

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 OBJECTIONS TO PERMANENT INJUNCTION

On March 30, 2018, the Court issued a permanent injunction against the Sumter County School Board redistricting plan. ECF No. 204 at 7. It offered the County until today, Friday, April 6, to file objections to that injunction. Defendant Sumter County respectfully responds to that order with the following objections.

OBJECTIONS

1. The Court enjoined the elections without affording Defendant a fair opportunity to brief and submit evidence on the relevant issues. The Court cancelled briefing on the preliminary-injunction motion and only entertained five pages of briefing on the abstract question of how the May election should proceed prior to the liability finding (and when such a finding did not appear, by the Court’s accounting, imminent, ECF Nos. 179, 197). Defendant never had the opportunity to present evidence on how, in light of the Court’s March 17 liability ruling, an injunction would affect election administration.

2. The opportunity to file “objections” now does not cure the lack of opportunity for fair briefing before the injunction was issued. The injunction is currently in effect, and Sumter

County officials have no other choice than to take steps to comply. *See, e.g.*, Declaration by Robert Brady (“Brady Decl.”) (attached as Exhibit A) at ¶3. This state of affairs appears practically guaranteed to preclude further changes in the Court’s injunction. That is why Local Rule 7 affords non-moving parties the opportunity to file oppositions to motions before, not after, they are decided.¹

3. Defendant objects to the issuance of the Court’s Order without any factual input from the Sumter County Board of Elections and Registration, the named Defendant, which is the party best-suited to inform this Court on election due-dates and administration issues. As an example, Defendant sought to file by Wednesday, April 4, 2018, a brief in opposition to Plaintiff’s motion and to correct factual errors in that motion. ECF No. 203. The Court denied Defendant’s request based on Plaintiff’s statement that “[i]n the absence of an injunction, those elections will go forward beginning on Monday, April 3.” Pl.’s Mot. 1, ECF No. 202; *see also, id.* at 4 (“Without an injunction, in other words, voting begins on Monday.”) (citing O.C.G.A. § 21-2-384(a)(2)). This deadline is a factual error: voting did not “begin” on Monday, April 2, or Tuesday, April 3, 2018. Brady Decl. ¶3(a). The first date on which voting could begin is April 7, 2018. *Id.* There was time for Defendant to brief this Court before voting began.

4. The County objects to the Court’s plan to “set[] interim boundaries for the new Sumter County Board of Education districts” no later than July 23, 2018, Order 7, ECF No. 204, without further input by Defendant Sumter County Board of Elections and Registration. First, as indicated by Objection 3, Defendant has useful factual input for the Court regarding due dates

¹ This places Defendant in the unfortunate position of challenging the Court’s reasoning after the fact, rather than attempting to influence it in advance. Defendant lodges these objections with respect for the Court and its efforts to handle a difficult case in a difficult procedural and practical posture.

and the actual operation of elections in the County, and Plaintiff is not a reliable sole-source for that information. Second, the Court's plan would rely on Plaintiff's Supplemental Brief in Support of Remedial Proposals (Dkt. 199), which itself relies nearly wholesale on inadmissible testimony. Dkt. 199 at 2 (citing Ex. 1 at 94-109 (Owen dep. Mar. 14, 2018)).

5. Defendant objects to the Court's finding on the merits for reasons stated in prior briefing.

6. The Court is incorrect to find that giving the General Assembly the opportunity to craft a remedial plan is impractical. The General Assembly has plenty of time to craft a remedial plan in the 2019 session. The Court's finding is based on the incorrect premise that the 2018 elections simply must be conducted under a new plan. Not only is that not the law, but the Court also found that a court-ordered remedy is *also* impracticable by May 2018. *See* ECF No. 204 at 1-2. The Court's approach simply trades one impractical solution for another.

7. The infringement of "black voters' right to vote" in Sumter County is not "severe." ECF No. 204 at 6. The Court's finding appears to be predicated on a view that Section 2 requires proportional representation, but it does not. Rather, the measure of severity is the proposed alternative, which the Court (incorrectly) viewed as affording three opportunity districts out of seven, or 42%. That is a difference of 13 percentage points. A violation any less "severe" would likely not even be a violation. Moreover, the Court did not find—and, indeed, made finding to the contrary—that Sumter County harbored discriminatory animus.

8. The Court's finding that "vastly disproportionate representation would continue for another two years," ECF No. 204, also fails to compare that (incorrectly predicted) result with the alternative. In this regard, it is unclear what representation will look like in the next two years because the Board members serve staggered terms, and Court's injunction is not clear as to

which electoral districts will be involved in the November elections. Brady Decl. ¶9.

9. The Court’s finding that “enjoining this election and moving it to November would cause minimal disruptions” is also incorrect. ECF No. 204 at 6. The changes throw confusion onto school-board members’ terms because it remains unclear what districts will be up for election. Brady Decl. ¶¶5-11. And, for the same reasons, representation for Sumter County’s residents remains unclear because new district lines will overlap with former district lines, so a partial slate of candidates may result in double-representation for some residents and no representation for others. *Id.* In short, the Court’s weighing of equities did not engage the facts of how elections in Sumter County actually work and therefore either under-weighed the injunction’s impact on term lengths or under-weighed its impact on representation.

10. The Court’s decision appears not to weigh the injunction’s impact on candidates. Candidates have already qualified, spent money for filing, researched the constituencies, and launched campaigns. Brady Decl. ¶¶4, 8. These include both black and white candidates and candidates who may obtain the support of minority voters. These efforts may not translate into a new districting scheme because candidates may not reside in the districts where they expected to run, where new elections will occur, or where they previously identified a base of support. Brady Decl. ¶8. The impact of injunctions on candidates is a factor courts weigh in making a determination regarding injunctions. *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003).

11. The Court’s order concedes that responding to the injunction is an administrative nightmare. *See* ECF No. 204 at 7 (ordering that ballots be altered and notices be printed). But it does not weigh those costs and challenges in deciding *whether* to enjoin the election. *See id.* at

6.²

12. The Court’s order, while acknowledging the proximity of the election, fails to take that into account. By comparison, the Supreme Court has stayed election injunctions issued *much further* out from election day than this one. *See, e.g., Whitcomb v. Chavis*, 396 U.S. 1055 and 396 U.S. 1064 (1970) (staying injunction issued weeks before candidate qualification and months before election); *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006).

13. The Court concedes that “voters may be confused by the changed election date,” ECF No. 204 at 6, but gives this minimal weight. By statute, non-partisan general elections occur in May, and that is when voters expect those elections.

14. The Court is also incorrect that placing school board elections on the ballot in November “is unlikely to disrupt the election process.” ECF No. 204 at 6. To the contrary, it means there will be a *second* wave of confusion because the Court has determined to act only by the end of July on imposing a new plan. Brady Decl. ¶¶5-14. Presumably, that plan will not match School Board and County Commissioner districts, so County officials will have to undertake the arduous tasks of reclassifying voters for the new districts. Brady Decl. ¶7. This was based on a schedule Plaintiff proposed, but Plaintiff has no experience running Sumter County elections.

15. Defendant respectfully disagrees that the “Court is acting with proper judicial restraint.” ECF No. 204 at 6. Leaving open the “opportunity” for the General Assembly to enact a new plan *after* this exceptional intrusion into Sumter County elections hardly makes the

² When Defendant received the Court’s Order on Friday, it proceeded with trying to find the most economical route to comply. Defendant’s compliance with the Court’s Order is detailed in the attached declaration. Brady Decl. at ¶3.

intrusion less exceptional. To the contrary, it places the thumb heavily on the scale *against* General Assembly action because further meddling with the Sumter County districting scheme will only impose further burden, cost, and confusion. Brady Decl. ¶¶5-14.

Date: April 6, 2018

Respectfully submitted by:

s/ Katherine L. McKnight
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ATTORNEYS FOR DEFENDANT SUMTER
COUNTY BOARD OF ELECTIONS AND
REGISTRATION

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 6th day of April, 2018.

/s/ Katherine L. McKnight
E. Mark Braden (pro hac vice)
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Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

MATHIS KEARSE WRIGHT, JR.,

Plaintiff,

v.

SUMTER COUNTY BOARD OF
ELECTIONS AND REGISTRATION,

Defendant.

CIVIL ACTION NO. 1:14-CV-42 (WLS)

DECLARATION OF ROBERT BRADY

1. My name is Robert Brady and I am over the age of 18 and competent to testify.
2. I offer this declaration in my official capacity as the Supervisor of Elections in Sumter County, Georgia.
3. Following issuance of the Court's Order on Friday, March 30, 2018, my office, the Sumter County Board of Elections and Registration, has taken the following actions:
 - a. Confirmed that the first date of voting is April 7, 2018. O.C.G.A. § 21-2-384(A)(2). The EBD (Electronically issued) UOCAVA (Ballots to Over Seas Voters) Ballots per Federal Law have to begin to be delivered on April 6, 2018 at midnight for the May 22, 2018 election and have to be delivered or issued by midnight April 7, 2018. The Secretary of State's Office handles issuing and delivering Electronic Ballots to UOCAVA voters, and the Local Authorities handle the issuance and delivery of mail type ballots, as well as Absentee in Person Voting.

- b. Contacted the head of the Center for Election Systems (“CES”), the division of the Secretary of State’s Office that builds ballots. We had not yet received copies of the paper ballots and we sought to determine if changes could still be made. We requested that he move Sumter County’s Ballot creation to the “bottom of the stack” to delay as long as possible and create the opportunity to exclude the Board of Education races from the ballots, not totally rebuilding the Ballots or printing them with information that requires redacting.
- c. Received notification from the CES that the Sumter County Board of Education Election will NOT appear on the May 22, 2018 ballot because of the injunction.
- d. Proofed the re-designed Ballots excluding the School Board Election, and instructed that the ballots be sent to our printer, to be transmitted to my local in house printer to be printed as needed.
- e. Notified various other officials about the injunction including the Director of the Elections Division in the Secretary of State’s office, the General Counsel for the Elections Division, and the Sumter County Board of Elections.
- f. Discussed how to handle the Qualifying Fees, set at \$72 per candidate, that have already been paid by all qualified candidates.
- g. Requested that the names of the no longer qualified School Board candidates be removed from the Secretary of State’s website listing the names of all of the qualified candidates in Sumter County, and requested that I be notified when that was accomplished.

4. As of the date of the Court's March 30 Order, candidates for the Sumter County School Board up for election in the May 2018 elections have already undertaken the following:
 - a. Completed Qualifying Documents and presenting them in a timely fashion before the deadline to cease Qualifying occurred.
 - b. Paid Qualifying Fees of \$72.00.
 - c. Completed Ethics (Georgia Government Transparency & Campaign Finance Commission) mandated paperwork.
 - d. Formed Campaign Committees / volunteer groups.
 - e. Bought signs and/or campaign material.
 - f. Attended Candidate Forums presented by various civic organizations.
 - g. Shaped their platform and communicated it to those they sought to represent.
 - h. Ordered and obtained Voter's Lists from the Secretary of State's Office (costing about \$60).
 - i. Campaigned in their districts, going door-to-door, meeting their potential voters and asking for their support.
 - j. Spent time securing permission to place signs and banners on private property, then having the signs placed, or placing them themselves, on the private property
5. Costs and challenges related to compliance with the Court's injunction are likely to continue into the future because additional complications may arise in administering the

May 2018 elections (such as queries from confused voters) and because the plan has been enjoined without a current replacement. When the replacement is implemented, further costs will arise.

6. The Court's order does not specify what Sumter County must do with the qualifying fees that have been paid already. My office has yet to receive guidance on how to handle this.
7. Once a new plan is implemented, it will be necessary to reassign the voters to their new permanent school board districts from their interim districts. This effort involves anywhere from three-days' work to several weeks non-stop depending on the complexity of the changes.
8. Any redistricting will affect candidates for office, including those who invested time and money planning to run in May 2018. They may end up in districts where they did not anticipate running, they may be paired with incumbents or opponents they did not anticipate, and they may be paired with constituencies they did not anticipate. Among other problems this may create, it may, for example, result in would-be-minority candidates ending up in majority-white districts where the Court concluded they are unlikely to be successful. Or it may result in their ending up in districts where no election will take place.
9. Significant details of the November election remain un-addressed. For example, the School Board elections are staggered, and not all seats were up for election in May 2018. If the Court chooses to run races for all seats in November, it must cut short the terms of Board members. If the Court chooses to run races for only seats already scheduled to be run, there may be portions of the electorate unrepresented because of the mismatch

between current and former district lines. Some residents could be represented by two members, or even three.

10. Additionally, questions of eligibility may arise. Officeholders may be moved out of their districts, raising the question whether they are entitled to continue serving. Their terms may be cut short inadvertently.
11. It also remains unclear whether the current set of candidates will choose to run under the circumstances. The November elections may then involve uncompetitive races or races with no candidates. Or, for example, many of the candidates may end up in a single district, flooding the race there and leaving neighboring districts with no candidates.
12. I understand that the Court has left open the option for the General Assembly to create a new plan in 2019. If it chooses to do so (which is not within my control), all of the above-described problems will occur again.
13. I have administered elections in Sumter County for 5 years. In my experience, even small changes in elections administration can confuse and vex voters, and my office, in turn, bears the brunt of complaints and questions. My office is staffed by two people. In my experience, I will be expected personally to field all questions that come to our office about possible changes to a voter's district. The time leading up to the November elections is a very busy and trying time for my office because of all the demands of the voting season. My office prides itself on the accuracy and completeness of information it dispenses but this takes time and will take substantial time during an already busy time of year.

14. Based on this experience and information, I anticipate further confusion, expense, and difficulty with compliance with the Court's injunction.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on April 6, 2018, in Georgia, United States.


