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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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JOHN F. KNIGHT, JR., ET AL.,

U.S. DISTRICT COURT
N.D. OF ALABAMAPlaintiffs and
Plaintiff Intervenors,

UNITED STATES OF AMERICA

Plaintiff,

CIVIL ACTION NUMBER:
CV-83-M-1676-S

v.

THE STATE OF ALABAMA, ET AL.,

Defendants.

ORDER

This case is before the Court on the Knight-Sims Plaintiffs' Motion to Alter or Amend Order Entered October 5, 2004, Denying Motion for Additional Relief with Respect to State Funding of Higher Education [3297].

I. Standard Applied to Motion for Reconsideration

The Federal Rules of Civil Procedure do not mention motions for reconsideration. Rule 59(e), however, provides for motions to alter or amend a judgment filed within ten days of the judgment. Fed. R. Civ. P. 59(e). A party may also seek relief from a final judgment pursuant to the relatively strict provisions of Rule 60(b). Fed. R. Civ. P. 60(b). Furthermore, the Court may modify or vacate non-final orders at any point

prior to final judgment. Fed. R. Civ. P. 54(b); see also Bon Air Hotel Inc. v. Time, Inc., 426 F.2d 858, 862 (5th Cir. 1970).¹

A motion for reconsideration seeks to invoke a district court's authority to modify or vacate its prior orders. Such authority is committed to the district court's sound discretion. Summit Med. Ctr. of Ala., Inc. v. Riley, 284 F. Supp. 2d 1350, 1352 (M.D. Ala. 2003). "[R]econsideration of a previous order is an extraordinary remedy to be employed sparingly." Richards v. United States, 67 F. Supp. 2d 1321, 1322 (M.D. Ala. 1999). Parties therefore may not employ a motion for reconsideration as a vehicle to present new arguments or evidence that should have been raised earlier, introduce novel legal theories, or repackage familiar arguments to test whether the Court will change its mind. Summit Med. Ctr. 284 F. Supp. 2d at 1352. "Instead, courts have recognized three grounds justifying reconsideration: 1) an intervening change in controlling law; 2) the availability of new evidence; and 3) the need to correct clear error or manifest injustice." Id. With the foregoing principles in mind, the Court addresses the Knight-Sims Plaintiffs' Motion to Alter or Amend Order Entered October 5,

1

Opinions of the Fifth Circuit issued prior to October 1, 1981, the date marking the creation of the Eleventh Circuit, are binding precedent on this Court. See Bonner v. City of Prichard, 661 F.2d 1206, 1209-11 (11th Cir. 1981) (en banc).

2004, Denying Motion for Additional Relief with Respect to State Funding of Higher Education.

II. Discussion

In their Motion to Alter or Amend Order Entered October 5, 2004, Denying Motion for Additional Relief with Respect to State Funding of Higher Education, the Knight-Sims Plaintiffs argue: (1) that in light of the Court's findings of facts in its Order of October 5, 2004, Hunter v. Underwood, 471 U.S. 222 (1985), requires that the Court enjoin enforcement of challenged provisions of the 1901 Alabama Constitution; (2) that the Court erred in its application of United States v. Fordice, 505 U.S. 717 (1992), and (3) that the Court erred in its application Hunter v. Erickson, 393 U.S. 385 (1969).

Turning to the Knight-Sims Plaintiffs' first argument, the Court finds that Hunter v. Underwood does not compel the relief that the Knight-Sims Plaintiffs seek. In that case, the plaintiffs challenged the constitutionality of Section 182 of the 1901 Alabama Constitution, which provided for the disenfranchisement of persons convicted of certain crimes, including misdemeanors. Hunter v. Underwood, 471 U.S. at 224. The plaintiffs had been convicted of presenting a worthless check, a misdemeanor, and were subsequently blocked from the voters rolls pursuant to Section 182. Id. The plaintiffs

argued that the provision had been adopted for the purpose of disenfranchising blacks, and that it had that intended effect. Id. The Supreme Court agreed, affirming the Eleventh Circuit Court of Appeals' finding that Section 182 had been enacted with the intent and desire to disenfranchise blacks on the basis of race. Id. at 229. The Supreme Court also found that Section 182 continued to have a discriminatory effect against blacks. Id. at 233. As a result, the Supreme Court concluded that Section 182 violated the equal protection clause of the Fourteenth Amendment, and invalidated that provision of the Alabama Constitution. Id.

The Knight-Sims Plaintiffs contend that because the Court has found that the constitutional provisions at issue in the instant litigation were enacted with a racially discriminatory motivation, it follows that this Court must similarly strike down those provisions. While the Court appreciates the Knight-Sims Plaintiffs' argument, the Court declines that request. Here, unlike in Hunter v. Underwood, the Court has found that despite the fact that the challenged constitutional provisions were initially enacted with a racially discriminatory motivation, those provisions do not have a continuing segregative effect on higher education. As the Court found in its Order of October 5, 2004, "the effect of the state's inability to raise revenue due to the challenged constitutional

provisions is simply too attenuated to form a causal connection between the tax policy and any segregative effect on school choice." (Order of Oct. 5, 2004, at 85.) Moreover, the Court believes that the relief that the Knight-Sims Plaintiffs request is beyond the scope of this litigation--indeed, as Defendants observe in their Response Brief, this case involves desegregation in higher education; this is not a taxpayer action. The relationship between the challenged constitutional provisions and higher education is simply too attenuated to permit the Court to grant the relief that the Knight-Sims Plaintiffs request. Accordingly, the Court finds Hunter v. Underwood inapplicable under the circumstances of this case.

The Court next considers the Knight-Sims Plaintiffs' argument that the Court erroneously applied Fordice by limiting "school choice" to a student's decision as to which university to attend. According to the Knight-Sims Plaintiffs, in footnote 9 of its Order of October 5, 2004, the Court misinterpreted Fordice by interpreting school choice as simply a student's decision as to which institution of higher learning to attend, rather than viewing student choice as the ability for students to choose freely "whether to pursue an advanced education and, when the choice is made, which of several universities to attend." See Fordice, 505 U.S. at 729. The Knight-Sims Plaintiffs' argument is without merit.

In the Order of October 5, 2004, regardless of the Knight-Sims Plaintiffs' interpretation of footnote 9, it is clear that the Court reached its conclusion based on the Knight-Sims Plaintiffs' failure to show that the ability of black students to attend college, or to choose a particular institution of higher education, has been unconstitutionally stymied by the property tax system. (Order of Oct. 5, 2004, at 84-85 (concluding that the segregative effect of the challenged constitutional provisions is too attenuated to support a finding that those provisions violate Fordice.) Accordingly, the Court finds this argument without merit.

Finally, the Court addresses the Knight-Sims Plaintiffs' argument that the Court erred in rejecting the Knight-Sims Plaintiffs' reliance on Hunter v. Erickson and its progeny. The Knight-Sims Plaintiffs, however, add nothing new to their argument, and the Court does not believe that its rejection of Hunter v. Erickson worked a manifest injustice that requires reconsideration. The Court therefore finds this argument unavailing.

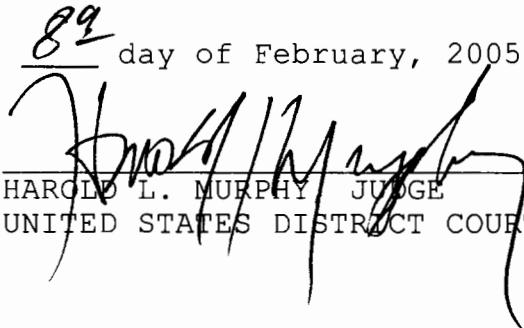
In sum, the Court rejects the Knight-Sims Plaintiffs' requests to amend or alter the Court's Order of October 5, 2004. The Court therefore denies the Knight-Sims Plaintiffs' Motion to Alter or Amend Order Entered October 5, 2004, Denying Motion

for Additional Relief with Respect to State Funding of Higher Education.

III. Conclusion

ACCORDINGLY, the Court **DENIES** the Knight-Sims Plaintiffs' Motion to Alter or Amend Order Entered October 5, 2004, Denying Motion for Additional Relief with Respect to State Funding of Higher Education [3297].

IT IS SO ORDERED this the 8th day of February, 2005.



HAROLD L. MURPHY JUDGE
UNITED STATES DISTRICT COURT