F.4th 431 (6th Cir. 2023), *cert. denied*, 144 S. Ct. 1353 (2024). There, Michigan State University employees who alleged they had acquired natural immunity to COVID-19 challenged the university's mandatory vaccine policy. 73 F.4th at 433-34. The Sixth Circuit upheld the district court's determination that, under *Jacobson*, the university's vaccine policy need only satisfy rational basis scrutiny. *Id.* at 435-36. Because public health and safety "easily" qualify as legitimate state interests, and because the university could "rationally believe that requiring the vaccine for naturally immune individuals would further combat COVID-19 on its campus," the policy passed constitutional muster. *Id.* at 436. The Sixth Circuit observed that many of the plaintiffs' arguments echoed the

arguments made in *Jacobson*—in particular, the "scientific consensus around the smallpox vaccine was contested" in *Jacobson*, just as the plaintiffs contested the science around the COVID-19 vaccine. *Id.* Finally, the Sixth Circuit noted that the university was acting as the plaintiffs' employer, and "[g]overnments acting as employers have broader powers and discretion" as to their employees than as to the public at large. *Id.* at 436-37. This Court denied the subsequent petition. 144 S. Ct. 1353 (2024).

The Sixth Circuit relied on the Seventh Circuit's similar conclusion in *Klaassen v. Trustees of Indiana University*, 7 F.4th 592 (7th Cir. 2021) (Easterbrook, J.). Students at Indiana University challenged the school's COVID-19 vaccine mandate. *Id.* at 592. The Seventh Circuit observed that the case was "easier" for the government than *Jacobson*, because Indiana's vaccine policy had exemptions for adults (unlike the policy in *Jacobson*) and because Indiana limited the vaccine requirement to students (as opposed to every member of the public, as in *Jacobson*). *Id.* at 593.

So too with the First Circuit's decision in *Brox v. Hole*, 83 F.4th 87 (1st Cir. 2023), which affirmed a district court's application of *Jacobson* to a public ferry authority's COVID-19 vaccine mandate for employees. *Id.* at 89-90, 100-01. The First Circuit rejected the plaintiffs' arguments, similar to Petitioners' here, that rational basis scrutiny could not be satisfied because the "'vaccines confer no broad public health or safety benefit[s] in terms of reducing spread.'" *Id.* at 101. The court concluded that the government had more than sufficiently shown it had a "'plausible

justification' for adopting the Policy." *Id.* (citation omitted).

The Second, Third, and Fourth Circuits have held the same in response to challenges to COVID-19 vaccine mandates by public employers and universities, and this Court has turned away two additional petitions arising from those cases. *See, e.g.*, *Antunes v. Becerra*, No. 22-2190, 2024 WL 511038, at *1 (4th Cir. Feb. 9, 2024) (per curiam) (adopting the district court's decision in *Antunes v. Rector & Visitors of Univ. of Va.*, 627 F. Supp. 3d 553 (W.D. Va. 2022), which applied *Jacobson* to reject a state university employee's challenge), *cert. denied*, 145 S. Ct. 159 (2024); *Children's Health Def., Inc. v. Rutgers, the State Univ. of N.J.*, 93 F.4th 66, 80 (3d Cir. 2024) (holding that "*Jacobson* control[led]" the plaintiffs' claim that a university COVID-19 vaccine mandate violated their substantive due process rights), *cert. denied*, 144 S. Ct. 2688 (2024); *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 293-94 (2d Cir. 2021) (per curiam) (applying *Jacobson* to reject plaintiffs' claims that a COVID-19 vaccine mandate for certain healthcare employees violated "their fundamental rights to privacy, medical freedom, and bodily autonomy"), *clarified by* 17 F.4th 368 (2d Cir. 2021).

In short, there is no split of authority on the question presented, and this Court has repeatedly denied petitions raising the same issue in recent terms. It should do the same here.

II. Mootness Makes This Case A Poor Vehicle For Addressing The Questions Presented.

Even if this Court were inclined to assess the circuits' uniform view—or overrule *Jacobson*—this case is the wrong vehicle. LAUSD's rescission of the Policy more than two years ago renders this case moot: there is no longer a COVID-19 policy in place for Petitioners to challenge. At a minimum, the mootness question is sufficiently substantial to divide this Court before it even has the opportunity to weigh in on the merits.

"Article III of the Constitution restricts the power of federal courts to 'Cases' and 'Controversies.'" *Chafin v. Chafin*, 568 U.S. 165, 171 (2013). An "actual controversy" must exist through "all stages" of the litigation. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90-91 (2013) (citation omitted). This case no longer presents an active controversy. The sole relief Petitioners have sought throughout this case is an injunction restraining LAUSD from enforcing the Policy. Because LAUSD rescinded the Policy, there is no policy for this Court to enjoin. Both the panel and the en banc court concluded the case was alive, albeit for dueling reasons. As Judges Owens and Hawkins explained in their respective dissents, neither reason was correct. *See* Pet. App. 29a, 69a.

1. To start, this Court should reject the en banc Ninth Circuit's conclusion that Petitioners can manufacture a live dispute by pointing to their complaint's general request for "such other and further relief as the Court may deem just and proper" to claim that they can still seek reinstatement to their former jobs. Pet. App. 10a. As this Court has reasoned, such a new

request for relief, "extracted late in the day from [a plaintiff's] general prayer for relief and asserted solely to avoid otherwise certain mootness, b[ears] close inspection." *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 71 (1997).

It does not take a "close inspection," *id.*, of Petitioners' new requested relief to know that Petitioners never requested reinstatement until the mootness briefing before the Ninth Circuit. Petitioners did not request reinstatement in their complaint. *See* C.A. App. ER-23, 33. And until mootness became an issue, Petitioners focused their briefing entirely on wanting a court to enjoin LAUSD from enforcing the Policy—not on wanting a court to require LAUSD to take the affirmative act of reinstating the individual Petitioners who had been terminated. *See, e.g.*, Pet'r C.A. Reply Br. at 24 (noting that Petitioners "are not seeking an order that LAUSD wrongfully terminated their employment" and only "sued to declare LAUSD's COVID-19 vaccine policy unlawful" and "enjoin further enforcement of the policy").

In other words, Petitioners now seek to avoid mootness by attempting to add additional relief that they have neither pleaded nor pursued. *See Murphy v. Hunt*, 455 U.S. 478, 481-82 & n.5 (1982) (holding that a plaintiff's case was moot where he "had not prayed for" the only remaining available relief and had not stated he was pursuing that relief in his briefing). This Court should reject this attempt to manufacture a live controversy. Indeed, allowing Petitioners to retroactively add a request for new injunctive relief that they had never before sought would invite creative litigators—or courts—to save

virtually *any* case from mootness by relying on a complaint's catchall request for any relief the court deems proper.

2. The Ninth Circuit panel majority's reasoning for concluding the case was not moot is no more persuasive. That LAUSD voluntarily rescinded the Policy does not mean this case is still alive. *Contra* Pet. App. 55a. The voluntary cessation exception to mootness seeks to prevent a defendant from "suspend[ing] its challenged conduct after being sued, win[ning] dismissal, and later pick[ing] up where it left off," thereby allowing it to continue the challenged conduct and avoid being subject to suit in perpetuity. *FBI v. Fikre*, 601 U.S. 234, 241 (2024). So, to show that a case is in fact moot, a defendant who has voluntarily stopped the challenged conduct must show that it is clear that the challenged conduct "could not reasonably be expected" to resume. *Already, LLC*, 568 U.S. at 92.

It is abundantly clear that LAUSD cannot "reasonably be expected" to reinstitute the Policy. *Id.* For starters, LAUSD adopted the Policy in response to a unique circumstance: a "once-in-a-century" pandemic that required governments to adapt to quickly changing conditions. *See Burt v. Bd. of Trs. of Univ. of R.I.*, 84 F.4th 42, 53 (1st Cir. 2023). That unique set of facts no longer exists. Once COVID-19 rates and corresponding hospitalizations declined, the World Health Organization declared that the disease no longer constituted an international emergency, and COVID-19 began to be thought of as endemic several years ago, public employers including LAUSD responded by rescinding their COVID-19 vaccination mandates. *See*

Pet. App. 73a-74a. So the pandemic is effectively over. And a once-in-a-century pandemic, of course, cannot "reasonably be expected" to resume. *Already, LLC*, 568 U.S. at 92; *see Health Freedom Def. Fund v. President of the United States*, 71 F.4th 888, 893-94 (11th Cir. 2023) ("[T]he COVID-19 pandemic of 2020 is often compared to the influenza pandemic of 1918. Given the primary comparator occurred over a century earlier, we simply have no reasonable basis to conclude the same parties will be involved in a future controversy if a similar situation ever does arise again."). Considering this highly unusual circumstance, LAUSD is not reasonably likely to reinstitute the Policy. *See County of Los Angeles v. Davis*, 440 U.S. 625, 632 (1979) (concluding that Los Angeles County had met its burden of showing that its challenged conduct was unlikely to recur because the conditions that precipitated the conduct were "unique" and "no longer present").[1]

Nothing about LAUSD's conduct is even close to the type of litigation gamesmanship that triggers the voluntary cessation exception. *See Fikre*, 601 U.S. at 241. Rather, as Judge Hawkins explained in his panel-stage dissent, real-world events explain LAUSD's choice to enact and then rescind the policy. *See* Pet. App. 72a-74a. CEMF, one of the Petitioners

[1] Moreover, LAUSD also averred during the course of this litigation that "absent a very unlikely return to the onset of the COVID-19 pandemic, it will not reinstate the Policy." Pet. App. 74a. That, too, supports finding that this case is moot. *See Already, LLC*, 568 U.S. at 94 (reasoning that a party who had taken one position during the litigation "would be hard pressed to assert the contrary down the road").

here, first sued before LAUSD had issued a COVID-19 vaccination policy to begin with. *See* Pet. App. 49a, 73a. After initially adopting a policy that allowed employees to test for COVID-19 instead of getting vaccinated, LAUSD then adopted stricter COVID-19 vaccination requirements for employees just before returning to in-person learning for the first time since the start of the pandemic. *See* Pet. App. 73a. And although LAUSD's decision in 2023 to rescind the Policy coincided with the panel argument before the Ninth Circuit, it *also* coincided with changing real-world conditions—including the end of states of emergency—that resulted in other public employers rescinding their vaccine mandates around the same time. Pet. App. 74a; *see* Pet. App. 51a-52a. Thus, LAUSD's choice to institute and then rescind the Policy reflects LAUSD's responses to the ever-evolving nature of the pandemic, not an attempt to thwart Petitioners' lawsuit.

LAUSD can accordingly show that the voluntary cessation exception to mootness does not apply because LAUSD is not reasonably likely to reinstitute the challenged Policy.

3. The mootness issue in this case is serious—as perhaps best demonstrated by the fact that reasonable jurists of the Ninth Circuit disagreed on precisely how to resolve the question. *Compare* Pet. App. 54a-58a (panel majority of the Ninth Circuit concluding that the case was not moot because the voluntary cessation exception to mootness applies), *and* Pet. App. 13a-17a (en banc majority of the Ninth Circuit concluding that the case was not moot because a court could still grant effective relief to Petitioners), *with*

Pet. App. 69a-75a (Hawkins, J., dissenting from the panel decision on the grounds that the case was moot), *and* Pet. App. 29a-33a (Owens, J., dissenting from the en banc decision on the grounds that the case was moot).

Granting certiorari here would require this Court to resolve the mootness issue before it reaches the merits—which means the issue could either prevent the Court from reaching the Petition's questions presented or divide the Court sufficiently as to prevent a majority from authoritatively resolving them. *See, e.g.*, *Lab'y Corp. of Am. Holdings v. Davis*, 605 U.S. 327, 328-31 (2025) (Kavanaugh, J., dissenting) (disagreeing with the Court's decision to dismiss a case as improvidently granted and explaining that the Court had "presumably dismisse[d]" the case because the Court "d[id] not want to tackle the threshold mootness question"); *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 8-9 (2023) (Thomas, J., concurring in the judgment) (arguing that the Court should have addressed the merits instead of dismissing the case as moot); *compare N.Y. State Rifle & Pistol Assoc. v. City of New York*, 590 U.S. 336, 340 (2020) (Kavanaugh, J., concurring) (noting agreement with the Court's conclusion that the case was moot), *with id.* at 340-42 (Alito, J., dissenting) (arguing in a dissent joined by Justice Gorsuch and Justice Thomas that the Court was "incorrectly dismissing this case as moot").

III. The Decision Below Is Correct On The Merits.

Review is also unwarranted because the Ninth Circuit's decision was correct on the merits. This

Court's decision in *Jacobson* controls the analysis of Petitioners' claim and is consistent with the Court's more recent cases applying modern constitutional scrutiny. Under *Jacobson* and more recent precedent, Petitioners have no substantive due process right to refuse to be vaccinated against COVID-19.

All the circuits that have addressed a substantive due process challenge to a COVID-19 vaccine mandate are right in holding that this Court's decision in *Jacobson* controls. In *Jacobson*, Massachusetts enacted a statute permitting the "board of health of a city or town" to require adults to be vaccinated. 197 U.S. at 12. Cambridge responded by enacting a regulation requiring all adult residents to be vaccinated against smallpox or else pay a $5 fine. *See id.* at 12-14. Jacobson refused to comply with Cambridge's regulation, so he was criminally prosecuted, sentenced to pay the fine, and ordered to "stand committed until the fine was paid." *Id.* at 13-14. He argued that the vaccine requirement violated his constitutional rights under the Fourteenth Amendment, contending that he had a right to "care for his own body and health in such way as to him seems best" and that a law requiring vaccinations, "no matter for what reason," violates this right. *Id.* at 14, 26; *cf. Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 24 (2020) (per curiam) (Gorsuch, J., concurring) (characterizing Jacobson as having argued that he "possessed an implied 'substantive due process' right to 'bodily integrity' that emanated from the Fourteenth Amendment").

This Court rejected Jacobson's argument that a "right given or secured by the Constitution [wa]s invaded" by the vaccine requirement. *Jacobson*, 197

U.S. at 25. The Court reasoned that the Constitution does not guarantee an individual a right to be "at all times and in all circumstances[] wholly freed from restraint." *Id.* at 26. Rather, there are "manifold restraints to which every person is necessarily subject for the common good." *Id.* One such permissible restraint is a community's "right to protect itself against an epidemic of disease which threatens the safety of its members." *Id.* at 27.

After rejecting Jacobson's arguments that he had a constitutional right to refuse to be vaccinated, the Court applied what amounted to rational basis review to the vaccine requirement and upheld the law. *See id.* at 27-30; *cf. Roman Cath. Diocese*, 592 U.S. at 23 (Gorsuch, J., concurring) (noting that "[a]lthough *Jacobson* pre-dated the modern tiers of scrutiny, this Court essentially applied rational basis review" to Jacobson's constitutional challenge). The Court emphasized that the question of how to protect the safety and wellbeing of the community was best left to the legislature, not a court or jury. *See Jacobson*, 197 U.S. at 30. Because the Massachusetts legislature and Cambridge's policymakers had reasonably determined that a smallpox vaccination requirement was necessary to protect the public, the Court upheld the requirement. *Id.* at 30-31.

Here, as in *Jacobson*, Petitioners claim that they have a substantive due process right to bodily integrity that allows them to refuse to be vaccinated and that LAUSD's policy accordingly need survive something more than rational basis review. *Jacobson* squarely controls, as the Ninth Circuit correctly held.

Petitioners contend that *Jacobson* does not control here because Petitioners have alleged that the COVID-19 vaccine does not prevent the spread of the disease, but instead merely lessens the severity of the symptoms for individuals who are vaccinated and then contract the disease. *See* Pet. App. 23a. In Petitioners' view, *Jacobson*'s holding is limited to vaccines that prevent transmission of disease, so the Ninth Circuit erred in applying it to their claim. Pet. 3. But *Jacobson* is not so limited. In fact, as the Ninth Circuit acknowledged, *Jacobson* addressed very similar arguments. *See* Pet. App. 23a-26a. The plaintiff there argued that the required smallpox vaccine had "little or no value … as a means of preventing the spread of smallpox" and that "vaccination causes other diseases of the body." *Jacobson*, 197 U.S. at 30. The Supreme Court rejected this argument, reasoning that it could "assume that, when the statute in question was passed, the legislature of Massachusetts was not unaware of these opposing theories." *Id.* Because the legislature could show that smallpox vaccination had a "real or substantial relation to the protection of the public health and the public safety," the Court upheld the vaccine requirement. *Id.* at 31. Thus, *Jacobson*'s holding is not limited to vaccines that limit community spread.

Petitioners are also incorrect in asserting *Jacobson* needs to be overruled as inconsistent with this Court's more recent cases applying modern constitutional scrutiny. Relying primarily on *Cruzan ex rel. Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990), and *Sell v. United States*, 539 U.S. 166 (2003), Petitioners argue that, since *Jacobson*, this Court has recognized a substantive due

process right to general bodily integrity. But this Court has never held that the Constitution guarantees the sweeping right that Petitioners claim. In *Cruzan*, the Court addressed a request by a woman's parents to refuse life support following a serious car accident that had left the woman in a "persistent vegetative state." 497 U.S. at 266-69. This Court reasoned that it could be "inferred" from the Court's prior decisions, including *Jacobson*, that a "competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment." *Id.* at 278. The Court accordingly "assume[d]," for "purposes of this case," that the Constitution "would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition." *Id.* at 279. The Court did not, as Petitioners seem to claim, hold that the Constitution guarantees individuals an overarching right to bodily integrity that would encompass Petitioners' objections to receiving the COVID-19 vaccine as a condition of employment.

This Court's decision several years later in *Washington v. Glucksberg*, 521 U.S. 702 (1997), makes this clear. In *Glucksberg*, the Court reviewed the constitutionality of a Washington State statute that made it illegal to assist with a suicide. *Id.* at 705-06. A group of physicians challenged the law, arguing that the liberty interests protected by the Fourteenth Amendment "extend[] to a personal choice by a mentally competent, terminally ill adult to commit physician-assisted suicide." *Id.* at 708. The Court disagreed and held that substantive due process rights do not sweep so far. *Id.* at 709, 720-35. The Court explained that it has "always been reluctant to expand the concept of substantive due process." *Id.* at 720 (citation omitted).

To determine whether to recognize such a right, the Court asks whether the right is "deeply rooted in this Nation's history and tradition." *Id.* at 721 (citation omitted). And the Court requires a "'careful description' of the asserted fundamental liberty interest." *Id.* The Court characterized *Cruzan* as having been consistent with that "tradition of carefully formulating the interest at stake in substantive-due-process cases," elaborating that *Cruzan* had made the "precise" assumption that "the Constitution granted competent persons a 'constitutionally protected right to refuse lifesaving hydration and nutrition.'" *Id.* at 722-23 (quoting *Cruzan*, 497 U.S. at 279).

Glucksberg concluded that that required analysis demanded the conclusion that the Constitution does not recognize a fundamental right to physician-assisted suicide. *Id.* at 709, 735. In so holding, this Court rejected the physicians' arguments that *Cruzan* necessitated finding such a right because *Cruzan* "reflect[ed] a general tradition of 'self-sovereignty'" and taught that "the 'liberty' protected by the Due Process Clause includes 'basic and intimate exercises of personal autonomy.'" *Id.* at 724 (citation omitted).

The Court's decision in *Sell v. United States*, 539 U.S. 166 (2003), the other case upon which Petitioners principally rely, only further confirms that the Court articulates substantive due process rights narrowly. There, the Court addressed a prisoner's constitutional challenge to the government's efforts to forcibly administer antipsychotic drugs to him. To address that challenge, the Court articulated the right at issue narrowly, focusing both on the status of the individual at issue (a prisoner, subject to the state's control) and

the precise nature of the state action at issue (forced administration of antipsychotic drugs). *See id.* at 178-79.

Thus, this Court has never adopted the broad, overarching fundamental right to bodily integrity that Petitioners claim. To the contrary, this Court's substantive due process precedents since *Jacobson* demonstrate that the Court is reluctant to read new fundamental rights into the Constitution—and will do so only after articulating the right narrowly and confirming that the right is consistent with "this Nation's history and tradition." *Glucksberg*, 521 U.S. at 720-21; *see also, e.g.*, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 239 (2022) ("[I]n *Glucksberg*, which held that the Due Process Clause does not confer a right to assisted suicide, the Court … made clear that a fundamental right must be 'objectively, deeply rooted in this Nation's history and tradition.'" (quoting *Glucksberg*, 521 U.S. at 720-21)).

Moreover, although *Jacobson* predated this framework of modern constitutional analysis, the case's reasoning fits comfortably within it—as Justice Gorsuch recently observed. *See Roman Cath. Diocese*, 592 U.S. at 23-25 (Gorsuch, J., concurring). In *Jacobson*, the Court examined the claimed right at issue—an "implied 'substantive due process' right to 'bodily integrity' that emanated from the Fourteenth Amendment." *See id.* at 24 (Gorsuch, J., concurring) (citing *Jacobson*, 197 U.S. at 13-14). The Court rejected the notion that the Constitution contained such a right, stating that Cambridge's smallpox vaccine regulation did not "contravene the Constitution" or "infringe any right granted or secured by that instrument."

Jacobson, 197 U.S. at 25. The Court then applied what amounted to rational basis review to the smallpox regulation. *See Roman Cath. Diocese*, 592 U.S. at 23 (Gorsuch, J., concurring) (noting that "this Court essentially applied rational basis review" to Jacobson's claim). The Court, in other words, "applied what would become the traditional legal test associated with the right at issue." *Id.* at 24.

Petitioners make no meaningful attempt at demonstrating that they have a fundamental right to refuse vaccination because such a right is "objectively, deeply rooted in this Nation's history and tradition." *Glucksberg*, 521 U.S. at 720-21 (citation omitted). Nor could they. As Judge Easterbrook recently explained, *Jacobson* itself shows that "vaccination requirements, like other public-health measures, have been common in this nation." *Klaassen*, 7 F.4th at 593; *see also Zucht v. King*, 260 U.S. 174, 175-77 (1922) (upholding a city ordinance requiring vaccinations in public schools). Indeed, the rights at issue in *Cruzan*, *Glucksberg*, and *Sell* were distinct from the claimed right here in a key way: Those cases involved a claimed right with consequences only for one person, not a claimed right with wide-reaching effects on a community.

Further, *Jacobson*'s conclusion that the decision whether to enact public health measures like vaccines is best left to policymakers, not courts, continues to make sense today. The decision whether to require vaccinations, especially during a fast-changing global pandemic, requires policymakers and on-the-ground officials to "act in areas fraught with medical and scientific uncertainties." *Marshall v. United States*, 414

U.S. 417, 427 (1974). That decision "should not be subject to second-guessing by an 'unelected federal judiciary,' which lacks the background, competence, and expertise to assess public health and is not accountable to the people." *S. Bay United Pentecostal Church v. Newsom*, 590 U.S. 965, 967 (2020) (Roberts, C.J., concurring) (citation omitted). Indeed, under Petitioners' proposed constitutional framework for evaluating individual objections to vaccine requirements, courts would be in the business of having to decide whether a vaccine sufficiently prevents transmissibility or instead only reduces symptoms. Courts lack the scientific background and expertise to undertake such an analysis, especially during a pandemic like COVID-19 where scientists' understanding of the nature of the disease evolves quickly. Not allowing policymakers to act quickly and rationally, based upon their good-faith conclusions, could hamstring the government when flexibility and adaptability are most needed—to keep the public safe in an uncertain and rapidly evolving public health crisis.

At bottom, Petitioners have no fundamental right to refuse to be vaccinated as a condition of employment during a pandemic. The Policy easily survives the rational basis review that *Jacobson* requires. As the Ninth Circuit correctly held, LAUSD reasonably decided to require COVID-19 vaccines that would protect the health and safety of its employees and students. Pet. App. 7a; *see also, e.g.*, *Roman Cath. Diocese*, 592 U.S. at 18 ("Stemming the spread of COVID-19 is unquestionably a compelling interest."). The proper question is "what reasonable legislative and executive decisionmakers *could* have rationally concluded about whether a vaccine protects the

public's health and safety, not whether a vaccine *actually* provides immunity to or prevents transmission of a disease." Pet. App. 22a (second emphasis added). And as the en banc majority observed, although Petitioners' complaint alleged that the COVID-19 vaccine was not effective at preventing transmission of the disease, at the time that LAUSD issued the Policy, public health experts had been reporting that people who were fully vaccinated against COVID-19 were "less likely to become infected" and "less likely to get and spread" the disease. Pet. App. 8a-9a; 23a.

If anything, this case is easier than *Jacobson*. Petitioners' arguments ignore a piece of crucial context: While *Jacobson* involved a vaccine requirement that applied to the general public, this case involves a policy that LAUSD applied to its employees in its capacity as an *employer*. As this Court has repeatedly held, that context matters. The government "has significantly greater leeway in its dealings with citizen employees than it does when it brings its sovereign power to bear on citizens at large." *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 599 (2008); *see also, e.g.*, *Connick v. Myers*, 461 U.S. 138, 143 (1983) (noting that "government offices could not function if every employment decision became a constitutional matter"). So "[w]hen a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom." *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006).

The Ninth Circuit correctly held that this Court's decision in *Jacobson* resolves Petitioners' claim, and *Jacobson* is entirely consistent with modern constitutional scrutiny. This Court need not grant review.

IV. Certiorari Is Unwarranted Because An Opinion From This Court Would Have Little Impact.

On top of all the other reasons to deny review, this case will have minimal impact because it arises from a once-in-a-century pandemic that is unlikely to be repeated in the foreseeable future. No global, federal, state, or local states of emergency related to the pandemic remain in effect; most were lifted nearly three years ago. Respondents know of no public employers with current COVID-19 vaccine mandates. That significantly diminishes the practical importance of this issue.

Petitioners only reinforce that conclusion by gesturing toward the most farfetched of scenarios, such as compelled abortions for high-risk pregnancies. *See* Pet. 17. There is no reason to believe any court would apply *Jacobson* to that scenario. The decision below carefully limited its analysis to vaccines that policymakers could have rationally concluded would "protect the public's health and safety." Pet. App. 26a. In any event, a hypothetical future case presenting those kinds of materially different facts—including any future advancements in medical treatment for communicable diseases—would present a distinct question not covered by *Jacobson* or the Ninth Circuit's decision, and does not provide a reason for this Court to grant certiorari.

The questions presented are bound up with the unique facts of a particular policy, adopted by a particular school district, in response to a particular public health crisis that has long since abated. Whatever

abstract interest the questions might hold, their resolution here would be dictated by—and limited to—the highly specific circumstances of the COVID-19 pandemic and LAUSD's reasonable response to it.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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