

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 Nos.

18-11510 and 18-13510

**Plaintiff-Appellee's Reply
in Support of His Motion
for a Limited Remand**

Sumter County opposes this motion and clearly wants the remedial phase of this case to remain on hold until after this Court rules on the merits of its interlocutory appeals. Its opposition is based on a fundamental misunderstanding of procedure and two disagreements about timing.

First, procedure. The County suggests that granting Wright's motion for a limited remand would delay this Court's consideration of the merits of this appeal by cancelling oral argument. (Appellant's Opp. to Appellee's Mot. for Limited Remand ("Appellant's Br.") at 9.) It

would not. Under Rule 12.1(b), this Court would retain jurisdiction during a limited remand “unless it expressly dismisses the appeal.” Fed. R. App. P. 12.1(b). This Court did not dismiss the appeals when it issued a limited remand last year, and Wright has not asked the Court to dismiss the appeals during a limited remand in this motion. This Court would therefore have jurisdiction to proceed with oral argument as scheduled in July even if it grants Wright’s motion. Wright’s motion does not seek or require any delay in this Court’s consideration of the pending appeals.

Second, timing. Here, the County makes two points. First, the County argues that a limited remand is not necessary because all elections for the school board are currently on hold. (Appellant’s Br. at 9-10). It is certainly true that all school-board elections in Sumter County are currently on hold. But, as this Court recognized when it remanded the case last year, that is not a good thing. Elections pending appeal should not be allowed to proceed under an unlawful plan, as the County wants, but they *should* proceed as scheduled under a lawful plan if time permits the district court to devise an interim plan. Now that the Georgia General Assembly has adjourned *sine die* without

adopting a remedy for the second time following the district court's finding of liability, a remand is again appropriate so that the district court can ensure that an interim election plan is available in time for the regularly-scheduled school-board election to be held in May 2020.

The County also suggests that, even without a remand, there is "ample time" to resolve these appeals and to have a remedy in place before the 2020 election cycle begins next March. (Appellant's Br. at 10.) The County's argument first posits that this Court will resolve the appeals on the merits by October. (*Id.* at 11.) Then, the County says that "all that remains is for the district court to review the evidence already adduced and arguments already filed and issue its decision." (*Id.* at 12.) Wright respectfully disagrees.

This Court may or may not decide this case within three months. It took more than four months in the prior appeal (15-13628), which was a short unpublished *per curiam* decision reversing summary judgment. Although the Eleventh Circuit is the third-busiest circuit in the country according to statistics compiled by the Administrative Office of the U.S. Courts, in the undersigned counsel's experience it is

not unreasonable to anticipate that the Court will rule in three to six months.

But the district court is a different story. Briefing on the parties' remedial plans had been completed for nearly three months when the district court decided last June that it lacked jurisdiction to continue. (ECF 214.) Later, in explaining why it could not implement a remedial plan on limited remand last August, the district court indicated that it intends to draw its own boundaries for a remedial plan and that doing so could take a considerable amount of time. (ECF 238 at 5-6.) Sumter County greatly underestimates what remains for the district court to do.

Indeed, the process of devising a court-drawn districting plan usually involves hiring a special master. The district court then devises instructions for the special master. The special master then draws one or more plans. The parties typically then have an opportunity to raise objections to the special master's plans. And the district court then addresses the parties' objections before implementing any remedy. That is not a speedy process. It can happen quickly when circumstances demand it, but the better and wiser course of action

would be to let the district court begin that process now. That is the only realistic way to ensure that an interim remedy will be available by next March. In light of the district court's deliberate pace so far and its clear indication that a remedy will take some time, the County's wait-and-see approach is far riskier and more likely to result in another cancelled election.

Dated: April 30, 2019

/s/ Bryan L. Sells

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/s/ Bryan L. Sells

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Dated: April 30, 2019

Certificate of Service

I hereby certify that on April 30, 2019, I electronically filed the foregoing **Plaintiff-Appellee's Reply in Support of his Motion for a Limited Remand** 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:

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