

Nos. 18-11510, 18-13510, 20-10394

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

Motion To Consolidate and Expedite and for Other Relief

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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 Kears, Jr.

Defendant:

Sumter County Board of Elections and Registration

Motion To Consolidate and Expedite and for Other Relief

These three appeals are from the same district-court proceeding. That proceeding adjudicated a Voting Rights Act challenge to the districting plan governing the school board in Sumter County, Georgia. The appeals have been docketed separately because separate appealable injunctions have been issued in that case at different times. First, the district court enjoined the May 2018 election from occurring under the legislatively enacted districting plan (leading to case No. 18-11510). Second, after a limited-purpose remand from this Court, the district court enjoined the County from conducting the November 2018 election under the districting plan (leading to case No. 18-13510). And third, after another limited-purpose remand from this Court, the district court ordered the County to use a new remedial map in future elections and entered final judgment against the County (leading to case No. 20-10394). Now, the district-court proceeding has reached a final injunction and judgment, and that judgment supersedes the interlocutory injunctions issued in this case.

The County moves for the following forms of relief.

1. The cases should be consolidated. Two of the cases (Nos. 18-11510 and 18-13510) have already been consolidated; the third case (No. 20-10394) is related to both for the same reasons they are related to each other; it should be consolidated with them.

2. The parties should be exempted from further briefing requirements. Briefing has been conducted on the first two cases, and it is sufficient to resolve them. And the third case involves no new issues; the County has no *independent* objection to the remedial districting plan, and it raised none below. The County instead challenges the predicate finding of a Voting Rights Act violation, which is the basis for the remedial order, and it filed a new notice of appeal only to ensure that this Court retains jurisdiction now that the prior injunctions that formed the basis of the Court's jurisdiction have been superseded. But neither party preserved any objection to the remedy itself, nor does this Court need to address any remedial issues. Because the only issues in this appeal have already been briefed, the Court should instruct the clerk of court not to require any further briefing or appendices.

3. The Court should expedite the case and set it for argument at the next available session. Sumter County is scheduled to conduct elections to its school board in November 2020, and it is in the public interest for this Court to resolve promptly the question of what districting plan should be used in that election. This case should be argued as soon as possible. If the Court believes conducting argument will interfere with its ability to issue a prompt decision, the County will be content to submit this case for resolution on the briefs.

For these reasons, and those discussed below, the Court should grant the motion and afford the requested relief.

Factual Background

This is a Voting Rights Act challenge brought by one plaintiff (the “Plaintiff”) against the Sumter County school-board districting plan (the defendant here is referred to as the “County”). On March 17, 2018, the district court issued an order concluding that the plan violates the “effects” prong of Section 2 of the Voting Rights Act. On March 30, 2018, the district court issued a permanent injunction against the May 2018 election and rescheduled it for November 2018 under a yet-to-be-created remedial districting plan. On April 11, 2018, the County appealed under 28 U.S.C. § 1292(a)(1).

The appeal was docketed on April 12, 2018, as case number 18-11510. On April 13, 2018, the County moved to expedite, observing that, since the district court rescheduled the school-board election for November 2018, the appeal could be resolved in time to determine whether it should proceed under a remedial plan or the enjoined plan, which the County contends is lawful. On May 4, 2018, the Court (Pryor, J., J.) denied the motion “without prejudice to the right of either party to seek a stay and/or expedited review upon the district court issuing an order setting interim boundaries for the Sumter County Board of Election districts.” Order, May 4, 2018.

But, on June 21, 2018, the district court issued an order concluding that the notice of appeal deprived it of jurisdiction to issue a remedial order and implement an interim plan during the pendency of the appeal. Dist. Ct. Dkt. 214. The district court therefore concluded that the November election would proceed under the enjoined plan.

Plaintiff then moved to dismiss the County's appeal. On August 9, 2018, this Court (Marcus, Pryor, W., & Jordan, JJ.) issued an order denying that motion. The order, however, *sua sponte* issued a limited-purpose remand to allow the district court to determine whether the November 2018 election should proceed and, if so, under what districting scheme. Order, Aug. 9, 2018, at 2.

On August 17, 2018, the district court issued an order (1) concluding that it was too late to issue a remedial districting plan and (2) enjoining the November election. Dist. Ct. Dkt. 237. The County filed an emergency motion to stay or vacate the injunction pending appeal. In response, this Court issued a jurisdictional question on whether the County needed a second notice of appeal to establish appellate jurisdiction to review the new injunction. *See* Jurisdictional Question, Aug. 21, 2018. The County promptly filed a second notice of appeal, which opened case number 18-13510. That case has since been consolidated with case number 18-11510. On August 24, 2018, the Court

(Tjoflat, Rosenbaum, & Newsom, JJ.) denied the County's stay motion. The 2018 school-board election therefore did not occur, and the existing school-board composition remained the same.

The case proceeded again in this Court. Pursuant to prompting of the clerk of court to file a second brief in the 18-13510 appeal, the County filed another appellant brief and appendix, which incorporated its prior arguments by reference and raised only a few supplemental issues. On February 1, 2019, the Plaintiff filed a single appellee brief for both consolidated cases. On February 22, 2019, the County filed a single reply brief for both consolidated cases.

On March 29, 2019, the clerk of court issued an order tentatively calendaring the appeals for argument the week of July 22, 2019. But, on April 26, 2019, the Plaintiff moved this Court for another limited-purpose remand, contending that the district court should be allowed to formulate a remedy. The County opposed this motion. On May 16, 2019, the Court granted the motion and remanded the case again.

On remand, the district court retained a special master to propose remedial districts (even though the Plaintiff had offered multiple proposals, the parties conducted extensive briefing on them, and the parties agreed that no new proposals were needed). On November 22, 2019, the special master issued

a report outlining multiple new interim proposals. Dist. Ct. Dkt. 272. The County stated in response that, although it does not believe the proposals are better than the current plan, it has no objection to any of the proposals *per se*, aside from its underlying contention that the current plan is lawful. The Plaintiff objected to only a subset of plans and, ultimately, objected only to one of them.

On January 13, 2020, the district court conducted a remedial hearing. On January 29, 2020, it issued an order adopting one of the special master's proposals (one that did not draw an objection from Plaintiff) and ordering the County to conduct an election under that plan in November 2020. Dist. Ct. Dkt. 277. On the same day, the district court entered final judgment. *Id.* Dkt. 278. On January 30, the County filed a timely notice of appeal. *Id.* Dkt. 279. On January 31, 2020, the district court entered an amended judgment. *Id.* Dkt. 280. On February 5, 2020, the County filed an amended notice of appeal to incorporate that amended judgment expressly. *Id.* Dkt. 284.¹

¹ The amendment appears to have been to correct a mis-designation of the ultimate relief afforded: the district court's January 29 judgment "dismiss[ed] this case," Dist. Ct. Dkt. 278, whereas the amended judgment was "in favor of Plaintiff," *id.* Dkt. 280. Although the amended judgment may have fallen within the County's original notice of appeal, the County filed an amended notice out of an abundance of caution.

Argument

The procedural gymnastics of this case have finally run their course, and this Court should take the following actions to bring this case to a conclusion expeditiously.

1. The Court should consolidate case No. 20-10394 with previously consolidated case Nos. 18-11510 and 18-13510. The cases are between the same parties, involve the exact same issues, and are from interrelated injunctions issued in the same district-court proceeding. They are, indeed, one single case and should be resolved as such.

2. The Court should issue an order relieving the parties of any further briefing, particularly in case No. 20-10394.

The new notice of appeal is a jurisdictional formality. The district court's final judgment supersedes the prior injunctions as the source of the County's injury-in-fact, and this Court's precedent signals that a new notice of appeal was required to incorporate that judgment, and the remedial order, into this appeal. *See, e.g., Osterneck v. E.T. Barwick Industries, Inc.*, 825 F.2d 1521, 1528 (11th Cir. 1987). The County's challenge to the remedial order differs in no material respect from its challenge to the prior orders; the County contends that *no* remedy is appropriate because the predicate liability finding is erroneous. This issue has already been briefed, and no new briefing is needed.

Plaintiff, meanwhile, did not object to the remedial option the district court selected, and would, if he did object, be required to appeal. He appears to have no intention of challenging the remedial order, and he has already filed a appellee brief on the issues the County has raised. There is no reason why further briefing from either party is needed.

Nevertheless, the rules (or at least the clerk of court) require a separate brief for each case, even in consolidated matters. Clarification from the Court is therefore needed to relieve the parties of further briefing requirements. Further briefing would be a waste. The Court should instruct the clerk of court not to require further briefing, dispense with any requirement in the rules for more briefing, and set this case for argument.

3. The Court should expedite this appeal and set it for the next available argument session. This case concerns an election that is scheduled for November 2020, and the question before the Court is whether that election should proceed under the interim remedial map or the map the district court enjoined (and which the County contends is lawful).² The issues the County presents for appellate review have already been deemed substantial enough to warrant an oral argument, which is granted in only a small subset of cases

² There is no primary election to the Sumter County school board, so there is no election scheduled until November.

before this Court every year. Moreover, the issues here are substantially similar to those in a recent case that the Fifth Circuit *sua sponte* set for *en banc* review—demonstrating how close and important they are. *See generally Thomas v. Bryant*, 938 F.3d 134 (5th Cir. 2019), *reh’g en banc granted*, 939 F.3d 629 (5th Cir. 2019).³ The district court correctly appreciated that this case involves matters “of significant public importance.” Dist. Ct. Dkt. 273 at 2. They should be resolved before the election season.

Further delay in this matter—which the County contended in May 2018 should proceed to an expeditious resolution *that year*—would be adverse to the public interest. The County will need lead time to prepare for an election under whichever plan governs. So, although the election is months away, final resolution cannot come too soon—especially when this case has been stalled by many delays. (It was originally filed in 2014.) And, if this Court rules in the County’s favor after the November 2020 election, the County is concerned that special elections may be necessary to revert the County back to the districts that govern by force of Georgia law. That would be yet further expense to, and burden on, elections in the County, which is a comparatively poor, rural county. There is no good reason not to resolve this matter as soon as possible.

³ The County will discuss this case in more detail in a forthcoming Rule 28(j) notice.

There is no downside to an expedited case. The briefing and appendices have *already been submitted*, and the record is sufficient for prompt resolution. All that remains is an argument and decision. Moreover, if the Court determines that conducting an argument would interfere with its ability to render a prompt decision, the County is content to submit the case for resolution on the briefs without oral argument.

For all these reasons, the Court should grant the above-cited relief. It should also order an expeditious response to this motion by Plaintiff, if he intends to respond.

Dated: February 5, 2020

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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 5th day of February 2020. 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: February 5, 2020

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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 2168 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 Microsoft Word in 14-point Calisto MT font.

Dated: February 5, 2020

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