

UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

**Mathis Kearse Wright Jr.,**

Plaintiff-Appellee,

vs.

**Sumter County Board of  
Elections and Registration,**

Defendant-Appellant.

Appeal No. 18-11510-H

**Response in Opposition  
to the Defendant-  
Appellant's Motion to  
Expedite Appeal**

**and**

**Motion to Dismiss**

**Wright v. Sumter County Bd. of Elections and Registration  
18-11510-H**

**Certificate of Interested Persons  
and  
Corporate Disclosure Statement**

Pursuant to Eleventh Circuit Rule 26.1, 26.1-2, and 26.1-3,  
counsel for the plaintiff-appellee certifies that the following persons and  
entities have or may have an interest in the outcome of this case:

ACLU Foundation, Inc.

ACLU Foundation of Georgia, Inc.

Baker & Hostetler, LLP

Braden, E. Mark

Brady, Robert

Khondoker, Aklima

McDonald, M. Laughlin

McKnight, Katherine L.

Raile, Richard R.

Sands, W. Louis

Sells, Bryan L.

Stanley, Trevor

C-1 of 2

**Wright v. Sumter County Bd. of Elections and Registration  
18-11510-H**

**Certificate of Interested Persons  
and  
Corporate Disclosure Statement  
(continued)**

Sumter County Board of Elections and Registration

The Law Office of Bryan L. Sells, LLC

There is no nongovernmental corporate party to this proceeding.

**/s/ Bryan L. Sells**

Bryan L. Sells  
Attorney for Mathis Kearse Wright, Jr.,  
Plaintiff-Appellee  
Dated: April 18, 2018

Plaintiff-appellee Mathis Kearse Wright, Jr., respectfully submits this response in opposition to Sumter County's motion to expedite this appeal. As explained below, Wright opposes the motion because this Court lacks jurisdiction over the appeal and because, even if the Court did have jurisdiction, there is currently no good cause to expedite the Court's consideration of the appeal.

### **Background**

This is a Section 2 challenge to the method of electing members of the Board of Education in Sumter County, Georgia. The plaintiff-appellee, Mathis Kearse Wright, Jr., is an African-American resident and registered voter in Sumter County. The defendant-appellant is the Sumter County Board of Elections and Registration ("Sumter County" or the "County"), which is responsible for conducting elections for members of the Sumter County Board of Education. Act No. 87, 2001 Ga. Laws 3865.

Wright filed his complaint and motion for a preliminary injunction on March 7, 2014. (ECF 1.)\* On April 3, 2014, the district court denied Wright's motion for a preliminary injunction. (ECF 17.) On July 14,

---

\* All ECF citations refer to documents filed in the district court.

2015, the court granted the County's motion for summary judgment and granted judgment in its favor. (ECF 62 and 63.)

A year later, this Court reversed. (ECF 71.) The Court concluded, among other things, that the district court had improperly weighed district elections held under Sumter County's prior election plan more heavily than the 2014 at-large elections held under the current plan in which the minority-preferred candidates did not win. (ECF 71 at 6.) The Court also held that the district court had improperly ignored the possibility that the current plan's majority-vote requirement may add to the dilutive effect of the at-large elections. (ECF 71 at 5.)

The district court subsequently reopened discovery at the parties' request. (ECF 76.)

In a scheduling order entered on December 20, 2016 (ECF 85), the district court instructed the parties "tentatively" to be ready for trial to begin on Monday, June 5, 2017. Following a series of discovery extensions caused by the ill health of one of the defendant's attorneys, the district court subsequently indicated that the case would not be ready for trial in June, but it gave no other trial date. (ECF 99.) The court later assured the parties that "upon review of its trial calendar,"

permitting the defendant to file an untimely discovery motion would not push the trial date beyond the next school-board election. (ECF 102.)

On June 20, 2017, Wright moved the court for a status conference to discuss scheduling the trial. (ECF 107.) The court denied that motion but ordered the parties to submit a written status report identifying the relevant dates in the election calendar for the 2018 school-board elections. (ECF 108.) The parties filed their joint report on July 13, indicating, among other things, that the qualifying period for school-board candidates runs from March 5, 2018, at 9:00 a.m. until March 9, 2018, at noon. (ECF 111.)

On September 21, 2017, the district court set the case for trial beginning on December 11, 2017, “so that a judgment may be issued prior to the 2018 school board general election.” (ECF 114 at 2.)

On October 26, 2017, the district court granted partial summary judgment in Wright’s favor. (ECF 125.) Specifically, the court concluded that the African American community in Sumter County is sufficiently large and geographically compact to constitute a majority in an additional single-member district, satisfying the first *Gingles* factor. (ECF 125 at 20.) The court also concluded the following material facts

are undisputed and will be treated as established in the case: (1) Sumter County uses a majority-vote requirement; (2) no African American has been elected to an at-large seat on the school board under the challenged plan; and (3) no African Americans have been elected in school board districts except where African Americans constitute a majority of the voting-age population. (*Id.*)

The district court held a trial on the merits over four days in December 2017 and allowed the parties to submit evidence, testimony, and written arguments. (ECF 144, 145, 146, 148, 161, 162, and 163.) At the conclusion of trial, the court set a post-trial briefing schedule that was expected to end in early February, thus giving the court time to resolve this case on the merits before qualifying for the 2018 school-board elections would begin. (ECF 147; Trial Tr. vol. 4, 145-153.)

On February 9, however, the district court advised the parties that it no longer believed that it could rule on the merits and, if necessary, implement a remedial plan before March 5. (ECF 179.) The court called a status conference to discuss, among other things, “whether the Court should allow the May 2018 election to proceed as planned with the current districts or enjoin the election.” (*Id.* at 2.)

Wright subpoenaed the county's election supervisor, Robert A. Brady, to appear at the conference in case his testimony was needed regarding election administration, but the County successfully moved to have the subpoena quashed. (ECF 185, 186, and 187.)

Following the status conference, the district court issued an order inviting Wright "to file a motion for injunctive relief if he believes such a motion is needed." (ECF 189.) Wright filed a motion for a preliminary injunction shortly thereafter. (ECF 190.)

On March 17, 2018, before Wright's motion had been fully briefed, the Court issued a 38-page order finding, "based on the totality of the circumstances, that the at-large districts of the Sumter County Board of Education dilute African-American voting strength in violation of Section 2 of the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10301." (ECF 198 at 37.) The district court did not adopt a remedy in its order but noted instead that this case "now moves to a remedial stage." (*Id.*) The court ordered the defendant to "to confer with Sumter County's legislative delegation and inform that Court ...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.” (*Id.*) In light of its order, the district court denied Wright’s motion for a preliminary injunction without prejudice. (*Id.* at 38.)

On Monday, March 26, the County filed a status report in which it indicated that the legislature would not adopt a remedy in the current legislative session and that the General Assembly could take up the matter at its next legislative session, which is scheduled to begin in January 2019. (ECF 201.) Three days later, in the middle of the night on Thursday, March 29, the General Assembly adjourned *sine die* without adopting a remedy.

The next morning, Wright filed an emergency motion for a temporary restraining order and preliminary injunction asking the district court to enjoin the County from conducting the school-board elections scheduled for May 22, 2018. (ECF 202.) Later that same day, the district court issued an order granting the motion and enjoining the May 22 election. (ECF 204.) The court indicated that it would enter a further order by July 23 setting forth an interim remedial plan for future school-board elections. (*Id.* at 7.) The court also invited the County to file any objections to its order no later than April 6, 2018. (*Id.*)

On April 6, Sumter County filed various objections to the district court's order enjoining the election. (ECF 205.) Accompanying the objections was a declaration from the county's election supervisor indicating, among other things, that the school-board election had been removed from the county's ballots and that voting for other contests on the ballot in the May 22 election would begin on April 7. (ECF 205-1 ¶ 3.)

Five days later, the district court entered a twelve-page order considering and rejecting each of the County's objections. (ECF 206.) The County filed its notice of appeal on the same day. (ECF 207.)

### **Argument**

#### **1. The Court lacks jurisdiction over this appeal.**

The May 22 school-board election has been canceled. It has been removed from all ballots, and voting for other races in the May 22 election began almost two weeks ago. The terms of the district court's injunction canceling the election have been satisfied. Sumter County does not ask this Court to un-cancel the election, nor could the Court do so at this point. As a result, this appeal is moot, and the Court lacks jurisdiction to hear it.

The Court of Appeals has statutory jurisdiction to review a district court's interlocutory order granting an injunction. *See* 28 U.S.C. § 1292(a)(1). Indeed, that is the sole basis on which the County invokes the Court's jurisdiction. But the Court loses its jurisdiction if an interlocutory appeal no longer presents a live case or controversy. In those circumstances, an appeal is moot, and the Court is without subject-matter jurisdiction to reach the merits of the appeal. *See RES-GA Cobblestone, LLC v. Blake Constr. & Dev., LLC*, 718 F.3d 1308, 1314 (11th Cir. 2013).

In the case of an interlocutory appeal taken from the grant of an injunction, the appeal is moot "where the effective time period of the injunction has passed." *Brooks v. Ga. State Bd. of Elections*, 59 F.3d 1114, 1119 (11th Cir. 1995). It is quite common for interlocutory appeals to become moot in election cases due to the ordinary passage of time. *See, e.g., Fleming v. Gutierrez*, 785 F.3d 442, 445-47 (10th Cir. 2015) (collecting cases).

In this case, a decision affirming or reversing the cancelation of the May 22 election would not have any present-day, real-world effect on the parties because the school-board election has already been

canceled. Ballots have gone out without the school-board contest on it. Votes have been cast. It is simply too late to un-cancel it. The County could have sought a stay of the injunction in the eight days between its issuance and the date when voting began. But the County chose not to do so, and, as a result of that choice and the passage of time, this appeal has now become moot.

The absence of jurisdiction over this particular appeal does not mean, of course, that the Court of Appeals will never have the opportunity to review the merits of the district court's order on liability. (That order is the real focus of the County's arguments in this appeal anyway.) That order may well come before the Court in due course if one of the parties appeals the yet-to-be-issued remedial plan or a yet-to-be issued final judgment. Until that happens, however, this Court lacks jurisdiction to reach that order.

And, finally, because the Court lacks jurisdiction over this appeal, it should not grant expedited briefing. Instead, it should dismiss the appeal altogether.

**2. There is no good cause to expedite this appeal.**

Even if this Court had jurisdiction to hear this interlocutory appeal, expediting it would be a bad idea because the case, at this point, remains a moving target. The district court has indicated that it intends to issue at least one further remedial order before July 23. (ECF 204 at 7.) The district court has not asked for further briefing, and that order could come at any time. If that order comes down before this appeal is resolved, then additional briefing and perhaps re-argument could become necessary. That is just a waste of resources. It would be far better to brief and hear this appeal once, after the district court issues its remedial plan. Keeping this appeal on the usual briefing schedule—or perhaps even an extended one—is the more efficient course.

The County offers a number of arguments to establish good cause to expedite the appeal, and none of them have any merit. Some of them were addressed by the district court when it overruled the County's objections to its order. (ECF 206.)

For example, the County's primary argument is that, if this Court does not resolve the appeal before the end of July, the November election "will either (a) unseat three sitting Board members whose

terms are not scheduled to end until 2020; or (b) create portions of the electorate who are unrepresented; or (c) create portions of the electorate represented by more than one person.” (Mot. To Expedite 12, Apr. 13, 2018.) But, as the district court noted, Wright raised these issues in January and proposed a solution for them. (ECF 206 at 8-9.) The County did not address the issues in its briefing on the proposed remedial plans and only raised them for the first time after the district court issued its injunction canceling the election. (*Id.* at 9.) The district court is aware that any remedial plan will have to address these issues and the court “intends to do [so] in deciding whether to implement a remedial plan.” (*Id.*) Expedited briefing will therefore do nothing to address those issues. Those issues will be resolved when the district court issues its remedial plan.

The County also claims that good cause exists to expedite this appeal because the injunction was issued without its input. That claim is simply not true, and the district court discussed it at some length when it overruled the County’s objections. (ECF 206 at 4-6.) But even if it were true, it would not constitute good cause to expedite the briefing schedule. It is an argument that goes to the merits of the appeal.

The County also claims that good cause exists to expedite this appeal because only an expedited appeal can provide meaningful relief. If true, that might constitute good cause. But the County fails to explain why a decision reversing the district court's remedial plan or final judgment in April 2019, for example, would not give it any relief. The 2020 school-board election would presumably proceed under the now-enjoined plan, and there would be plenty of time for the district court to take any other action necessary to provide relief before then.

The County's arguments that there is a circuit split and that this case presents a clear question of law likewise have no merit. There is no circuit split, and this case is utterly fact-bound—as this Court's prior opinion demonstrates. But more importantly, these arguments go to the merits of the underlying appeal and do not constitute good cause for expedited briefing. Indeed, if there were a circuit split or a difficult question of law, this Court would want to take its time to consider those important issues.

### **Conclusion**

This Court should deny the defendant's motion to expedite and dismiss the appeal.

Dated: April 18, 2018

**/s/ Bryan L. Sells**

Bryan L. Sells  
Georgia Bar No. 635562  
Attorney for the Plaintiffs  
The Law Office of Bryan L. Sells, LLC  
PO Box 5493  
Atlanta, Georgia 31107-0493  
Telephone: (404) 480-4212  
Email: bryan@bryansellsllaw.com

M. Laughlin McDonald  
American Civil Liberties Union  
Foundation, Inc.  
2700 International Tower  
229 Peachtree Street, N.E.  
Atlanta, Georgia 30303  
Telephone: (404) 500-1235  
lmcdonald@aclu.org

Aklima Khondoker  
American Civil Liberties Union  
Foundation of Georgia  
P.O. Box 77208  
Atlanta, Georgia 33057  
Telephone: (770) 303-8111  
akhondoker@acluga.org

Attorneys for  
Mathis Kearse Wright, Jr.,  
Plaintiff-Appellee

### **Certificate of Compliance**

This document complies with the type-volume limit of Rule 27(d)(2)(A) of the Federal Rules of Appellate Procedure because, excluding the cover page, tables, certificates, and signature blocks, this document contains 2,414 words. This document complies with the typeface and type-style requirements of Local Rule 27-1(a)(10) because this document has been prepared in a proportionally spaced typeface using version 16.12 of Microsoft Word for Mac in 14-point Century Schoolbook font.

**/s/ Bryan L. Sells**

Bryan L. Sells  
Attorney for Mathis Kearse Wright, Jr.,  
Plaintiff-Appellee  
Dated: April 18, 2018

### **Certificate of Service**

I hereby certify that on April 18, 2018, I electronically filed the foregoing RESPONSE IN OPPOSITION TO THE DEFENDANT-APPELLANT'S MOTION TO EXPEDITE APPEAL AND MOTION TO DISMISS with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Bryan L. Sells: [bryan@bryansellsllaw.com](mailto:bryan@bryansellsllaw.com)  
M. Laughlin McDonald: [lmcdonald@aclu.org](mailto:lmcdonald@aclu.org)  
Aklima Khondoker: [akhondoker@acluga.org](mailto:akhondoker@acluga.org)  
Katherine L. McKnight: [kmcknight@bakerlaw.com](mailto:kmcknight@bakerlaw.com)

**/s/ Bryan L. Sells**

Bryan L. Sells  
Attorney for Mathis Kearse Wright, Jr.,  
Plaintiff-Appellee  
Dated: April 18, 2011