Nos. 18-11510, 18-13510, 20-10394

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

Reply Brief in Support of Motion To Consolidate and Expedite and for Other Relief

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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:

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Plaintiff:

Wright, Mathis Kearse, Jr.

Defendant:

Sumter County Board of Elections and Registration

Reply Brief in Support of Motion
To Consolidate and Expedite and for Other Relief

The Court should grant all of the relief requested in Sumter County's motion.

1. **Consolidation**. The parties agree that the existing appeals should be consolidated with case No. 20-10394. This relief should be granted.

2. **Resolving the Case With No Further Briefing**. Plaintiff has no good basis to oppose to the County's request that the case be argued without further briefing. Plaintiff contends that further briefing is needed to respond to the County's supposed argument that "no remedy" to the alleged Section 2 violation "is possible." Pl's Mot. Resp. 4.

But the County in fact argued that Plaintiff did not meet—at trial—"*his burden* to show that 'a reasonable alternative practice exists…..'" Appellant's Br. 39 (emphasis added) (quoting (*Holder v. Hall*, 512 U.S. 874, 880 (1994)). It made clear that its arguments concerned Plaintiff's failure at the liability stage and that the remedial phase is irrelevant to its contentions. *See also id.* at 50 n.13 ("[T]he possibility of an effective remedy's emergence *deus ex machina* from the ongoing remedial phase is irrelevant; the court found liability and issued a permanent injunction on the illustrative plan presented at trial."). Plaintiff did not respond to this contention in his appellee brief. His assertion now that the remedial phase is relevant is waived.

Regardless, the issue Plaintiff asks to brief is legally irrelevant. It was Plaintiff's burden *at the liability phase* to establish all elements of his claim, including the existence of a viable remedy. *See Abbott v. Perez*, 138 S. Ct. 2305, 2333 (2018) (reversing district court at the liability phase on this basis). The "record of the district court's *remedial proceedings*," Pl's Mot. Resp. 4 (emphasis added), is legally irrelevant to whether or not Plaintiff met his burden at trial, and nothing in the remedial proceedings could possibly contradict the County's already-briefed contentions about the failed liability showing. If Plaintiff must rely on remedial proceedings to show liability, he cannot prevail in this case.

The remedial proceedings are especially irrelevant because the district court rejected all of Plaintiff's remedial proposals at the remedial phase, including the remedy Plaintiff proposed at the liability phase. It only accepted the proposal of a court-appointed special master—whose fees and expenses are being charged to the County. Plaintiff cannot seriously expect that his liability deficiencies can be made up at the remedial phase under these circumstances.

If the Court disagrees and requests further briefing, it should do so on a limited basis and an expedited schedule. It should afford Plaintiff no more than one week from the Court's resolution of this motion to file a supplemental brief of up to 4,000 words and the County no more than one week to respond with a

supplemental brief of up to 4,000 words. That would be sufficient to brief these self-evidently irrelevant contentions.

3. **Expediting the Resolution of This Case**. The County's motion explains that, with elections scheduled for this November, the Court should expedite this case for prompt resolution.

Plaintiff's response is contradictory. He asserts that he "does not oppose an order expediting these appeals." Pl's Mot. Resp. 4. That should resolve the matter. And that is especially so since Plaintiff also asserts that the case should be resolved by July of this year at the latest.[1] *Id.* at 5. The parties agree, then, that the Court should act promptly. Hence, the Court should expedite this appeal.

But Plaintiff goes on to say that an order expediting the case would be "premature." *Id.* at 4. This is false. The need for expedited resolution is not going away, so it is certainly not "premature" to grant that relief. Plaintiff asserts that "[t]here is a Rule 59 motion pending in the district court," *id.*, but the motion has no bearing on the underlying liability ruling or any issue on appeal. Rather, Plaintiff moved under Rule 59 to ask the district court to order

[1] This assertion is dubious at best. The district court and this Court have issued many orders in this case much closer to election day than the timeline Plaintiff cites in his brief. Regardless, Plaintiff's cursory treatment of this subject renders this motion inappropriate to explore or adjudicate these questions.

that all school-board seats be up for reelection this November (even though Plaintiff waived this argument by failing to raise it before judgment).

The merits of that motion aside, it has nothing to do with this appeal; no ruling the district court could make on the motion will impact the *liability* issues raised here. If the County wins this appeal, everything after the liability phase will be moot; if Plaintiff wins this appeal, then the district court's forthcoming ruling will remain in effect, along with its other remedial orders. There is no scenario where the Rule 59 motion will impact the issues on appeal, and it certainly has no bearing on the County's need for a prompt resolution of the appeal. At least, Plaintiff's cryptic brief here fails to identify any potential impact, which itself should indicate to this Court that this is a sideshow designed to distract and confuse.

Equally irrelevant is Plaintiff's citation to a "technical error" the district court recently identified "in its remedial plan." *Id.* at 5. The technical error is a simple inconsistency in the assignment of district numbers. Like the Rule 59 motion, it has no bearing on the issues on this appeal, and Plaintiff cites no reason why the Court would need to know which remedial district numbering scheme the district court eventually chooses before resolving this appeal—let alone the County's request to expedite, which Plaintiff does not oppose.

CONCLUSION

The County's motion should be granted in full.

Dated: February 24, 2020

Respectfully submitted,

/s/ E. Mark Braden

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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 24th day of February 2020. 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: February 24, 2020

Respectfully submitted,

/s/ E. Mark Braden

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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 955 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 Microsoft Word in 14-point Calisto MT font.

Dated: February 24, 2020

Respectfully submitted,

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