

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  
Motion for a Limited  
Remand**

**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

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McKnight, Katherine L.

Raile, Richard R.

Reid, Kimberly

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**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

Wright, Mathis Kearse, Jr.

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: April 16, 2019

Plaintiff-Appellee Mathis Kearse Wright, Jr. respectfully moves the Court for a limited remand of this case in order to allow the district court to devise a remedy in time for the 2020 school-board elections. This Court previously remanded the case for the purpose of devising a remedy on August 9, 2018, but the district court determined that it did not have enough time to implement a remedy before the November 2018 election. Now that the Georgia General Assembly has adjourned *sine die* without adopting a remedy for the second time following the district court's finding of liability, another remand is appropriate so that the district court can ensure that a remedy is available in time for the regularly-scheduled school-board election to be held in May 2020.

### **Background**

This is a Section 2 challenge to the method of electing members of the Board of Education in Sumter County, Georgia. The plaintiff-appellee, Mathis Kearse Wright, Jr., is an African-American resident and registered voter in Sumter County. The defendant-appellant is the Sumter County Board of Elections and Registration (“Sumter County” or the “County”), which is responsible for conducting elections for

members of the Sumter County Board of Education. Act No. 87, 2001 Ga. Laws 3865.

Wright filed this action on March 7, 2014. (ECF 1.)<sup>1</sup> After one round-trip to this Court (Appeal No. 15-13628), the district court held a trial on remand in December 2017. 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 district court did not enjoin the County from using the challenged plan or adopt a remedy in its order but noted instead that this case “now moves to a remedial stage.” (*Id.*)

On March 30, 2018, the district court granted Wright’s emergency motion for an order enjoining the May 22 school-board election, which was about to be held using the plan that the Court found to be discriminatory. (ECF 204.) In its order, the court 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.)

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<sup>1</sup> All ECF citations refer to documents filed in the district court.

The County appealed that injunction. (ECF 207.) That appeal was docketed as 18-11510.

Then on June 21, 2018, the district court issued an order modifying the March 30 injunction from which the County had appealed. (ECF 214.) The new order modified the prior order by removing the self-imposed July 23 deadline for issuing an order regarding new boundaries for the board of education election districts. The court concluded that it lacked jurisdiction to do so because of the pendency of this appeal. The net effect of the June 21 order was to allow the County to hold the next school board election on November 6, 2018, using the election plan that the district court had found to violate the Voting Rights Act.

Wright promptly filed a motion asking the district court to reconsider its June 21 order. On July 23, the district court denied Wright's motion for reconsideration after again concluding that it lacked jurisdiction to issue new boundaries. (ECF 217.) The court also denied without prejudice Wright's request for an order enjoining the November election but stated that it would "... entertain the request [to enjoin the November election] upon Wright's motion on a date closer to

the election.” (*Id.* at 7). Wright filed a motion making that request eight days later, and the district court expedited the briefing schedule.

On August 9, 2018, while the parties were briefing Wright’s motion for an injunction in the district court, this Court issued a limited-remand order returning the case to the district court with instructions to issue new boundaries for the November election if it was still feasible to do so. Otherwise, the district court was instructed to resolve any motions regarding the November election and return the case to this Court.

On Friday, August 17, the district court entered an order concluding that it was not still feasible to issue new boundaries for the November election and that the election should not be allowed to proceed under the boundaries that it had found to be discriminatory. (ECF 237.) The court then issued a longer order explaining its injunction on the following Monday. (ECF 238.)

Later that same day, the County filed an emergency motion asking this Court to stay the district court’s August 17 injunction and to allow the school-board election to proceed in November under the unlawful boundaries. The County’s appeal of the August 17 injunction

was docketed as 18-13510, and the County moved to consolidate that appeal with 18-11510.

On August 24, 2018, this Court granted the County's motion to consolidate but denied the County's motion to stay. As a result, the 2018 general election went forward on November 6 without any school-board races on the ballot in Sumter County.

Despite the County's report to the district court that the Georgia General Assembly could adopt a remedy at its 2019 session (ECF 201), the legislature adjourned *sine die* on April 2, 2019, without taking up the issue.

The County's appeals have been fully briefed, and they have been set for oral argument on the July 22 calendar.

The next school-board election in Sumter County is scheduled for May 19, 2020, with a candidate qualifying period from March 2 until March 6, 2020.

### **Argument**

A limited remand under Rule 12.1 of the Federal Rules of Appellate Procedure is appropriate here for the same reasons that the Court remanded the case last year. Without express authorization from

this Court, the district court concluded that it lacks jurisdiction to conduct the proceedings that it deems necessary to devise a remedy for the voting-rights violation that is the subject of this appeal. Wright takes issue with that conclusion (ECF 201), but a limited remand under Rule 12.1 would allow remedial proceedings to continue in the district court without this Court having to resolve the jurisdictional question.

Moreover, the need for remedial proceedings is even greater now. Because the school board was unable to hold a lawful election last year, three members of the board are now holdovers. There have been no elections under a lawful plan since 2010. (Prior litigation cancelled the 2012 election, and both the 2014 and 2016 elections were held under the plan found to be discriminatory.) If the May 2020 school-board election does not go forward under a lawful plan, all seven members of the board will be holdovers elected under an unlawful plan. If the board is to retain any democratic legitimacy, this Court must ensure that a remedy is available in time for the next election.

In addition, the district court has already indicated that it intends to draw its own boundaries for a remedial plan and that doing so could take a considerable amount of time. (ECF 238 at 5-6.) Given the pace

at which the district court has proceeded thus far, there is a high risk that the court would not have time to devise a remedy before the 2020 election if it waits until this Court resolves these appeals. It would be prudent, therefore, for this Court to authorize the district court to begin that process sooner rather than later.

### **Conclusion**

For the foregoing reasons, this Court should issue a limited remand authorizing the district court to conduct remedial proceedings.

Dated: April 16, 2019

**/s/ Bryan L. Sells**

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## Certificate of Compliance

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**/s/ Bryan L. Sells**

Bryan L. Sells

Attorney for Mathis Kearse Wright, Jr.,

Plaintiff-Appellee

Dated: April 16, 2019

### Certificate of Service

I hereby certify that on April 16, 2019, I electronically filed the foregoing **Plaintiff-Appellee's Motion for a Limited Remand** 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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