

# No. 18-13510

---

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

---

**Brief of Defendant-Appellant**  
**Sumter County Board of Elections and Registration**

---

Kimberly A. Reid  
LAWSON & REID, LLC  
901 East 17th Avenue  
P.O. Box 5005  
Cordele, Georgia 31010  
kimberly.reid@lawsonreidlaw.com  
(229) 271-9323 (telephone)  
(229) 271-9324 (facsimile)

E. Mark Braden  
*Counsel of Record*  
Katherine L. McKnight  
Richard B. Raile  
BAKER & HOSTETLER LLP  
1050 Connecticut Ave NW Suite  
1100, Washington, DC 20036  
(202) 861-1504 (telephone)  
(202) 861-1783 (facsimile)  
mbraden@bakerlaw.com

*Counsel for Appellant Sumter County  
Board of Elections and Registration*

## **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:**

Sells, Bryan L.  
McDonald, M. Laughlin  
Khondoker, Aklima

### **Attorneys for Defendant-Appellant:**

Braden, E. Mark  
McKnight, Katherine L.  
Raile, Richard B.  
Stanley, Trevor  
Reid, Kimberly

### **Plaintiff:**

Wright, Mathis Kearse, Jr.

### **Defendant:**

Sumter County Board of Elections and Registration

## CORPORATE DISCLOSURE STATEMENT

There is no nongovernmental corporate party to this proceeding, and no association of persons, form, partnerships or corporations that have an interest in the case or the outcome of the appeal.

Dated: November 26, 2018

Kimberly A. Reid  
LAWSON & REID, LLC  
901 East 17th Avenue  
P.O. Box 5005  
Cordele, Georgia 31010  
kimberly.reid@lawsonreidlaw.com  
(229) 271-9323 (telephone)  
(229) 271-9324 (facsimile)

Respectfully submitted,

/s/ E. Mark Braden  
E. Mark Braden  
Katherine L. McKnight  
Richard B. Raile  
BAKER & HOSTETLER LLP  
1050 Connecticut Ave NW Suite  
1100, Washington, DC 20036  
(202) 861-1504 (telephone)  
(202) 861-1783 (facsimile)  
mbraden@bakerlaw.com

*Counsel for Appellant Sumter County  
Board of Elections and Registration*

## STATEMENT REGARDING ORAL ARGUMENT

As stated in the appellant brief in consolidated case number 18-11510, this appeal raises issues of first impression and challenges the district court's view that this Court's precedent is incompatible with that of the Fifth Circuit. Oral argument is presumptively required, *see* Fed. R. App. P. 34(a), and this case does not fall within any narrow exception to that rule. The Court should hold argument.

Dated: November 26, 2018

Kimberly A. Reid  
LAWSON & REID, LLC  
901 East 17th Avenue  
P.O. Box 5005  
Cordele, Georgia 31010  
kimberly.reid@lawsonreidlaw.com  
(229) 271-9323 (telephone)  
(229) 271-9324 (facsimile)

Respectfully submitted,

/s/ E. Mark Braden

E. Mark Braden  
Katherine L. McKnight  
Richard B. Raile  
BAKER & HOSTETLER LLP  
1050 Connecticut Ave NW Suite  
1100, Washington, DC 20036  
(202) 861-1504 (telephone)  
(202) 861-1783 (facsimile)  
mbraden@bakerlaw.com

*Counsel for Appellant Sumter County  
Board of Elections and Registration*

## TABLE OF CONTENTS

Disclosure Statement.....	i
Statement Regarding Oral Argument.....	ii
Table of Contents.....	iii
Table of Citations.....	vii
Statement of Jurisdiction.....	1
Statement of the Issues.....	3
Statement of the Case.....	4
Summary of Argument.....	9
Argument.....	9
Conclusion.....	11

## TABLE OF CITATIONS

	<b>Page(s)</b>
<b>Cases</b>	
<i>Abbott v. Perez</i> , 138 S. Ct. 2305 (2018) .....	5
<i>Massey v. Cong. Life Ins. Co.</i> , 116 F.3d 1414 (11th Cir. 1997) .....	2, 5
<i>Osterneck v. E. T. Barwick Industries, Inc.</i> , 825 F.2d 1521 (11th Cir. 1987) .....	6
<b>Statutes and Rules</b>	
28 U.S.C. § 1292 .....	2, 4
28 U.S.C. § 1331 .....	1
52 U.S.C. § 10301 .....	1, 4
Fed R. Civ. P. 62.1 .....	5
Fed. R. App. P. 12.1 .....	5
<b>Other Authorities</b>	
Kevin Sack and Alan Blinder, <i>In Georgia Governor’s Race, a Defining Moment for a Southern State</i> , New York Times (July 28, 2018), <a href="https://www.nytimes.com/2018/07/28/us/politics/georgia-governor-race.html">https://www.nytimes.com/2018/07/28/us/politics/georgia-governor-race.html</a> .....	10

Georgia Secretary of State, *Official Election Results Sumter County, Georgia,*

<https://results.enr.clarityelections.com/GA/91639/Web02->

[state.221451/#/p/all/vt/ALL/pr/Sumter](https://results.enr.clarityelections.com/GA/91639/Web02-state.221451/#/p/all/vt/ALL/pr/Sumter) ..... 8

## STATEMENT OF JURISDICTION

The plaintiff below, Mathis Wright Jr. (“Plaintiff”), filed this case under Voting Rights Act § 2, 52 U.S.C. § 10301. Jurisdiction in the district court was proper under 28 U.S.C. § 1331.

The defendant below, the Sumter County Board of Elections and Registration (“Sumter County” or the “County”), appeals from two permanent injunctions issued by the district court. The district court issued its first injunction on March 30, 2018. That injunction barred Sumter County from conducting school-board elections in May 2018, ordered it to conduct a special election in November 2018, and had the practical effect of enjoining future elections under the school-board districting plan. Sumter County filed a timely notice of appeal, and the resulting appeal is Eleventh Circuit case number 18-11510, which has been pending since April 2018 and is consolidated with this case.

The district court issued its second injunction after a series of motions and rulings in this Court and in the district court regarding the status of the November 2018 school-board elections that the district court originally ordered Sumter County to conduct. After this Court issued a limited-purpose remand because the case would not be resolved before the November elections, the district court enjoined the November election as well. *See* District Court

Record/18-13510 Appellant's Appendix Tab 237 at 2 ("T237/2"); T238/11-12. Sumter County sought a stay of that order, and the Court responded with a notice calling for the parties' views on whether a new notice of appeal was necessary for this Court to have jurisdiction to review the second injunction. Sumter County promptly filed a second notice of appeal to resolve any doubt on that question. T240. For administrative purposes, that resulted in this second case, numbered 18-13510. The Court consolidated cases 18-13510 and 18-11510. The Clerk of Court, however, instructed the County to file a brief in this case, even though it has filed a brief in the 18-11510 case.

Jurisdiction is proper in both cases under 28 U.S.C. § 1292(a)(1). The scope of appellate review includes the injunction itself and the "basis" of the injunction, *Massey v. Cong. Life Ins. Co.*, 116 F.3d 1414, 1417 (11th Cir. 1997), including the district court's finding of liability.

Plaintiff has twice moved to dismiss the appeal numbered 18-11510, and both motions were denied by panels of this Court. On October 31, 2018, the Court issued an order in the 18-11510 case noting probable jurisdiction.

## **STATEMENT OF THE ISSUES**

**I.** Does Sumter County's black community have less opportunity than other groups to elect its preferred candidates in at-large elections where it outnumbers those groups in voter registration and no special circumstance negates that advantage?

**II.** Did the district court err by requiring Sumter County to disprove that Plaintiff's illustrative districting scheme is effective, by failing to make factual findings on its effectiveness, and by crediting Plaintiff's expert's ultimate conclusion that it is effective after rightly rejecting the premise underlying that conclusion?

**III.** Did the district court err in weighing the evidence, including by:  
(A) affording significant weight to election results in single-member districts with black voting-age population (BVAP) levels substantially below the BVAP level in the challenged at-large seats, and

(B) affording no weight to election results in county-wide votes where Democratic Party candidates, who uniformly enjoy the support of the black community, won Sumter County?

## STATEMENT OF THE CASE

This is an appeal from a second permanent injunction the district court entered forbidding Sumter County from using a districting map for its school-board elections. The parties agree that this appeal raises no new issues from the appeal stemming from the first injunction, because both injunctions are predicated on the same finding that the school-board map violates Section 2 of the Voting Rights Act. Both this case and the case numbered 18-11510 challenge that finding of liability. Sumter County filed a brief in the 18-11510 case on May 22, 2018. Sumter County stands on that brief, incorporates it expressly by reference, and, out of concern for judicial economy, does not repeat the same arguments here. This brief recounts the case history since May 22, 2018, and addresses one relevant factual development since then.

A. The case docketed as 18-11510 is an appeal from the Middle District of Georgia's permanent injunction against elections under the County's school-board districts. The district court concluded that the school-board districts violate the "effects" prong of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. Subsequently, on March 30, 2018, it issued an injunction against the May 2018 elections under the school-board plan. The County filed a timely notice of appeal from that injunction on April 11. *See* 28 U.S.C. § 1292(a)(1). The resulting appeal (as noted) is the 18-11510 case. On May 22,

2018, Sumter County filed its appellant brief in the 18-11510 case, challenging the district court's liability holding that was the predicate of its permanent injunction. *See Massey v. Cong. Life Ins. Co.*, 116 F.3d 1414, 1416-17 (11th Cir. 1997) (stating that appellate review of injunctions extends to the "basis" of the injunction). For the Supreme Court's latest discussion of appeals from permanent injunctions in Voting Rights Act litigation, see *Abbott v. Perez*, 138 S. Ct. 2305, 2319–2324 (2018).

B. The injunction challenged in the 18-11510 case originally forbade only the May 2018 school-board elections and affirmatively required that special elections for school board be held in November. However, after Plaintiff filed two successive motions to dismiss the 18-11510 case as moot (which were both denied), and after the district court concluded that it lacked jurisdiction to implement a remedial plan, this Court on August 9, 2018, issued a limited-purpose remand under Federal Rule of Appellate Procedure 12.1 and Federal Rule of Civil Procedure 62.1(a)(3) to allow the district court jurisdiction to address how and if the November election would proceed. On August 17, 2018, the district court issued a second injunction barring the November elections as well. T237. On August 20, the district court issued an opinion explaining the basis of the second injunction. T238. As with the first

injunction, the district court predicated the second injunction on the fact that Plaintiff “has prevailed in his claim.” T238/7.

C. The County filed an emergency motion in the 18-11510 case to vacate or stay that second injunction enjoining the November elections. In response, a panel of this Court posed the question whether an additional notice of appeal was required for this Court to have jurisdiction over the second injunction. *See Osterneck v. E.T. Barwick Industries, Inc.*, 825 F.2d 1521, 1528 (11th Cir. 1987) (“The general rule in this circuit is that an appellate court has jurisdiction to review only those judgments, orders or portions thereof which are specified in an appellant’s notice of appeal.”).

The County promptly filed a second notice of appeal. T240. Then it renewed its stay motion in the 18-11510 case. (The second notice of appeal was then being processed, and no new case had yet been docketed in this Court.) In the same filing, the County moved the Court to consolidate the 18-11510 case to the new case that would be opened following the second notice of appeal. In his briefing, the Plaintiff-Appellee agreed with the County that the new notice of appeal conferred jurisdiction for this Court to address the motion to stay or vacate the second injunction. He also agreed that the cases should be consolidated, observing that “the new appeal does not present any new issues”—just a new injunction.

D. The appeal eventually docketed as a result of that second notice of appeal is this case, marked 18-13510. On August 24, the Court in the 18-11510 case denied the County's motion for a stay, but it granted the County's motion to consolidate the 18-13510 case with the 18-11510 case.

The 18-11510 case remains open and briefing is ongoing, but only Sumter County's appellant brief has been filed. Plaintiff has not yet filed his appellee brief in either case.

On October 30, 2018, the Court issued an order noting probable jurisdiction in the 18-11510 case and ordering Plaintiff to file his brief in 30 days. But the next day, October 31, 2018, the Clerk of Court issued a second order partially abrogating the first and requiring Sumter County to file a separate brief in *this* consolidated case, 18-13510, and setting the due date for Plaintiff's appellee brief in both cases for 30 days after the filing of this brief.

This brief is therefore in response to the Clerk's order. However, because the parties agree that this consolidated case involves no new issues, Sumter County stands on the brief in the 18-11510 case and files this to satisfy its obligations under local rules and practice.

E. On November 6, 2018, elections for federal, statewide, and local office occurred in Georgia, including in Sumter County. The featured race in Georgia was a hotly contested race between Stacey Abrams, a black

Democratic candidate, and Brian Kemp, a white Republican candidate.

Although Ms. Abrams lost to Mr. Kemp in the statewide vote, she won the Sumter County vote by approximately 51% to 49%. Georgia Secretary of State, *Official Election Results Sumter County, Georgia*.<sup>1</sup>

Additionally, in a race for the office of insurance commissioner between black, Democratic candidate Janice Laws and white Republican candidate Jim Beck, Ms. Laws won the Sumter County vote by slightly over 50% to 48.5%.

*Id.* And in the race for the U.S. House of Representatives for Georgia congressional district 2, which contains Sumter County in whole, black Democratic candidate Sanford Bishop defeated white Republican candidate Herman West by a countywide vote of approximately 56% to 44%. *Id.*

The district court's injunction prohibited school-board elections from going forward that day. However, according to Plaintiff's (contested) theory that voting in Sumter County is polarized along racial lines, voters for Ms. Abrams and these other black candidates would also have been voters for a black-preferred school-board candidate that day. Indeed, a black candidate was qualified to run in the at-large seat prior to the district court's injunction frustrating his effort at election to the school board—and extending the terms

---

<sup>1</sup> <https://results.enr.clarityelections.com/GA/91639/Web02-state.221451/#/p/all/vt/ALL/pr/Sumter>

of candidates the court found to be white-preferred candidates. Under Plaintiff's theory of polarized voting, there were sufficient votes for the black-preferred candidates to win the total vote in Sumter County.

### **SUMMARY OF ARGUMENT**

This case raises no new issues from the consolidated case numbered 18-11510, and Sumter County stands on the brief filed in that case. The County discusses here only the additional factual development since May 2018 that, once again, black-preferred candidates have been successful in winning the Sumter County vote. Black registered voters outnumber white registered voters in Sumter County, so it is no surprise that black candidates routinely win the county-wide vote. Among the district court's many errors—discussed at length in Sumter County's briefing in the 18-11510 case—was its failure to give *any* weight to either the black registration advantage or the repeated wins of black and Democratic Party candidates. This most recent development confirms that this flaw in the district court's decision prevented it from accurately predicting what will be necessary in the future for black voters to have an equal opportunity to elect their preferred candidates.

### **ARGUMENT**

As discussed in the County's appellant brief in the 18-11510 case, Section 2 of the Voting Rights Act guarantees only equal opportunity. It does not guarantee any electoral outcome. The district court erred in focusing solely

on outcome, finding that the Sumter County school-board plan is dilutive because, in three races, two candidates the court found to be white-preferred defeated two candidates the court found to be black-preferred. But the court neither assessed the *opportunity* to elect preferred candidates—because it ignored that black registered voters’ numerical superiority empowers them to outvote white registered voters—nor the repeated successes of black candidates in the County-wide vote.

The 2018 results underscore both failures. The Georgia gubernatorial race received national attention and was billed a racially charged contest. *See, e.g.,* Kevin Sack and Alan Blinder, *In Georgia Governor’s Race, a Defining Moment for a Southern State*, the New York Times (July 28, 2018) (“Ms. Abrams...has leveraged the prospect of becoming the country’s first female African-American governor to nationalize her campaign and its fund-raising”).<sup>2</sup> Yet Stacey Abrams, the black Democratic candidate, defeated Brian Kemp, the white Republican candidate, in the countywide vote. And that was no anomaly: black candidates won the countywide vote in other races. Plainly, black voters have an equal opportunity to win the countywide vote simply by turning out, as ostensibly occurred in this election.

---

<sup>2</sup> <https://www.nytimes.com/2018/07/28/us/politics/georgia-governor-race.html>.

Plaintiff will undoubtedly point out that no expert has run an analysis on this race to determine if Ms. Abrams was the black-preferred candidate and Mr. Kemp was the white-preferred candidate, but no such analysis is necessary under these circumstances. If Ms. Abrams is *not* the black-preferred candidate, then there must be extensive crossover voting, and not polarization in that race. That would be overwhelming evidence against Plaintiff's case because it would show that voting was not, in that instance, polarized. Indeed, if voting were not polarized in this election of all elections, that would be highly probative because the 2018 gubernatorial race was a high-profile, racially charged contest. If that race was not polarized in Sumter County, then no race for school board has been polarized.

### **CONCLUSION**

For reasons stated in Sumter County's briefing in the 18-11510 case and those stated above, the Court should vacate the district court's two permanent injunctions and reverse the underlying liability decision.

Dated: November 26, 2018

Respectfully submitted,

Kimberly A. Reid  
LAWSON & REID, LLC  
901 East 17th Avenue  
P.O. Box 5005  
Cordele, Georgia 31010  
kimberly.reid@lawsonreidlaw.com  
(229) 271-9323 (telephone)  
(229) 271-9324 (facsimile)

*/s/ E. Mark Braden*  
\_\_\_\_\_  
E. Mark Braden  
Katherine L. McKnight  
Richard B. Raile  
BAKER & HOSTETLER LLP  
1050 Connecticut Ave NW Suite  
1100, Washington, DC 20036  
(202) 861-1504 (telephone)  
(202) 861-1783 (facsimile)  
mbraden@bakerlaw.com

*Counsel for Appellant Sumter County  
Board of Elections and Registration*

## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the word limit set forth in Fed. R. App. P. 32(a)(7) because, excluding the parts of the document not exempted by Fed. R. App. P. 32(f) and 11th Circuit Rule 28-1, 32-4, it contains 2,252 words. I further certify that the foregoing brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) and 11th Circuit Rule 32-3.

Dated: November 26, 2018

Kimberly A. Reid  
LAWSON & REID, LLC  
901 East 17th Avenue  
P.O. Box 5005  
Cordele, Georgia 31010  
kimberly.reid@lawsonreidlaw.com  
(229) 271-9323 (telephone)  
(229) 271-9324 (facsimile)

Respectfully submitted,

/s/ E. Mark Braden

E. Mark Braden  
Katherine L. McKnight  
Richard B. Raile  
BAKER & HOSTETLER LLP  
1050 Connecticut Ave NW Suite  
1100, Washington, DC 20036  
(202) 861-1504 (telephone)  
(202) 861-1783 (facsimile)  
mbraden@bakerlaw.com

*Counsel for Appellant Sumter County  
Board of Elections and Registration*

## 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 26th day of November, 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: November 26, 2018

Kimberly A. Reid  
LAWSON & REID, LLC  
901 East 17th Avenue  
P.O. Box 5005  
Cordele, Georgia 31010  
kimberly.reid@lawsonreidlaw.com  
(229) 271-9323 (telephone)  
(229) 271-9324 (facsimile)

Respectfully submitted,

/s/ E. Mark Braden  
E. Mark Braden  
Katherine L. McKnight  
Richard B. Raile  
BAKER & HOSTETLER LLP  
1050 Connecticut Ave NW Suite  
1100, Washington, DC 20036  
(202) 861-1504 (telephone)  
(202) 861-1783 (facsimile)  
mbraden@bakerlaw.com

*Counsel for Appellant Sumter County  
Board of Elections and Registration*