

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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JEFFREY T. WORTHLEY, )  
Plaintiff, )  
)  
VS. )C.A. NO. 1:22-cv-12060-DJC  
)  
SCHOOL COMMITTEE OF GLOUCESTER; )  
and BEN LUMMIS, in his official and personal capacities, )  
Defendants. )

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**DEFENDANTS’ MEMORANDUM IN OPPOSITION TO  
PLAINTIFF’S EMERGENCY MOTION FOR RECONSIDERATION**

**I. INTRODUCTION**

On December 7, 2022, the Plaintiff filed a motion, styled as an “Emergency Motion for Reconsideration” in reference to an email sent by this Court’s clerk. (ECF Doc. No. 11). The Defendants, Ben Lummis, Superintendent of Gloucester Public Schools, and the School Committee of Gloucester, hereby submit this Memorandum of Law in opposition to Plaintiff’s motion.

This case arises from Defendant Ben Lummis’ issuance of a lawful No Trespassing Order to Plaintiff on November 14, 2022 as related to Plaintiff’s inappropriate communications with a minor female Gloucester High School student (“Jane Doe”).<sup>1</sup> Under the Order, Plaintiff is forbidden from appearing on or entering the premises of Gloucester High School for the remainder of the 2022-2023 school year. Plaintiff (a member of the Gloucester City Counsel) filed his complaint in the Essex County Superior Court (“State Court”) on November 23, 2022. (ECF Doc. No. 1, Ex. B). In Count I of his action, Plaintiff alleges that Defendants violated his First Amendment rights to free speech under 42 U.S.C. § 1983 by interfering with his right to

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<sup>1</sup> To protect the student’s identity, Defendants will refer to her only by the pseudonym, “Jane Doe.”

communicate with constituents. In Count II, Plaintiff alleges that Defendants violated his Fourteenth Amendment rights to procedural due process under 42 U.S.C. § 1983. (ECF Doc. No. 1, Ex. B). On November 25, 2022, Plaintiff filed a motion, captioned as an Emergency *Ex Parte* Motion for Temporary Restraining Order and Motion for a Preliminary Injunction in State Court. The State Court, “after thorough consideration,” denied Plaintiff’s motion insofar as it requested *ex parte* relief and set the matter over for a hearing on December 8, 2022. On December 5, 2022, Defendants filed a Notice of Removal to the United States District Court pursuant to 28 U.S.C. § 1441(a).<sup>2</sup> The instant case was docketed in the United States District Court on December 6, 2022. (ECF Doc. No. 6). As a result of Defendants’ removal, the State Court cancelled the hearing on Plaintiff’s motion.

Also on December 6, 2022, Plaintiff refiled his Emergency *Ex Parte* Motion for Temporary Restraining Order and Motion for a Preliminary Injunction and memorandum in support thereof. (EFC Doc. Nos. 8, 8-1, 8-2, 8-3). The Defendants, acting expeditiously, notified this Court’s Clerk via email on December 7, 2022 of their intention to oppose the motion, and this Court’s Clerk responded that the Defendants would have 14 days (the time proscribed by Local Rule 7.1(b)(2)) to respond to the motion. (ECF Doc. No. 11, Ex. A). In his Emergency Motion for Reconsideration, the Plaintiff characterizes the Clerk’s statement regarding the due date for Defendants’ opposition as an “extension,” and seeks relief under Federal Rule of Civil Procedure 60(b). The Plaintiff wrongfully equates the Court Clerk’s statement of well-established Local Rules of this Court as an “order” or “final judgment” from which he can seek relief or

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<sup>2</sup> Contrary to Plaintiff’s allegations, Defendants did not remove this case to the United States District Court in order to engage in “the gamesmanship of delay,” but rather to protect their rights to have plaintiff’s federal claims decided in federal court.

“reconsideration.” The Plaintiff’s Emergency Motion for Reconsideration should be denied, as there is nothing for the Court to reconsider.

## II. ARGUMENT

As an initial matter, “[t]here is no motion for ‘reconsideration’ in the Federal Rules of Civil Procedure.” Bass v. U.S. Dep’t of Agric., 211 F.3d 959, 962 (5th Cir. 2000) (quoting Hamilton Plaintiffs v. Williams Plaintiffs, 147 F.3d 367, 371 n. 10 (5th Cir.1998)). Nor does Plaintiff’s motion assert a viable claim for relief. As such, there is simply nothing to reconsider. McGillen v. JP Morgan Chase Bank, N.A., No. CV 19-10336-LTS, 2019 WL 2642647, at \*1, n.10 (D. Mass. June 27, 2019) (concluding that where no ruling had been made on pending motion to dismiss at time of, there was nothing to reconsider, and vacating that portion of Court’s order).

As conceded by Plaintiff in his motion, Local Rule 7.1(b) provides for 14 days to file an opposition to a motion. See L.R. 7.1(b). Plaintiff cites no statute or case which requires this court to defer, or much less adhere to, the State Court’s scheduling of hearings on motions and other matters once removed. See Concordia Partners, LLC v. Pick, 790 F.3d 277, 279 (1st Cir. 2015) (citing Granny Goose Foods, Inc. v. Bhd. of Teamsters, Local 70, 415 U.S. 423, 436 n. 10 (1974) (federal procedural law governs in removed cases)). And although Plaintiff asserts, without citation to any case, that “[r]emoval can function as a means of delay[.]” Plaintiff does not dispute the propriety of Defendants’ removal of this action.<sup>3</sup>

Moreover, Rule 60(b) has no application in this matter. See Fed. R. Civ. P. 60(b). Rule 60(b) provides that “On motion and just terms the court may relieve a party or its legal representative from a final judgment, order, or proceeding” in certain enumerated circumstances.

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<sup>3</sup> Defendants explicitly acknowledged the pending Motion for Temporary Restraining Order and Preliminary Injunction in its removal in Response 8 of their Category Form filed with their Notice of Removal. (ECF Doc. No. 1-4).

Fed. R. Civ. P. 60(b). The Clerk's email, merely restating a well-established Local Rule of motion practice does not constitute a "final judgment, order, or proceeding" upon which the Plaintiff can invoke Rule 60(b).<sup>4</sup> See Fin. Indus. Ass'n v. Ward, 2014 WL 11444189, at \*5 (M.D. Fla. Aug. 14, 2014), report and recommendation adopted sub nom. Fin. Indus. Ass'n v. United States, 2014 WL 11444075 (M.D. Fla. Dec. 12, 2014) (a scheduling entry by a clerk is not a court order). Such a broad interpretation of the words "judgment, order, or proceeding" rendering any and all routine communications from the Clerk's office "orders" within the scope of Rule 60(b) is simply untenable. See Banister v. Davis, 140 S. Ct. 1698, 1710 (2020) (a Rule 60(b) motion "attacks an already completed judgment").

Further, even assuming Plaintiff's motion was properly brought under Rule 60(b), which the Defendants deny, "[r]elief under Rule 60(b) is extraordinary in nature and ... motions invoking that rule should be granted sparingly." Giroux v. Fed. Nat. Mortg. Ass'n, 810 F.3d 103, 106 (1st Cir. 2016), (quoting Karak v. Bursaw Oil Corp., 288 F.3d 15, 19 (1st Cir.2002)). See also Harding v. Gross Mortg. Corp., 2022 WL 7060525, at \*2 (D. Mass. Oct. 12, 2022) (quoting Davila Alvarez v. Escuela de Medicina Universidad Central del Caribe, 257 F.3d 58, 64 (1st Cir. 2001) (noting Rule 60(b) is a "vehicle for extraordinary relief" and that motions under the rule should only be allowed in extraordinary circumstances)). Such extraordinary circumstances are not present here.

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<sup>4</sup> Plaintiff's assertion that the Clerk issued an "*ex parte substantive ruling*" is belied by the record, which demonstrates that undersigned counsel for the Defendants "carbon copied" Plaintiff's counsel of record in his initial email to the Clerk. (ECF Doc. No. 11, Ex. A).

### III. CONCLUSION

For the reasons set forth above, this Honorable Court should deny plaintiff's Emergency Motion for Reconsideration, and award any other relief the Court deems appropriate.

The Defendants,  
SCHOOL COMMITTEE OF GLOUCESTER &  
BEN LUMMIS, in his official and personal capacities,  
By their Attorneys,

**PIERCE DAVIS & PERRITANO LLP**

*/s/ Matthew J. Hamel*

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John J. Davis, BBO #115890  
Matthew J. Hamel, BBO #706146  
10 Post Office Square, Suite 1100N  
Boston, MA 02109  
(617) 350-0950  
[jdavis@piercedavis.com](mailto:jdavis@piercedavis.com)  
[mhamel@piercedavis.com](mailto:mhamel@piercedavis.com)

Dated: December 8, 2022

### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing, filed through the Electronic Case Filing System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that a paper copy shall be served upon those indicated as non-registered participants on December 8, 2022.

*/s/ Matthew J. Hamel*

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Matthew J. Hamel, Esq.