UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE GEORGIA SENATE BILL 202	MASTER CASE NO. 1:21-mi-55555-JPB
UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF GEORGIA, et al., Defendants.	CIVIL ACTION NO. 1:21-cv-02575-JPB

ORDER

Before the Court is Defendants State of Georgia, Brad Raffensperger and the State Election Board's (collectively "State Defendants") Motion for Reconsideration or, in the alternative, Certification for Immediate Appeal ("Motion"). ECF No. 11. After due consideration of the Motion, the Court finds as follows:

I. BACKGROUND

Plaintiff the United States of America ("the United States") filed this action seeking a declaration that certain provisions of Georgia Senate Bill 202 ("SB 202") violate § 2 of the Voting Rights Act.

State Defendants filed a motion to dismiss the action on the merits, which the Court denied in a detailed order. *See* No. 1:21-cv-02575, ECF No. 69 (the "Order"). The Court was not persuaded by State Defendants' arguments that the complaint failed to state a claim, including their contention that the opinion in *Johnson v. DeSoto County Board of Commissioners*, 72 F.3d 1556 (11th Cir. 1996), required the United States to particularly allege disparate results arising from SB 202.

State Defendants seek reconsideration of the Order on the grounds that the Court improperly applied the holding in *DeSoto*. Their Motion does not point to any newly discovered evidence, clear error or an intervening development or change in controlling law and instead rehashes the same arguments that they previously raised in their motion to dismiss.

For these reasons, the United States responds that State Defendants have not satisfied the threshold requirement for reconsideration of the Order. The United States also argues that because the Court applied well-settled principles of § 2

jurisprudence, State Defendants cannot demonstrate that there is substantial ground for a difference of opinion and that an immediate appeal is warranted.

Specifically, the United States explains that: (i) the Court principally found that the complaint stated a claim under the "totality of the circumstances" framework, which is derived from the language in § 2; (ii) the Court additionally relied on the framework set forth in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), which the Supreme Court of the United States has identified as the "familiar approach" for evaluating § 2 discriminatory intent or purpose claims; and (iii) the Court's application of *DeSoto* is consistent with this circuit's "long-held understanding that the 1982 amendments of the Voting Rights Act merely eliminated the requirement of proving discriminatory purpose in a Section 2 case."[1] ECF No. 19 at 9.

II. DISCUSSION

"Courts may grant relief under . . . Local Rule 7.2E only if the moving party clears a high hurdle." *Chesnut v. Ethan Allen Retail, Inc.*, 17 F. Supp. 3d 1367, 1370 (N.D. Ga. 2014). Indeed, Local Rule 7.2(E) dictates that "[m]otions for reconsideration shall not be filed as a matter of routine practice" and may be filed

[1] The United States also contends that certification for immediate appeal is not appropriate where the litigation would proceed with the remaining plaintiffs.

only when "absolutely necessary." "Reconsideration is only 'absolutely necessary' where there is: (1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact." *Bryan v. Murphy*, 246 F. Supp. 2d 1256, 1259 (N.D. Ga. 2003).

Thus, Local Rule 7.2E does not afford a dissatisfied party "an opportunity to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of [the order], introduce novel legal theories, or repackage familiar arguments to test whether the Court will change its mind." *Chesnut*, 17 F. Supp. 3d at 1370. In other words, a motion for reconsideration is not "an opportunity to show the court how it 'could have done it better.'" *Bryan*, 246 F. Supp. 2d at 1259 (quoting *Pres. Endangered Areas of Cobb's History, Inc. v. U.S. Army Corps of Eng'rs*, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995)).

Here, at the heart of State Defendants' Motion is their disagreement with the Court's application of the holding in *Desoto*. Instead of pointing to new evidence, clear error or an intervening change in law, they have simply repackaged already rejected arguments to see if the Court will change its mind. As such, none of the conditions for reconsideration of the Order is satisfied.

But even if the Court agreed with State Defendant's contention that the Order represents a substantial ground for difference of opinion, State Defendants

have similarly not satisfied the requirements for immediate appeal. For example, State Defendants cannot show that an immediate appeal from the Order would materially advance the ultimate termination of this litigation. *See* 28 U.S.C. § 1292(b) (stating that an order may be certified for immediate appeal if the district court is "of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation"). This action will move forward notwithstanding any potential success on the *DeSoto* issue on appeal because State Defendants have not demonstrated clear error in (and do not expressly seek to appeal) the key grounds for the Court's denial of their motion to dismiss: the allegations of the complaint state a claim under the "totality of the circumstances" framework and are consistent with the factors enumerated in *Arlington Heights*. In short, a win on the *Desoto* issue would not necessarily dispose of the case and would not materially advance the termination of this litigation.

Based on the foregoing analysis, the Court **DENIES** State Defendants' Motion (ECF No. 11).

SO ORDERED this 21st day of April, 2022.

J. P. BOULEE
United States District Judge