

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

MATHIS KEARSE WRIGHT, JR.,	:	
	:	
Plaintiff,	:	
	:	CASE NO.: 1:14-CV-42 (WLS)
v.	:	
	:	
SUMTER COUNTY BOARD OF	:	
ELECTIONS AND	:	
REGISTRATION,	:	
	:	
Defendant.	:	
	:	

ORDER

On November 20, 2017, the Court issued an order memorializing the pretrial conference in this action. The order directed the parties to “submit their views on the procedure required for an order implementing a redistricting plan in this action were Plaintiff to prevail” (Doc. 134.) Plaintiff Mathis Kears Wright, Jr. submitted his views first. (Doc. 140.) He argued the Court should give elected officials the first opportunity to remedy an unlawful plan, but that timing or other factors may make doing so impracticable. (*Id.* at 3.) Any new plan put in place, he noted, must not violate Section 2 of the Voting Rights Act. (*Id.* at 4.) Defendant Sumter County Board of Elections and Registration agreed that the legislature should have the first opportunity to remedy an unlawful plan. (Doc. 141 at 3.) If the legislature failed to do so, it noted, the Court would have to put a plan in place which would approximate the plan the legislature would have put in place. (*Id.* at 4.)

The Court then held a bench trial in this matter on December 11–14, 2017. (Docs. 144–146; 148.) Following the trial, the Court ordered the parties to submit a series of post-trial briefs, including proposed remedial plans. (Doc. 147.)

Wright filed his proposed remedial plans on January 22, 2018. (Doc. 174.) Sumter County filed a response on February 5, 2018, (Doc. 176), and Wright then filed a reply on February 14, 2018. (Doc. 180.) In the midst of that briefing, the Court filed an order

explaining that a series of motions filed and hearings requested by the parties would prevent it from determining liability and implementing a remedial plan prior to the scheduled May 2018 elections. (Doc. 179.) It ordered the parties to file brief no later than February 23, 2018, and no longer than five pages, addressing whether the Court should allow the upcoming election to proceed as planned with the current districts or enjoin the election. (Doc. 179.)

Wright responded that, in the event the Court found the current plan to violate Section 2, the election should be enjoined. (Doc. 181 at 1.) He suggested the election be moved to the general election on Tuesday, November 6, 2018. (*Id.* at 3.) Sumter County argued the election should not be moved. (Doc. 182.) It suggested that, even if the Court ruled in Wright's favor on the merits, the elections should go forward as scheduled. (*Id.* at 1.) The Court held a status conference on February 28, 2018. Wright suggested the following timeline for a general election:

- July 23, 2018: Deadline for new district boundaries to be set.
- August 6–10, 2018: Candidate qualifying period.
- August 8, 2018: Approximate time ballots begin being created.
- September 21, 2018: Deadline for ballots to be made available.
- November 6, 2018: General election.

(Doc. 189.) Sumter County did not object to the proposed timeline at the hearing. In a post-hearing order, the Court noted that those dates were reasonable in the event the election was enjoined. (*Id.*) Again, Sumter County did not object to the Court's order.

On March 17, 2018, the Court found that the current school board districts violate Section 2 of the Voting Rights Act. (Doc. 198.) The Court noted that the Georgia General Assembly would be in session through at least Thursday, March 29, 2018. S.R. 631, 154th Gen. Assemb., Reg. Sess. (Ga. 2018). It ordered Sumter County "to confer with Sumter County's legislative delegation and inform th[e] Court no later than Monday, March 26, 2018 whether the General Assembly is inclined to enact a remedial plan before adjourning sine die or, if not, a timeline for when it believes a remedial plan could be adopted." (Doc. 198 at 37.) Sumter County filed a status report on March, 26, 2018. (Doc. 201.) It spoke with Senator Freddie Powell Sims, the representative for Georgia Senate

District 12, who informed counsel that the Assembly would not be able to change the school board districts before it returned to session in January 2019. (*Id.*)

Also on March 26, 2018, the parties filed supplemental briefs regarding remedy proposals. Wright argued that, if the General Assembly failed to enact a remedial plan before adjourning, the Court should enact a remedial plan as an interim remedy and move the election date to November 6, 2018. (Doc. 199 at 1.) Again, Sumter County disagreed. (Doc. 200.) It suggested the Court leave the May 2018 election in place and permit the Assembly to enact a plan in 2019. (*Id.* at 29.) Further, it requested the Court issue a partial final judgment in accordance with Federal Rule of Civil Procedure 54(b) and reserve jurisdiction over remedial issues until after the Assembly has an opportunity to act. (*Id.* at 30.)

On March 30, 2018, Wright filed an Emergency Motion for a Temporary Restraining Order and Preliminary Injunction. (Doc. 202.) He informs the Court that, in the absence of an injunction, absentee ballots may begin being distributed on April 3, 2018. (*Id.* at 4.) Wright requested that Sumter County: “(a) redact the names of school-board candidates by means of a sticker or permanent marker; (b) include a notice with the ballots that the school-board election has been cancelled; or (c) both. Alternatively, the Court could enjoin the defendant from distributing any ballots for a few days while the parties attempt to agree on a suitable procedure for canceling the election.” (Doc. 202 at 8 (citation omitted).)

Later the same day, Sumter County filed a Notice Regarding Briefing. (Doc. 203.) It noted that Wright’s motion was filed the morning of Good Friday and sought nearly-immediate Court action without a response from the County. (*Id.*) It requested until Wednesday, April 4, 2018, to file a response. (*Id.*)

The Court issued an order later that day. (Doc. 204.) It construed Wright’s motion as one for a permanent injunction and issued such an injunction. (*Id.*) The Court issued the order without a response from Sumter County under Middle District of Georgia Local Rule 7.7 but invited Sumter County to file objections by April 6, 2018. (Doc. 204.) Sumter County timely filed its objections (Doc. 205), which the Court now considers.

DISCUSSION

I. Objection One: Sumter County did not have an adequate opportunity to brief the issue of an injunction before the Court issued an order.

II. Objection Two: The opportunity to file objections does not meaningfully cure the lack of a response.

III. Objection Three: The injunction was issued without any factual input from Sumter County.

The Court addresses these three related objections together. It is standard procedure in the Middle District of Georgia that the opposing party receives twenty-one days after the filing of a motion to file its response. M.D. Ga. L.R. 7.2. However, a motion may be considered by the Court immediately after its filing when the Court “may clearly determine from the record before it the relative legal positions of the parties so as to obviate the need for the filing of opposition thereto.” M.D. Ga. L.R. 7.7. The opposing party is not entirely removed from the process, however. It may still file objections to the order within seven days and the Court will entertain those objections “even after entry of an order on the motion” *Id.*

Sumter County argues the Court “cancelled briefing on the preliminary-injunction motion and entertained five pages of briefing on the abstract question of how the May election should proceed prior to the liability finding” (Doc. 205 at 1.) As detailed above, the Court invited briefing on how a remedial plan should be implemented on two separate occasions, (Docs. 134; 179), and Sumter County without invitation shared its views on a third occasion. (Doc. 200.) The Court found and continues to find that these three sets of briefs allowed it to determine Sumter County’s legal position without the need for another round of briefs prior to ruling.

The County complains that the Court relied on Wright’s representation of the facts without any input from Sumter County. (Doc. 205 at 2.) In particular, it asserts that the Court incorrectly found absentee voting could begin April 3, 2018 (*Id.*) In reality, it asserts, voting would not begin until April 7, 2018. (*Id.*) But the Court was not relying solely on Wright’s representation—it was relying on the representation made by both parties in a joint status report that the “[e]arliest day for a registrar to mail an absentee ballot for the May 22 election” was April 3, 2018. (Doc. 111 at 2.) Sumter County cannot now complain that the Court relied on its own incorrect statement of fact to justify the need for a responsive brief.

Next, Sumter County complains that it “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.” (Doc. 205 at 1.) The Court has recognized throughout this case the importance of a timely resolution. (*See* Doc. 108 (requesting a status report with election dates to facilitate the Court’s resolution prior to the May 2018 election); 129 (denying motion to continue trial because Sumter County was aware that “a prompt trial date was necessary because of the upcoming election”); 179 (expressing the Court’s hope that a remedy could be implemented prior to the May 2018 election).) It had intended to issue an order on liability and implement a remedial plan before the May 2018 elections. However, doing so was not an easy task. As the Court previously stated:

The Court has explained in detail the actions taken by both Parties which had the effect of delaying a trial date. (*See* Doc. 108.) Since the trial has concluded, the delays have only continued. Rather than spend its time making findings of fact and conclusions of law, the Court has been forced to address objections to judicially noticed facts that neither party actually contests (Docs. 164; 165; 167), the late disclosure of an expert witness (Doc. 177), accusations of attorney misconduct (Doc. 177-1), two “emergency” motions (Docs. 178; 191), a motion to strike (Doc. 178), the reopening of discovery (Doc. 189), a motion to quash a subpoena (Doc. 187), to conduct three hearings (*see* Doc. 188; 193; 195), and to spend court time on issues the Parties have failed to discuss in good faith with each other (*see, e.g.*, Docs. 185 at 2; 192 at 1 n.1).

(Doc. 197 at 2.) Still, the Court has attempted to act as quickly as possible given the circumstances. The Court solicited the parties’ views on various issues while liability was pending so it could act promptly following its order without having to wait weeks or months for additional rounds of briefing. One of those issues was the procedure for implementing a remedy. Sumter County now implies its views or arguments on implementing a remedy have changed in light of the Court’s decision on liability, (Doc. 205 at 1), but the Court struggles to imagine—and Sumter County does not explain—how that could be true. The Court’s order on liability followed a well-established blueprint for deciding Section 2 cases and none of the findings of fact or conclusions of laws should have come as a surprise to the parties.¹

¹ That is not to say Sumter County agrees with the Court’s ruling on liability, but only that no part of the ruling would have been unforeseeable when the County was presenting its views on implementing remedies.

Given that, the Court relied on Sumter County's previous legal arguments regarding remedy and did not believe it was necessary to await another round of briefing when absentee ballots could be distributed so soon. Further delay risked additional voter confusion and administrative difficulties in stopping the election. If Sumter County had additional arguments to make as to how a remedy should be implemented, it should have raised them earlier.

IV. Objection Four: Setting interim boundaries by July 23, 2018.

Sumter County's fourth objection contains two parts. First, the Court stated in its order that it "will enter an order no later than July 23, 2018 setting interim boundaries for the new Sumter County Board of Education districts." (Doc. 204 at 7.) Sumter County warns that any plan selected by the Court would be the result of inadmissible testimony. (Doc. 205 at 3.) The Court's order insinuated more than was intended: the Court will issue an order concerning the parties' remedial briefs no later than July 23, 2018. The Court is not suggesting it has determined one of Wright's proposed remedial plans will, in fact, be implemented.

Second, Sumter County asserts that it "has useful factual input for the Court regarding due dates and actual operation of elections in the County, and Plaintiff is not a reliable sole-source for that information." (*Id.* at 2–3.) As the Court detailed above, it is relying on dates suggested by Wright that the County did not object to at the hearing and did not object to after the Court indicated it would adopt them. This should not be a real point of contention between the parties. Wright appears to be amenable to deferring to the County's expertise on administering elections: he attempted to subpoena Robert Brady, the County's supervisor of elections, to appear at the status conference where Wright suggested his November election schedule. (Doc. 185-1). If the Court's November election schedule is infeasible or factually inaccurate, Sumter County should confer with Wright and submit a joint proposed set of amendments to the schedule.

V. Objection Five: The Court's finding on the merits.

Sumter County “objects to the Court’s finding on the merits for reasons stated in prior briefing.” Because Sumter County does not specify how the Court erred and what specific arguments it is incorporating, the Court declines to consider this objection.

VI. Objection Six: The ability of the General Assembly to craft a remedial plan.

As the Court noted in its order, “redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt.” *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978). The Georgia General Assembly should have the first opportunity to craft a remedial plan when doing so is “practicable.” *Id.* at 540. The Court found that it was not practicable for the Assembly to create a remedial plan at this stage because it could not do so until 2019. (Doc. 204 at 4.) Sumter County argues it is only impracticable if the Court assumes the 2018 election must take place under the new plan. The Court’s assumption was not in error. “[O]nce a State’s[—or here, school board’s—] legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan.” *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). Sumter County has not shown this is one of those “unusual cases.” The 2018 election, therefore, requires a new plan, and the General Assembly cannot implement a new plan until 2019. Deferring to the Assembly is thus not practicable.

VII. Objection Seven: The severity of the violation.

In fashioning an equitable remedy, the Court is to consider “the severity and nature of the particular constitutional violation” *North Carolina v. Covington*, 137 S. Ct. 1624, 1626 (2017). The Court found that “the infringement of black voters’ right to vote in Sumter County is severe. Despite African Americans constituting 49.5% of the voting age population in Sumter County, they are only able to elect their candidates of choice to 29% of the school board seats.” (Doc. 204 at 6.) Sumter County objects that “[t]he Court’s finding appears to be predicated on a view that Section 2 requires proportional representations, but it does not.” (Doc. 205 at 3.) Section 2 does not require proportionality, but it is a relevant factor in determining whether a Section 2 violation has occurred. (Doc. 198 at 32.)

The Court continues to find the Section 2 violation severe. Beyond the lack of proportionality, the Court reiterates the facts it found compelling in its liability determination:

(1) the incredibly high rates of polarized voting in races that pit an African American candidate against a white candidate; (2) the glaring lack of success for African American candidates running for county-wide office, both historically and recently, despite their plurality in voting-age population; (3) the undisputed history of discrimination in Sumter County and throughout Georgia; (4) the lingering effects of that discrimination today, including the comparatively low income and education levels and high rates of poverty for African Americans in Sumter County; and (5) the low rate of African American turnout in these elections which—in the absence of evidence to the contrary—the Court attributes to the history of discrimination and the socioeconomic disparities.

(Doc. 198 at 33.) Based on these facts, alongside the lack of proportionate representation for African Americans in Sumter County, the Court finds the violation to be severe.

VIII. Objection Eight: Severity must be measured against an alternative, and it is unclear which districts will be on the ballot in November.

IX. Objection Nine: Enjoining the election will cause substantial disruptions because it is not clear which elections will be on the ballot in November.

Sumter County attaches an affidavit from Robert Brady to its objections. (Doc. 205-

1.) Brady notes that:

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 election unrepresented because of the mismatch between current and former district lines. Some residents could be represented by two members, or even three

(Doc. 205-1 at 5–6.) Both the eighth and ninth objections assert that the Court is unable to properly determine if an injunction is proper without considering this issue.

Brady and Sumter County’s concern is a reasonable one. The Court is perplexed by why it is only being raised by Sumter County for the first time now. On January 22, 2018, Wright raised this issue for the first time and proposed a solution to it: treating incumbents

who are not up for election as the representatives for certain districts. (Doc. 174 at 6–7.) Sumter County responded on February 5, 2018, but did not address the issue. (Doc. 176.) On February 9, 2018, the Court ordered the parties to file brief addressing if the May 2018 election should proceed and, “if the election is enjoined, whether there is a set date the Court should reschedule the election for.” (Doc. 179 at 2.) The Court then set a status conference and alerted the parties they should be prepared to discuss “the Court’s invited briefs.” (*Id.*) Wright filed a response to the Court’s order suggesting moving the election to November 2018. (Doc. 181 at 3.) Sumter County responded later the same day and argued only that the election should not be enjoined. (Doc. 182.) At the status conference, Sumter County did not raise any logistical concerns regarding a November election. (*See* Doc. 189.) On March 26, 2018, Sumter County filed a supplemental brief regarding remedial procedures. (Doc. 200.) Again, it did not address Wright’s proposal.

Even now, Sumter County does not address Wright’s proposal. It merely asserts that the issue is one the Court needs resolve, which the Court intends to do in deciding whether to implement a remedial plan. Because Sumter County refrained from discussing the issue in the plethora of briefing already before the Court, the Court declines to consider the issue for the first time now.

X. Objection Ten: Weighing the injunction’s impact on the candidates.

Sumter County notes that candidates for school board have already completed qualifying documents, paid qualifying fees, and taken other steps to begin their campaigns. (*See* Doc. 205-1 at 4.) It asserts that the Court should consider those costs in weighing whether an injunction is appropriate. *See Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003). Assuming that is a factor to be taken into consideration, the Court still finds that an injunction is appropriate. The cost to the candidates is only minimal. The Court enjoined the election nearly two months before it was to take place. Most of the costs in forming committees, attending forums, shaping platforms, and going door-to-door will still be beneficial if new districts are put into place. Sumter County is of course correct that not every candidate would choose to run in a new district, (Doc. 205 at 4), but the history of Sumter County School Board elections reveals that many candidates choose to run year after

year. (*See* Doc. 154-10.) Even if a candidate does not choose to run in a new district, the injunction was issued early enough that many of the costs of the election have yet to be incurred. Balanced against the severe violation of Section 2, the Court finds the injunction to still be appropriate.

XI. Objection Eleven: Weighing the administrative costs of enjoining the election.

Sumter County objects that the Court failed to weigh the administrative costs of enjoining an election in deciding whether an injunction was appropriate. (Doc. 205 at 4.) The objection is moot. The costs of enjoining the election have already been spent, (Doc. 205-1 at 2–3), and reversing course now would only create additional costs.

XII. Objection Twelve: Proximity to the election.

The Court enjoined the election fifty-four days before the election was to take place. Sumter County argues the Court failed to take the proximity into account, noting that the Supreme Court has stayed election injunctions that were issued much further out than this one. (Doc. 205 at 5.) The Court finds the cases cited by the County distinguishable. *Whitcomb v. Chavis*, 396 U.S. 1055 and 1064 (1970), was a one-sentence and two-sentence order by the Supreme Court granting a stay of the district court’s injunction for reasons unknown and unknowable to this Court. The mere fact that an injunction of an election issued months before the election date may be inappropriate in some cases says nothing of this case. Given the summary fashion of the orders, the Court cannot know if the proximity to the election played a role in the Supreme Court’s decision, and if it did, which way it weighed.

Purcell v. Gonzalez, 549 U.S. 1 (2006), is even more tangentially related to this case. There, a motions panel of the United States Court of Appeals for the Ninth Circuit overturned the district court’s decision to not enjoin a voter identification law (rather than the election itself). *Id.* at 3. The Supreme Court then vacated the Ninth Circuit’s order, finding that it had failed “to give deference to the discretion of the District Court.” *Id.* at 5. The Supreme Court spoke of the “imminence of the election,” but only in relation to its own order; the Court issued the order two-and-a-half weeks before the mid-term election. *Id.* The

order does not discuss the timing of the district court's order and whether the timing weighed against an injunction.

Accordingly, the Court continues to find that a school board election scheduled fifty-four days away is not "imminent" such that an injunction would be categorically inappropriate.

XIII. Objection Thirteen: Voter confusion.

The Court noted in issuing the injunction that "that voters may be confused by the changed election date. However, the school board held elections in November as recently as 2010. (Doc. 153-61.) A November school board election will not be an unusual sight for Sumter County voters." (Doc. 204 at 6.) Sumter County counters that, "By statute, non-partisan general elections occur in May, and this is when voters expect those elections." (Doc. 205 at 5.) The mere fact that the State proclaims an event to be one way now does not mean citizens lose all sense of how it used to be. *Cf.* George Orwell, *Nineteen Eighty-four*, Part 1, Chapter 3 (1949) ("Oceania was at war with Eurasia: therefore Oceania had always been at war with Eurasia."). The Court maintains that, although school board elections are now scheduled in May, voter confusion will be mitigated given that school board elections so recently took place in November.

XIV. Objection Fourteen: The Court's timeline.

Sumter County suggests moving the elections to November will disrupt the election process "because the Court has determined to act only by the end of July on imposing a new plan. . . . This was based on a schedule Plaintiff proposed, but Plaintiff has no experience running Sumter County elections." (Doc. 205 at 5.) As recounted above, the Court's timeline is based on a schedule Plaintiff proposed *that Sumter County did not object to*. If the Court's timeline is infeasible, Sumter County should confer with Wright and submit a joint proposed set of amendments to the schedule.

XV. Objection Fifteen: Judicial restraint.

Finally, Sumter County asserts that the Court failed to act with judicial restraint when it enjoined the election before the Georgia General Assembly had an opportunity to enact a

remedial plan. (Doc. 205 at 5–6.) The Court reiterates and readopts the reasoning from its previous order:

[T]he Court is acting with proper judicial restraint. It attempted to defer to the General Assembly to craft a remedy for the 2018 elections. (Docs. 198; 201.) It is only after learning that the Assembly would be unable to act that the Court considered an injunction. Any injunction and specially set election will be for the 2018 election only. The Court will again defer to the Assembly when it returns to session in 2019.

(Doc. 204 at 6.) The Court finds that it would be an undue burden on the rights of affected voters if the 2018 election was permitted to proceed. It would only further complicate and make more difficult implementing an appropriate remedy, whether selected by the Court or the Georgia General Assembly.

CONCLUSION

Before concluding, the Court expresses its deep gratitude to Robert Brady and his staff for quickly and efficiently implementing the Court’s injunction regardless of their personal and professional opinions on the order. While Wright suggested the County would have to resort to makeshift fixes to stop the election, Mr. Brady and his staff were able to intervene in time to remove the Board of Education races from the ballot entirely. (Doc. 205-1 at 3.) The change satisfies the requirement in the injunction of “another method by which [Sumter County] intends to inform voters in the May 22, 2018 election that the races for the Sumter County Board of Education has been enjoined.” (Doc. 204 at 7.) The Court recognizes the small number of staff in Mr. Brady’s office and the additional burdens this case and the Court’s orders have placed on them in an already busy election season. (*See* Doc. 205-1 at 6.) The Court appreciates their assistance, and the parties’ assistance, in “handl[ing] a difficult case in a difficult procedural and practical posture.” (Doc 205 at 2 n.1.)

For the reasons stated herein, Sumter County’s objections are **OVERRULED**. The injunction outlined in docket entry 204 remains in effect.

SO ORDERED, this 11th day of April 2018.

/s/ W. Louis Sands _____

W. LOUIS SANDS, SR. JUDGE
UNITED STATES DISTRICT COURT