In the

United States Court of Appeals

For the Seventh Circuit

No. 23-8012

ALVIN BOONE, BRANDON HESTER, LINDSEY QUISENBERRY, TAMMY PARKHILL, and SUSAN CHRISTNER, individually, as well as on behalf of all persons similarly situated,

Plaintiffs-Respondents,

v.

ILLINOIS DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants-Petitioners.

Petition for Interlocutory Appeal from the
United States District Court for the
Central District of Illinois.
No. 3:21-cv-3229 — **James E. Shadid**, *Judge*.

SUBMITTED MAY 5, 2023 — DECIDED JUNE 21, 2023

Before SCUDDER, ST. EVE, and KIRSCH, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Before us is an interlocutory appeal arising in mighty odd circumstances. In November 2021 the Illinois General Assembly passed Public Act 102-667, which added a provision to the state's Health Care Right of Conscience Act. The new provision purported to be a

"declaration of existing law" that "shall not be construed as a new enactment." In reviewing a challenge to this new provision, the district court took the legislature at its word, explained that the provision "was merely a clarification of existing law" that affected nobody's rights or obligations, and thus rejected the plaintiffs' requests to enjoin the added provision from being enforced. But the district court then allowed the challenge to go forward to determine whether the new provision somehow harmed the plaintiffs in a way that would entitle them to some form of legal relief.

Both parties seek interlocutory review to sort out the impact of the district court's first holding (that Public Act 102-667 did not change existing law) on its second (that unresolved issues of fact remained regarding the plaintiffs' challenge). We see no way around it: the district court's two conclusions conflict. The new measure could not have injured the plaintiffs if it did not change their substantive rights and obligations.

The district court's primary conclusion about Public Act 102-667—that it changed nothing in Illinois law—requires dismissing the plaintiffs' challenge for lack of Article III standing. We therefore accept the interlocutory appeal as it was presented to us and remand with instructions to dismiss the case. At this time we do not question any other determinations made by the district court, including its holding that Public Act 102-667 did not change existing law. Such questions would be better addressed in an appeal from a final judgment on all the plaintiffs' claims.

I

The underlying lawsuit relates to COVID-19 vaccine mandates imposed by several Illinois state agencies. In October 2021 the plaintiffs, who work for these agencies, sued their employers and Governor J.B. Pritzker in Illinois state court, asserting the vaccine mandates were unlawful. The defendants then removed the case to federal court. In response to similar lawsuits, Illinois passed Public Act 102-667 on November 8, 2021. The measure amended the Health Care Right of Conscience Act to add the following provision:

> It is not a violation of this Act for any person or public official, or for any public or private association, agency, corporation, entity, institution, or employer, to take any measures or impose any requirements, including, but not limited to, any measures or requirements that involve provision of services by a physician or health care personnel, intended to prevent contraction or transmission of COVID-19 or any pathogens that result in COVID-19 or any of its subsequent iterations. It is not a violation of this Act to enforce such measures or requirements. This Section is a declaration of existing law and shall not be construed as a new enactment.

745 ILCS 70/13.5. This amendment took effect on June 1, 2022.

The next day the plaintiffs amended their complaint to add several claims challenging this new law. They contended that this amendment to the Health Care Right of Conscience Act violated federal and state constitutional protections of free exercise of religion and equal protection of the laws, so

they requested a declaration that the statute is unconstitutional as well as an injunction preventing the state from enforcing the amendment.

Notice what the plaintiffs did not do. In their amended complaint they never challenged any of the original provisions of the Health Care Right to Conscience Act—the statute that Public Act 102-667 purported to clarify. Quite the opposite: the plaintiffs asserted that the amendment *conflicted* with the meaning of the original Act despite the amendment's own statement to the contrary. In short, they contended that Public Act 102-667 changed, rather than clarified, existing law. Their issue was with the new provision, and that provision alone.

The defendants invoked Rule 12(b)(6) and moved to dismiss the plaintiffs' claims for failure to state a claim upon which relief can be granted. The district court granted the defendants' motion to dismiss the plaintiffs' original October 2021 claims challenging their employers' vaccination requirements under unrelated state and federal law. Those claims are not before us on this interlocutory appeal. Nor has the district court entered final judgment on those other claims.

As for the plaintiffs' claims regarding Public Act 102-667, the outcome was mixed. The district court determined that the new provision, by its terms, did not change and instead merely clarified existing law. The district court therefore held that the plaintiffs were unlikely to succeed on the merits and rejected their request for a preliminary injunction. But the district court did not stop there. It went on to observe that issues of fact remained unresolved on the very same claims, though it did not identify what those questions of fact were. In the end, the district court allowed the plaintiff's challenge to Public Act 102-667 to move forward notwithstanding the court's

prior conclusion that the amendment—as a legal matter—did not change anything about the original Health Care Right to Conscience Act.

The defendants then moved under 28 U.S.C. § 1292(b) to certify the following question for interlocutory appeal:

> Whether, given [the district] court's correct determination that Section 13.5 is a declaration of existing law that did not change the HCRCA, [the district] court cannot grant Plaintiffs any meaningful relief.

The district court certified this exact question for appeal.

II

A

We begin with our own jurisdiction as a court of review. Section 1292(b) requires us to independently decide whether to accept the certified question for interlocutory appeal. We may accept interlocutory appeals only if they present questions of law that are controlling and contestable, the resolution of which would speed up the litigation. See 28 U.S.C. § 1292(b); *Ahrenholz v. Bd. of Trs. of the Univ. of Illinois*, 219 F.3d 674, 675 (7th Cir. 2000). All those statutory criteria are met.

First, the certified question is a purely legal one. We have previously accepted interlocutory appeals regarding "the sufficiency of the allegations of a complaint" when the questions presented "require[ ] the interpretation, and not merely the application, of a legal standard." *In re Text Messaging Antitrust Litig.*, 630 F.3d 622, 625 (7th Cir. 2010).

Second, the question of law is controlling. The only active claims in this litigation are the plaintiffs' challenges to Public

Act 102-667, and the district court has already determined that the amendment did not change existing law. Resolution of the certified question is therefore "quite likely to affect the future course of the litigation." *Sokaogon Gaming Enter. Corp. v. Tushie-Montgomery Assocs., Inc.*, 86 F.3d 656, 659 (7th Cir. 1996).

Third, the question of law is contestable. The district court explained that the plaintiffs were unlikely to succeed on the merits of their challenge to Public Act 102-667, but it nevertheless held that they might be entitled to some relief. This demonstrates the confusion posed by the question presented to us for review.

Fourth, resolution of the certified question promises to speed up the litigation. If we conclude that no relief is available to the plaintiffs, the entirety of the litigation in the district court is almost certain to end—though an appeal from final judgment may follow. See *Johnson v. Burken*, 930 F.2d 1202, 1205 (7th Cir. 1991) ("[B]eing a threshold question its resolution now may materially advance the ultimate termination of the litigation."). And even if we find that some relief remains available to the plaintiffs, our identification of that relief would narrow the issues moving forward. We understand this is likely why the defendants sought interlocutory review in the first place: they do not want to spend the time and money necessary to defend a law that, in their view, caused no harm to the plaintiffs—or anyone else for that matter.

We conclude that we have jurisdiction to accept this interlocutory appeal under § 1292(b), and we accept the appeal.

B

With that we move to the merits of the certified question—whether the plaintiffs are entitled to any form of relief from Public Act 102-667, assuming that amendment did not change anything about the Health Care Right of Conscience Act.

At the outset we recognize that the plaintiffs continue to contend that Public Act 102-667 is at odds with the original meaning of Illinois's Health Care Right of Conscience Act. That may well be the case. But we accept the premise of the question as it was presented to us for interlocutory review and therefore do not address the plaintiffs' contentions further at this juncture.

For their part, the defendants explain that because Public Act 102-667 did nothing more than clarify existing law (a premise we accept for purposes of this appeal), the plaintiffs' isolated challenge to the statute does not state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6). This position appears sound: we do not see how the plaintiffs' desired outcome—a judicial invalidation of a statute of no independent legal significance—could provide meaningful relief to them or any plaintiffs.

But we decline to engage further with that question because our analysis has uncovered a related, threshold flaw with the plaintiffs' case—at least in the posture of this interlocutory appeal. If Public Act 102-667 truly did not effect a change in the law, no harm can flow from it, and no harm can be remedied by striking it down. That jeopardizes the authority of federal courts to hear this case in the first place. See *Sweeney v. Raoul*, 990 F.3d 555, 559 (7th Cir. 2021) ("To establish 'the irreducible constitutional minimum of standing,' the

plaintiff must have suffered an injury in fact traceable to the defendant and capable of being redressed through a favorable judicial ruling." (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992))). Simply put, the plaintiffs lack standing to bring—and we and the district court lack jurisdiction to hear—a challenge to a statutory measure that cannot have harmed the plaintiffs.

We must end our analysis with that conclusion and not go any further. See *Indiana Right to Life Victory Fund v. Morales*, 66 F.4th 625, 630 (7th Cir. 2023) ("We must address [ ] jurisdictional questions before we can even consider the merits." (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93–95 (1998))). Once the district court determined that the General Assembly's amendment did not change anything about the Health Care Right of Conscience Act, any further proceedings related to that challenge became futile. The district court should have immediately dismissed the plaintiffs' challenges to the amendment for lack of standing.

Do not overread our decision. We do not here decide whether Public Act 102-667 changed or merely clarified the Health Care Right of Conscience Act. Nor do we cast into doubt the plaintiffs' standing to challenge the amendment in the event it actually changed the law—or the plaintiffs' standing to challenge the underlying Act if the amendment did not change anything. We hold only that, accepting the certified question as it comes to us and assuming that the General Assembly merely clarified existing law when it passed Public Act 102-667, the plaintiffs lack standing to challenge that amendment.

We therefore REVERSE and REMAND with instructions to dismiss the plaintiffs' challenges to Public Act 102-667 for

lack of standing. The district court is free on remand to issue a proper final judgment pursuant to Rules 54(a) and 58(a), which would cover all the claims in the plaintiffs' amended complaint. The plaintiffs could then invoke 28 U.S.C. § 1291 and notice an appeal on any issues not resolved by this interlocutory appeal.