

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.)	
_____)	

DEFENDANT’S RESPONSE TO MOTION FOR EXPEDITED BRIEFING

Defendant opposes in part Plaintiff’s request for an expedited order for briefing on Plaintiff’s motion for a preliminary injunction. *See* ECF No. 191. Although Defendant has no view on whether it is “appropriate to shorten the time for the parties to brief the motion,” *id.* at 2, Defendant objects to Plaintiff’s recommendation that Defendant’s brief be due on Friday, March 16. That would make Defendant’s brief due the day after back-to-back-to-back expert depositions scheduled to accommodate the schedule of *Plaintiff’s* counsel. The proposal is prejudicial and unfair. Defendant respectfully submits that, if the Court chooses to expedite briefing, Defendant’s brief be due Friday, March 23.¹ In support of its position, Defendant states as follows.

1. On February 9, 2018, Plaintiff filed a motion to strike portions of Defendant’s submission in opposition to Plaintiff’s remedial proposals, including Dr. Owen’s affidavit, or, in

¹ Counsel for Plaintiff did not contact counsel for Defendant before filing the motion for expedited briefing, so the parties had no opportunity to exchange positions on what dates would be convenient for an alternative briefing schedule before taking the matter to the Court.

the alternative, grant leave for additional discovery. ECF No. 178.

2. The same day, the Court responded with an order (1) notifying the parties that the Court no longer believed a decision on the merits was possible before the 2018 Sumter County School Board Elections, (2) requesting briefing on whether the school board elections should proceed prior to a decision on the merits, and (3) setting a status conference to discuss the request for discovery and related issues. ECF No. 179.

3. On February 23, the parties filed briefs regarding the 2018 School Board Elections. ECF Nos. 181, 182. Plaintiff contended that the Court should enjoin the elections pending the Court's decision on the merits. ECF No. 181. Defendant contended that no injunction may issue without either a finding of liability or a finding that the standard for a preliminary-injunction are met after a proper motion and briefing. ECF No. 182 at 2-3 & n.2.

4. On February 28, the Court conducted a status conference, which resulted in a subsequent order providing that (1) the Court would not strike Dr. Owen's affidavit; (2) the parties may conduct further discovery to be completed in two weeks, by March 15; (3) the parties must file a joint report on March 15 providing the parties' position on supplemental briefing on the remedial proposals; and (4) Plaintiff may move for a preliminary injunction if he believes the School Board Elections schedule should be altered. ECF No. 189. The Court expressed no view on the likely merit of such a motion. *Id.*

5. Counsel promptly conferred regarding discovery scheduling and further document exchanges. Due to conflicts with Plaintiff's counsel's schedule, no depositions could occur the week of March 5. Defendant accommodated those conflicts and agreed to schedule depositions on March 13, 14, and 15 in Atlanta and Washington, D.C.

6. On March 7—after those arrangements had been finalized—Plaintiff moved for a preliminary injunction. ECF No. 190. Later the same day, without conferring with Defendant to try to identify a workable alternate briefing schedule, he moved for an order expediting briefing, proposing that Defendant’s brief be due on March 16, the day following the three-day string of depositions scheduled due to Plaintiff’s counsel’s schedule. ECF No. 191.

7. Defendant takes no position on Plaintiff’s view that “it would be appropriate to shorten the time for the parties to brief the motion.” ECF No. 191 at 2. As Defendant has already explained, ECF No. 182 at 3-5, it is too late to alter the May 2018 election date, *see North Carolina v. Covington*, 137 S. Ct. 1624, 1625 (2017) (per curiam), so expedited briefing on a belated (and meritless) preliminary-injunction motion at this stage is too little, too late. Nevertheless, all things being equal, Defendant would have no objection to an altered briefing period.

8. But all else is *not* equal: Plaintiff proposes that Defendant’s brief be due March 16, the day after back-to-back-to-back expert depositions, which were scheduled to accommodate *Plaintiff’s* schedule. The proposed timing is unfair and prejudicial. Given the various case commitments of Defendant’s counsel, a deadline of no sooner than Friday, March 23, would be appropriate.

For these reasons, if the Court chooses to alter the briefing schedule, it should set Defendant’s briefing due date no sooner than March 23, 2018.

Date: March 9, 2018

Respectfully submitted by:

s/ Katherine L. McKnight
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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record in this case.

Dated this 9th day of March, 2018.

/s/ Katherine L. McKnight
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