

the litigation between Plaintiff and his landlord cannot have any legal effect on the outcome of this litigation. Further, to the extent that Plaintiff appears to believe that the mere existence of either case can be used to gain a competitive advantage in the other case or somehow insulates him from the ordinary workings of law enforcement or the judicial system, he is mistaken.

While Defendants vehemently disagree with the substance of Plaintiff's Motion, they do agree that a stay until the pending Motions are resolved would be appropriate at this juncture. Defendants also state that they do not oppose counsel being appointed for Plaintiff once the Motions are resolved.

STATEMENT OF RELEVANT FACTS AND PROCEEDINGS

1. In December 2020, the Marshall County Commission passed a Picketing Resolution, the constitutionality of which is the subject of this action. (Doc. 1, ¶¶ 13, 34; Doc. 16, ¶ 34.)

2. On April 8, 2022, Plaintiff disseminated the document entitled "Writ to Cure," arguing that the Resolution is unconstitutional. (Doc. 1, pg. 21.) Plaintiff then met with Chairman Hutcheson regarding the matter on April 27, 2022, and spoke at the Commission meeting on May 11, 2022. (Doc. 1, ¶¶ 46, 47.) When the Commission did not agree with Plaintiff's legal arguments, he filed this lawsuit on May 12, 2022.

3. After this lawsuit was filed, a long-simmering dispute between Plaintiff and his landlord seems to have boiled over. In his filings in the District Court of Marshall County, *Wright v. Isom, et al.*, Case No. DV-22-69, Plaintiff alleged that he "knew that he'd made a mistake" literally from the first time he saw his apartment, and that it was not properly constructed and has not been properly maintained in the entire time (which is apparently over a decade) that he has lived there. (Exhibit A, *Wright v. Isom, et al.* Complaint.) According to Plaintiff, he has signed only two leases during the entire time: the original lease, and then a new lease in 2019 reflecting a rent increase. (Id. at pg. 8, ¶ 26.) Then, in June 2021, his landlord notified all tenants in the complex that he would require the signing of new leases in

September, and that the rent would be raised by \$50 per month starting in 2022. Plaintiff asked at that time to stay month-to-month with no increase, stating that his goal was to move out in six to nine months. (Doc. 30, pgs. 8-9.)

4. Without delving into the details, it appears fair to say that the relationship between Plaintiff and his landlord/its agents continued to deteriorate. Dempsey Isom eventually issued a Notice to Quit informing Plaintiff that the property owner was opting to terminate the month-to-month lease effective October 31, 2022. (Doc. 30, pg. 9, ¶ 11.)

5. On October 13, 2022, Plaintiff Gary Wayne Wright II filed a complaint against Dempsey T. Isom, D.T. Isom Enterprises, LLC; All Star Holdings, LLC; RTI Properties, Inc.; Grassy Holdings, LCC, and their employees, agents, and successors, in the District Court of Marshall County, Case No. DV-22-69, seeking monetary damages for breach of contract and personal injury due to negligence. Plaintiff stated in that Complaint that the Notice to Quit was in retaliation for his informing Isom, et. al., that “he would be seeking legal action against them due to the living conditions and his injuries.” (Ex. A., *Wright v. Isom* Complaint, ¶ 35.) He also stated that he “still intends to vacate the property...but is unable to give the Defendants an exact move out date,” (Id., ¶ 35.), and that he therefore would seek an injunction if the eviction proceeded. (Id., ¶ 36.)

6. On November 16, 2022, Isom, et al., answered the complaint and also alleged counterclaims against Plaintiff for eviction, defamation, and unpaid rent of a storage unit. (Exhibit B, *Wright v. Isom, et al.* Answer.)

7. As discussed herein, the substantive merits of the parties’ positions in the State court action are irrelevant to the current suit. For the purposes of this litigation, the most relevant “fact” is that Plaintiff told Isom on September 28, 2022, that he was “in the middle of a huge civil rights trial and need to keep this address in Marshall County until the trial is over to keep my legal standing in the

current federal court,” which he claims “clearly and irrevocably warned of the irreparable damage that would result in an eviction attempt.” (Doc. 30, pg. 10.)

8. On October 21, 2022, Plaintiff claims that he further stated to Jackie Hunt that he needed to talk to their attorney because, *inter alia*:

[E]x parte communications is forbidden and I typically do my own cases after 30+ years in federal court without needing an attorney...Marshall County including the sheriff are my defendants in a civil rights case, and for court ordered ex parte reasons, even the sheriff can't communicate with me without going through very expensive attorneys....So your attorney and I need to plan how this new litigation doesn't interfere in my other cases and bring this to a swift end! You should only communicate with me from now on through your legal counsel. See you in Court!

(Doc. 30, pg. 12.)

9. On November 18, 2022, Plaintiff Wright contacted the undersigned to state that, *inter alia*, he would need to file an Amended Complaint and “numerous motions in multiple courts.” (Exhibit C, Email Correspondence with Gary Wright.) The undersigned replied on Monday November 21, 2022, that she cannot consent to an amended complaint, particularly since she was unaware of the alleged incidents, but agreeing that it would make sense to put off a planning meeting until there was more clarity on what claims would be at issue, and asking when Mr. Wright anticipated filing his motion. Mr. Wright responded the same day by stating that he had filed a motion to stay proceedings, and attached a copy of the State court filings. As reflected by the lack of a Certificate of Service, Mr. Wright never provided the undersigned with a copy of the Motion. Defendants instead received notification when the Motion was uploaded to PACER on November 23, 2022.

ARGUMENT

I. THE RELIEF SOUGHT BY PLAINTIFF IS NOT JUSTIFIED BY HIS ENHANCED CONSPIRACY THEORIES.

First, for the record, Defendants have no intention of using Plaintiff's eviction to attempt to have this case dismissed on standing grounds and avoid litigating the constitutionality of the Resolution itself. There is no need for discovery or investigation on this point because such an outcome simply would not be possible. Standing is established at the time that a lawsuit is filed, *see, e.g., Keister v. Bell*, 29 F.4th 1239, 1256 (11th Cir. 2022), and – although Defendants certainly disagree that Plaintiff has suffered an injury – they have not contested that he adequately alleged an injury-in-fact at this stage as needed to challenge the validity of the Resolution. And because Plaintiff has alleged completed harm, the case itself cannot be mooted even if the evidence were to establish that he had no intentions of ever seeking to protest in Marshall County. *See Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021); *Keister v. Bell*, 29 F.4th 1239, 1250-51, 1256-57 (11th Cir. 2022). Further, the continued justiciability of Plaintiff's claims for prospective declaratory and injunctive relief depends on whether there is reason to believe that the challenged regulation would apply to him because he plans to protest in Marshall County in the future; merely maintaining an address in Marshall County is neither necessary nor sufficient to this determination. *See, e.g., CAMP Legal Defense Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1269-1277 (11th Cir. 2006).

It appears that Plaintiff may believe that filing this lawsuit affords him certain special protections against, i.e., eviction, or even any interaction with the Sheriff. Such a belief would be both incorrect and also extremely troubling. While the First Amendment protects Plaintiff against retaliation because he has exercised his right to challenge the Resolution, it does not somehow insulate him from other unpleasantness. *See, e.g., DeMartini v. Town of Gulf Stream*, 492 F.3d 1277, 1288 (11th Cir. 2019) (discussing First Amendment retaliation claims and holding that plaintiff could not prevail on such a

claim based on allegedly retaliatory litigation when the lawsuit was instituted with probable cause). Further, all parties involved enjoy rights and responsibilities that must be balanced against each other. *Id.* at 1306 (“[W]e conclude that applying the objective, lack of probable cause requirement to a § 1983 First Amendment retaliation case predicated on the filing of a civil lawsuit is appropriate because it strike the proper balance between protecting a plaintiff’s important First Amendment rights while, at the same time, ensuring that the Town has a similar ability to access the courts to protect itself and its citizens from non-meritorious litigation.”); *see also Dixon v. Burke County, Ga.*, 303 F.3d 1271, 1275 (11th Cir. 2002) (recognizing that imposing liability on public officials “for nothing more than voicing an opinion or recommendation” would implicate the officials’ own First Amendment rights). Plaintiff’s right to prosecute this lawsuit does not automatically trump his landlord’s property rights, nor does it provide a basis for Sheriff Sims to refuse to carry out his responsibility of executing any order issued by the District Court of Marshall County.

The general rule against communications with persons represented by Counsel (Ala. R. Prof. Conduct 4.2) also cannot have any effect on any proceedings outside the instant litigation. The Comment to Rule 4.2 makes clear that this restriction generally does not apply to communications concerning matters outside the scope of representation, i.e., service of an eviction notice. Somewhat ironically, given the nature of this case, the First Amendment also means that the Rule is generally inapplicable to communication with government officials in their official capacities. Alabama State Bar, Office of General Counsel, Ethics Opinion 2003-03, available: <https://www.alabar.org/assets/2019/02/2003-03-1.pdf>. Thus, Sheriff Sims can freely communicate with Wright, and vice-versa, in regards to matters under the Sheriff’s authority.

Defendants, as the Defendants in this case, have no knowledge of the true condition of Plaintiff’s apartment or the validity of his contract, and express no opinion as to whether there is some

provision of Alabama law that would enable Plaintiff to prevent his landlord from exercising their general right to terminate a month-to-month lease and/or would allow him to prevail on his claims for damages.² But they very much object to allowing this case to be used as a tool for a plaintiff to gain a competitive advantage in another wholly unrelated lawsuit that he has filed. A person who is otherwise due to be evicted (or served with process, arrested, prosecuted, etc.) cannot avoid such a consequence simply by first suing law enforcement, nor can a litigant disqualify an opposing party's long-term counsel by attacking that lawyer's other clients, or suing the lawyer himself. A contrary result would be fundamentally unfair and would lead to a flood of frivolous litigation as every tenant attempting to forestall an eviction rushed to sue their local sheriff.

II. A STAY IN THIS CASE UNTIL THE RESOLUTION OF THE MOTION TO DISMISS IS WARRANTED.

Although Defendants disagree with Plaintiff that a stay is warranted for the reasons that he has set forth, they do agree that a stay would be appropriate in this case, albeit for other reasons. Defendants have asserted multiple grounds for the dismissal of all claims except Counts 1, 2, and 3, relating to the constitutional validity of the Resolution alleged against Marshall County and Sheriff Sims, in his official capacity. (Docs. 14, 15, 26.) Of particular importance to the propriety of a stay is the assertion of legislative and qualified immunities.

Legislative immunity “comprises both immunity from civil liability and an evidentiary privilege to be free from compulsory process in civil litigation.” *Singleton v. Merrill*, 576 F.Supp.3d 931, 938 (N.D. Ala. 2021) (holding that State legislators had waived legislative immunity from being forced to participate in depositions and written discovery by not only failing to raise the defense, but actively

² To be clear, Clint Maze is sued individually and in his official capacity as County attorney. Both of these roles are different from his role as an advocate for his clients in the District Court litigation brought by Wright. Out of an abundance of caution, nothing that is said herein is meant to bind Maze in that litigation.

intervening in and participating in litigation). Similarly, “qualified immunity provides an entitlement not to stand trial or face the other burdens of litigation, conditioned on the resolution of the essentially legal immunity questions.” *Harbert Intern., Inc. v. James*, 157 F.3d 1271, 1280 (11th Cir. 1998) (internal quotations omitted). “For that reason, once a defendant raises the defense, ‘the trial court must exercise its discretion in a way that protects the substance of the qualified immunity defense. It must exercise its discretion so that officials are not subjected to unnecessary and burdensome discovery or trial proceedings.’” *Ibid.* (quoting *Crawford-El v. Britton*, 523 U.S. 574, 597-98 (1998)).

Defendants respectfully submit that staying all further proceedings in this case until the resolution of the pending Motion to Dismiss would be necessary in order to preserve their right to assert legislative and qualified immunities. Defendants also respectfully submit that a stay until a ruling has been made on the viability of the challenged claims would preserve scarce judicial resources and the Parties’ resources, as it appears inevitable that the Parties would have significant disagreements over the proper scope of discovery, at least some of which would likely be avoided by a stay.

While Defendants recognize that the appointment of counsel is firmly within this Court’s discretion, they do not object to counsel being appointed after this Court rules on the pending Motion to Dismiss.

Respectfully submitted this the 2nd day of December, 2022.

s/Jamie H. Kidd Frawley

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CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of December, 2022, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and will provide a copy to the following via electronic mail and United States Mail, First Class, postage prepaid:

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s/Jamie H. Kidd Frawley
OF COUNSEL