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

Reply Brief in Support of Time-Sensitive Renewed and Amended 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 Kearse, Jr.

Defendant:

Sumter County Board of Elections and Registration

Reply Brief in Support of Time-Sensitive Renewed and Amended Motion To Consolidate and Expedite and for Other Relief

The Court should grant all the relief requested in Sumter County's motion.

1. **Consolidation**. The parties agree that the existing appeals should be consolidated with case No. 20-10394. This relief should be granted.

2. **Resolving the Case With No Further Briefing**. Plaintiff has no good basis to oppose to the County's request that the case be decided without further briefing. Plaintiff contends that he needs further briefing to respond to the County's supposed argument that "no remedy" for the alleged Section 2 violation "was possible." Pl's Mot. Resp. 4. But the County in fact argued that Plaintiff did not meet "*his burden* to show that 'a reasonable alternative practice exists…..'" Appellant's Br. 39 (emphasis added) (quoting *Holder v. Hall*, 512 U.S. 874, 880 (1994)). The County made clear that its arguments concerned Plaintiff's failure at the liability stage and that the remedial phase is irrelevant to its contentions. *See also id.* at 50 n.13 ("[T]he possibility of an effective remedy's emergence *deus ex machina* from the ongoing remedial phase is irrelevant; the court found liability and issued a permanent injunction on the illustrative plan presented at trial."). Plaintiff did not respond to this contention in his appellee brief—which provided his opportunity to address this argument. His belated assertion now that the remedial phase is relevant is waived.

Regardless, the issue Plaintiff would like to brief is legally irrelevant. It was Plaintiff's burden *at the liability phase* to establish all elements of his claim, including the existence of a viable remedy. *See Abbott v. Perez*, 138 S. Ct. 2305, 2333 (2018) (reversing district court at the liability phase on this basis). The "record of the district court's *remedial proceedings*," Pl's Mot. Resp. 6 (emphasis added), is legally irrelevant to whether or not Plaintiff met *his burden* at trial, and nothing in the remedial proceedings could possibly contradict the County's already-briefed contentions about the failed liability showing. If Plaintiff must rely on remedial proceedings to show liability, he cannot prevail in this case.

The remedial proceedings are especially irrelevant because the district court *rejected* all Plaintiff's remedial proposals at the remedial phase, including the remedy Plaintiff proposed at the liability phase. It only accepted the proposal of a court-appointed special master—whose fees and expenses are being charged to the County. Plaintiff cannot seriously expect that his liability deficiencies can be made up at the remedial phase under these circumstances.

If the Court disagrees and requests further briefing, it should do so on a limited basis and an expedited schedule. Plaintiff's objection to expedited briefing is inconsistent with Plaintiff's contention that this case must be resolved by July to impact the 2020 election. Pl's Mot. Resp. 4. Although the

County disagrees with the specifics of Plaintiff's assertion (including the July deadline, *see* note 2 below), *both parties* agree that prompt resolution of this case is necessary to provide clarity for this year's election.

And it makes perfect sense that Plaintiff should file a brief first, since *Plaintiff* not the *County* is contending that briefing on that topic is advisable. The County is in no position to know whether it can "stand on its prior briefing," Pl's Mot. Resp. 5, before reading Plaintiff's brief on this topic that only Plaintiff believes is even relevant. And expedited briefing will not prejudice Plaintiff; he clearly has an idea of what positions to brief on remedial issues and, if these issues really are relevant, he should be able to explain why in short order. *See* Pl's Mot. Resp. 5.

Nor are briefs longer than approximately 4,000 words necessary. As it has explained many times, the County is only challenging the liability ruling, and the parties have extensively briefed that ruling. There is no need for the Court to entertain up to 26,000 additional words on remedial-stage issues that the *appellant is not raising*, since there is no appeal of the remedial orders (apart from what is necessary to preserve jurisdiction over the liability issues).[1] The

[1] In all events, the Court should issue an order clarifying deadlines in this case. Due to Plaintiff's Rule 59 motion, it is unclear how the default rules apply.

appellant is master of the appeal issues, the remedial issues are academic, and Plaintiff's intent to brief them appears to be an effort at delay, nothing else.

3. **Resolving this Case Without Argument**. Plaintiff does not object to the Court's resolving this case on the briefs. By rule, then, resolution without argument is appropriate. Eleventh Circuit Rule 34-3(d).

Yet Plaintiff oddly contends that, if the County is correct that the issues in this appeal concern difficult matters of first impression (they do), then argument would be "almost unavoidable." Pls. Mot Resp. 6. But Circuit rules allow even *difficult* cases to be submitted on the briefs, providing that, by agreement of the parties, a case may be placed on the non-argument track, and such a case "need not be unanimous and a dissent or special concurrence may be filed." Eleventh Circuit Rule 34-3(d). A case, in other words, can be so difficult that the result does not command unanimity and yet be resolved on the briefs. Because the parties agree that argument is not necessary (even though, as noted before, the County would ordinarily prefer argument), it is appropriate to place this appeal on the non-argument track.

The County will of course defer if the Court determines that argument is appropriate or necessary. It is ultimately for the Court to decide what it needs to resolve this case. If it chooses argument, it should set argument for the soonest practicable date. Plaintiff does not disagree.

4. **Expediting the Resolution of This Case**. The County's motion explains that, with elections scheduled for this November, the Court should expedite this case for prompt resolution. Plaintiff responds that he "does not oppose an order expediting these appeals." Pl's Mot. Resp. 4. That should resolve the matter. And that is especially so since Plaintiff also asserts that the case should be resolved by July of this year at the latest.[2] *Id.* at 5. The parties agree, then, in their request that the Court act promptly.

CONCLUSION

The County's motion should be granted in full.

Dated: April 20, 2020 Respectfully submitted,

[2] This assertion is dubious at best. The district court has issued multiple orders in this case much closer to election day than the timeline Plaintiff cites in his brief. But there is no reason to force the issue; the parties in principle agree that resolution as soon as possible will be best.

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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 20th day of April, 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: April 20, 2020

Respectfully submitted,

/s/ E. Mark Braden

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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 1,097 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: April 20, 2020

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/s/ E. Mark Braden

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