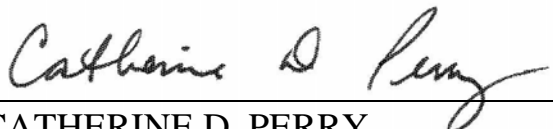




press reports about the case are available to the Governor, should he care to consider them in his clemency determination.

As in *Young v. Hayes*, 218 F.3d 850 (8th Cir. 2000), a trier of fact could reasonably infer that Cole (and potentially other) employees of the Department of Corrections remain under a substantial restraint as a result of the earlier actions of the defendants. In *Young*, as here, publicity about the lawsuit itself would have informed the Governor of the employee's desire to provide a statement and what she wanted to say, and there the superior had withdrawn her threat to fire the employee. The Court of Appeals nevertheless concluded the issue was not moot. "The standard for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: 'A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Id.* at 852, quoting *United States v. Concentrated Phosphate Export Assn.*, 393 U.S. 199, 203 (1968). The defendants have not met this heavy burden. Accordingly,

**IT IS HEREBY ORDERED** that defendant's Motion to Alter or Amend Judgment [#19] is denied.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 13<sup>th</sup> day of June, 2014.