

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 Motions for  
a Limited Remand and to  
Stay the Briefing  
Schedule**

**Wright v. Sumter County Bd. of Elections and Registration  
18-11510 and 18-13510**

**Certificate of Interested Persons  
and  
Corporate Disclosure Statement**

Pursuant to Eleventh Circuit Rule 26.1, 26.1-2, and 26.1-3,  
counsel for the plaintiff-appellee certifies that the following persons and  
entities have or may have an interest in the outcome of this case:

ACLU Foundation, Inc.

ACLU Foundation of Georgia, Inc.

Baker & Hostetler, LLP

Braden, E. Mark

Brady, Robert

Khondoker, Aklima

Lawson and Reid, LLC

McDonald, M. Laughlin

McKnight, Katherine L.

Raile, Richard R.

Reid, Kimberly

Sands, W. Louis

**Wright v. Sumter County Bd. of Elections and Registration  
18-11510 and 18-13510**

**Certificate of Interested Persons  
and  
Corporate Disclosure Statement  
(continued)**

Sells, Bryan L.

Stanley, Trevor

Sumter County Board of Elections and Registration

The Law Office of Bryan L. Sells, LLC

There is no nongovernmental corporate party to this proceeding.

**/s/ Bryan L. Sells**

Bryan L. Sells

Attorney for Mathis Kearse Wright, Jr.,

Plaintiff-Appellee

Dated: December 7, 2018

Sumter County does not dispute that it wants this Court to rely on evidence that is outside of the record in this case. The County also does not dispute that it wants this Court to rely on factual inferences that it draws from that evidence—inferences about racial voting patterns and turnout—which are also outside of the record and which are normally the subject of expert analysis in a district court. The County nonetheless opposes Wright’s motion for a limited remand and to stay the briefing schedule, arguing that Wright should not have the opportunity to present any expert analysis to rebut the County’s asserted inferences until after this Court rules on the merits.

That’s not how due process is supposed to work. If this Court is going to consider the County’s new assertions of fact, Wright should have an opportunity to rebut them with evidence of his own *before* this Court rules on the merits. The County notes that it has not offered any evidence—only argument—to support its factual assertions about racial voting patterns and turnout, but that’s beside the point. Racial voting patterns and turnout are questions of fact, and they are not a matter for judicial notice. Wright should have the opportunity to offer evidence on those questions even if the County doesn’t want to. (And the district

court, as the finder of fact, should also have the opportunity to resolve those questions of fact in the first instance.)

The County also argues, as a fallback, that a remand is not necessary here because the dispute over conclusions to be drawn from the 2018 election mirrors the dispute over conclusions that the district court declined to draw from earlier election results. That is certainly half true. The dispute over the raw results of the 2018 election mirrors the dispute over raw results of earlier elections that the County presented at trial. But that is not a reason for this Court to rely on new evidence that is outside of the record. Instead, it is a reason to strike those portions of the County's brief that rely on evidence outside of the record. That evidence is not necessary for the County to maintain its challenge to the district court's ruling on the earlier results.

Lastly, Sumter County does not dispute that the record in this case is a moving target, but it nonetheless opposes Wright's motion to stay the briefing schedule until the target stops moving. The County argues, in essence, that uncertainty over the record in this appeal does not hinder Wright's ability to draft his brief. Wright obviously disagrees. Less than three weeks before Wright's brief is due, the

County has asked this Court to take judicial notice of new facts. It is not too much to ask for a reasonable amount of time to draft a brief *after* the Court decides whether or not to do so.

Wright doesn't want further delay in this case, but he does want due process. Given the County's reliance on facts outside the record, this Court should either give Wright an opportunity to rebut those facts with evidence and argument in the district court or make clear that the Court will not consider the County's new facts in this appeal. And simple fairness demands that he have a full opportunity to draft his brief after the record is set.

Dated: December 7, 2018

**/s/ Bryan L. Sells**

Bryan L. Sells  
Georgia Bar No. 635562  
Attorney for the Plaintiffs  
The Law Office of Bryan L. Sells, LLC  
PO Box 5493  
Atlanta, Georgia 31107-0493  
Telephone: (404) 480-4212  
Email: bryan@bryansellsllaw.com

M. Laughlin McDonald  
American Civil Liberties Union  
Foundation, Inc.  
2700 International Tower  
229 Peachtree Street, N.E.  
Atlanta, Georgia 30303  
Telephone: (404) 500-1235  
lmcdonald@aclu.org

Aklima Khondoker  
American Civil Liberties Union  
Foundation of Georgia  
P.O. Box 77208  
Atlanta, Georgia 33057  
Telephone: (770) 303-8111  
akhondoker@acluga.org

Attorneys for  
Mathis Kearse Wright, Jr.,  
Plaintiff-Appellee

### **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 563 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 version 16.12 of Microsoft Word for Mac in 14-point Century Schoolbook font.

**/s/ Bryan L. Sells**

Bryan L. Sells

Attorney for Mathis Kearse Wright, Jr.,

Plaintiff-Appellee

Dated: December 7, 2018



### Certificate of Service

I hereby certify that on December 7, 2018, I electronically filed the foregoing **Plaintiff-Appellee's Reply in Support of Motions for a Limited Remand and to Stay the Briefing Schedule** 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:

Bryan L. Sells: bryan@bryansellslaw.com  
M. Laughlin McDonald: lmcdonald@aclu.org  
Aklima Khondoker: akhondoker@acluga.org  
Katherine L. McKnight: kmcknight@bakerlaw.com  
Richard Raile: rraile@bakerlaw.com  
E. Mark Braden: mbraden@bakerlaw.com

**/s/ Bryan L. Sells**

Bryan L. Sells  
Attorney for Mathis Kearse Wright, Jr.,  
Plaintiff-Appellee  
Dated: December 7, 2018