IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

STATE OF TEXAS et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**Civil Action No. 7:15-cv-00056-O**
	§	
UNITED STATES OF AMERICA et al.,	§	
	§	
Defendants.	§	
	§	

ORDER

Before the Court are Defendants' Motion to Vacate Memorandum Opinion Preliminary Statement (ECF No. 47), filed August 4, 2015; Plaintiffs' Response (ECF No. 48), filed August 25, 2015; and Defendants' Reply (ECF No. 49), filed September 8, 2015. Having reviewed the Motion, related briefing, and applicable law, the Court finds that Defendants' Motion to Vacate should be and is hereby **DENIED**.

I. BACKGROUND

This motion arises out of a previously dissolved preliminary injunction within a previously dismissed case. On March 18, 2015, Plaintiff State of Texas ("Texas") filed a complaint and motion for preliminary injunction challenging a February 2015 Department of Labor rule revising the regulatory definition of the term "spouse" under the Family and Medical Leave Act of 1993 ("FMLA"), 29 U.S.C. § 2601. Compl., ECF No. 1. Defendants filed their opposition to the motion for preliminary injunction, and Texas amended its complaint, adding the states of Arkansas,

Louisiana, and Nebraska as Plaintiffs. Am. Compl., ECF No. 14. On March 26, 2015, this Court issued an Order granting Plaintiff's motion for preliminary injunction staying the application of the February 2015 rule. Mem. Op. & Order ("March 26, 2015 Order"), ECF No. 18. Defendants requested a hearing on the matter, which the Court held on April 10, 2015. Defs.' Req. for Hr'g, ECF No.19; Tr. of Mots. Hr'g, ECF No. 29. On April 24, 2015, Plaintiffs filed a second amended complaint adding Georgia as a Plaintiff. 2d Am. Compl., ECF No. 35. The same day, Defendants filed a motion seeking dissolution of the preliminary injunction. Defs.' Mot. Stay, ECF No. 38.

On June 26, 2015, the United States Supreme Court decided *Obergefell v. Hodges*, which held that "[t]he Constitution . . . does not permit the State to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex." 135 S. Ct. 2584, 2607 (2015). The Supreme Court further held that "there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character." *Id*. at 2608. This Court then granted Defendants' motion to dissolve the preliminary injunction, finding that in light of *Obergefell*, Plaintiffs could not show a likelihood of success on the merits. Order, June 26, 2015, ECF No. 45. On July 17, 2015, Plaintiffs filed a notice of voluntary dismissal of this action, and the case was subsequently closed. Notice Dismissal, ECF No. 46. On August 4, 2015, Defendant filed the present Motion for the Court to vacate its March 26, 2015 Order granting the preliminary injunction. Defs.' Mot. Vacate, ECF No. 47. Plaintiffs oppose this Motion.

II. ANALYSIS

Defendants move for the Court to vacate its March 26, 2015 Order granting the preliminary injunction on two grounds: (1) events outside Defendants' control, the "vagaries of circumstance," prevented Defendants from pursuing further review of the decision before this Court or the Fifth

Circuit Court of Appeals; and (2) the Court addressed "other legal matters" in the March 26, 2015 Order, some of which "pertain to broad issues of law that could recur in future litigation." Defs.' Mot. 3–4, ECF No. 47. The Court will address each argument in turn.

A. Defendants Are Not Suffering From the "Vagaries of Circumstance" Because the Preliminary Injunction Has Lost Its Effectiveness.

A "preliminary injunction [is] by its very nature interlocutory, tentative, and impermanent." *Madison Square Garden Boxing, Inc. v. Shavers*, 562 F.2d 141, 144 (2d Cir. 1977). "A preliminary injunction remains in effect until a final judgment is rendered." *S.E.C. v. First Fin. Grp. of Tex.*, 645 F.2d 429, 433 (5th Cir. 1981) (citing 11 Wright & Miller, Federal Practice and Procedure, Civil §§ 2941, 2947 (1973)); *see also Madison Square Garden*, 562 F.2d at 144 ("With the entry of the final judgment, the life of the preliminary injunction [comes] to an end, and it no longer [has] a binding effect on any one.").

Plaintiffs argue that "[i]n a case like this one, there is 'no reason to vacate the district court's order because it is an interlocutory order that has lost its effectiveness.' This is especially true here, where the entire case has been dismissed *before* final judgment." Pls.' Resp. 3, ECF No. 48 (quoting *Marilyn T., Inc. v. Evans*, 803 F.2d 1383, 1385 (5th Cir. 1986) (emphasis added)). Defendants counter that "[t]he Court should vacate its March 26, 2015 opinion, given that events outside the defendants' control prevented them from pursuing further review of the decision before this Court or the Court of Appeals." Mot. 4, ECF No. 47. Defendants base their argument in *United States v. Munsingwear*, where the Supreme Court held:

> The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss. . . . That procedure *clears the path for future relitigation of the issues*

> *between the parties* and eliminates a judgment, *review of which was prevented through happenstance*. When that procedure is followed, the rights of all parties are preserved; none is prejudiced by a decision which in the statutory scheme was only preliminary.

340 U.S. 36, 40 (1950) (emphasis added). Defendants contend that "when a party's efforts to obtain further review of a decision are thwarted by later events outside that party's control, it is generally appropriate to vacate the decision if a proper request is made." Defs.' Mot. 3, ECF No. 47; *see also U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 25 (1994) ("A party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment."). In other words, "[i]f a claim becomes moot after the entry of a district court's judgment and prior to the completion of appellate review, we generally vacate the judgment and remand for dismissal." *Murphy v. Fort Worth Indep. Sch. Dist.*, 334 F.3d 470, 471 (5th Cir. 2003) (per curiam).

The parties do not dispute that in *Munsingwear*, and in every other case Defendants cite similarly within their Motion, the final district court judgments or orders granting preliminary injunctions became moot by happenstance on *appeal*, rather than while still pending at the district court level. *See*, *e.g.*, *id.*; *U.S. Bancorp*, 513 U.S. at 18; *Arizonans for Official English v. Ariz.*, 520 U.S. 43 (1997). However, Defendants contend that "the same principles of fairness" of vacating an opinion becoming moot while on appeal apply in this case. Defs.' Reply 2, ECF No. 49. More specifically, Defendants argue that since the decision would be vacated under *Munsingwear* if Defendants had immediately appealed the March 26, 2015 Order, rather than following the Court's invitation to file a motion to dissolve, Defendants "should not be punished for following the procedure suggested by the Court." *Id*.

However, the Court finds that Defendants have not shown how *Munsingwear*'s "principles of fairness" apply in contemplating the relief Defendants seek. Defendants are not being "forced to acquiesce in the judgment" with which they disagree, as this Court dissolved the preliminary injunction; it no longer binds any party. Defendants have not provided one example of when a district court vacated a judgment already dissolved in a case it already dismissed, and the Court is similarly unaware of any such precedent. The time has passed to essentially relitigate Plaintiff's claims concerning broad issues of law, such as federal jurisdiction and federal preemption. *See* Defs.' Mot. 4, ECF No. 47 ("The Court's reliance on *Obergefell*, while certainly correct, obviated the Court's consideration of other matters discussed in the defendants' motion to dissolve . . . ."). Defendants have nothing to appeal, so they are not frustrated by denial of an opportunity to do so.

Furthermore, while Defendants may have hypothetically reached a different result if they had never filed a motion to dissolve and instead appealed, the current jurisdictional reality facing the parties and this Court is that this case is moot. "[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Article III of the Constitution by alleging an actual case or controversy." *City of L.A. v. Lyons*, 461 U.S. 95, 101 (1983). "In order to have standing to assert federal jurisdiction, a 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.'" *Ctr. for Biological Diversity, Inc. v. BP Am. Prod. Co.*, 704 F.3d 413, 424 (5th Cir. 2013) (quoting *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). "A plaintiff that has sufficiently alleged an injury or a threatened injury to invoke federal jurisdiction may nevertheless lose the ability to maintain the suit." *Ctr. for Biological Diversity*, 704 F.3d at 424. "[A]ny set of circumstances that

eliminates actual controversy after the commencement of a lawsuit renders that action moot." *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006).

"[M]ootness can be described 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).'" *Ctr. for Biological Diversity*, 704 F.3d at 425 (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc*., 528 U.S. 167, 189 (2000) (citation omitted). "Mootness applies when intervening circumstances render the court no longer capable of providing meaningful relief to the plaintiff." *Ctr. for Biological Diversity*, 704 F.3d at 234. "If a case has been rendered moot, a federal court has no constitutional authority to resolve the issues that it presents." *Id*.; *see also MW Builders of Tex., Inc. v. City of Wichita Falls*, No. 7:08-CV-00192, 2009 WL 2365443, at *2 (N.D. Tex. July 31, 2009) (O'Connor, J.) ("If subject-matter jurisdiction is lacking, the federal court lacks the ability to adjudicate the claim before it, and must dismiss it.").

Defendants have not demonstrated what type of controversy still exists or actual remedy they seek. Accordingly, neither this Court, nor any other court, can now provide the relief Defendants request. *See Apert v. Riley*, 457 F. App'x 429, 430 (5th Cir. 2012) (per curiam) ("We hold that this appeal has been *mooted by the district court's dissolution* of the preliminary injunction, as we can no longer grant Appellant's requested relief.") (citing *In re Blast Energy Servs., Inc*., 593 F.3d 418, 423 (5th Cir. 2010) ("If an appellate court is unable to grant any remedy for an appellant, its opinion would be merely advisory and it must dismiss the appeal as moot.") (emphasis added)); *see also Hornbeck Offshore Servs., L.L.C. v. Salazar*, 396 F. App'x 147, 147 (5th Cir. 2010) ("In order for this court to maintain appellate jurisdiction over Appellants' appeal of the preliminary injunction, it must be able to provide the parties with some type of effective relief.").

Furthermore, the Court finds that Defendants are not being "punished" because Defendants, not Plaintiffs, were ultimately favored by *Obergefell*'s issuance before this Court could render a final judgment. The "principles of fairness" animating the appellate court's ability to vacate a district court injunction concern the rights of the losing party on the district level to enjoy a full appeal of that decision. *See U.S. Bancorp*, 513 U.S. at 24–25. Here, no final judgment was ever rendered. Defendants "lost" when the preliminary injunction was granted in favor of Plaintiffs, but as stated above, that injunction is no longer in effect because it was dissolved *at Defendants' request*. Accordingly, Defendants do not otherwise demonstrate that they have now "lost" anything, let alone how a case or controversy still exists as the preliminary injunction has long been ineffective.

Additionally, Defendants do not demonstrate how vacatur is appropriate under *Munsingerwear* to "clea[r] the path for future relitigation of the issues between the parties and [to] eliminat[e] a judgment, review of which was prevented through happenstance." 340 U.S. at 40. Here, *Obergefell* decided the issues between the parties, in Defendant's favor. *See* Pl.'s Notice Voluntary Dismissal 1, ECF No. 46 ("[T]he United States Supreme Court issued its opinion in *Obergefell v. Hodges*, and thus resolving all substantive issues raised in this lawsuit.") (citations omitted). There is no "future relitigation of the issues" to be had.

For the aforementioned reasons, the Court is not persuaded that the frustration of the vagaries of circumstance obligate the Court to vacate the March 26, 2015 Order.

B. The Court is Not Obligated to Vacate on the Grounds that Matters of "Broad Issues of Law" Discussed Within the Order May "Recur in Future Litigation."

Defendants argue that vacatur is appropriate because of "the court's consideration of other matters discussed in the defendants' motion, some of which pertain to broad issues of law that could

recur in future litigation." Defs.' Mot. 4, ECF No. 47. However, the Court finds it has no obligation to vacate because the law is clear that a district court's opinion does not have precedential value in other cases: it "is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case." *Camreta v. Greene*, 131 S.Ct. 2020, 2033 n. 7 (2011) (internal quotations omitted); *see also S.E.C. v. Cuban*, 798 F. Supp. 2d 783, 788 (N.D. Tex. 2011) (Fitzwater, C.J.) (quoting *Benavidez v. Irving Indep. Sch. Distr.*, 690 F. Supp. 2d 451, 462 (N.D. Tex. 2010) (Fitzwater, C. J.) ("The doctrine of *stare decisis* does not compel one district court judge to follow the decision of another.")). Furthermore, a district court's preliminary injunction opinion does not even bind the same court in the same case. *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Defendants cite no other case in which a Court retroactively vacated an order granting a preliminary injunction that has since been dissolved, simply because discussion of "broad issues of law" have the danger of being discussed again.

Indeed, *Munsingwear* cautions against preventing judgments "unreviewable because of mootness, from spawning any legal consequences." *Munsingwear*, 340 U.S. at 41. However, such judgments which *Munsingwear* warns against are not vacated because of "broad issues of law," such as the basic inquires of "federal court jurisdiction" and "federal preemption." Defs.' Mot. 4, ECF No. 47. On the other hand, cases relying on this *Munsingwear* principle employ this more narrowly to the factual issues specific to their cases. *See, e.g., In re Intern. Aviation Servs. I., Ltd.*, 180 F.3d 265, 265 (5th Cir. 1999)) ("Both [the bankruptcy and district courts'] rulings addressed the validity of the deed of trust in light of the unsatisfied condition precedent, and the courts reached differing results. Vacating both rulings will prevent the judgment, unreviewable because of mootness, from spawning any legal consequences.") (internal citations omitted); *Miss. Power & Light Co. v.*

F.E.R.C., 724 F.2d 1197, 1198 (5th Cir. 1984) ("[W]e hold the 1975 order non-justiciable and remand the 1982 order for consideration of whether the permanent settlement curtailment plan should include a compensation provision. . . . Accordingly, we direct the Commission to vacate the October 31, 1975 order as moot so that it will spawn no further legal consequences or prejudice the rights of the parties in future litigation.").

Defendants have not demonstrated any threat of "future litigation" between these parties. *See supra* Part II.A. Furthermore, Defendants have not otherwise demonstrated why the danger of broad legal issues "recurr[ing] in future litigation" supercedes mootness. In fact, in their Motion for Dissolution, Defendants essentially conceded this point:

> [Plaintiff]s have not shown that any future lawsuits will materialize, nor can they show that a ruling in this case will directly forestall or resolve any future lawsuit. *See Caleron v. Ashmus*, 523 U.S. 740, 749 (1998) (finding that when a suit merely seeks resolution of a legal issue that may arise in future litigation, but the outcome of the suit will not itself 'completely resolve' any material dispute, the suit fails to meet the Article III case or controversy requirement).

Defs.' Mot. Dissolve 8, ECF No. 40. The Court agrees with Defendants, as this argument now supports why Defendants' argument does not defeat the mootness of this case. For the aforementioned reasons, Defendants' motion is accordingly **DENIED**.

III. CONCLUSION

For the aforementioned reasons, the Court finds that Defendants' Motion to Vacate (ECF No. 47) should be **DENIED**.

SO ORDERED on this **2nd day** of **February, 2016.**

Reed O'Connor
UNITED STATES DISTRICT JUDGE