

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

FRED N. SAUER, ANNE GASSELL and GRETCHEN LOGUE,

Respondents,

v.

JEREMIAH W. (Jay) NIXON, et al,

Appellants.

DOCKET NUMBER WD78430

Date: November 17, 2015

Appeal from:
Cole County Circuit Court
The Honorable Daniel R. Green, Judge

Appellate Judges:
Division Two: Mark D. Pfeiffer, Presiding Judge, Lisa White Hardwick and James E. Welsh, Judges

Attorneys:
James R. Layton, Jefferson City, MO for appellant.
Dean J. Sauer, St. Louis and Michael C. Martinich-Sauter, Clayton, MO for respondents, Edward R. Martin, Jr. St. Louis, Amicus Curiae.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

FRED N. SAUER, ANNE GASSELL and GRETCHEN LOGUE

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Before Division Two: Mark D. Pfeiffer, Presiding Judge, Lisa White Hardwick and James E. Welsh, Judges

Jeremiah W. (Jay) Nixon, et al., ("Appellants") appeal the circuit court's grant of summary judgment in favor of Fred Sauer, Anne Gassel, and Gretchen Logue ("Respondents") on Respondents' petition for declaratory and injunctive relief concerning Missouri's membership in the Smarter Balanced Assessment Consortium ("SBAC"). Appellants contend the court erred in entering judgment in favor of Respondents and enjoining Missouri from making member payments to SBAC because its participation as a member of SBAC did not violate the Compact Clause of the U.S. Constitution or any state statutes.

APPEAL DISMISSED.

Division Two holds:

While this appeal was pending, Missouri terminated its membership in SBAC and ceased all payments to SBAC. This renders Appellants' appeal of the circuit court's judgment moot, as there is no longer an actual, live controversy regarding Missouri's

membership in and payment of membership dues to SBAC. The exceptions permitting us to exercise our discretion to hear the appeal despite its mootness are not applicable, as the case became moot well before it was argued and submitted, and the issues in the case are unlikely to recur or to evade appellate review if they do recur.

Opinion by: Lisa White Hardwick, Judge

November 17, 2015

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