

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 MOTION FOR RECONSIDERATION

Pursuant to Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure and Local Rule 7.6, plaintiff Mathis Kears Wright, Jr. respectfully moves the Court for reconsideration of a portion of its remedial order entered in this case on January 29, 2020 (ECF 277). The order contains a significant—though likely unintended—defect in the implementation of a new election plan for members of the Sumter County Board of Education, and that error is easily corrected.

I. Background

This is a voting-rights challenge to the method of electing the seven-member Board of Education in Sumter County, Georgia. At issue is Wright’s claim that the board’s two at-large seats dilute African-American voting strength in violation of Section 2 of the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10301. Following a bench trial, the Court found that the challenged plan violated Section 2 because, as a result of the at-large seats, African-American voters were only able to elect candidates of their choice to two seats on the board. (ECF 198.)

The Court appointed a special master, Professor Bernard Grofman, to assist in devising a remedy. (ECF 267.) Among other things, the Court ordered Professor Grofman to draw one or more plans consisting of “seven members with four-year terms elected on a non-partisan basis from single-member districts.” (*Id.* at 3; ECF 277 at 6.) The Court also ordered Professor Grofman to ensure that any remedial plan would give African-American voters a realistic opportunity to elect at least three seats on the school board and possibly four. (ECF 267 at 3.)

Professor Grofman submitted five plans for the Court’s consideration. (ECF 272.) The Court held a public hearing on the plans (ECF 276) and then issued an order selecting Map 3 as the remedy. (ECF 277 at 8-13.) Map 3 includes four districts in which African Americans constitute a majority of the voting-age population: districts 1, 2, 5, and 6. (ECF 277-1 at 5.) Professor Grofman indicated, however, that he would consider District 2 to be an “opportunity district” for African-American voters only if the election were moved to November and no White incumbent were running for re-election. (ECF 277 at 9-10.) Whites make up a majority of the voting-age population in districts 3, 4, and 7. (ECF 277-1 at 5.) Because the Court agreed with Professor Grofman about District 2, the remedial order moves the election to November in order to give black voters a chance to elect a fourth member to the board. (ECF 277 at 9-12.)

In addition, in a footnote at the very end of the remedial order, the Court noted that current members of the school board testified at the public hearing that they preferred for terms of office on the school board to remain staggered.¹ (ECF 277 at 13 n. 17.) To maintain staggered terms, the Court ordered as follows:

¹ The two current board members who testified at the public hearing were James Reid and Meda Krenson, both of whom are white. (ECF 276.)

the only School Board seats that shall be on the November 2020 ballot shall be those for Districts 1, 3, 5, and 7, as those representatives are currently serving holdover terms. The remaining Board members for District seats 2, 4, and (formerly at-large) 6, shall remain on the Board until after members are elected to these seats in 2022 and take office effective January 2023.

(ECF 277 at 13.) The Court also deemed that the current occupant of one of the at-large seats would continue to serve as the incumbent in District 6 until an election could be held.²

As a result, the only seats up for election in 2020 are majority-black Districts 1 and 5 and majority-white Districts 3 and 7. And, if the Court's interim remedy is not replaced by the Georgia General Assembly following the 2020 Census, the 2022 election would feature majority-black Districts 2 and 6 and majority-white District 4.

II. Discussion

The Court's implementation of staggered terms by delaying certain elections until 2022 is plainly an error, albeit likely an unintended one. There was no suggestion of delaying elections in the special master's report, nor was there any discussion of delaying any elections in the parties' briefing or at the public hearing. The effect of delaying elections is that African-American voters will only have an opportunity to elect two members to the school board (in Districts 1 and 5) in 2020. Because the incumbents in Districts 1 and 5 are African American, delaying elections in majority-black Districts 2 and 6 until 2022 means that the board will almost certainly retain its 5 white/2 black composition until at least 2023. Given the Court's ruling on liability and its instruction to Professor Grofman to ensure that any remedy would give African-

² The Court did not specify which of the two current at-large board members would be deemed to be the incumbent in District 6, which otherwise has no incumbent. (ECF 277-1 at 2.)

American voters an opportunity to elect at least three members of the board, the Court likely did not intend such a result.

It is important to note, moreover, that the Court's remedial plan almost certainly will not be used in 2022. Rather, because the plan's districts will likely fail to comply with the one-person-one-vote standard of the Equal Protection Clause in light of the 2020 Census, the Georgia General Assembly will have to redraw the districts in 2021 or early 2022. A redrawn plan could potentially move the election date back to May, put off elections in the majority-black districts until 2024, and maintain the 5/2 composition until 2025.

Delaying elections in Districts 2 and 4 until 2022 also has the effect of extending the term of office from four years to six for the incumbents in those seats. Under the challenged plan, members in districts 2 and 4 and one of the at-large seats were elected to four-year terms "in 2016 and quadrennially thereafter." (ECF 153-22 at 3.) Under state law, those incumbents are due for election in 2020 but the Court's order delays that election until 2022 and extends the term until 2023. "The remedial powers of an equity court must be adequate to the task, but they are not unlimited." *Whitcomb v. Chavis*, 403 U.S. 124, 161 (1971). "[M]odifications of a state plan are limited to those necessary to cure any constitutional or statutory defect." *Upham v. Seamon*, 456 U.S. 37, 43 (1982). It obviously cannot be said that delaying the opportunity of African-American voters to elect a third—and possibly fourth—member of the school board is necessary to cure the defect identified in this Court's order on liability. (ECF 198.) The Court did not so find in the remedial order, nor could it. As a result, the portion of the order extending the terms of office in Districts 2 and 4 likely exceeds the Court's remedial powers.

Finally, the remedial order contains an ambiguity that magnifies the defect. The order provides that one of the former at-large members is deemed to be the incumbent in District 6, a majority-black district which otherwise has no incumbent (ECF 277-1 at 2), but it does not indicate which one of the two at-large members that will be. (ECF 277 at 13.) Sylvia Roland, whose at-large seat was last elected in 2016 along with existing districts 2 and 4 under the challenged plan, lives in District 7 under Map 3. (ECF 277-1 at 9.) If she is deemed to be the incumbent in District 6 and chooses to run instead in District 7 in 2020, then District 6 would lose its representative and the current 5/2 board could then fill the vacancy. The other at-large member is Michael Busman, who lives in District 5. (ECF 277-1 at 7.) His at-large seat was last elected in 2014 and, as the Court has already noted, he is already a holdover. If he is deemed to be the incumbent in District 6, his term will have been extended to eight years. And if he chooses to run instead in District 5, then District 6 would lose its representative and the current 5/2 board could then fill the vacancy.

Fortunately, these problems are easily fixed. The Court can maintain staggered terms in precisely the same way as provided for by the General Assembly in the current plan. That is, the Court should amend its remedial order to provide as follows: (1) all seats will be up for election in 2020; (2) Districts 1, 3, 5, and 7 will be elected in 2020 to fill out the remainder of their current term under state law, which expires in January 2023; (3) Districts 2, 4, and 6 will be elected in 2020 to a full four-year term; and (4) Michael Busman is deemed to be the incumbent in District 6. (A proposed order is attached.) Because many of the incumbents are likely to run for re-election under a plan that expressly protects them, continuity on the board is assured.

Date: February 11, 2020

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing PLAINTIFF'S MOTION FOR RECONSIDERATION 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 11th day of February, 2020.

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ORDER

Upon consideration of the plaintiff’s motion for reconsideration (ECF 287), and for good cause shown, it is hereby ordered that the motion is granted. The Court’s remedial order (ECF 277) is hereby amended as follows:

(1) All seats in Map 3 shall be on the ballot in the general election to be held in November 2020.

(2) At the November general election in 2020, members from Districts 1, 3, 5, and 7 (formerly the at-large seat elected to a four-year term in 2014) shall be elected to fill out the remainder of the existing terms under state law, which expires on January 1, 2023, or until their successors are duly elected and qualified. Members so elected shall take office immediately.

(3) At the November general election in 2020, members from Districts 2, 4, and 6 will be elected to a full four-year term. They shall take office on January 1, 2021.

(4) Until a successor is duly elected and qualified, Michael Busman is deemed to be the incumbent in District 6.

Except as modified by the remedial order (ECF 277) or this Order, all other provisions of House Bill 836 and other applicable laws shall remain in effect.

SO ORDERED, this _____ day of _____, 2020.

W. Louis Sands
United States District Judge