

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

DAVID CABALLERO, ET AL.

PLAINTIFFS

VS.

CAUSE NO.: 3:17-CV-752-LG-RHW

CAREY WRIGHT, MISSISSIPPI STATE
SUPERINTENDENT OF EDUCATION, ET AL.

DEFENDANTS

**STATE DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTION SUGGESTING MOOTNESS**

Dr. Carey Wright, Mississippi State Superintendent of Education, Rosemary Aultman, Chair of the State Board of Education, and Heather Westerfield, Chair of the State Commission on School Accreditation (the "State Defendants"), file this Memorandum in Support of Motion Suggesting Mootness as to Plaintiffs' Motion for Injunctive Relief. *See* [Dkt. 13 and 14].

FACTS

On September 18, 2017, Plaintiffs filed their emergency petition for temporary and permanent injunction, and complaint for relief under 42 U.S.C. § 1983. [Dkt. 1]. On September 29, 2017, the parties' respective counsel conducted a status conference with the Magistrate Judge during which the parties agreed to a briefing schedule on Plaintiffs' petition for temporary injunction. Following the status conference, the Magistrate Judge entered a text order setting the briefing deadlines. *See ECF Minute Entry*, September 29, 2017.

On October 5, 2017, Plaintiffs filed an amended petition for temporary and permanent injunction, and complaint for relief under 42 U.S.C. § 1983. [Dkt. 12]. The amended petition substituted several individual Plaintiffs, but is otherwise identical to the original petition. On

October 10, 2017, Plaintiffs filed a motion for preliminary injunction and declaratory judgment, [Dkt. 13] and supporting memorandum, [Dkt. 14]. Plaintiffs seek to enjoin the State Defendants from “any takeover or further proceedings concerning the Jackson Public School District.” (“JPSD”) [Dkt. 12], p. 40, ¶ (b). On October 17, 2017, the State Defendants filed their memorandum in opposition to the motion for preliminary injunction and declaratory judgment. [Dkt. 15]. On October 25, 2017, Plaintiffs filed their reply in support of the motion for preliminary injunction. [Dkt. 19].

On October 26, 2017, the Office of the Governor, Office of the Mayor of the City of Jackson, the Jackson Public School District and W.K. Kellogg Foundation entered into a Memorandum of Understanding regarding the Jackson Public School District. *See Exhibit A, Memorandum of Understanding* (“MOU”). The MOU recites, in part, that “[i]n September 2017, the State Board of Education requested the Governor declare a state of emergency for JPS and start the process of state takeover. However, the Governor, the Mayor and JPS propose a different approach. . . .” *See Exhibit A, MOU, p.1.* Plaintiffs’ claims for prospective injunctive relief are moot.¹

ANALYSIS

“If a case has been rendered moot, a federal court has no constitutional authority to resolve the issues that it presents.” *Hancock Cty. Bd. of Sup’rs v. Ruhr*, 487 Fed. Appx. 189, 199 (5th Cir. 2012). Moreover, a federal court is obligated to review issues of mootness at all stages of the litigation and may raise the issue on its own if the parties remain silent. *See Guillory v. Hodge*, 2016 WL 1175282, at *2, n.5 (citing *Dailey v. Vought Aircraft Co.*, 141 F.3d 224, 227 (5th Cir. 1998)); *see also* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.”). A case is moot when an “intervening factual event . . . causes the [petitioner] to no longer have a present right to be vindicated or a stake or interest in the outcome.” *Dailey*, 141 F.3d at 227 (citations omitted); *see also Elmore v. Ford*, 2012 WL 1715325

¹ Plaintiffs’ retrospective state law claim for declaratory relief is barred by the Eleventh Amendment.

(S.D. Miss. April 17, 2012), *report and recommendation adopted*, 2:11-CV-256-KS-MTP, (S.D. Miss. May 14, 2012).

Plaintiffs' combined motion and memorandum in support of declaratory judgment and preliminary injunction, [Dkt. 14], seeks an injunction prohibiting the State Defendants from taking any further action regarding a state takeover of the JPSD. [Dkt. 14], p. 34, ¶ (b). This request for relief has been rendered moot in light of the MOU which provides that the "Governor, the Mayor and JPS propose a different approach" to a state takeover of the School District. *See* Exhibit A, p.1.

Further, Plaintiffs' claims alleged in the purported *emergency* motion for declaratory judgment are not only moot in light of the MOU, but also barred by the Eleventh Amendment through the application of *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 106 (1984), as to state law claims and application of *Ex parte Young*, 209 U.S. 123 (1908) as to federal law claims.² [Dkt. 14], p. 34, ¶ (a). The State Defendants previously addressed the Eleventh Amendment's bar to Plaintiffs' state law claims. *See* [Dkt. 15], pp. 10-12.

In the end, the MOU renders moot the Plaintiffs' complaint as to all prospective claims for injunctive relief and the retrospective claims for declaratory relief are barred by the Eleventh Amendment and application of *Ex parte Young*. The State Defendants submit that Plaintiffs should promptly inform the Court and the State Defendants whether they intend to voluntarily dismiss the complaint in its entirety.

CONCLUSION

For the reasons set forth, the State Defendants suggest that Plaintiffs' claims for prospective injunctive relief are moot and that Plaintiffs should inform the Court and the State Defendants whether they intend to voluntarily dismiss the complaint in its entirety.

² The *Ex parte Young* exception to Eleventh Amendment immunity applies only when relief is sought that serves directly to bring an end to a present violation of federal law. Plaintiffs seek no such relief in this case.

THIS the 27th day of October, 2017.

Respectfully submitted,

CAREY WRIGHT, Mississippi State Superintendent
of Education, ROSEMARY AULTMAN Chair of the
State Board of Education, and HEATHER
WESTERFIELD, Chair of the State Commission on
School Accreditation

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed using the Court's ECF filing system
and thereby served on all counsel of record who have entered their appearance in this action to date.

THIS the 27th day of October 2017.

/s/ Douglas T. Miracle
Douglas T. Miracle