**DEFENDANTS’ MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

**Perry N Royall**

**Defindants**

**M Manntro 477 Badge**

**State**

**Plantiff**

**Perry N Royall**

**Defindants**

**March 4th 2018**

**Case #**

I claim personal jurisdiction and question the subject matter jurisdiction, I hereby move to dismiss all claims in this case for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and 12(h)(3). In support of their motion, Defendants respectfully submit the following memorandum of points and authorities Motion to dismiss for lack of Subject Matter Jurisdiction and motion to dismiss for lack of in Personal Jurisdiction. Cite lack of evidence

**LEGAL STANDARD**

Article III of the Constitution permits federal courts to adjudicate only actual cases or controversies. Lewis v. Continental Bank Corp., 494 U.S. 472, 477 (1990). This means litigants must suffer, or be threatened with, an actual injury traceable to the defendant’s actions, and that the federal court must be able to grant effectual relief. See id. This case or-controversy requirement must be satisfied at every stage of judicial proceedings. Id. If it is not, the federal court lacks the power to adjudicate the case and must dismiss for lack of subject matter jurisdiction. E.g., Home Builders Ass’n of Miss., Inc. v. City of Madison, 143 F.3d 1006, 1010 (5th Cir. 1998). Plaintiffs generally bear the burden of establishing subject matter jurisdiction, see Ramming v. United States, 281 F.3d 158, 161 (5th Cir. 2001), including their own standing to sue, see Cobb v. Central States, 461 F.3d 632, 635 (5th Cir. 2006). When a party asserts that its own conduct has eliminated any live case or controversy, however, it bears a “heavy burden” to show that the change in circumstances makes it “absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 189 (2000). Governmental entities, however, “are accorded a presumption of good faith because they are public servants, not selfinterested private

parties.” Sossamon v. Lone Star State of Texas, 560 F.3d 316, 325 (5th Cir. 2009), aff’d, 131 S. Ct. 1651 (2011).

**ARGUMENT AND AUTHORITIES**

The case is moot, and the Court therefore lacks subject matter jurisdiction. The Constitution confines the judicial power to actual cases or controversies. See U.S. Const. art. III § 2. The Supreme Court has explained that the “triad of injury in fact, causation, and redressability constitutes the core of Article III's caseor-controversy requirement.” Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 103–04 (1998) (footnote omitted). “To invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.” Lewis v. Continental Bank Corp., 494 U.S. 472, 477 (1990); see also Iron Arrow Honor Soc’y v. Heckler, 464 U.S. 67, 70 (1983) (per curiam) (“To satisfy the Article III case or controversy requirement, a litigant must have suffered some actual injury that can be redressed by a favorable judicial decision.”). When a lawsuit no longer presents a live controversy, the court loses subject matter jurisdiction and can proceed no further: Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. Steel Co., 523 U.S. at 94 (1998) (quoting Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1868)). Because this case no longer presents a live case or controversy the plaintiffs’ claims against the 2011 redistricting plan are moot. “[A]n actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.” Arizonans for Official English v. Arizona, 520 U.S. 43, 67 (1997). “A case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” City of Erie v. Pap’s A.M., 529 U.S. 277, 287 (2000) (quoting County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979)). The issues presented by the plaintiffs’ challenge to the 2011 plan are no longer live because the plan has no prospect of enforcement. A suit challenging the validity of a statute generally becomes moot when the statute is repealed. In that event, the challenge to the statute no longer presents a live controversy, and the case must be dismissed: If the challenged statute no longer exists, there ordinarily can be no real controversy as to its continuing validity, and an order enjoining its enforcement would be meaningless. In such circumstances, it is well settled that the case should be dismissed as moot. Ne. Florida Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla., 508 U.S. 656, 670 (1993); see also McCorvey v. Hill, 385 F.3d 846, 849 (5th Cir. 2004) (“Suits regarding the constitutionality of statutes become moot once the statute is repealed.”). Similarly, the demise of the 2011 redistricting plan eliminates the plaintiffs’ concrete stake in the outcome of the case because they face no realistic threat of injury from Plan S148. To maintain a live case or controversy: [t]he parties must continue to have a “personal stake in the outcome” of the lawsuit. . . . . This means that, throughout the litigation, the plaintiff “must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.” Spencer v. Kemna, 523 U.S. 1, 7 (1998) (quoting Lewis v. Continental Bank Corp., 494 U.S. 472, 477–78 (1990)). For this reason, the doctrine of mootness is often characterized as “the doctrine

of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).”5 E.g., Arizonans for Official English v. Arizona, 520 U.S. 43, 68 n.22 (1997); cf. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (explaining that Article III standing requires the plaintiff to identify “a concrete and imminent invasion of a legally protected interest that is neither conjectural nor hypothetical”); Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) (“The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation.”). Because the claims asserted by all plaintiffs are directed at legislation that has now been repealed and replaced, the plaintiffs cannot demonstrate that they are likely to be harmed by the challenged redistricting plan. Plaintiffs’ inability to identify any threat of injury deprives them of a concrete stake in the outcome of this case, rendering the case moot and divesting this Court of subject matter jurisdiction.6 It follows from the repeal of the 2011 plan that this Court can no longer provide any effectual relief on the plaintiffs’ claims. “The ‘case or controversy’ requirement of Article III of the United States Constitution prohibits federal courts from considering questions ‘that cannot affect the rights of litigants in the case before them.’” C&H Nationwide, Inc. v. Norwest Bank Texas NA, 208 F.3d 490, 493 (5th Cir. 2000) (quoting North Carolina v. Rice, 404 U.S. 244, 246 (1971)). A case no longer presents a live case or controversy, and thus becomes moot, “when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” Chafin v. Chafin, 133 S. Ct. 1017, 1023 (2013). The fact that the challenged statute has been repealed provides an absolute assurance that the conduct sought to be enjoined—implementation of Plan S148— will not occur. To be sure, a party urging mootness based on voluntary cessation of the challenged conduct bears a “heavy burden” to demonstrate that it is “absolutely clear that the allegedly wrongful behavior could not reasonably be expected to occur.” Friends of the Earth, 528 U.S. at 189. But a governmental entity’s conclusive abandonment of the challenged policy is sufficient to demonstrate that the threat of injury has abated, even when the change in policy is not accomplished by a statutory repeal or amendment. See, e.g., Sossamon, 560 F.3d at 325 (holding that the TDCJ director’s affidavit explaining a revision to the policy in question was sufficient to establish that the plaintiff would no longer be subject to the challenged restrictions on attendance at religious services); Coalition of Airline Pilots Ass’n v. F.A.A., 370 F.3d 1184, (D.C. Cir. 2004) (“[T]he agencies’ commitment to draft new regulations that will provide additional administrative review procedures—a commitment made both to this court and in the formal entry in the TSA rulemaking dockets—provides sufficient assurance that the agencies will never return to [the] Case 5:11-cv-00788-OLG-JES-XR Document 183 Filed 06/28/13 Page 8 of 11 9 allegedly unlawful procedures.”). Government entities are entitled to a presumption of good faith when a change in policy eliminates the case or controversy. See Sossamon, 560 F.3d at 325 (“Without evidence to the contrary, we assume that formally announced changes to official governmental policy are not mere litigation posturing.”). The Legislature’s formal repeal of the statute at issue in this case demonstrates beyond any doubt that the State will not reanimate the challenged redistricting plan. With no prospect that the 2011 plan will be used to conduct elections, any order enjoining its use or declaring it unlawful would serve no purpose, as it would not change the plaintiffs’ position. Because ruling on the validity of the repealed 2011

plan can provide no relief to the parties, any such ruling would constitute an advisory opinion, which the federal courts lack power to issue. E.g., Prieser v. Newkirk, 422 U.S. 395, 401 (1975) (“[A] federal court has neither the power to render advisory opinions nor ‘to decide questions that cannot affect the rights of litigants in the case before them.’” (quoting North Carolina v. Rice, 404 U.S. 244, 246 (1971))). This case no longer presents a live controversy because the Legislature has repealed the redistricting plan challenged by the plaintiffs. The statute that created Plan S148 will not take effect. That plan will not be used to conduct any election. Any order to prevent its implementation would be an advisory opinion. The case should be dismissed as moot

**CONCLUSION**

For the reasons stated above, the case should be dismissed for lack of subject matter jurisdiction.

Dated: April 4th 2018

**In the event the court claims to have Jurisdiction above I do not waive any of my rights including a jury! I DEMAND A JURY!**