

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT**

**ALLISON POLIDOR,** )  
**ERICA BOWTON,** )  
**and MARYAM ABOLFAZLI,** )  
 )  
**Plaintiffs,** )

**v.** )

**CAMERON SEXTON, in his official** )  
**Capacity as the Speaker of the House of** )  
**Representatives; TAMMY LETZLER,** )  
**in her official capacity as the Chief Clerk** )  
**of the House of Representatives; BOBBY** )  
**TROTTER, in his official capacity as the** )  
**Sergeant at Arms; MATT PERRY, in his** )  
**official capacity as the Colonel of the** )  
**Tennessee Highway Patrol;** )  
**Defendants.** )

**Case No. 23-1132-II  
Chancellor Martin**

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**DEFENDANTS' MOTION TO DISMISS  
WITH INCORPORATED MEMORANDUM OF LAW**

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Defendants Cameron Sexton, in his official capacity as Speaker of the House of Representatives of Tennessee, Tammy Letzler, in her official capacity as the Chief Clerk of the House of Representatives, Bobby Trotter, in his official capacity as the Sergeant at Arms, and Matt Perry, in his official capacity as Colonel of the Tennessee Highway Patrol, by counsel and pursuant to Rule 12.02(1) of the Tennessee Rules of Civil Procedure, respectfully move the Court to dismiss this action as a matter of law.

**BACKGROUND**

On August 8, 2023, Governor Lee called on the Tennessee General Assembly to convene a special session to consider measures that would enhance public safety while safeguarding

constitutional rights. On August 21, 2023, the House of Representatives opened the special session by adopting “Rules of Order” to govern its operations during the session. *See* Compl., ¶ 2 (Ex. 1 to Yarbrough Decl.). One of those rules provided that “[n]o voice or noise amplification devices, flags, signs, or banners shall be permitted in the galleries of the House of Representatives.” *Id.* at ¶ 27. Plaintiffs allege that they were removed from a House committee hearing the following day for violating the Rules’ prohibition on signs in the galleries (“Sign Regulation”). *Id.* at ¶¶ 30-33. Plaintiffs assert that they “intend to return to House proceedings and exercise their First Amendment rights, including the display of small signs,” but that the Sign Regulation prevents them from doing so. *Id.* at ¶34.

Plaintiffs filed suit on August 23, 2023 requesting the Court to declare the Sign Regulation unconstitutional and enjoin Defendants from enforcing the same. The Defendants are State officials sued in their official capacities.

However, the General Assembly adjourned the special session on August 29, 2023. *See* Chris Davis, *The Special Session is over. The House and the Senate finally adjourn.*, NewsChannel5 (Aug. 28, 2023), <https://www.newschannel5.com/news/exclusive-after-meeting-with-the-governor-tenn-senate-and-house-remain-at-impasse-over-special-session>. Accordingly, Plaintiffs’ claims against each of these Defendants are now moot.

## **ARGUMENT**

The role of the courts “is limited to deciding issues that qualify as justiciable, meaning issues that place some real interest in dispute.” *City of Memphis v. Hargett*, 414 S.W.3d 88, 96 (Tenn. 2013) (citing *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 838 (Tenn. 2008)). And “cases must be justiciable not only when they are first filed but must also remain justiciable throughout the entire course of the litigation, including the appeal.” *McIntyre v. Traughber*, 884

S.W.2d 134, 137 (Tenn. Ct. App. 1994) (citing *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990)).

A case loses its justiciability if it “no longer involves a present, ongoing controversy.” *Tennessee Democratic Party v. Hamilton Cnty. Election Comm’n*, 2020 WL 865282, at \*2 (Tenn. Ct. App. 2020) (citing *McCanless v. Klein*, 188 S.W.2d 745, 747 (Tenn. 1945)). To be sure, a case becomes “moot” if it “no longer serves as a means to provide some sort of judicial relief to the prevailing party.” *Id.* (citing *Knott v. Stewart Cnty.*, 207 S.W.2d 337, 338-39 (Tenn. 1948)). In other words, “mootness results when events occur during the pendency of a litigation which render the court unable to grant the requested relief.” *Carras v. Williams*, 807 F.2d 1286, 1289 (6th Cir. 1986). And previous exposure to illegal conduct, without a showing of continuing and present adverse effects, “cannot establish standing for declaratory and injunctive relief.” *Grandell v. Ohio Supreme Court*, 252 F.3d 828, 832 (6th Cir. 2001). Mootness is a justiciability doctrine that implicates a court’s subject matter jurisdiction. *Dominy v. Davidson Cnty. Election Comm’n*, 2023 WL 3729863, at \*4 (Tenn. Ct. App. 2023). Whether a case is moot is a question of law. *Alliance for Native American Indian Rights in Tennessee, Inc. v. Nicely*, 182 S.W.3d 333, 339 (Tenn. Ct. App. 2005).

Events occurring subsequent to the filing of this action have rendered Plaintiffs’ claims moot. The special session has now adjourned. And the procedural rules adopted by the House for the special session—including the Sign Regulation that Plaintiffs ask this Court to declare unconstitutional and enjoin—are no longer in effect. That means there is no longer a “present, ongoing controversy” for this Court to review, as “there is no basis for a court to enjoin the enforcement of a [law] that is no longer in effect.” *Pylant v. Haslam*, 2012 WL 3984648, at \*4 (Tenn. Ct. App. 2012) (finding plaintiffs’ claims for declaratory and injunctive relief were moot

where the statute being challenged as unconstitutional was no longer in effect); *see also Fuqua v. Robertson Cnty. Election Comm'n*, 2023 WL 5529714 (Tenn. Ct. App. 2023) (holding that plaintiff's claims for declaratory and injunctive relief seeking to remove political candidate from ballot were "unquestionably moot" since election had already occurred); *Edwards v. City of Memphis*, 2008 WL 2331027, at \*5 (Tenn. Ct. App. 2008) (finding that plaintiffs' claims for declaratory and injunctive relief challenging the city's adoption of a new police department rank of "executive major" were moot since that rank had since been abolished). No exceptional circumstances exist here such that any exception to the mootness doctrine would apply. *See Pylant*, 2012 WL 3984648, at \*4 ("as the statute is no longer in effect we find that this action does not fit into one of the exceptions to the mootness rule").

### CONCLUSION

Because no "present, ongoing controversy" remains, Plaintiffs' claims against these Defendants are moot and should be dismissed as a matter of law.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion has been filed and served upon the following by operation of the court's electronic filing system, with courtesy copies provided by email, on this the 29th day of August, 2023:

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