IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

MATHIS KEARSE WRIGHT, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO.: 1:14-cv-42 (WLS)
	)	
SUMTER COUNTY BOARD OF ELECTIONS AND REGISTRATION,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S EMERGENCY MOTION FOR AN INJUNCTION PENDING APPEAL

Plaintiff Mathis Kearse Wright, Jr. respectfully moves the Court for an injunction pending appeal prohibiting the Sumter County Board of Elections and Registration from conducting the school-board elections currently scheduled for November 6, 2018. **According to the County, the last day to remove the election from the November ballot is Friday, August 17**.[1] The purpose of this motion is to maintain the status quo while the Court of Appeals considers the County's appeal. Granting this Motion will maintain the status quo and is within the discretion of this Court under Federal Rules of Civil Procedure 62(c) and Federal Rules of Appellate Procedure 8(a)(1).

[1] Attorneys for the County identified August 17 as the drop-dead date for the first time in an email sent after the close of business on Friday, July 27. In the absence of discovery or further explanation from the County, Wright takes this date at face value. However, Wright notes that the County was previously able to remove the school-board election from the ballot following this Court's order on March 30, 2018, which was 53 days before the May 22 election. August 17 is 81 days before the November 6 election.

BACKGROUND

This is a Section 2 challenge to the method of electing members of the Board of Education in Sumter County, Georgia. On March 17, 2018, the Court issued a 38-page order finding, "based on the totality of the circumstances, that the at-large districts of the Sumter County Board of Education dilute African-American voting strength in violation of Section 2 of the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10301." (ECF 198 at 37.) The Court did not adopt a remedy in its order but noted instead that this case "now moves to a remedial stage." (*Id.*)

After the Georgia General Assembly declined the Court's invitation to devise a remedy, Wright filed an emergency motion asking the Court to enjoin the County from conducting the school-board elections scheduled for May 22, 2018. (ECF 202.) On March 30, the Court granted the motion, finding that "Here, the infringement of black voters' right to vote in Sumter County is severe." (ECF 204 at 6.) The Court reset the election for November and indicated that it would enter a further order by July 23 setting forth an interim remedial plan for future school-board elections. (*Id.* at 7.) The Court did not at that time enjoin further use of the unlawful plan.

On April 11, the County appealed the Court's March 30 injunction and its order on liability. (ECF 207.) Two days later, the County filed a motion to expedite the appeal. Wright opposed. On May 4, the Eleventh Circuit denied the County's 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."

Then on June 21, this Court, acting *sua sponte*, issued an order modifying the March 30 injunction. (ECF 214.) Concluding "that [the Court] lacks jurisdiction to enter" a remedial order while the County's appeal remains pending, that order removed the self-imposed July 23

deadline for issuing a remedial plan, and it made clear that the Court intended to issue no further orders regarding whether a remedy is appropriate until after the Court of Appeals resolves the appeal. (*Id.* at 3.) The order also clarified that the March 30 order "requires only that the Sumter County Board of Education elections previously scheduled for May 22, 2018 be held on November 6, 2018." (*Id.* at 5-6.) Thus, it appears that the practical effect of the Court's June 21 order is that, in the absence of a further injunction, the next school-board election will take place in November using the discriminatory plan.

In light of this Court's June 21 order, Wright filed a renewed motion to dismiss the appeal for lack of appellate jurisdiction and a motion to hold the briefing schedule in abeyance. The Eleventh Circuit granted Wright's motion to hold the appeal in abeyance pending resolution of the jurisdictional issue, and the motion to dismiss remains pending.

Wright also filed a motion for reconsideration asking this Court to reconsider its June 21 order. On July 23, the Court denied Wright's motion in part without prejudice because it "did not know how expeditiously the Eleventh Circuit will act on the appeal…" and stated that it would "… entertain the request [to enjoin the November election] upon Wright's motion on a date closer to the election." (ECF 217 at 7). The Court also directed the parties to confer on a briefing schedule for such a motion.

The next day, Wright's attorneys requested a conference with opposing counsel. Wright's attorneys also asked the County to identify the last date on which the school-board election could be removed from the November ballot. Three days later, after the close of business on Friday, July 27, the County's attorneys responded that the drop-dead date is Friday, August 17. The County's attorneys also indicated that they would be available for a conference call on Monday, July 30.

The parties conferred but were unable to agree upon a briefing schedule. Wright's attorneys favored an extremely expeditious briefing schedule so that (1) the Court has time to consider the motion and (2) the parties have an opportunity to seek an injunction in the Court of Appeals (as permitted by Rule 8 of the Federal Rules of Appellate Procedure). The County's attorneys requested at least 10 days to respond to Wright's motion, which would give this Court only a day or two to rule and would effectively preclude any review in the Eleventh Circuit or the Supreme Court.

ARGUMENT

Rule 62(c) provides that "[w]hile an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." Fed. R. Civ. P. 62(c); *see also* Fed. R. App. P. 8(a)(1) (requiring a party to move first in the district court for an order suspending modifying, restoring, or granting an injunction while an appeal is pending). Rule 62(c) is an exception to the general rule that a district court loses jurisdiction over matters that are on appeal, and it is designed to permit a court to maintain the status quo between the parties during the pendency of an appeal where equity requires it. *See, e.g., Natural Resources Defense Council, Inc. v. Southwest Marine Inc.,* 242 F.3d 1163, 1166 (9th Cir. 2001); *Dillard v. City of Foley*, 926 F. Supp. 1053, 1075 (M.D. Ala. 1995).

When determining whether to grant an injunction pending appeal, a court should consider: (1) the movant's likelihood of success on the appeal; (2) whether the movant will be irreparably injured in the absence of an injunction; (3) whether the injunction will harm other parties interested in the proceeding; and (4) the public interest. *Hilton v. Braunsklill*, 481 U.S. 770, 776 (1987); *accord Touchston v. McDermott*, 234 F.3d 1130, 1132 (11th Cir. 2000);

Garcia-Mir v. Meese, 781 F.2d 1450, 1453 (11th Cir. 1986); *Smith v. Snow,* 722 F.2d 630 (11th Cir. 1983).

In addition, the Eleventh Circuit has adopted a relaxed standard where, as here, an injunction would merely maintain the status quo pending the outcome of an appeal. *See Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Circ. 1981) [2] (an injunction pending appeal is appropriate when the last three factors strongly favor interim relief); *see also LabMD, Inc. v. Federal Trade Commission,* 678 Fed. Appx. 816 (11th Cir. 2016) ("granting a stay that simply maintains the status quo pending appeal 'is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the injunction would inflict irreparable injury on the movant.'"); *Garcia-Mir*, 781 F.2d at 1453 (citing *Ruiz*).

1. Wright is likely to succeed on appeal.

Wright has already succeeded on the merits of his claim in this Court, and he is likely to prevail on appeal. This Court's 38-page ruling on liability is well founded in both the facts and existing law. The facts in this case are barely contested. The law in this area is well established. And there has been no great change in the law after the Court's ruling which could put its viability in doubt. The County's appellate brief raises nothing new or out of the ordinary. Simply put, the Court's ruling rests on solid ground.

Although this factor is of less importance under the Eleventh Circuit's relaxed standard, Wright has established a strong likelihood that he will succeed on the merits of the County's appeal.

[2] Decisions of the Fifth Circuit Court of Appeals handed down prior to October 1, 1981, are binding precedent in the Eleventh Circuit. *See Bonner v. City of Prichard,* 661 F.2d 1206, 1209 (11th Cir. 1981).

2. Wright will suffer irreparable harm in the absence of an injunction.

Harm is irreparable for purposes of a preliminary injunction when "it cannot be undone through monetary remedies." *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981). Harms that touch upon the constitutional and statutory rights of political parties, candidates, and voters are generally not compensable by money damages and are therefore considered irreparable. *See, e.g., Elrod v. Burns*, 427 U.S. 347 373 (1976) (plurality opinion); *League of Women Voters v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986); *Ga. State Conference of the NAACP v. Fayette Cnty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338, 1347 (N.D. Ga., 2015); *Bird v. Sumter County Bd. of Educ*., 1:12-cv-76 (M.D. Ga., June 21, 2012).

Part of the reason for this treatment of political and voting harms is the special importance of the right to vote in the American democratic tradition:

> Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

Reynolds v. Sims, 377 U.S. 533, 561-62 (1962); accord *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live."). Money cannot fully compensate an individual for the loss of a right so fundamental. Part of the reason is also practical: a court simply cannot undo, by means of a special election or otherwise, all of the effects of an invalid election. Tremendous practical advantages accrue to those who win even tainted elections, and a court simply has no way to re-level the playing field. See, e.g., *League of*

Women Voters of N.C., 769 F.3d at 247 ("Courts routinely deem restrictions on fundamental voting rights irreparable injury" because "once the election occurs, there can be no do-over and no redress.").

In this case, the irreparable nature of the threatened injuries is obvious. Money cannot compensate Wright or other African Americans in Sumter County for allowing an election to go forward under a racially discriminatory election plan. Moreover, the November 6, 2018, election (like the May 22 election) is a general election, meaning that the election directly decides the membership of the Board of Education for the next four years. Whereas the results of a primary election might be stayed, the results of a general election carry a heavier weight, further magnifying the injury to the plaintiff's right to vote should the election go forward. In addition, allowing the election to go forward would likely require the Court to reopen discovery, re-open the record, and conduct another trial. *See*, e.g., *Levy v. Lexington Cnty*. 589 F.3d 708, 715 (4th Cir. 2009).

This Court has already ruled in this case that there is no adequate remedy at law for a violation of Section 2 of the Voting Rights Act (ECF 204 at 5 (citing *Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1363 (M.D. Ala. 1986)), and nothing about the current posture of the case warrants a different conclusion.

This factor weighs in favor of granting the injunction.

3. The balance of harms favors Wright.

The third factor requires the Court to consider the potential impact that the requested injunction might have upon the Board of Elections, and to balance that potential with the considerable and irreparable harms that Wright would suffer should his request be denied. There is no question that the balance of equities tip in Wright's favor here.

The Board of Elections will suffer no harm if the injunction is granted because all it does is maintain the status quo—as it did when the Court enjoined the May 22 school-board election. Removing the special school-board election from the November ballot will cause minimal disruptions to the ordinary process of governance because current board members will remain in office until their successors are elected (ECF 153-22 at 3), and the special school-board election can be reset to coincide with one of several already-scheduled special-election dates in Georgia.[3]

By contrast, Wright and other African American voters will continue to be significantly and irreparably harmed if yet another election goes forward under a discriminatory plan. This Court has rightly described the harm to black voters caused by the current plan as "severe," and allowing the election to proceed under the unlawful plan would entrench this harm for another two years. (ECF 204 at 6.)

Under no circumstances should the election be allowed to go forward under an unlawful and discriminatory election plan. *See Clark v. Roemer*, 500 U.S. 646, 652-53 (1991) (the district court erred in failing to enjoin elections held in violation of the Voting Rights Act); *Lucas v. Townsend*, 486 U.S. 1301, 1305 (1988) ("Permitting the election to go forward would place the burdens of inertia and litigation delay on those whom the statute was intended to protect, despite their obvious diligence in seeking an adjudication of their rights prior to the election."); *Reynolds v. Sims*, 377 U.S. 533, 585 (1964) ("it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan").

[3] There are special elections already scheduled in Georgia for March 19, June 18, and September 17, 2019. *See* http://sos.ga.gov/admin/uploads/2019_State_Short_Calendar_Website1.pdf

4. An injunction serves the public interest.

The public interest in this case is clear. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013) (en banc) (quoting *Awad v. Ziriax*, 670 F.3d 1111, 1131–32 (10th Cir. 2012)), aff'd 134 S. Ct. 2751 (2014); accord *League of Women Voters of N.C.*, 769 F.3d at 247. The requested injunction will ensure that the next school-board election is held under a lawful election plan. Without it, the election will be held under a plan that discriminates against African American voters. The public undoubtedly has a vital interest in the conduct of free, fair, and constitutional elections. *See Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (recognizing the public has a "strong interest in exercising the fundamental political right to vote" (citations omitted)). The requested injunction, if granted, would therefore favor the public interest.

CONCLUSION

This Court should grant Wright's injunction in order to maintain the status quo between the parties.

Date: July 31, 2018

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing PLAINTIFF'S EMERGENCY MOTION FOR AN INJUNCTION PENDING APPEAL 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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Dated this 31st day of July, 2018.

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