UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, et al.,

Plaintiffs,

v.

PAMELA BONDI,[1] in her official capacity as Attorney General of the United States, et al.,

Defendants.

No. 4:24-cv-01473-SEP

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

[1] Under Federal Rule of Civil Procedure 25(d), Pamela Bondi automatically replaces Merrick Garland as a defendant in this matter.

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INTRODUCTION

On November 4, 2024, the State of Missouri and its Attorney General and Secretary of State ("Missouri") brought this suit and moved for a temporary restraining order ("TRO") to enjoin the U.S. Department of Justice from sending monitors to polling places in the City of St. Louis on the day of the 2024 General Election. The Department responded that its monitoring was authorized by a settlement agreement with the St. Louis Board of Election Commissioners under the Americans with Disabilities Act ("ADA"). This Court refused to grant a TRO on the grounds that Missouri failed to show irreparable harm, and Department monitors visited polling sites in St. Louis the next day. Since then, the settlement agreement was terminated in advance of its planned expiration later this year. Accordingly, there is no longer a live dispute between the parties.

Missouri nonetheless asserts that this case remains live because the Department might announce plans to monitor an election in Missouri in the future. But except for monitoring pursuant to the now-terminated settlement agreement, there is no evidence that the Department has monitored an election over the State's objection. Indeed, Missouri concedes that during the 2022 General Election, its Secretary of State objected to the Department's plan to monitor for ADA compliance inside polling places on Election Day, and the Department accordingly did not send any monitors inside polling places. Under these circumstances, there is no longer an Article III case or controversy and thus, the case should be dismissed as moot.

The exception to the mootness doctrine that Missouri invokes—"the capable of repetition yet evading review" exception—is inapplicable because Missouri has no reasonable expectation of recurrence. It is speculative whether there will be another settlement agreement that similarly permits Election Day monitoring. Although not the subject matter of this suit, it is also unreasonable to expect that absent a court order or settlement agreement, the Department would

conduct monitoring over the State's objection, particularly given the sparse history of the Department monitoring of jurisdictions in Missouri.

All told, the Court should dismiss this case for lack of Article III jurisdiction.

BACKGROUND

I. Procedural Background

A. The Department's Monitoring of General Elections and Press Releases

Every even numbered year for at least the last 20 years, the Department of Justice has issued a press release laying out its plan to monitor certain jurisdictions during that year's general election.[2] The jurisdictions have ranged in region, type, and size—from Manhattan, New York,

[2] A "district court may take judicial notice of public records and may thus consider them on a motion to dismiss." *Stahl v. U.S. Dep't of Agric.*, 327 F.3d 697, 700 (8th Cir. 2003). Moreover, when considering a motion to dismiss for lack of subject-matter jurisdiction, the Court may consider and rely on materials "via any rational mode of inquiry." *Buckler v. United States*, 919 F.3d 1038, 1044 (8th Cir. 2019) (internal quotation marks and citation omitted); *see Hilger v. United States*, 87 F.4th 897, 899 (8th Cir. 2023). The Court should accordingly take note of the prior press releases, of which only those for 2022 and 2024 were included as exhibits to the complaint. *See In re Crop Inputs Antitrust Litig.*, No. 4:21-MD-02993-SEP, 2024 WL 4188654, at *3 & n.12 (E.D. Mo. Sept. 13, 2024) (taking judicial notice of a press release).

The prior press releases since 2004 can be found on the Justice Department's website:
2004: https://www.justice.gov/archive/opa/pr/2004/October/04_crt_725.htm
2006: https://www.justice.gov/archive/opa/pr/2006/November/06-crt-752.html
2008: https://www.justice.gov/archive/opa/pr/2008/October/08-crt-973.html
2010: https://www.justice.gov/opa/pr/justice-department-monitor-polls-18-states-election-day
2012: https://www.justice.gov/opa/pr/justice-department-monitor-polls-23-states-election-day
2014: https://www.justice.gov/opa/pr/justice-department-announces-ground-monitoring-polling-places-18-states-election-day-0
2016: https://www.justice.gov/opa/pr/justice-department-monitor-polls-28-states-election-day
2018: https://www.justice.gov/opa/pr/justice-department-monitor-compliance-federal-voting-rights-laws-election-day
2020: https://www.justice.gov/opa/pr/justice-department-again-monitor-compliance-federal-voting-rights-laws-election-day
2022: https://www.justice.gov/opa/pr/justice-department-monitor-polls-24-states-compliance-federal-voting-rights-laws
2024: https://www.justice.gov/opa/pr/justice-department-monitor-polls-27-states-compliance-federal-voting-rights-laws

to Perry County, Alabama, to Apache, Cochise, and Navajo Counties in Arizona. Prior to the 2024 dispute, Missouri jurisdictions have appeared only a few times: St. Louis in 2004 and 2016 and Cole County in 2022. The planned Cole County monitoring inside polling places was ultimately cancelled because Missouri objected to the monitoring.[3] Compl. ¶¶ 23, 24, ECF No. 1; ECF No. 1-4 (Ltr. from the Missouri Secretary of State's Office to U.S. Attorney General).

B. The 2024 General Election and Missouri's Suit

On November 1, 2024, the Department of Justice issued a press release stating that it would "monitor compliance with federal voting rights laws in 86 [identified] jurisdictions in 27 states for the Nov. 5 general election." *Justice Department to Monitor Polls in 27 States for Compliance with Federal Voting Rights Laws* ("2024 Press Release"), Nov. 1, 2024, ECF No. 1-2 at 1–2. St. Louis was one of the jurisdictions. *Id.* at 2. The press release also provided various statutory authorities for the monitoring, including the ADA. *Id.* at 3.

On November 4, 2024, Missouri sued to block the Department of Justice from monitoring polling places in the State during the general election. Compl. ¶ 2. Its complaint lists two claims under the Administrative Procedure Act ("APA")—lack of statutory authority and arbitrary and capricious action. *Id.* ¶¶ 30–47. For the former, Missouri asserts that "DOJ has not identified a statutory authority under which any of the actions set to take place would be authorized." *Id.* ¶ 33. For the latter, Missouri alleges that the Department has failed to satisfactorily explain its actions.

[3] The Missouri Secretary of State objected to the Department entering polling places on Election Day. ECF No. 1-4 at 2. The Department agreed that any monitors sent to Cole County would not enter any polling places and stay outside, beyond Missouri's electioneering boundaries. Declaration of Elizabeth Johnson ¶¶ 3–4, ECF No. 22-2; *see Hilger*, 87 F.4th at 899 (explaining that a district court may consider evidence on a 12(b)(1) motion). Instead, Department monitors reviewed compliance with architectural accessibility requirements in parking areas and on exterior routes. Declaration of Elizabeth Johnson ¶¶ 3–4. Missouri and Cole County officials were aware of these revised monitoring efforts. *Id.*

Id. ¶¶ 40–47. For relief, Missouri seeks declaratory and injunctive relief to bar the "actions outlined in the press release." *Id.* Request for Relief A–E. Missouri simultaneously sought a TRO barring Department staff from entering any Missouri polling places the next day. Emergency Mot. at 1, ECF No. 2. Missouri asserted that Mo. Rev. Stat. § 115.409 barred entry by Department staff. Mem. Supp. Emergency Mot. at 2, ECF No. 3.

In response, the Department explained that the planned St. Louis monitoring was based on a settlement agreement "between the United States and the St. Louis Board of Election Commissioners under Title II of the [ADA]," and that the agreement explicitly permitted monitoring on election days. Opp'n to TRO Mot. at 1, ECF No. 8. Because the settlement agreement was executed pursuant to Title II of the ADA, which explicitly contemplates as its enforcement mechanism such voluntary agreements, the Department argued that any contrary State statute was preempted. *Id.* at 3–5.

The settlement agreement, then set to expire in July 2025, was based on "substantiated complaints" alleging noncompliance with the ADA. January 2021 Settlement Agreement ¶ 4, ECF No. 8-1; Addendum and Extension to January 2021 Settlement, ECF No. 8-2. The Department's investigation found that, of the dozens of St. Louis polling places surveyed, each contained a defect "that rendered the facilities inaccessible to voters with disabilities." January 2021 Settlement Agreement ¶ 3. The St. Louis Board of Election Commissioners resolved the investigation by agreeing to comply with instructions in the settlement agreement. *See, e.g.*, *id.* ¶¶ 11, 16–39. The Board further agreed to allow "the United States [to] review compliance with this Agreement at any time" including "providing the United States with timely access to polling places (including on Election Day)." *Id.* ¶ 46.

After a hearing on the evening of November 4, the Court denied the TRO motion. Mem.

Op. at 1, ECF No. 10. The Court held that Missouri had failed to make a sufficient showing of irreparable harm to justify a TRO. *Id.* at 4.

The next day, Missouri filed a "notice of intent to continue litigation after election day" and asked the Court not to dismiss the case as moot. Notice, ECF No. 12 at 1. It argued that for "two consecutive federal elections" the United States "announced that they would send federal officials into state polling places, and they have continually refused to provide [Missouri] with information about those plans." *Id.* at 1–2. Missouri further argued that the monitoring involved "last-minute decisions" and "surprises" for Missouri. *Id.* at 2. Accordingly, Missouri plans to argue that "[t]he legal issues presented are capable of repetition, yet evade review." *Id.*

In December 2024, the Department terminated the settlement agreement with the St. Louis Board of Election Commissioners due to the Department's determination of "durable compliance" under the terms of the agreement. Declaration of Elizabeth Johnson ¶¶ 6–8; January 2021 Settlement Agreement ¶ 48 ("This Agreement or a distinct, severable part of the Agreement will terminate earlier than three years if the United States determines that the Board has demonstrated durable compliance with Title II of the ADA and this Agreement, or with that distinct, severable part, as applicable.").

II. Statutory and Regulatory Framework

The ADA comprehensively prohibits "public entit[ies]," such as State and local governments, as well as their departments and agencies, from discriminating against people with disabilities. 42 U.S.C. § 12131(1). Specifically, ADA Title II's prohibition largely mirrors Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), by specifying that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to

discrimination by any such entity." 42 U.S.C. § 12132. But while the Rehabilitation Act requires an entity to be federally funded to be subject to its prohibition, *see* 29 U.S.C. § 794(a), the ADA contains no such restriction, 42 U.S.C. §§ 12131(1), 12132.

As for enforcement, Congress provided that "[t]he remedies, procedures, and rights set forth in [Section 505 of the Rehabilitation Act] shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of [Title II's statutory prohibition on discrimination]." *Id.* § 12133. Congress thus did not specifically list the means of enforcement. Instead, Congress cross-referenced and adopted the enforcement mechanisms for Section 505 of the Rehabilitation Act.

Section 505 of the Rehabilitation Act then cross-references and adopts a third statute, Title VI of the Civil Rights Act of 1964, for the applicable enforcement mechanisms. 29 U.S.C. § 794a(a)(2) ("The remedies, procedures, and rights set forth in [T]itle VI . . . shall be available to any person aggrieved" under Section 504 of the Rehabilitation Act). Title VI bars recipients of federal financial assistance from discriminating based on race, color, or national origin. 42 U.S.C. § 2000d. Title VI states that enforcement can be effectuated by (1) administrative termination of federal funds to a recipient, or (2) "by any other means authorized by law." *Id.* § 2000d-1. Over time, the "any other means authorized by law" has, by regulation, been implemented to include an administrative complaint and investigation system, as well as lawsuits by the Department of Justice—for both the Rehabilitation Act and Title VI. *See, e.g.*, 28 C.F.R. § 41.5; 45 C.F.R. § 80.8.

Finally, the ADA directs that the Attorney General "promulgate regulations in an accessible format that implement this part." *Id.* § 12134(a). And, more specifically, it requires those regulations to be "consistent with" specific "coordination regulations" previously promulgated under Section 504 of the Rehabilitation Act. *Id.* § 12134(b). Those coordination

regulations required agencies to "establish a system for the enforcement of section 504" that "include[s] . . . [t]he enforcement and hearing procedures that the agency has adopted for the enforcement of [T]itle VI." 43 Fed. Reg. 2132, 2137 (Jan. 13, 1978) (45 C.F.R. § 85.5(a) (1979).

Altogether then, the relevant portions of the ADA almost entirely adopt, or direct the Attorney General to adopt, the substance and procedures then governing the Rehabilitation Act. Accordingly, the Attorney General has created an administrative enforcement scheme, including administrative complaints and investigations, which may lead to a referral and informal resolution, or suit. 28 C.F.R. §§ 35.170–78.

The process can start with an administrative complaint by an individual who believes she has been subjected to discrimination. *Id.* § 35.170. The Department of Justice or another designated agency will then review the complaint and decide whether to investigate.[4] *See id.* §§ 35.171, 35.172(a). Designated agencies may also "conduct compliance reviews of public entities" to determine whether they have violated the ADA. *Id.* § 35.172(b). After investigation, and when appropriate, agencies are directed to attempt "informal resolution" of investigated matters. *Id.* § 35.172(c). When that fails, and if there's a violation, the investigating authority may issue a "Letter of Findings" with details of the violation, appropriate remedies, and next steps. *Id.* After that, agencies seek a voluntary compliance agreement providing for "enforcement by the Attorney General." *Id.* § 35.173. If negotiations fail, the agency shall then "refer the matter to the Attorney General with a recommendation for appropriate action." *Id.* § 35.174.

The voluntary settlement agreement between the Department and the St. Louis Board of Election Commissioners was the result of substantiated complaints leading to an informal

[4] The Department of Justice is the designated agency for voting-related investigations. *See* 28 C.F.R. § 35.190(b)(6).

resolution of the violations identified. January 2021 Settlement Agreement ¶¶ 3–4, 46. It was thus part and parcel of the ADA's enforcement scheme.

ARGUMENT

DEFENDANTS' MOTION TO DISMISS SHOULD BE GRANTED BECAUSE THIS CASE IS MOOT

I. There Is No Live Controversy Because The Challenged Actions Have Concluded

"To invoke the jurisdiction of this court, the litigants must present an 'actual, ongoing' controversy within the meaning of Article III of the Constitution," *Iowa Protection & Advoc. Servs. v. Tanager, Inc.*, 427 F.3d 541, 543 (8th Cir. 2005), and a case that "no longer presents a live case or controversy is moot," *Minn. Humane Society v. Clark*, 184 F.3d 795, 797 (8th Cir. 1999). "[M]ootness, however it may have come about, simply deprives [the court] of [its] power to act; there is nothing for [it] to remedy." *Spencer v. Kemna*, 523 U.S. 1, 18 (1998).

The controversy here has straightforwardly come to an end. When analyzing mootness, the Court must focus on only the claims raised in the complaint. *Prowse v. Payne*, 984 F.3d 700, 703 (8th Cir. 2021). Even if "factual allegations may form the basis of another lawsuit" it is the "claims" in the complaint that control. *Id.*; *id.* at 701–03 (holding case to be moot once plaintiff received the requested relief from defendant, even though issues ancillary to that relief could form the basis of additional claims). Thus, if Missouri "did not raise [a claim] in [its] complaint," the possibility of alleging a claim in a different lawsuit "do[es] not overcome mootness." *Id.*

Here, the complaint alleges two counts under the APA. Both challenge the "actions set forth in the [2024] press release." Compl. ¶¶ 38, 47. In its prayer for relief, Missouri asks that the Court declare that the "actions outlined in the press release are [unlawful under the APA]," [h]old[] unlawful DOJ's actions as outlined in the press release," and "[t]emporarily restrain[] and permanently enjoin[] Defendants . . . from taking the actions outlined in the press release." *Id.* at

Request for Relief ¶ ¶ A–C. So it "challeng[es] DOJ's decision to send staff to polling places in Missouri to monitor the November 5, 2024, general election." *Id.* ¶ 2.

Those APA claims solely reference and challenge the actions outlined in the Department's 2024 press release, which in turn simply outlines the monitoring to be undertaken on November 5, 2024. 2024 Press Release at 1. That date has long since passed. This is thus a classic case where "due to the passage of time or a change in circumstance, the issues presented . . . will no longer be 'live' or the parties will no longer have a legally cognizable interest in the outcome of the litigation." *See Arkansas AFL–CIO v. FCC.*, 11 F.3d 1430, 1435 (8th Cir. 1993) (en banc). That is, "the challenged governmental action has 'expired by its own terms.'" *Rinne v. Camden Cnty.*, 65 F.4th 378, 385 (8th Cir. 2023) (Colloton, J.) (quoting *Burke v. Barnes*, 479 U.S. 361, 363 (1987)). Such an expiration deprives the Court of Article III jurisdiction, which requires a live case and controversy. *See id.*

II. Neither Mootness Exception Applies

A. The Capable-of-Repetition-Yet-Evading-Review Exception Is Inapplicable

Perhaps recognizing the cessation of a live controversy, Missouri's notice of its intent to continue litigating, filed on the day of the 2024 General Election, cites the capable-of-repetition-yet-evading-review exception to the mootness doctrine to justify continued case or controversy. Notice at 1–2. That exception has two prongs and both must be satisfied: "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again." *Whitfield v. Thurston*, 3 F.4th 1045, 1047 (8th Cir. 2021) (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975)). Specifically, "a mere physical or theoretical possibility is insufficient to overcome the jurisdictional hurdle of mootness." *Van Bergen v. State of Minn.*, 59

F.3d 1541, 1547 (8th Cir. 1995). Where "the likelihood of repetition is only speculative" the exception cannot be satisfied. *Roberts v. Norris*, 415 F.3d 816, 819 (8th Cir. 2005). Critically, "the party invoking the [capable-of-repetition-yet-evading-review] exception, []bears the burden of demonstrating that it applies." *Whitfield*, 3 F.4th at 1047.

And, as with the other exception to mootness, the exception must be considered against the background that "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *See Sch. of the Ozarks, Inc. v. Biden*, 41 F.4th 992, 997 (8th Cir. 2022) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006)).

Here, the exception is inapplicable. The Department's only asserted source of authority for monitoring polling places in St. Louis on November 5, 2024—the settlement agreement with the St. Louis Board of Election Commissioners—has been terminated due to durable compliance. Declaration of Elizabeth Johnson ¶¶ 6–8. As discussed above, that agreement arose from substantiated complaints under the ADA that "rendered the [voting] facilities inaccessible to voters with disabilities." January 2021 Settlement Agreement ¶¶ 3–4. In compliance with the ADA's implementing regulations, the Department sought "informal resolution" of the investigated matters. *See* 8 C.F.R. § 35.172(c). In January 2021, the Department and the St Louis Board of Election Commissioners entered into an out of court settlement agreement. The agreement provided in part that the Board would allow "the United States [to] review compliance with this Agreement at any time" including "providing the United States with timely access to polling places (including on Election Day)." January 2021 Settlement Agreement ¶ 46.

So, first and foremost, Missouri cannot satisfy the first prong. Simply put, it is speculative whether there would be another similar settlement agreement. And such an agreement would need

to be based on an investigation by the Department to substantiate unlawful behavior, and if appropriate, negotiations between the Department and the relevant local election board or other State authorities. At that time, Missouri could seek to challenge any provisions allowing Election Day polling place monitoring. For that reason, Missouri cannot demonstrate that "the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration." *Whitfield*, 3 F.4th at 1047. Missouri avers that the Secretary of State is the "chief election authority in Missouri." Compl. ¶ 21. He could thus take action to challenge any settlement agreement provision that permits such monitoring long before the Department announces any plan to monitor any Missouri jurisdictions pursuant to such a settlement agreement.

Moreover, there is no "reasonable expectation that the same complaining party [will] be subjected to the same action again." *See Whitfield*, 3 F.4th at 1047 (quoting *Weinstein*, 423 U.S. at 149). Beyond the now-terminated settlement agreement, there is no evidence that the Department has ever otherwise monitored a Missouri election over the State's or local election board's objection. In fact, Missouri concedes that the Department cancelled its plan to monitor inside Cole County's polling places in 2022 upon the Secretary of State's objection. *See* Compl. ¶¶ 23–24. And the Department has otherwise infrequently announced plans to monitor general elections in Missouri over the past 20 years. St. Louis appeared in the 2004 press release for monitoring, but that was pursuant to a consent decree. *See* Stipulation of Facts and Consent Order ¶ XIX, ECF No. 22-3.[5] St. Louis was listed one more time in 2016. Six years later, Cole County was in the 2022 press release, but as discussed above, the Department ultimately did not send any monitors inside polling places upon the Missouri Secretary of State's objection. In sum, for the ten general elections between 2004 and 2022, a jurisdiction in Missouri was slated for monitoring

[5] Located at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/stlouis_cd.pdf.

just three times—one of those times was pursuant to a judicial order and another time the Department complied with Missouri's objection and did not go inside the polling places.

Altogether, the "fact-specific analysis" here defeat application of the repetition exception, *Glow In One Mini Golf, LLC v. Walz*, 37 F.4th 1365, 1372 (8th Cir. 2022), because there is "no demonstrated probability" of recurrence, *Weinstein*, 423 U.S. at 149. In sum, the circumstances render the likelihood of recurrence of the same acts "only speculative" and therefore insufficient. *See Roberts*, 415 F.3d at 819.

Noem v. Haaland is instructive. 41 F.4th 1013 (8th Cir. 2022). There, "the National Park Service denied a permit for a fireworks show at Mount Rushmore" and South Dakota challenged both the denial itself and the constitutionality of the permitting regime under the APA. *Id.* at 1015. After the date of the fireworks show came and went, the Eighth Circuit held that the case was moot and the repetition exception inapplicable. "Even though South Dakota ha[d] established a reasonable expectation that it will regularly apply for a fireworks permit, the circumstances are likely to be different each time." *Id.* at 1016–17 (internal quotation marks and citation omitted). Thus, the State's challenge was doomed by "the subject-to-the-same-action requirement." *Id.* at 1016. And that was true even though there had been cycles of permitted fireworks shows and times where "visitor-safety and fire-danger concerns put the practice on hold." *Id.* at 1015. "Opining about the standards an agency should apply to an out-of-date application would amount to an advisory opinion." *Id.* at 1016 (cleaned up and citation omitted).

The exception similarly fails here. The Department's monitoring of polling places on election day was authorized by its settlement agreement. There is no such agreement now. Missouri must then theorize a hypothetical future settlement agreement permitting monitoring on

Election Day, and a future Department announcement to conduct monitoring pursuant to such an agreement over the State's objection. That is insufficient to invoke this exception.

A situation where the Department seeks to monitor without a settlement agreement is not the "same action" and thus definitionally cannot support the repetition exception. *See id.* at 1016. But even if that issue were in this case, which it is not, it is still far too speculative to sustain jurisdiction. Without a settlement agreement or consent decree, the Department must confer with local election officials to conduct monitoring. And in such a circumstance the Secretary of State would be free to object, as his predecessor did, to monitoring, as the chief elections official for Missouri. There is no reason to believe the Department would not honor such an objection. Thus, the parties cannot now litigate that issue, even assuming the issue was present in this case. It would amount to a theoretical, academic, discussion of the Department's authority. And because "[p]laintiffs have not been able to show anything beyond a hypothetical possibility that another, similar" action will take place, this action is affirmatively moot. *See Missouri v. Biden*, No. 4:21-cv-1300-JSD, 2024 WL 2381910, at *4 (E.D. Mo. May 23, 2024).

Missouri might respond by relying on the regularity of *other* jurisdictions being listed for monitoring in the future. Eighth Circuit precedent squarely forecloses this route. It is true that "in some of [the Eighth Circuit's] older decisions" it did not strictly apply the requirement that the same party suing be the one "subject to the challenged [actions] again." *Whitfield*, 3 F.4th 1045, 1047–48 (citing *Libertarian Party v. Bond*, 764 F.2d 538, 539 n.1 (8th Cir. 1985); *MacBride v. Exon*, 558 F.2d 443, 447 (8th Cir. 1977); and *McLain v. Meier*, 637 F.2d 1159, 1161–62 (8th Cir. 1980)). The Circuit, however, has affirmatively corrected course and thus brought itself in line with "the Supreme Court's more recent caselaw [which] dictates applying the same-complaining-party requirement." *Whitfield*, 3 F.4th at 1048. Thus, the sole question is whether there is a

reasonable expectation that *Missouri* will be subject to the same acts. And it cannot establish such an expectation.

B. There Was No Voluntary Cessation Because Monitoring Expired Naturally

Missouri did not invoke the voluntary cessation exception to mootness in its notice. And that was for good reason. The exception seeks to prevent a defendant from "moot[ing] a case simply by ending its unlawful conduct once sued." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013); *see also Prowse*, 984 F.3d at 702; *Iowa Prot. & Advoc. Servs.*, 427 F.3d at 543. But when "[t]he expiration [of the governmental action] was predetermined, [] the voluntary cessation exception to mootness [] does not apply . . . ." *Rinne*, 65 F.4th at 386.

Nothing like voluntary cessation happened here. The 2024 Press Release announced monitoring for November 5, 2024. 2024 Press Release at 1. The Department monitored polling places in St. Louis based on its settlement agreement with the city's Board of Election Commissioners. After that date passed, the challenged Department actions naturally expired on their own terms. Accordingly, there was no voluntary cessation.

* * *

In sum, Missouri asks this Court to decide "what the law would be upon a hypothetical state of [future] facts." *See Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990)); *cf. O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974) ("Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief."). To continue this suit would require the Department to litigate any hypothetical basis for future monitoring during a general election in Missouri. There is nothing concrete about that dispute. Indeed, it would likely amount to a generalized debate of when the Department is ever authorized to monitor polling places—disconnected from time, place, and

circumstance.

CONCLUSION

For the foregoing reasons, the Court should grant Defendants' motion to dismiss.

Dated: March 4, 2025

Respectfully submitted,

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