IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

THE STATE OF MISSOURI ex rel. ERIC S. SCHMITT, et al.,	)	
Plaintiffs,	)	
v.	)	Case No. 22BA-CV00219
COLUMBIA PUBLIC SCHOOLS,	)	
Defendant.	)	

JUDGMENT AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED PETITION AS MOOT

NOW ON THE 17th day of May, 2022, the parties appeared and argued Defendant Columbia Public Schools' Motion to Dismiss Plaintiffs' First Amended Petition as Moot. Plaintiff State of Missouri appeared by Attorneys Atkins and Talent. Plaintiffs Arnett, Hagler, and Hamlin appeared by Attorney Cox. Defendant appeared by Attorneys Hoernschemeyer and Wiens.

The Court has thoroughly considered the arguments presented by each party. Now, having done so, the Court concludes that no present, live controversy exists for the Court to resolve. In short, Plaintiffs succeeded in obtaining the ultimate relief sought in their lawsuit: an end to the mask mandate in Columbia Public Schools ("CPS"). The result desired by Plaintiffs has been achieved as Defendant has not required masks in CPS for over four months and there is no reasonable expectation that Defendant will reimplement its mask mandate. Under these circumstances, there is no presently existing controversy for the Court to decide. Therefore, it would be inappropriate for the Court to proceed any further. To hold otherwise would require the Court to engage in speculation and to provide an advisory opinion regarding abstract propositions of law, which the Court is prohibited from doing under Missouri law. Accordingly, Defendant's Motion to Dismiss Plaintiffs' First Amended Petition as Moot is GRANTED.

ANALYSIS

A. Missouri Courts Do Not Resolve Moot Cases.

"In Missouri, it is well-settled that the courts do not determine moot cases." *Jackson County Bd. Of Election Comm'rs v. City of Lee's Summit*, 277 S.W.3d 740, 743 (Mo. App. W.D. 2008). "A cause of action is moot when the question presented for decision seeks a judgment upon some matter which, if the judgment was rendered, would not have any practical effect upon any then existing controversy." *Bank of Washington v. McAuliffe*, 676 S.W.2d 483, 487 (Mo. banc. 1984). A moot case raises the issue of justiciability – that is, whether a particular case is appropriate or suitable for adjudication by a court. *See, e.g., Jackson County Bd. Of Election Comm'rs*, 277 S.W.3d at 743. "When an event occurs that makes a court's decision unnecessary or makes it impossible for the court to grant effectual relief, the case is moot and generally should be dismissed." *Id*. at 744. "A court may not proceed to hear an action if, subsequent to its initiation, the dispute loses 'its character as a present, live controversy of the kind that must exist if the Court is to avoid advisory opinions on abstract propositions of law." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 212-213 (2000) (Scalia, J., dissenting).

B. The Voluntary Cessation Doctrine Does Not Apply.

1. General overview of the voluntary cessation doctrine.

Defendant argues that this case is moot because it has voluntarily ended the mask mandate in CPS. Plaintiffs respond by arguing that a case is not rendered moot simply because a defendant has voluntarily ceased the behavior which is alleged to be wrongful or unlawful. Plaintiffs argument in this regard invokes the "voluntary cessation doctrine".

Plaintiffs are certainly correct that "voluntary cessation of a challenged practice does not necessarily moot a case." *Hillesheim v. Holiday Stationstores, Inc.*, 903 F.3d 786, 791 (8th Cir. 2018). As the Unites States Supreme Court has recognized, "[a] defendant cannot automatically

moot a case simply by ending its unlawful conduct once sued." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). If this was true, "a defendant could engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off, repeating this cycle until he achieves all his unlawful ends." *Id*.

Nevertheless, the United States Supreme Court has also observed that, even when a defendant's cessation of challenged conduct is voluntary, as is true here, "[a] case might become moot if subsequent events ma[k]e it absolutely clear that the alleged wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc.*, 528 U.S. at 189 (internal quotations omitted). In a similar vein, the Missouri Court of Appeals for the Western District has stated 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' . . . ." *Bratton v. Mitchell*, 979 S.W.2d 232, 236 (Mo. App. W.D. 1998).

In light of the foregoing, it is clear that any potential application of the voluntary cessation doctrine in this case turns on the question of whether there is a "reasonable expectation" that Defendant will reimplement a mask mandate in CPS. The burden of showing that such conduct is unlikely to recur lies with Defendant, the party asserting mootness. *Friends of the Earth, Inc.*, 528 U.S. at 189. Although the burden on Defendant is heavy, it is slightly less onerous given Defendant's status as a governmental entity. *Let Them Play MN v. Walz*, 556 F. Supp. 3d 968, 977 (D. Minn. 2021) (*citing Prowse v. Payne*, 984 F.3d 700, 703 (8th Cir. 2021)).

2. <u>There is no reasonable expectation that a mask mandate will return to CPS</u>.

Defendant asserts that the voluntary cessation doctrine does not apply under the facts of this case because there is no reasonable expectation that it will reimplement a mask mandate in CPS. In support, Defendant offers two arguments. First, Defendant states that a mask mandate has not been in place in CPS in over four months. Second, Defendant notes that during a press

conference held on March 30, 2022, and in a press release issued afterwards, the Governor of Missouri announced the end of the COVID-19 crisis in Missouri, stating that Missouri will be shifting to an endemic phase of the pandemic effective April 1, 2022.

In response, Plaintiffs provide two arguments of their own. First, Plaintiffs assert that Defendant's arguments do not satisfy Defendant's "heavy" evidentiary burden. Second, Plaintiffs argue that this case does, in fact, involve an immediate, concrete dispute between the parties in that Defendant *could* reinstate the mask mandate in CPS at any time. Plaintiffs further argue that a favorable decision from the Court on the matter would have the practical effect of prohibiting Defendant from reimplementing a mask mandate in the future.

Although this case presents a close call, the Court finds that Defendant has satisfied its "heavy" burden. Defendant voluntarily terminated the mask mandate in CPS on February 10, 2022. Over four months have elapsed since that decision was made. During that time, Governor Parson announced an end of the COVID-19 crisis in Missouri, signaling to state agencies and local authorities that the on-going COVID-19 crisis is shifting to an endemic phase. In addition, the 2021-2022 school year for CPS concluded in May of 2022 without Defendant reissuing a mask mandate. Moreover, the summer school term for CPS started in June of 2022 and is nearly finished with no mask mandate in place. Given these facts, the Court concludes that there is no "reasonable expectation" that Defendant will reimplement a mask mandate in CPS as asserted by Plaintiffs. As such, the voluntary cessation doctrine does not apply under the facts of this case.

C. The Capable of Repetition Yet Evading Review Exception Does Not Apply.

Even if Defendant's voluntary cessation of the CPS mask mandate has made this case moot, Plaintiffs claim that this case falls within the "capable of repetition yet evading review" exception to the mootness doctrine. This exception, which is characterized as "narrow" by Missouri courts, "is applicable when 'a case presents an issue that (1) is of general public interest; (2) will recur;

and (3) will evade appellate review in future live controversies.'" *Asher v. Carnahan*, 268 S.W.3d 427, 431 (Mo. App. W.D. 2008). As the parties invoking this exception, Plaintiffs bear the burden of demonstrating it applies. *Whitfield v. Thurston*, 3 F.4th 1045, 1047 (8th Cir. 2021).

As to the first element, the Court agrees with Plaintiffs that this element is satisfied. The topic of masks and mask mandates have permeated almost every aspect of our culture for over two years. Simply put, mask mandates are a subject of "general public interest." Thus, Plaintiffs have satisfied the first element of the capable of repetition test.

The Court cannot, however, say the same about the second and third elements of the test. With respect to element two, the Court has already concluded that there is no reasonable expectation that Defendant will reimplement a mask mandate in CPS. Although Defendant *could* do so, Plaintiffs' claim that Defendants *will* do so is speculative, and speculation does not satisfy the second element of the capable of repetition test. *See, e.g., Jackson County Bd. Of Election Comm'rs*, 277 S.W.3d at 745 (a party invoking the capable of repetition exception "must point to circumstances which take the possibility of recurrence out of the realm of pure speculation.").

The bottom line is that the passage of time has changed the character of this case. When Defendant voluntarily ceased its mask mandate on February 10, 2022, a mask mandate had been continuously in place in CPS for six months with exception of the nine-day period from January 4 to January 13, 2022. The situation is now completely different. In the four months since Defendant voluntarily ceased its mask mandate in CPS, Governor Parson announced an end to the COVID-19 pandemic, the 2021-2022 school year concluded for CPS without Defendant reimplementing a mask mandate, and the 2022 summer school term for CPS commenced and is nearly complete without Defendant reintroducing a mask mandate. Based on these facts, Plaintiffs' claim that Defendant *will* reimplement a mask mandate in CPS is pure speculation, which does not satisfy the second element of the capable of repetition test as a matter of Missouri law. *Id.*

As for the third element of the test, the Court notes that Plaintiff State of Missouri is actively litigating the issue of mask mandates in public schools in multiple other courts throughout this state. Notably, several of these cases involve claims against school districts which are *currently* utilizing a district-wide mask mandate. The existence of these other lawsuits undercut Plaintiffs' claim that the topic of mask mandates in schools will evade appellate review.

Furthermore, in the event that Defendant were to reimplement a mask mandate in CPS, Plaintiffs are free to file another lawsuit in this county. The practice of the 13th Judicial Circuit is to expedite any case involving a time-sensitive claim for injunctive relief. If a situation arises which necessitates the filing of a new lawsuit by Plaintiffs, this Court is confident that Plaintiffs will receive a prompt hearing, just as they did in the present case.

Because Plaintiffs have failed to satisfy all of the above elements, the capable of repetition yet evading review exception to the mootness doctrine does not apply.

CONCLUSION

For each of the foregoing reasons, the issues presented in this case are moot. As such, the Court is required to dismiss this case. In reaching this result, the Court is certainly mindful of the *possibility* that, as Plaintiffs contend, Defendant *could* reimplement a mask mandate in CPS at some point in the future. This *possibility*, however, does not present a "live controversy of the kind that must exist if the Court is to avoid advisory opinions on abstract propositions of law." *Friends of the Earth, Inc.*, 528 U.S. at 212-213 (2000) (Scalia, J., dissenting). In fact, if the Court were to move forward under the present facts, it would be forced to engage in scientific speculation regarding how the COVID-19 pandemic will proceed in the future, as well as political speculation regarding any future response by Defendant to the pandemic. *Let Them Play MN*, 556 F. Supp. 3d at 978-79. This Court is not well-suited for either type of speculation. *Id*. Rather, given the facts presented, this Court is required to find this case moot under Missouri law, and must proceed no

further. *See, e.g., Jackson County Bd. Of Election Comm'rs*, 277 S.W.3d at 743 ("When an event occurs that makes a court's decision unnecessary or makes it impossible for the court to grant effectual relief, the case is moot and generally should be dismissed.").

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Columbia Public Schools' Motion to Dismiss Plaintiffs' First Amended Petition as Moot is GRANTED, and thus, Plaintiffs' First Amended Petition is hereby ordered DISMISSED WITHOUT PREJUDICE.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that all other matters and motions currently pending before the Court are hereby DENIED as moot.

IT IS SO ORDERED, ADJUDGED, AND DECREED this 16th day of June, 2022.

COURT SEAL OF

BOONE COUNTY

Honorable Joshua C. Devine, Division IV