IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

MATHIS KEARSE WRIGHT, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO.: 1:14-cv-42 (WLS)
	)	
SUMTER COUNTY BOARD OF ELECTIONS AND REGISTRATION,	)	
	)	
Defendant.	)	

PLAINTIFF'S MOTION FOR RECONSIDERATION

Plaintiff Mathis Kearse Wright, Jr. respectfully moves the Court pursuant to Rules 59 and 60 of the Federal Rules of Civil Procedure and Local Rule 7.6 for reconsideration of its June 21 order modifying—*sua sponte*—the Court's March 30 order and injunction. (ECF 214.) That modification is premised on legal error and should be reversed.

BACKGROUND

This is a Section 2 challenge to the method of electing members of the Board of Education in Sumter County, Georgia. On March 17, 2018, the Court issued a 38-page order finding, "based on the totality of the circumstances, that the at-large districts of the Sumter County Board of Education dilute African-American voting strength in violation of Section 2 of the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10301." (ECF 198 at 37.) The Court did not adopt a remedy in its order but noted instead that this case "now moves to a remedial stage." (*Id.*)

After the Georgia General Assembly declined the Court's invitation to devise a remedy, Wright filed an emergency motion asking the Court to enjoin the County from conducting the school-board elections scheduled for May 22, 2018. (ECF 202.) On March 30, the Court granted

the motion, finding that "Here, the infringement of black voters' right to vote in Sumter County is severe." (ECF 204 at 6.) The Court reset the election for November and indicated that it would enter a further order by July 23 setting forth an interim remedial plan for future school-board elections. (*Id.* at 7.) The Court did not at that time enjoin further use of the unlawful plan.

On April 11, the County appealed the Court's March 30 injunction and its order on liability. (ECF 207.) Two days later, the County filed a motion to expedite the appeal. Wright opposed. On May 4, the Eleventh Circuit denied the County's motion "without prejudice to the right of either party to seek a stay and/or expedited review upon the district court issuing an order setting interim boundaries for the Sumter County Board of Election districts."

Then on June 21, this Court, acting *sua sponte*, issued an order modifying the March 30 injunction. (ECF 214.) Concluding "that [the Court] lacks jurisdiction to enter" a remedial order while the County's appeal remains pending, the new order removes the self-imposed July 23 deadline for issuing a remedial plan, and it makes clear that the Court intends to issue no further orders regarding whether a remedy is appropriate until after the Court of Appeals resolves the appeal. (*Id.* 3.) The order also clarifies that the March 30 order "requires only that the Sumter County Board of Education elections previously scheduled for May 22, 2018 be held on November 6, 2018." (*Id.* at 5-6.) Thus, it appears that the practical effect of the Court's June 21 order is that the next school-board election will take place in November using the discriminatory plan.

ARGUMENT

Reconsideration is justified when (1) there has been an intervening change in the law; (2) new evidence has been discovered that was not previously available to the parties at the time the original order was entered; or (3) reconsideration is necessary to correct a clear error of law or prevent manifest injustice. *See, e.g., Richards v. United* States, 67 F. Supp. 2d 1321, 1322 (M.D.

Ala. 1999); *McCoy v. Macon Water Auth*., 966 F. Supp. 1209, 1222-23 (M.D. Ga. 1997). In this case, reconsideration is justified because the Court's conclusion "that it lacks jurisdiction to enter" a remedial order is a clear error of law. (ECF 214 at 3.)

As a general rule, the filing of a notice of appeal divests the district court of jurisdiction over the case pending disposition of the appeal. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam). But a number of exceptions have emerged. The district court retains jurisdiction, for example, to issue orders staying, modifying or granting injunctions, to direct the filing of supersedeas bonds, and to issue orders affecting the record on appeal, the granting of bail, and matters of a similar nature. *Mahone v. Ray,* 326 F.3d 1176, 1179 (11th Cir. 2003*); Doe v. Bush,* 261 F.3d 1037, 1064-65 (11th Cir. 2001); *Weaver v. Florida Power and Light Co.*, 172 F.3d 771 (11th Cir. 1999); *see also Mary Ann Pensiero, Inc. v.* Lingle, 847 F.2d 90, 97 (3d Cir. 1988). *See generally,* Fed. R. Civ. P. 60, 62; Fed. R. App. P. 7, 8, 9, 10, 11.

The rule is a judge-made creation, rather than a statutory or constitutional limit, that is founded on prudential considerations. It is designed to prevent the confusion and inefficiency that would result if both the district court and the court of appeals were adjudicating the same issues simultaneously. As a prudential doctrine, the rule should not be applied when doing so would defeat its purpose of achieving judicial economy. *See Pensiero*, 847 F.2d at 97; 9 J. Moore, B. Ward, & J. Lucas, *Moore's Federal Practice* 203.11, at 3-45 n. 1 (1987).

In redistricting cases like this one, moreover, it is standard judicial practice for a district court to proceed with the remedial stage of the case, notwithstanding a party's appeal of a ruling on liability, unless and until a superior court stays those proceedings. The recent Virginia redistricting case is illustrative. *See Personhuballah v. Alcorn*, 155 F. Supp. 3d 552 (E.D. Va. 2016). In June 2015, a three-judge district court found Virginia's Third Congressional District to

be an unconstitutional racial gerrymander. *See Page v. Va. State Bd. of Elections*, No. 3:13cv678, 2015 WL 3604029 (E.D. Va. June 5, 2015). The court immediately enjoined the Commonwealth from conducting any further elections for U.S. Representative until a new redistricting plan was adopted, and the Court ordered the Virginia General Assembly to devise a remedial plan by September 1, 2015. The defendant-intervenors appealed to the Supreme Court on June 19.

While that appeal was pending, the district court proceeded with the remedial stage of the case. After the Virginia General Assembly failed to act, the district court appointed a special master to devise a remedial plan with input from the parties. On November 13, 2015, the Supreme Court noted probable jurisdiction over the appeal. Three days later, the special master issued his report. The district court held a remedial hearing in December 2015 and issued a remedial plan on January 7, 2016. In its ruling, the court specifically rejected the defendant-intervenors' argument that their appeal divested the district court of jurisdiction to issue a remedy, citing the exceptions to the prudential rule. *Personhuballah*, 155 F. Supp. 3d at 557-58.

Five days later, the defendant-intervenors asked the Supreme Court to stay implementation of the remedial order pending resolution of their appeal as to liability. The Supreme Court denied the stay on February 1. The Court heard oral argument in March and ruled unanimously against the defendant-intervenors in May. *See Wittman v. Personhubballah*, 136 S. Ct. 1732 (2016). And the election proceeded in November under the district court's January plan.

In this case, the Court not only reached the wrong legal *conclusion* regarding jurisdiction, but it also appears to have applied the wrong legal standard in reaching that conclusion. Citing a lack of Eleventh-Circuit caselaw on the issue, the Court seems to have applied an "involved with" standard. (ECF 214 at 5.) That is, the Court concluded that it lacked jurisdiction to issue a remedial plan because the school-district boundaries are "'involved' with the appeal in this

case." (*Id.*) However, there is controlling Eleventh-Circuit caselaw on the issue. None of it was cited in the Court's opinion, and none of it applies the "involved with" standard. The Eleventh Circuit's clearest statement of the test can be found in *Weaver,* where Judge Tjoflat's opinion for the court observes that the usual rule does not apply to matters that do not "affect[] the questions presented on appeal." 172 F.3d at 773. Applying that standard here would clearly lead to a different result. If this Court were to issue a remedial order, the questions presented in the appeal would remain intact. All of those issues relate to the Court's finding on liability. *See* Appellant's Br. 3. So the Court here could not, except under very limited circumstances, alter its ruling on liability, but it can clearly issue a remedial order to enforce its prior ruling.

Finally, the Court's ruling on jurisdiction does not serve the interest of judicial economy. If the Court permits another election to go forward under the unlawful plan, the Court will likely have to reopen discovery, permit the parties to analyze the results, hold another trial, and issue yet another ruling on liability. That would effectively preclude any opportunity to have the Georgia General Assembly devise a remedy at its next session beginning in January 2019. And it would almost certainly lead to yet another appeal of the Court's subsequent ruling on liability based on the new evidence. It would literally create a never-ending cycle of litigation. A prudential rule designed to conserve judicial resources should not be applied in that way – which is precisely why courts in redistricting cases don't do that.

For all of these reasons, the Court should reconsider its ruling that it lacks jurisdiction to issue a remedial order. It should then issue a remedial order forthwith so that the 2018 school-board election can proceed in November under a lawful redistricting plan. Alternatively, the Court should further modify its March 30 injunction to make clear that the County may not hold any more elections under the unlawful plan.

Date: June 27, 2018

Respectfully submitted by:

/s/ Bryan L. Sells
BRYAN L. SELLS
Georgia Bar #635562
The Law Office of Bryan L. Sells, LLC.
P.O. Box 5493
Atlanta, GA 31107-0493
(404) 480-4212 (voice/fax)
bryan@bryansellslaw.com

M. LAUGHLIN McDONALD
American Civil Liberties Union
Foundation, Inc.
2700 International Tower
229 Peachtree Street, N.E.
Atlanta, Georgia 30303
Tel: (404) 500-1235
Fax: (404) 565-2886
lmcdonald@aclu.org

AKLIMA KHONDOKER
Georgia Bar No.: 410345
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF GEORGIA
P.O. Box 77208 77208
Atlanta, Georgia 33057
(770) 303-8111
akhondoker@acluga.org

ATTORNEYS FOR PLAINTIFF
MATHIS KEARSE WRIGHT, JR.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing PLAINTIFF'S MOTION FFOR RECONSIDERATION with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

E. Mark Braden
mbraden@bakerlaw.com

Katherine L. McKnight
kmcknight@bakerlaw.com

Richard B. Raile
rraile@bakerlaw.com

Kimberly A Reid
kimberly.reid@lawsonreidlaw.com

Trevor Stanley
tstanley@bakerlaw.com

Dated this 27th day of June, 2018.

/s/ Bryan L. Sells
BRYAN L. SELLS
Georgia Bar #635562
P.O. Box 5493
Atlanta, GA 31107-0493
(404) 480-4212 (voice/fax)
bryan@bryansellslaw.com