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OFFICE OF APPELLATE COURTS

STATE OF MINNESOTA
IN SUPREME COURT

A21-0626

Drake Snell, et al.,

Petitioners,

vs.

Tim Walz, Governor of Minnesota, in his official capacity, et al.,

Respondents.

BRIEF OF AMICUS CURIAE INSTITUTE FOR JUSTICE IN SUPPORT OF NEITHER PARTY

INSTITUTE FOR JUSTICE
Anthony B. Sanders, No. 387307
520 Nicollet Mall, Suite 550
Minneapolis, Minnesota 55402
Tel: (612) 435-3451
asanders@ij.org

Counsel for Amicus Curiae Institute for Justice

UPPER MIDWEST LAW CENTER
Douglas P. Seaton, No. 127759
James V. F. Dickey, No. 393613
8421 Wayzata Boulevard, Suite 300
Golden Valley, Minnesota 55426
Tel: (612) 428-7000
Doug.Seaton@umlc.org;
James.Dickey@umlc.org

Attorneys for Appellant

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota
Liz Kramer, No. 325089
Alec Sloan, No. 0399410
445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
Tel: (651) 757-1010
Liz.kramer@ag.state.mn.us

Attorneys for Respondent

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Statement of Amicus Curiae[1]

The Institute for Justice is a nonprofit, public-interest law firm committed to defending the essential foundations of a free society by securing greater protection for individual liberty and by restoring constitutional limits on the power of government. As part of that mission, the Institute litigates constitutional cases in state and federal courts nationwide to defend property rights, economic liberty, freedom of speech, and educational choice.

The Institute knows through first-hand experience how important the voluntary cessation exception to mootness is to protecting individual rights. Government actors rarely appreciate either the legal or public scrutiny that public-interest lawsuits may subject them to. As a result, they often try to avoid this scrutiny by strategically mooting lawsuits against them. The Institute believes that this Court should adopt the voluntary cessation doctrine so that Minnesotans challenging government action in state court will enjoy the same protection against this sort of gamesmanship as has been available in federal courts for decades.[2]

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[1] Counsel certifies that he wrote this brief in its entirety for amicus curiae Institute for Justice. No person or entity other than amicus curiae made any monetary contribution to the preparation or submission of the brief. Counsel files this brief on behalf of the Institute for Justice, which this Court granted leave to participate as amicus curiae by Order dated February 23, 2022.

[2] The Institute takes no position on the merits of this dispute. Its interest is solely in seeing this Court adopt the voluntary cessation doctrine.

The Institute filed a similar brief as amicus curiae in *In re Merrill Lynch Mortgage*, A18-1554, in October 2019. In that case, the same issue of adopting the voluntary cessation doctrine was before this Court, and just like in this case, the court of appeals had previously declined to adopt the doctrine without this Court's lead. *In re Merrill Lynch Mortg.*, No. A18-1554, 2019 WL 2079819, at *3 (May 13, 2019) ("But the Minnesota Supreme Court has not adopted this doctrine, and we decline to do so here."). Unfortunately, that case settled and was dismissed before this Court could rule on this important question. *See* Order, *In Re Merrill Lynch Mortg.*, No. A18-1554 (Apr. 30, 2020). The fact this Court has this issue before it for the second time in three years demonstrates how frequently it arises in the lower courts and how important it is that this Court settle the matter.

Statement of the Case and Facts

Amicus adopts the Statement of the Case and Statement of Facts set forth in the Brief of Petitioners Drake Snell, et al.

Argument

The voluntary cessation exception to mootness is a vital safeguard to the rights of litigants and the integrity of the judicial system. Without this doctrine, plaintiffs and courts have no effective remedy against gamesmanship by defendants seeking to avoid judicial scrutiny. Further, the voluntary cessation doctrine has its most urgent

applications in the realm of constitutional law, where it ensures that courts can hold other government actors accountable when they violate citizens' rights.

In Section I, Amicus will explain the importance of the voluntary cessation doctrine to public-interest litigants in constitutional cases. In Section II, Amicus will survey the status of the voluntary cessation exception in other states, which shows that failing to adopt the voluntary cessation exception would make Minnesota the first state in the country to reject the voluntary cessation doctrine on the merits.

I. The Voluntary Cessation Exception to Mootness Is Vital to Protecting Constitutional Rights.

The voluntary cessation doctrine plays a crucial role in safeguarding the ability of courts to rule on important issues in the public interest. Without it the government can simply withdraw a challenged statute, policy or practice, only to reinstate it after the instant litigation goes away. As public interest litigation frequently only concerns equitable relief, without the possibility of damages, the danger of gamesmanship is a constant one. That is especially true when the challenged provision or practice is not a statute requiring the legislature and the governor, or Congress and the President, to repeal the law, but a requirement that can be "turned off and on" much more easily. That can be a decision of an executive official—such as the one at issue in this case—or a city ordinance, which only requires a vote of a unicameral city council.

The Institute itself has used the voluntary cessation doctrine to ensure the judiciary's protection of constitutional liberties in our cases. One notable example is in the

area of civil forfeiture. Within the last few years, this once-obscure practice has made national headlines, due in part to the Institute's litigation. *See, e.g.*, Deanna Paul, *Police seized $10,000 of a couple's cash. They couldn't get it back—until they went public*, Wash. Post, (Aug. 31, 2018), https://www.washingtonpost.com/nation/2018/09/01/police-seized-couples-cash-they-couldnt-get-it-back-until-they-went-public/. And as this practice has grown more controversial, government agencies have tried hard to prevent courts from scrutinizing it more closely.

Take the Institute's challenge to the City of Philadelphia's "seize and seal" program. Under this program, the Philadelphia D.A.'s Office would routinely obtain *ex parte* orders to kick people out of their homes and begin forfeiture proceedings if even one of the residents committed a crime. Residents could sometimes regain access to their homes only by waiving any defenses to future forfeiture actions, giving the Commonwealth veto power over future tenants, and even agreeing to bar specific people, including relatives, from the property. And that's exactly what happened to Chris Sourovelis, who was forced out of his home, along with his wife and two daughters, after police arrested his 22-year-old son on a minor drug charge. *See* Institute for Justice, *Philadelphia Forfeiture*, https://ij.org/case/philadelphia-forfeiture/ (last visited March 9, 2022).

But when Mr. Sourovelis sued to challenge this practice, the city dropped its forfeiture action against his home, promised to amend its forfeiture procedures, and argued that the case was moot. That was good for his family's immediate needs, but

did not solve the long-term problem—if the case was moot, the court could not prevent the city from doing the same thing again in the future. Thankfully, because Mr. Sourovelis brought his case in federal court, the judge quickly dispensed with the City's mootness argument by invoking the doctrine of voluntary cessation. *Sourovelis v. City of Philadelphia*, 103 F. Supp. 3d 694, 701–02 (E.D. Pa. 2015). The Court allowed Mr. Sourovelis's lawsuit to move forward, ultimately leading to a settlement that overhauled the City of Philadelphia's forfeiture practices and led to the creation of a compensation fund for families, like the Sourovelises, who had been unconstitutionally barred from their homes. *See* Consent Decree, *Sourovelis v. City of Philadelphia*, No. 14-4687 (filed Sept. 18, 2018) (describing the revisions to the forfeiture system); *see also* Order, *Sourovelis v. City of Philadelphia*, No. 14-4687 (filed Apr. 30, 2019) (granting preliminary approval for compensation fund).

Other public-interest groups have faced similar tactics by the government. In *Rich v. Secretary, Florida Department of Corrections*, 716 F.3d 525 (11th Cir. 2013), for example, Bruce Rich, an Orthodox Jew who had been denied a strictly kosher diet in the prison in which he was incarcerated, filed a RLUIPA claim against the Department of Corrections. After unsuccessfully representing himself pro se before the trial court, Mr. Rich appealed to the Eleventh Circuit with help from public-interest counsel. Only then—facing a litigant represented by counsel—did the Department of Corrections announce that it would develop a plan for a kosher meal program. It then implemented that plan only two weeks before argument on the appeal, and only in the

prison where Mr. Rich was incarcerated. But thanks to the voluntary cessation doctrine, the Eleventh Circuit rejected this transparent "attempt to manipulate jurisdiction." *Id.* at 532. The court remanded the case and the federal government used the example of Mr. Rich to secure a settlement that required the Department of Corrections to provide kosher meals to inmates statewide. *See Rich v. Crews*, No. 1:10-cv-00157, 2014 WL 523018 (N.D. Fla. Feb. 10, 2014). *See also Speech First, Inc. v. Fenves*, 979 F.3d 319, 328 (5th Cir. 2020) (challenge to school speech code not moot under the doctrine even after revision of policies); *Fikre v. FBI*, 904 F.3d 1033, 1039–40 (9th Cir. 2018) (challenge to American citizen's inclusion on no-fly list not mooted by him being removed as underlying policy responsible for his inclusion remained); *Walker v. City of Calhoun*, 901 F.3d 1245, 1270–71 (11th Cir. 2018) (challenge to city's bail policy not moot); *Index Newspapers LLC v. City of Portland*, 480 F. Supp. 3d 1120, 1141 (D. Ore. 2020) (ruling voluntary cessation prevented case from becoming moot in journalists' suit to allow them to cover protests at the city's federal courthouse).

Even when the government acts from legitimate motives, and not to evade judicial review, the voluntary cessation doctrine serves important purposes. In the Supreme Court's decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), for example, the Supreme Court considered the constitutionality of a state grant program to help public and private schools purchase shredded tires to resurface their playgrounds. Because the program excluded religious schools, Trinity Lutheran Church—represented by public-interest counsel—challenged it under the Free

Exercise Clause of the First Amendment. Mere days before oral argument at the U.S. Supreme Court, however, Missouri's new Governor repealed the religious exclusion. *Id.* at 2019 n.1. There is no suggestion that the Governor did this strategically to moot the case. To the contrary, the Governor's contemporaneous statements suggest that he repealed the exclusion because he genuinely disagreed with it.[3] Still—based on the voluntary cessation exception—the Supreme Court reached the merits, because it recognized there was no effective barrier to the state reimplementing the exclusion under a different administration. *Id.*

In short, the constitutional stakes here could not be higher. The voluntary cessation exception to mootness has allowed many Americans to vindicate their constitutional rights, and it has allowed many more others to benefit from the clarity and security provided by federal court decisions invoking that doctrine. The people of Minnesota deserve that same protection when they sue in state courts.

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[3] *See* Jason Hancock, *Gov. Greitens Reverses State Policy, Allowing Tax Dollars to Aid Religious Groups*, Kansas City Star (Apr. 13, 2017) ("'We have hundreds of outstanding religious organizations all over the state of Missouri who are doing great work on behalf of kids and families every single day,' [Gov.] Greitens said in a statement announcing the decision. 'We should be encouraging that work. So, today we are changing that prejudiced policy.'"), https://www.kansascity.com/news/politics-government/article144497099.html.

II. Failing to Adopt the Voluntary Cessation Exception Would Make Minnesota an Extreme Outlier Among States That Have Considered the Issue.

As the previous section showed, failing to adopt the voluntary cessation exception to mootness would leave many with no effective remedy against unconstitutional government action. But besides this, failing to adopt the voluntary cessation exception would make Minnesota an extreme outlier among states whose courts have considered the issue. As far as Amicus has been able to determine, no state has rejected the voluntary cessation exception on the merits.

For ease of the Court's reference, Amicus has summarized the state of the law below, separated into (A) twenty states (and the District of Columbia) whose highest court has explicitly adopted the federal voluntary cessation doctrine; (B) ten states whose highest court has adopted the voluntary cessation doctrine without relying on federal law; (C) eleven states in which an intermediate appellate court has adopted the voluntary cessation doctrine; (D) two states that have noted the doctrine and not adopted it but only because it was inapplicable on the facts or was not properly presented; and (E) six states that have not considered the issue.

A. The high courts of twenty states have adopted the federal voluntary cessation doctrine.

The high courts of 20 states and the District of Columbia have explicitly adopted the federal standard for voluntary cessation. They are:

- **Alabama**. *Barber v. Cornerstone Cmty. Outreach, Inc.*, 42 So. 3d 65, 71–72 (Ala. 2009) (quoting *United States v. Concentrated Phosphate Exp. Ass'n, Inc.*, 393 U.S. 199, 203 (1968); *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953)), *overruled on other grounds by Tyson v. Macon Cnty. Greyhound Park, Inc.*, 43 So. 3d 587, 591 (Ala. 2010).
- **Alaska**. *Slade v. State Dep't of Transp. & Pub. Facilities*, 336 P.3d 699, 700 nn.6–7, 700–01 (Alaska 2014) (citing *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 189 (2000); *Concentrated Phosphate*, 393 U.S. at 203).
- **Connecticut**. *Boisvert v. Gavis*, 210 A.3d 1, 18–19 (Conn. 2019) (citing *Friends of the Earth*, 528 U.S. at 189).
- **District of Columbia**. *Welsh v. McNeil*, 162 A.3d 135, 154, 154 n.57 (D.C. 2017) (per curiam) (citing *Hardaway v. D.C. Hous. Auth.*, 843 F.3d 973 (D.C. Cir. 2016) (quoting *Friends of the Earth*, 528 U.S. at 189)).
- **Georgia**. *WMW, Inc. v. Am. Honda Motor Co., Inc.*, 733 S.E.2d 269, 273 (Ga. 2012) (citing *Friends of the Earth*, 528 U.S. at 189; *Concentrated Phosphate*, 393 U.S. at 203; *W.T. Grant Co.*, 345 U.S. at 632).
- **Idaho**. *O'Boskey v. First Fed. Sav. & Loan Ass'n of Boise*, 739 P.2d 301, 306 (Idaho 1987) (citing *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 n.10 (1982); *Concentrated Phosphate*, 393 U.S. at 203; *W.T. Grant Co.*, 345 U.S. at 632).
- **Kentucky**. *Morgan v. Getter*, 441 S.W.3d 94, 99–100 (Ky. 2014) (citing *Friends of the Earth*, 528 U.S. at 189; *W.T. Grant Co.*, 345 U.S. at 632).
- **Louisiana**. *Cat's Meow, Inc. v. City of New Orleans*, 720 So. 2d 1186, 1194 (La. 1998) (citing *W.T. Grant Co.*, 345 U.S. at 632; *La. Assoc. Gen. Contractors, Inc., v. State*, 669 So. 2d 1185, 1193 (La. 1996)).
- **Maine**. *LeGrand v. York Cty. Judge of Probate*, 168 A.3d 783, 792 n.10 (Me. 2017) (citing *Knox v. SEIU, Local 1000*, 567 U.S. 298, 307 (2012)).
- **Maryland**. *State v. Neiswanger Mgmt. Servs., LLC*, 179 A.3d 941, 950 (Md. 2018) (citing *Friends of the Earth*, 528 U.S. at 189).
- **Montana**. *Havre Daily News, LLC v. City of Havre*, 142 P.3d 864, 875 (Mont. 2006) (citing *Friends of the Earth*, 528 U.S. at 189).
- **Nebraska**. *Stewart v. Heineman*, 892 N.W.2d 542, 565, 565 nn.48–51 (Neb. 2017) (citing *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013); *Friends of the Earth*, 528 U.S. at 189).

- **New Jersey**. *Galloway Twp. Bd. of Educ. v. Galloway Twp. Educ. Ass'n*, 393 A.2d 218, 227 (N.J. 1978) (citing *W.T. Grant Co.*, 345 U.S. at 632–33).
- **North Carolina**. *Thomas v. N.C. Dep't of Human Res.*, 485 S.E.2d 295 (N.C. 1997) (per curiam) (mem.), *aff'g* 478 S.E.2d 816, 821 (N.C. Ct. App. 1996) (citing *City of Mesquite*, 455 U.S. at 289; *W.T. Grant Co.*, 345 U.S. at 632).
- **Oklahoma**. *State ex rel. Okla. Firefighters Pension & Ret. Sys. v. City of Spencer*, 237 P.3d 125, 129 n.16, 129–30 (Okla. 2009) (citing *Concentrated Phosphate*, 393 U.S. at 203; *W.T. Grant Co.*, 345 U.S. at 632).
- **Oregon**. *Gates v. McClure*, 588 P.2d 32, 33 (Or. 1978) (en banc) (citing *Concentrated Phosphate*, 393 U.S. at 202–04).
- **Rhode Island**. *Bucci v. Lehman Bros. Bank, FSB*, 68 A.3d 1069, 1080 (R.I. 2013) (citing *Friends of the Earth*, 528 U.S. at 189; *Concentrated Phosphate*, 393 U.S. at 203).
- **Tennessee**. *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cty.*, 301 S.W.3d 196, 205–06 (Tenn. 2009) (citing *Friends of the Earth*, 528 U.S. at 189; *W.T. Grant Co.*, 345 U.S. at 632).
- **Texas**. *Matthews v. Kountze Indep. Sch. Dist.*, 484 S.W.3d 416, 418 (Tex. 2016) (citing *Friends of the Earth*, 528 U.S. at 189; *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979); *W.T. Grant Co.*, 345 U.S. at 632).
- **Vermont**. *All Cycle, Inc. v. Chittenden Solid Waste Dist.*, 670 A.2d 800, 803–06 (Vt. 1995) (citing *Concentrated Phosphate*, 393 U.S. at 202–04; *W.T. Grant Co.*, 345 U.S. at 632).
- **Washington**. *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, 510 P.2d 233, 238–39 (Wash. 1973) (en banc) (citing *Concentrated Phosphate*, 393 U.S. at 202–04).

B. An additional ten state high courts have recognized the voluntary cessation doctrine without explicitly adopting the federal standard.

Another ten states have applied some form of the voluntary cessation doctrine without explicitly adopting the federal standard:

- **Arkansas**. *Covell v. Bailey*, 757 S.W.2d 543, 544 (Ark. 1988) (acknowledging the plaintiff's assertion of the voluntary cessation exception from *W.T. Grant Co.*, 345 U.S. at 632, but holding that the case is moot because the defendant's acts "put an end to the matter").
- **Delaware**. *Clark v. State Farm Mut. Auto. Ins. Co.*, 131 A.3d 806, 812 n.14 (Del. 2016) (describing "the voluntary cessation doctrine" as "prevent[ing] a defendant from changing its behavior only to revert back to its previous conduct after the case is held to be moot," but finding it inapplicable in this case).
- **Indiana**. *State ex rel. Ind. State Bar Ass'n v. Northouse*, 848 N.E.2d 668, 674–75 (Ind. 2006) (per curiam) ("[T]he respondents' representations—made after the

institution of this original action—that they do not intend to engage in unauthorized practice of law in the future does not render this proceeding moot.”).

- **Kansas**. *Depew v. Wichita Ass'n of Credit Men*, 49 P.2d 1041, 1047 (Kan. 1935) (upholding an injunction, despite the corporate defendant's promise that the wrongful acts will not be repeated, because corporate officers "may be replaced and their successors may feel differently about obeying such a promise" and "[c]ourts are not required to accept and rely upon promises under all circumstances, and, unless they do so rely, the danger of repetition of a wrong may be prevented by injunction").
- **Massachusetts**. *Cantell v. Comm'r of Corr.*, 60 N.E.3d 1149, 1155, 1115 n.16 (Mass. 2016) (explaining that "to establish mootness . . . a defendant bears a heavy burden of showing that there is no reasonable expectation that the wrong will be repeated; and a defendant's mere assurances on this point may well not be sufficient" (quoting *Wolf v. Comm'r of Pub. Welfare*, 327 N.E.2d 885, 890 (Mass. 1975)).
- **Mississippi**. *State ex rel. Whall v. Saenger Theatres Corp.*, 200 So. 442, 443–44 (Miss. 1941) (holding that an issue was not moot because there was no "satisfactory showing that the acts are no longer done by the parties anywhere within the jurisdiction of the court" (citing other states' supreme court cases)).
- **Nevada**. *Pojunis v. Denis*, No. 60554, 2014 WL 7188221, at *1 (Nev. Dec. 16, 2014) (not explicitly articulating a standard other than holding that no exception to mootness applied, including the voluntary cessation exception as set forth in *Friends of the Earth*, 528 U.S. at 189); *Guinn v. Legislature of State of Nev.*, 76 P.3d 22, 33 n.45 (Nev. 2003) (per curiam) (not articulating any standard, but rejecting "counter-petitioners' attempt to avoid the mootness bar under the exception that voluntary cessation will not prevent review" because "[their] suggest[ion] that the Legislature's passage of revenue-raising legislation constitutes unconstitutional conduct . . . is absurd" and their additional allegation of a constitutional violation was unsupported by the record).
- **New Hampshire**. *Londonderry Sch. Dist. SAU #12 v. State*, 958 A.2d 930, 932 (N.H. 2008) ("We are, however, hesitant to dismiss a dispute as moot simply because one party voluntarily ceases the challenged practice or attempts to remedy its failure to act.").
- **North Dakota**. *Tibert v. City of Minto*, 679 N.W.2d 440, 444 (N.D. 2004) ("While voluntary cessation of the alleged conduct does not make the case moot, the case is moot when 'there is no reasonable expectation that the alleged violation will recur, and . . . interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.'" (quoting *St. Louis Fire Fighters Ass'n Int'l v. City of St. Louis*, 96 F.3d 323, 329 (8th Cir. 1996)).

- **Pennsylvania**. *Tamagno v. Waiters & Waitresses Union, Local No. 301*, 96 A.2d 145, 147 (Pa. 1953) ("[T]he mere fact that an illegal practice has been abandoned does not necessarily cause a controversy to become moot. The question always remains whether such practice is likely to be resumed and even though the defendant may give assurance that he will not err again it is for the court to say whether [an injunction is warranted].").
- **West Virginia**. *State Farm Mut. Auto Ins. Co. v. Schatken*, 737 S.E.2d 229, 238 n.6 (W. Va. 2012) (acknowledging that the plaintiffs/respondents urge the Court to "adopt the 'voluntary cessation' exception to mootness to prevent [the defendant] from depriving the Court of the opportunity to rule on the validity of this provision, only to use it against other insureds in other cases," but avoiding the issue by concluding that the appeal concerns ripeness, not mootness); *State ex rel. M.C.H. v. Kinder*, 317 S.E.2d 150, 153 (W. Va. 1984) (concluding that "a case is not rendered moot even though a party to the litigation has had a change in status such that he no longer has a legally cognizable interest in the litigation or the issues have lost their adversarial vitality, if such issues are capable of repetition and yet will evade review").

C. Eleven intermediate state appellate courts have recognized the voluntary cessation doctrine.

Of the remaining 19 states, another 11 have adopted the voluntary cessation doctrine, either the federal version or their own, at the intermediate appellate level:

- **Arizona**. *State ex rel. Babbitt v. Goodyear Tire & Rubber Co.*, 626 P.2d 1115, 1118 (Ariz. Ct. App. 1981) (recognizing that "voluntary cessation of the questioned practices will not automatically moot the injunctive remedy" unless it is "'absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur'" and remanding for the lower court to analyze "factors which indicate proof of likelihood to engage in future violations" (second quote citing *Ralph Williams*, 510 P.2d at 238)).
- **California**. *Pittenger v. Home Sav. & Loan Ass'n of L.A.*, 332 P.2d 399, 402 (Cal. Ct. App. 1958) (recognizing that voluntary cessation may moot a case "if the defendant can demonstrate that there is no reasonable expectation that the wrong will be repeated" (citing *W.T. Grant Co.*, 345 U.S. at 632–33)).
- **Colorado**. *United Air Lines, Inc. v. City & Cnty. of Denver*, 973 P.2d 647, 652 (Colo. App. Div. II. 1998) ("[A] defendant's voluntary cessation of a challenged practice does not deprive a court of its power to determine the legality of the practice . . . because there is no certainty that the defendant will not resume the

challenged practice once the action is dismissed." (citing *City of Mesquite*, 455 U.S. at 289)), *aff'd on other grounds*, 992 P.2d 41 (Colo. 2000) (en banc), *cert. denied*, 530 U.S. 1274 (2000).

- **Florida**. *Off Lease Only, Inc. v. LeJeune Auto Wholesale, Inc.*, 187 So. 3d 868, 870 (Fla. Ct. App. 2016) ("The mere voluntary cessation of conduct alleged to be in violation of [a statute] does not necessarily foreclose [the plaintiff] from pursuing an action for injunctive relief.").
- **Hawaii**. *Wiginton v. Pac. Credit Corp.*, 634 P.2d 111, 119 (Haw. Ct. App. 1981) (holding trial judge did not abuse his discretion in issuing the injunction because, "even if [the defendants] had voluntarily reformed, wrongful behavior could recur" (citing *Ralph Williams*, 510 P.2d at 238)).
- **Illinois**. *Cohan v. Citicorp*, 639 N.E.2d 1302, 1305 (Ill. App. Ct. 1993) (recognizing and adopting the federal voluntary cessation exception to mootness doctrine) (citing *Concentrated Phosphate*, 393 U.S. at 203).
- **Michigan**. *Educ. Subscription Serv., Inc. v. Am. Educ. Servs., Inc.*, 320 N.W.2d 684, 692 (Mich. Ct. App. 1982) (applying the federal voluntary cessation exception to mootness doctrine) (citing *W.T. Grant Co.*, 345 U.S. at 632).
- **Missouri**. *Bratton v. Mitchell*, 979 S.W.2d 232, 236 (Mo. Ct. App. 1998) (finding an issue not moot because of "the general principle that voluntary cessation of certain conduct does not render a case moot if there is a 'reasonable expectation,' the wrong will be repeated, and where the actions of government may impact on the 'same objecting litigants'" (quoting *State Highway Comm'n v. Volpe*, 479 F.2d 1099, 1106 (8th Cir. 1973))).
- **New York**. *Puerto v. Doar*, 34 N.Y.S.3d 409, 415–16 (N.Y. App. Div. 2016) ("[A] court may adjudicate an otherwise moot matter that 'satisfies the three critical conditions to the mootness exception in that it presents an issue that (1) is likely to recur, (2) will typically evade review and (3) is substantial and novel.'" (quoting *Chenier v. Richard W.*, 626 N.E.2d 928, 930 (N.Y. 1993) (citing *W.T. Grant Co.*, 345 U.S. at 632))).
- **Ohio**. *Nissan of N. Olmsted, LLC v. Nissan N. Am., Inc.*, 38 N.E.3d 500, 507 (Ohio Ct. App. 2015) ("We recognize the fact that '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.'" (quoting *Knox*, 567 U.S. at 307)); *but see Antol v. Dayton Malleable Iron Co.*, 38 N.E.2d 100, 102 (Ohio Ct. App. 1941) ("[T]he court is not justified in granting a permanent injunction on the theory that the defendant might, at some future date, again offend in the matter complained of. An assumption of what he will do in the future based upon a claim as to what he did in the past is not a safe ground upon which to base an order of the court granting injunction.").

- **Virginia**. *Va. Dep't of State Police v. Elliot*, 633 S.E.2d 203, 205, 205 n.1 (Va. Ct. App. 2006) (recognizing the voluntary cessation exception to mootness under the federal standard, but holding that the exception did not apply because the defendant "cured the alleged illegality before it could occur") (citing *W.T. Grant Co.*, 345 U.S. at 632); *Harrisonburg Rockingham Soc. Servs. Dist. v. Shifflett*, No. 2375-04-3, 2005 WL 1667805, at *4 (Va. Ct. App. July 19, 2005) (same); *Forbes v. Commonwealth*, Nos. 0699-04-3, 0713-04-3, 2005 WL 1388060, at *7 (Va. Ct. App. June 14, 2005) (same); *see Lange v. Lange*, No. 2547-06-2, 2007 WL 1244488, at *3 (Va. Ct. App. May 1, 2007) ("[C]ases involving voluntary cessation of allegedly illegal activity are not moot." (citing *City of Va. Beach v. Brown*, 858 F. Supp. 585 (E.D. Va. 1994))); *Turner v. Spinner*, No. 1559-96-4, 1997 WL 147456, at *2 (Va. Ct. App. Apr. 1, 1997) (same).

D. Two state high courts have not rejected the federal voluntary cessation doctrine, but declined to adopt it given the context of specific cases.

Two states—**Utah** and **Wyoming**—have addressed the voluntary cessation doctrine, but declined to adopt it because it was not necessary for the outcome of their specific cases. First, the Utah Supreme Court refused to adopt the doctrine in *Teamsters Local 222 v. Utah Transit Authority*, 424 P.3d 892 (Utah 2018), only because it determined that it did not apply to the facts of the case. Further, it reaffirmed in a subsequent case that it could adopt the doctrine in the future. *Widdison v. State*, 489 P.3d 158, 165 n.5 (Utah 2021). Similarly, the Wyoming Supreme Court declined to adopt the voluntary cessation doctrine in *Guy v. Wyoming Department of Corrections*, 444 P.3d 652 (Wyo. 2019),

but only because the plaintiff in that case failed to preserve that argument. In neither case did a court reject the doctrine.

E. Six states have no caselaw on the voluntary cessation exception to mootness doctrine

In the six remaining states, Amicus could find no cases applying the voluntary cessation doctrine or citing the major Supreme Court decisions on voluntary cessation. These six states are:

- **Iowa**.
- **New Hampshire**.
- **New Mexico**.
- **South Carolina**.
- **South Dakota**.
- **Wisconsin**.

CONCLUSION

As shown above, the voluntary cessation exception to mootness is a vital safeguard of constitutional rights, which has no doubt contributed to its near universal adoption by state courts. Indeed, as far as Amicus has been able to determine, no court that has fully considered the issue has ever rejected the voluntary cessation doctrine. Thus, this Court should reverse the decision below and adopt the voluntary cessation exception to mootness.

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Respectfully submitted,

INSTITUTE FOR JUSTICE
/S/ ANTHONY B. SANDERS
Anthony Sanders, No. 387307
520 Nicollet Mall, Suite 550
Minneapolis, Minnesota 55402
Tel: (612) 435-3451
asanders@ij.org

Counsel for Amicus Curiae
Institute for Justice

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/s/ Anthony B. Sanders
Anthony B. Sanders, No. 387307
INSTITUTE FOR JUSTICE
520 Nicollet Mall, Suite 550
Minneapolis, Minnesota 55402
Tel: (612) 435-3451
asanders@ij.org