No. 18-11510

In the United States Court of Appeals
for the Eleventh Circuit

MATHIS WRIGHT, JR.,

Plaintiff-Appellee

v.

SUMTER COUNTY BOARD OF ELECTIONS AND REGISTRATION,

Defendant-Appellant.

On Appeal from the United States District Court
For the Middle District of Georgia
No. 1:14-cv-00042
The Honorable W. Louis Sands

Opposition to Renewed Motion To Dismiss

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Rule 26.1-1 of this Court, Appellant certifies that the below listed persons and entities have interests in the outcome of this case:

Trial Judge:

Sands, W. Louis

Attorneys for Plaintiff-Appellee:

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Plaintiff:

Wright, Mathis Kearse, Jr.

Defendant:

Sumter County Board of Elections and Registration

Introduction

This appeal is no more moot today than it was on May 9 when this Court denied the Plaintiff's first motion to dismiss this appeal. The district court has ordered the Defendant, the Sumter County Board of Elections and Registration ("Sumter County"), to conduct an election in November 2018. That is a live court order punishable by contempt, and Sumter County can obtain relief from that order in this appeal. For that reason alone, this case is not moot.

Plaintiff's argument also fails for the more fundamental reason that it ignores the provisional nature of the district court's amendment of its injunction. The district court's initial injunction had the effect of enjoining future elections under the redistricting map that the court found violates Voting Rights Act § 2. Because Sumter County appealed that injunction—as Congress plainly allows, *see* 28 U.S.C. § 1292(a)(1)—the district court concluded that it lacks jurisdiction *during the pendency of this appeal* to issue a remedial plan, and it therefore concluded that elections may proceed under the old map *during the pendency of this appeal*. But the amendment has no force beyond this appeal. In other words, the order is the functional equivalent of a stay pending appeal. Such a stay does not render an appeal moot for the obvious reason that, once

the appeal is over, the stayed injunction kicks back into force. The Court plainly has the ability to relieve an appellant of that injury.

Accordingly, the Court should deny the Plaintiff's second effort to evade this Court's review.

Background

On March 17, 2018, the district court found that Sumter County's school-board districting scheme violates the Voting Rights Act. District Court Docket (Dkt.) 198. On March 30, the court issued what it styled as a permanent injunction; it expressly declined to make it a preliminary injunction. Dkt. 204. The injunction prohibited the May school board elections and instituted an alternative election schedule the court adopted in a prior order, which, among other things, mandates a special election on November 6. *Id.* at 7. The court stated that it would issue a remedial districting plan by July 23. *Id.*

On April 11, Sumter County filed a notice of appeal.

On April 18, the Plaintiff moved to dismiss this appeal, asserting that it is moot. He argued that, because Sumter County did not seek a stay of the order barring the May election, this Court would be unable to provide further relief from the injunction. The Plaintiff indicated that, in his view, had Sumter County obtained a stay, the case would not be moot. *See* Stay Motion, filed

4/18/2018, at 12 (arguing that "the County chose not to" seek a stay, "and, as a result of that choice and the passage of time, this appeal has now become moot").

On April 20, Sumter County responded that the district court's order also mandated that Sumter County conduct an election in November—an event that is yet to occur—has the functional effect of enjoining future elections under the plan—all events that have yet to occur—and triggers Plaintiff's right to attorneys' fees—which have yet to be assessed or paid. All of these *future* actions can be impacted or obviated by a favorable judgment from this Court.

On May 9, a panel of this Court (Tjoflat, Marcus, J. Pryor, JJ.) unanimously denied the Plaintiff's motion in a one-sentence order.

On June 21, the district court issued a new order amending its judgment. Dkt. 214. It concluded that the notice of appeal deprived it of jurisdiction to issue a remedial plan and that it lacks authority under Federal Rule of Civil Procedure 62(c) to add to its injunction by ordering new district lines. That is so, the court said, because Rule 62(c) only authorizes a district court to preserve the status quo, not alter it, while an appeal is pending, and drawing new district lines is a status quo altering, not preserving, measure. Accordingly, the court modified its injunction, removed its self-imposed July 23 deadline to redraw the lines, stated that "[c]ompliance with the Court's March 30, 2018

injunction requires only that the Sumter County Board of Education elections previously scheduled for May 22, 2018 be held on November 6, 2018," and provided that "[a] series of reset deadlines will be ordered upon remand from the Court of Appeals, if appropriate." *Id.* at 6.

The Plaintiff responded on June 22 with this renewed motion to dismiss.

Subsequently, the Plaintiff filed a separate motion in the district court asking it to reconsider its June 21 order. Dkt. 215. That motion is not yet fully briefed.

Argument

A case "becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (quotations omitted). This is a requirement of *complete* inability to render relief; if the Court can afford "*some* form of meaningful relief," the case remains live. *Church of Scientology of California v. United States*, 506 U.S. 9, 13 (1992) (emphasis in original).

For example, in *Church of Scientology*, the appealing party challenged IRS seizure of documents and materials. Although the Supreme Court could not "return the parties to the *status quo ante*" because it could not purge the knowledge of the IRS officers who reviewed the materials, it could order return of the documents and thereby give "*some*" relief. *Id.* Similarly, in *Chafin*, the

Supreme Court found that an international child-custody battle was not moot, even though (1) physical custody of the child in question had been secured in another country and (2) the country had any number of tools at its disposal to block the return of the child to the United States, even if the petitioner won the appeal. Notwithstanding all of that, a federal-court order had a "small" chance of returning the child to the United States, and that "is enough to save this case from mootness." 568 U.S. at 176. What mattered was that the parties' interests were not "simply a matter of academic debate." *Id.*

Here, as in those cases, Sumter County "is asking for typical appellate relief: that the Court of Appeals reverse the District Court and that the District Court undo what it has done." *Chafin*, 568 U.S. at 173. What the court below "has done" is, in a word, declare the Sumter County School Board unlawful and subject Sumter County School Board elections to federal-court oversight, including by enjoining an election in May and ordering one in November. And, as in those cases, the Plaintiff is confusedly asserting that, because this Court cannot completely reverse what the lower court has done, the case is moot. And, as in those cases, that rule is wrong; the Court can afford "some" relief, and that "is enough to save this case from mootness." *Chafin*, 568 U.S. at 176.

Most obviously, Sumter County remains subject to a court-ordered obligation to hold an election on November 8, 2018. Were that not clear enough from the district court's original injunction, its June 21 order—which the Plaintiff claims as the sole basis for his renewed mootness argument—states expressly that it "requires…that the Sumter County Board of Education elections…be held on November 6." No Georgia statute or state policy sets that date; that is the work of the court alone. The dispute remains live and not "academic" on that basis alone.

A second, independent reason this appeal is not moot is that the district court's June 21 order is provisional. The court determined that, during this appeal, Sumter County may use the old plan it found unlawful. But that does not "undo what" the district court "has done." *Chafin*, 568 U.S. at 173. It does not mean Sumter County can use the plan *after* the appeal ends. But the entire point of the appeal is to allow Sumter County to use the plan *after* the appeal ends. So the district court's order does absolutely nothing to give Sumter County the relief it asks from this Court. It therefore does nothing to moot this appeal.

Instead, the district court has merely placed Sumter County in the position it would have been in had it obtained a stay—actually, a partial stay—of its injunction. According to the Supreme Court's recent decision in *Abbott v.*

Perez, No. 17-586, 2018 WL 3096311, at *9–13 (U.S. June 25, 2018), a district-court order that a redistricting plan violates the Voting Rights Act and orders a remedial districting map has "the practical effect of enjoining use of the current plan[]" for future elections and is therefore immediately appealable under the appropriate statute granting appellate jurisdiction over inunctions.[1] Accordingly, the district court's order mandating new election dates and a new map had the practical effect of barring Sumter County from using the plan in all future elections, and this Court was right the first time not to dismiss this appeal from that order.

But provisional relief suspending an order to redraw district lines on a temporary basis does not deprive the appeals court of jurisdiction it would otherwise have because it is just that—*provisional*. That much is plain from the fact that, in *Abbott*, the U.S. Supreme Court granted a stay from the injunction that formed the basis of appellate jurisdiction, *see Abbott v. Perez*, 138 S. Ct. 49 (Sept. 12, 2017), so during the appeal, there was no live obligation to draw new lines. Under the Plaintiff's view of mootness, that should have mooted the case, because it meant elections could proceed under the challenged plan during the appeal. That no one in a hotly contested 5–4 decision thought to

[1] That *Abbott* concerned the right of appeal under 28 U.S.C. § 1253 and this case is under 28 U.S.C. § 1292(a)(1) is irrelevant because *Abbott* confirmed that the same standard applies under each statute. 2018 WL 3096311, *9-11.

argue that point illustrates how far afield it is from law and logic. In fact, the Plaintiff effectively conceded in his first round of briefing that *if* Sumter County had obtained a stay, the case would *not* be moot. Now that Sumter County has obtained what is in effect a stay, he cites it as the basis for the case's becoming moot. This makes no sense.

The Plaintiff's view is further illogical in that it posits a circular operation of appellate jurisdiction: a district-court injunction inflicting the appellant's injury becomes moot as soon as the case arrives at the court with ability to cure that injury (whether because the district court loses jurisdiction or affords a stay). And then, as soon as the case is dismissed, the injury is revived. That is the case here, since the district court could not have been clearer that, if Sumter County loses the appeal, it will schedule a "series of reset deadlines," thereby rendering the challenged plan unusable in future elections under the rule in *Abbott*. And, with that, the appeals jurisdiction *Abbott* identified will again be triggered, and, as soon as it is invoked with a new notice of appeal, the case will again be moot under the Plaintiff's theory. This absurd view is obviously not the law, and the Court should not adopt it.

Conclusion

For these reasons, and those stated in Sumter County's response to the Plaintiff's initial stay motion, the Court should deny his renewed motion.

Dated: June 29, 2018

Respectfully submitted,

/s/ E. Mark Braden

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing will be filed electronically with the Court by using the CM/ECF system on the 29th day of June, 2018. I further certify that the foregoing document will be served on all those parties or their counsel of record through the CM/ECF system.

Dated: June 29, 2018

Respectfully submitted,

/s/ E. Mark Braden

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