

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 BRIEF IN RESPONSE TO DEFENDANT’S MOTION TO STRIKE

This Brief is filed in response to the Court’s order of March 20, 2015, Doc. 49, directing Plaintiff to respond to Defendant’s Motion to Strike.

In its Order of July 2, 2014, Doc. 21, p. 2, the Court held that “all dispositive motions must be filed no later than forty-five (45) days after the close of discovery.” Discovery was subsequently extended by the Court until November 28, 2014. Doc. 35, p. 1. Defendant filed its Motion for Summary Judgment, Doc. 40, on February 2, 2015, the last day for filing a dispositive motion. Defendant now argues that Plaintiff’s Cross-Motion for Summary Judgment, which was filed on March 13, 2015, Doc. 47, should be struck because it was filed after the deadline set by the Court. Defendant’s Motion should be denied for several reasons.

First, given the fact that Defendant waited until the last day to file its dispositive motion, it must accept the fact that a cross-motion for summary judgment could be filed after the deadline had passed. In *Murdock v. Mingus Union High School District*, 2005 WL 3199105 (D. Ariz. 2005), the court denied defendants’ motion to strike plaintiffs’ cross-motion for summary

judgment on the grounds that it was filed after the deadline for filing dispositive motions.

According to the court:

The fact that Plaintiffs did not file the Cross-Motion until after the dispositive motion deadline is irrelevant, seeing as the cross-motion is based upon Defendants' Motion for Summary Judgment. This would be akin to asking this Court to strike all of Plaintiffs' responses in opposition to the Motion for Summary Judgment, because they were filed after the dispositive motion deadline.

If Defendants are going to wait until the last day to file their dispositive motions, they must accept the fact that cross-motions for summary judgment will be filed after the deadline has passed.

Id. Plaintiff's Cross-Motion for Summary Judgment filed in response to Defendant's Motion for Summary Judgment was warranted and should not be struck.

Second, this Court has retained authority to extend the time for filing a motion for summary judgment. In its Order of July 2, 2014, the Court held that the time for filing dispositive motions could be "extended by Order of the Court." Doc. 21, p. 2. Thus, the Court may extend the time for filing a motion for summary Judgment to include March 13, 2015, the date upon which Plaintiff filed his Cross-Motion for Summary Judgment.¹

¹Defendant relies upon *Union Carbide Corp. v. Thiokol Corp.*, 890 F.Supp. 1035, 1052 (S.D. Ga. 1994), to support its Motion to Strike. But in *Union Carbide* the court held a motion for summary judgment on a counterclaim and third party complaint was barred by a consent scheduling order prohibiting the filing of any summary judgment motions after July 6, 1994. Here, there was no such consent order prohibiting the filing of any summary judgment motion. Instead, as noted above, in its Order of July 2, 2014, the Court indicated that the time for filing dispositive motions could be "extended by Order of the Court." Doc. 21, p. 2.

Third, a motion for summary judgment has been filed by Defendant, Doc. 40, and is pending before the Court. Thus, both parties agree this case can and should be resolved by summary judgment, although they disagree on what that resolution should be while Defendant has limited its motion to the Second and Third factors identified in *Thornburg v. Gingles*. 478 U.S. 30, 50-1 (1986), as probative of minority vote dilution.² Defendant's contention that this case should be resolved on summary judgment contradicts its Motion to Strike.

Fourth, the underlying purpose of summary judgment would be undermined by granting the Motion to Strike. The purpose of summary judgment is "to avoid an unnecessary trial when only one outcome can ensue." *Allen v. United States*, 119 Fed. Cl. 461, 476 (Fed. Cl. 2015). *See also, Pure Gold, Inc. v. Syntex (U.S.A.), Inc.*, 739 F.2d 624, 626 (C.A. Fed. 1984) ("The basic purpose of summary judgment procedure is one of judicial economy—to save time and expense of a full trial when it is unnecessary") (citation omitted). And as the court in *Murdoc* concluded: "this Court surely recognizes that it would best serve judicial economy and fairness if all relevant issues were before the Court when ruling on the pending motions for summary judgment. To exclude a single issue, raised in a cross-motion based on Defendants' Motion for Summary Judgment, would be a waste of judicial time and expense." Again, both parties agree that summary judgment is appropriate in this case, and deciding the case on summary judgment would save the time and expense of an unnecessary full trial.

²Defendant claims that failure to strike Plaintiff's Motion for Summary Judgment "will dramatically affect the schedule set in this case." Defendant's Brief, p. 3, Doc. 48-1. But given the pendency of Defendant's Motion for Summary Judgment, consideration by the Court of Plaintiff's motion should not "dramatically affect" the case's schedule.

Fifth, researching the past and continuing history of racial discrimination in Georgia and Sumter County, which was included in Plaintiff's Brief in support of his Cross-Motion for Summary Judgment, Doc. 47-1, and Plaintiff's Statement of Material Facts, Doc. 47-2 ("Facts"), was very time consuming and required much effort. It included documenting: discrimination in voting, Facts Nos. 48-78; discrimination and segregation in education; bans on interracial marriage; segregation of public transportation; segregation of prisons and jails; segregation of public accommodations; segregation of hospitals; and resolutions calling for impeachment of Justices of the U.S. Supreme Court for their racial integration decisions and declaring the Fourteenth and Fifteenth Amendments, which protect the rights of racial minorities, null and void and of no effect. Facts Nos. 79-133. The time it took Plaintiff to prepare and file his Cross-Motion for Summary Judgment and supporting documents was justified.

Conclusion

For the above and foregoing reasons, Plaintiff requests the Court to deny Defendant's Motion to Strike.

This 25th day of March 2015.

s/M. Laughlin McDonald

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