

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

MATHIS KEARSE WRIGHT, JR.,

Plaintiff,

v.

SUMTER COUNTY BOARD OF  
ELECTIONS AND REGISTRATION,

Defendant.

CIVIL ACTION NO. 1:14-CV-42 (WLS)

**DEFENDANT’S RESPONSE TO ORDER AND MOTION TO AMEND THE JUDGMENT**

This brief responds to two queries the Court presented on post-judgment matters in this closed case. *See* ECF No. 288. First, Plaintiff moved under Rule 59(e) for an amendment of the final judgment, requesting that all school-board seats be up for election this November. *See* ECF No. 287-1 ¶ 1 (proposed order). The Court should deny this request. This matter was discussed at the Court’s January 13 hearing, Plaintiff agreed that the Court should honor staggered terms, and the Court’s ruling ostensibly reflects its considered judgment—which is sound. Second, the Court identified an error in numbering on the remedial proposal. This is a minor technical error that can and should be corrected at this time.

**A. The Rule 59(e) Motion Should Be Denied**

The Court should deny Plaintiff’s motion to amend the judgment. A Rule 59 motion “cannot” be used “to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.” *Michael Linet, Inc. v. Vill. of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005). Here, the issue of staggered terms was addressed at the January 13 hearing, Plaintiff’s counsel acceded to the Court’s view that staggered terms should continue, he stated that “no one has raised that [issue] thus far in this case,” he declined to raise it at the

hearing or present evidence on it, and the Court therefore honored staggered terms in its final judgment. Under these circumstances, it is improper for Plaintiff to raise this issue for the first time post-judgment.

At the January 13 hearing, the Court explained to Plaintiff's counsel:

Well, I assume the idea was that you wouldn't have a completely new board at any given time; there would always be experienced board people there. I understand there's –

Exhibit, Jan. 13 Tr. 14:24–15:2. Plaintiff's counsel responded: "Right." *Id.* 15:3.

The Court explained further:

So I would think there would have to be some substantial reason why that would not be honored –

*Id.* 15:4–6. Plaintiff's counsel responded again: "Right." *Id.* 15:7. The Court explained further that the reason for honoring staggered terms is "the clear benefit of it." *Id.* 15:9. Plaintiff's counsel answered:

Yes, that's not been an issue thus far. Professor Grofman didn't raise it. There are times when staggered terms can be a dilutive mechanism, but *no one has raised that thus far in this case.*

*Id.* 15:9–13 (emphasis added).

But now, Plaintiff directly challenges staggered terms, calling the Court's choice to honor them "plainly an error" and even an "unintended one." ECF No. 287 at 3. That is incorrect. The Court itself raised the question, and Plaintiff expressly agreed with the Court's view that terms should be staggered.

The Court's judgment on this point was sound (a point underscored by Plaintiff's unequivocal endorsement of it at the hearing). There should not be "a completely new board at any given time," because the board needs "experienced" members to facilitate its work. Jan. 13 Tr. 14:24–15:2. There would have to be "some substantial reason why that would not be

honored.” *Id.* 15:4–6. Plaintiff provided no substantial reason at the hearing, and his effort to do so post-judgment is insufficient, belated, and prejudicial. Plaintiff’s attempt to “relitigate old matters” and present arguments “that could have been raised prior to the entry of judgment” is improper. *Michael Linet*, 408 F.3d at 763. If nothing else, Plaintiff could have presented the matter of which board seats should be up for election this November. He did not.

And, had Plaintiff presented that position in prior briefing or at the hearing, the County would have been in a position to present its side of the story. Here, the Board is undertaking the substantial new project of building a high school, which is, to state the obvious, complicated. The current Board is steeped in the minutiae of funding and executing this task, and a complete turnover of the membership would add an unnecessary and problematic layer of complexity. Had Plaintiff advocated this turnover before or at the January 13 hearing, the County could have presented its position and evidence at the hearing—a hearing the Court *sua sponte* chose to conduct; Plaintiff had not requested it. The Court, in turn, could have weighed these factors, taken other positions on the question from interested attendees, and issued a determination in its final judgment. Plaintiff’s choice to *agree* with the Court’s view on staggered terms and then reverse course now contravenes the entire point of the public hearing.

In short, Plaintiff’s argument is waived, incorrect, and prejudicial.<sup>1</sup>

#### **B. The Court Should Correct the Numbering Error It Identified**

In contrast to the Court’s considered ruling on staggered terms, its numbering choice and the error it identified as to districts 2 and 7 does appear to be inadvertent. The County has no objection to a correction, nor would an objection appear well founded.

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<sup>1</sup> If the Court disagrees with the County and is inclined to grant the motion, it appears that the Court would have jurisdiction to do so, since the change is unrelated to the issues the County is presenting on appeal. That said, the County has not examined this question in detail.

Furthermore, the County believes that the Court has jurisdiction to make this ministerial correction. Federal Rule of Civil Procedure 62(d) authorizes it to “modify” an injunction after a notice of appeal is filed, so long as the Court does not alter the status quo. A technical correction carries no substantive import, and there is no respect in which the mere transposition of numbering can alter the status quo. *Compare Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1167 (9th Cir. 2001) (order clarifying precise time frame for meeting injunction’s requirements was permissible pending appeal); *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co. Inc.*, 73 F.3d 546, 578 (5th Cir. 1996) (similar ruling).

### CONCLUSION

The Court should deny Plaintiff’s Rule 59 motion. It should, however, correct the error it identified in its final injunction.

Respectfully submitted by:

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of February, 2020 the foregoing was filed and served pursuant to the Court's electronic filing procedures using the Court's CM/ECF system.

s/ Katherine L. McKnight  
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# **Exhibit 1**

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

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MICHAEL KEARSE WRIGHT, JR, :  
PLAINTIFF : Case No. 1:14-CV-42 (WLS)  
v. :  
January 13, 2020  
Albany, Georgia  
SUMTER COUNTY BOARD OF :  
ELECTIONS AND REGISTRATION, :  
DEFENDANT. :

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STATUS CONFERENCE

BEFORE THE HONORABLE W. LOUIS SANDS  
UNITED STATES DISTRICT JUDGE, PRESIDING

APPEARANCES:

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**P R O C E E D I N G S**

**January 13, 2020** **3:00 p.m.**

**THE COURT:** All right. Good afternoon.

**COUNSEL:** Good afternoon, Your Honor.

**THE COURT:** For the record this is Case Number 1:14-CV-42, Wright versus Sumter. I thank you for being here this afternoon, and just for the record Professor Bernard Grofman is on the line on phone listening in just in case he may be seated need for Dr. Grofman.

**PROFESSOR GROFMAN:** Yes, I am, thank you.

**THE COURT:** Thank you very much. Just as a matter of short summary, of course, this case has been remanded to this court for further proceedings and specifically for this court to conclude and consider its judgments based on the finding of liability that the Court entered earlier.

The Court has the benefit of further briefing since that remand, and with the assistance of parties, the Court also, of course, selected appointed a special master to assist the Court. As I said Professor Grofman is present on the phone as you are aware.

Now, I'm aware that neither party ask for further hearing. I think one or both thought it was

1 not necessary because we've had plenty of hearings in  
2 the matter, however, the Court feel since it's of  
3 public importance that it's important and appropriate  
4 to have a final public hearing in this matter.

5 Now, each party, of course, will be given  
6 the opportunity to further inform the Court as you  
7 may see fit. I do have specific questions I like  
8 each party to address if you can, of course, you may  
9 not have further things to state, but the Court  
10 believes this appropriate question.

11 The first thing the Court like to know  
12 whether either party further wishes to comment on any  
13 matter pending before the Court. We are here about  
14 the suggested resolution or selection of a map or any  
15 of information you believe is appropriate regarding  
16 which map would be the -- should be selected.

17 The Court does note for the record the  
18 defendant in the Court's opinion has not  
19 affirmatively recommended to the Court any particular  
20 map, although you have made comment on the  
21 preferences as stated by the plaintiffs, but I don't  
22 believe there is an affirmative recommendation from  
23 the defendants with regard to any map or any other  
24 recommendation. If I am incorrect, you may correct  
25 me.

1           Also the Court notes that the local  
2 legislators have not taken advantage of the  
3 opportunity offered by the Court to consider a  
4 legislative solution, and so far as the Court knows,  
5 that remains the circumstance.

6           The second matter the Court would like  
7 each party to address is what amount of time would be  
8 required for the election officials to take the  
9 necessary steps to hold an election. I guess this  
10 may be more appropriate to the defendant, but the  
11 plaintiff may have some comments about that also.

12           Third, what opinion, if any, do the  
13 parties hold with regard to scheduling of the  
14 election? I like to hear from you on that.

15           Fourthly, are there any anticipated  
16 logistical, legal, or other concern that either party  
17 may have or may be aware of that the Court has not  
18 addressed and that should be addressed?

19           Fifthly, do the parties believe that any  
20 additional order other than the Court's order  
21 redrawing districts is necessary or appropriate for  
22 the next election?

23           And, lastly, just kind a catch-all, is  
24 there anything that you all have thought about the  
25 Court has not thought about or mentioned that you

1 believe may be appropriate and should be addressed.  
2 If you need a reminder, I'd be happy to repeat those  
3 for you. I think it's appropriate to begin with  
4 plaintiffs. Mr. Sells.

5 **MR. SELLS:** Thank you, Your Honor. Bryan  
6 Sells for the plaintiff. I think I've got your five  
7 questions in my notes, and I don't have very much to  
8 say. I think I may have two points, but let me go  
9 over them one by one.

10 Whether or not we have any further comment  
11 on the plans. I think the answer is no. We have  
12 commented fully on the plans, but since Dr. Grofman  
13 is on the line I want to commend him for doing great  
14 work so he can hear my thanks in person. Obviously  
15 we objected, we found a smaller error in one of his  
16 plans, but he corrected that, and he was terrific to  
17 work with, and you did a great job finding him and  
18 appointing him, and so we thank him for the work that  
19 he's done.

20 **THE COURT:** Well, I must say it was with  
21 the consensus of counsel on both sides.

22 **MR. SELLS:** That's right, right. Well,  
23 there's a reason why people don't object to Professor  
24 Grofman, and I think we saw why.

25 Your second question is about the amount

1 of time to implement. That is probably something  
2 that is better directed to the defendant.

3 **THE COURT:** I'm aware of that. I thought  
4 there may just be something that you might be aware  
5 of or haven't thought about it that would --

6 **MR. SELLS:** No, I think we have enough  
7 time regardless of when the election is scheduled.  
8 Obviously the election supervisor will have to note  
9 the new district in which every voter lives, but  
10 there are systems in place for doing that.

11 I do understand that the county has a new  
12 elections supervisor so perhaps defendant's counsel  
13 can speak to that. That may raise some issues if he  
14 is -- and I understand it's a he -- is not up to  
15 speed on that system. But I would imagine that the  
16 Secretary of State's office could fill in, if  
17 necessary, to help make that transition happen once  
18 we get a final map in place. I don't see any reason  
19 why there's a time issue given that we are now just  
20 the second week of January as long as the Court picks  
21 a remedy promptly as it has indicated that it would  
22 do.

23 Your third question is about scheduling.  
24 Should the election be held in May, or should it be  
25 held the November. I take it to mean that's

1 what your --

2 **THE COURT:** That's basically what the  
3 choices are.

4 **MR. SELLS:** And as we said in our briefing  
5 we think in light of Professor Grofman's Map 3, that  
6 it makes sense to move the election to November so  
7 that African-American voters in Sumter County have at  
8 least a shot at a fourth seat.

9 They would have certainly a reasonable  
10 opportunity of three, but Map 3 would give them an  
11 opportunity at four, which would be roughly  
12 proportional to the share of the African-American  
13 population in the county.

14 And we agree with Dr. Grofman's conclusion  
15 that it's really only a long-shot opportunity if the  
16 election is held in November given the past turnout  
17 trends which is lower turnout for African American in  
18 May which is with school board election would  
19 otherwise happen.

20 I think if the Court is inclined to do  
21 that, it should make a finding on the record that it  
22 is reasonably necessary to move the election in order  
23 to provide the plaintiff with a full and complete  
24 remedy in this case just so that we have that finding  
25 on the record if the Eleventh Circuit wonders why you

1 have moved that.

2 So that's about all I have to say about  
3 the move unless have you further questions about  
4 that.

5 **THE COURT:** No.

6 **MR. SELLS:** Your fourth question was about  
7 other sort of logistical or legal concerns. And I  
8 did want to raise or re-raise a point that I believe  
9 the parties made much earlier in briefing, but in  
10 case it got lost.

11 As I read House Bill 836, it is certain  
12 that at least three of the school board members,  
13 those being the ones elected from District 2, 4, and  
14 presumably six under a remedial plan would not take  
15 office until January regardless of when the election  
16 is held. So if the election is held in May under HB  
17 836 unless you shorten their terms, which no one is  
18 suggesting that you do, they have a four-year term;  
19 they were elected in 2016 but didn't take office  
20 until January 1st of 2017 so term doesn't officially  
21 expire until January 1. That may also play into your  
22 decision whether or not to move the election, right.

23 So, for example, Ms. Roland is in the  
24 audience today, she was most recently elected in  
25 2016, and so presumably her term wouldn't end until

1 the end of the year. Am I clear on that so far?

2 **THE COURT:** Yes.

3 **MR. SELLS:** Okay. I think it is a, more  
4 of a question with respect to the other four because  
5 the other four are now holdovers. Those would be  
6 from Districts 1, 3, 5, and the other at-large seat  
7 which would presumably be District 7.

8 **THE COURT:** I suppose you all saw my  
9 footnote with regard to indirect communication, that  
10 there was some concern about people -- I don't know  
11 whether it was that they didn't want to remain or  
12 that people were concerned about them remaining.

13 **MR. SELLS:** I saw the footnote. I don't  
14 know what the communication was, and I haven't heard  
15 anything.

16 **THE COURT:** The Court has not  
17 communicated. The Court wanted to make sure you all  
18 understood it, but there was a call to my chambers  
19 from a legislative person saying, just to say that  
20 there were concerns that people were in offices, you  
21 know, and holdover. So I did not know and did not  
22 inquire as to what the nature of it was. Whether you  
23 all know, I don't know.

24 **MR. SELLS:** Right. So as I read House  
25 Bill 836 the holdover is not a problem because it

1 says that the representatives from those districts  
2 hold office for four years and until their successors  
3 are duly elected and qualified. So they're still  
4 lawfully in office because their successors haven't  
5 been elected and qualified yet.

6 I think the harder question is, well, if  
7 we have an election in May or even in November, when  
8 do their successors take office, when do their terms  
9 end, and I don't have a good answer on that. Perhaps  
10 we can confer with defendant's counsel, but I think  
11 the best reading of it is that those four elected  
12 from those districts might well take office sooner  
13 rather than later, rather than on June 1st, as long  
14 as the qualification process doesn't drag on and on  
15 if -- in the event of an election contest or  
16 something like that.

17 So I think the way House Bill 836 is  
18 drafted those four, if the election were held in May,  
19 would likely take office in the absence of a runoff  
20 immediately upon the conclusion of the election which  
21 would be some time in June. If there's a runoff, the  
22 runoff would be in July, and then they could take  
23 office some time maybe in August.

24 If the election is held in November, then  
25 presumably they could take office in the middle of

1 December. So at least that's how I read the statute  
2 and defendant's counsel may read it differently.

3 That's the main point I wanted to make to  
4 raise and make sure it was in the front of the  
5 Court's mind, that we know three of them would not  
6 take office until January anyway, the others might  
7 take office sooner, and that may play into your  
8 decision as to when to hold the election. Any  
9 questions about that, Your Honor?

10 **THE COURT:** No, sir. I'm interested to  
11 see what the other side has to say about that.

12 **MR. SELLS:** So then the last thing I would  
13 say, Your Honor, is that -- and this is in response  
14 to your catchall question number five, I think  
15 obviously your attention needs to be focused on the  
16 remedy, but once that remedy is entered I think the  
17 Court should enter a final judgment because there's  
18 nothing else to do.

19 **THE COURT:** That's why I asked that  
20 question, that's the Court's perception and so that  
21 this matter can be returned to the circuit.

22 **MR. SELLS:** So, right, it could be  
23 returned to the circuit and we can start the  
24 attorney's fees process as well, which can take a  
25 while and this case has taken a while, and frankly

1 it's hardship for me as a solo practitioner to go  
2 four years without any prospect of getting paid, and  
3 I'd like it not to be another four years and these  
4 things can take a while.

5 **THE COURT:** Of course, as long as counsel  
6 understands that's all entirely in this Court's  
7 hands.

8 **MR. SELLS:** Sure, but it is without  
9 question possible to litigate attorney's fees while  
10 an attorney appeal is going on.

11 **THE COURT:** That's generally my  
12 understanding, I don't know, there may be --

13 **MR. SELLS:** Right, right. So --

14 **THE COURT:** -- or otherwise, but that's  
15 generally the case.

16 **MR. SELLS:** So it's not just for my own  
17 purposes, but I think it makes a lot of sense for the  
18 Court to enter final judgment once it picks the  
19 remedy. That way the entire merits can go up on  
20 appeal, and we can -- to the extent that there is any  
21 fighting we can haggle over fees down here so that  
22 it's not unduly drawn out.

23 **THE COURT:** I did not say that initially,  
24 but once the Court of Appeals returned it for the  
25 Court to complete that process that's exactly what I

1 anticipated that we would get everything concluded  
2 that I need to conclude, and that's why I wanted to  
3 make sure if there was anything else that you all had  
4 in mind that I need to consider, that if you make it  
5 known to me so to make sure that I can address it so  
6 I can put my final stamp on it and allow it to be --  
7 and return it to the circuit.

8 **MR. SELLS:** Right, right. You know,  
9 before I sit down, I think I should have said one  
10 other thing about the transition issue because of the  
11 four holdovers, and this is something you should get  
12 input from opposing counsel on. I think that the  
13 best reading of House Bill 836 is that the four  
14 elected to Districts 1, 3, 5, and the at-large would  
15 be elected for a term that ends in 2022 because their  
16 term should have -- well, actually January 1st, 2023,  
17 but so they would effectively be elected for the  
18 remainder of that term. The House Bill 836 has this  
19 stagger, and I think in order to maintain that  
20 stagger, unless the Court wishes to eliminate it,  
21 you'd have to specify in the remedial order that for  
22 the first election they would hold office until  
23 that --

24 **THE COURT:** Well, I assume the idea was  
25 that you wouldn't have a completely new board at any

1 given time; there would always be experienced board  
2 people there. I understand there's --

3 **MR. SELLS:** Right.

4 **THE COURT:** So I would think there would  
5 have to be some substantial reason why that would not  
6 be honored --

7 **MR. SELLERS:** Right.

8 **THE COURT:** -- the clear benefit of it.

9 **MR. SELLS:** Yes, that's not been an issue  
10 thus far. Professor Grofman didn't raise it. There  
11 are times when staggered terms can be a dilutive  
12 mechanism, but no one has raised that thus far in  
13 this case.

14 **THE COURT:** All right. Thank you, Mr.  
15 Sells. All right, who will be speaking for the  
16 defense?

17 **MR. BRADEN:** Mark Braden.

18 **THE COURT:** Mr. Braden.

19 **MR. BRADEN:** Good afternoon, Your Honor.

20 **THE COURT:** Good afternoon.

21 **MR. BRADEN:** We really do not have  
22 additional comments on the proposed plans. I have a  
23 comment on where we were and what has been presented  
24 to the Court. It would appear to us from the report  
25 that was provided by Dr. Grofman, who I'd like to

1       thank too, and I was oddly in favor of Dr. Grofman,  
2       who I've worked with for many years doing this, and I  
3       respect his work. I think his work, in fact,  
4       provides this Court with some additional information  
5       on which you might on your own decision determine  
6       that the determination of liability in the original  
7       case was questionable since Dr. Grofman is unable to  
8       come up with a plan that is, in fact, better than the  
9       existing plan for the interests of the citizens of  
10      Sumter County, and certainly no better than the plan  
11      that has been submitted to this Court by the  
12      plaintiffs. And those two in combination show the  
13      failure in the initial stage on the liability. There  
14      can only be liability if there's a better plan, and  
15      none of these plans are better.

16                But in comparison to each other, we have  
17      no opinion. They all have shortcomings, they all  
18      have good points, but as to which one, my client has  
19      no particular opinion.

20                We are wildly in favor of the entry of a  
21      final order, and we are wildly in favor of a plan  
22      being adopted as soon as possible. The timeline that  
23      we'll be looking, the present dates for a May 19th  
24      election, which is the next scheduled election,  
25      candidate qualifications would begin March 2nd to

1 6th, according to the information the Court has  
2 provided to me.

3 Based upon that time frame one has to move  
4 back from that slightly and consider what time one  
5 needs to have to decide to make the decision to  
6 become a candidate based on these new districts.

7 Obviously what these lines look like  
8 logically affects whether or not I was a citizen of  
9 Sumter County, whether or not I would run or not, or  
10 who I would have to run against, what resources might  
11 be able, whether or not I thought the incumbent  
12 representing that district was a person that I  
13 wouldn't run against because they were good, or it  
14 might bring out additional people who will run  
15 because they're unhappy with who is in there  
16 representing them.

17 So I think you need to be thinking about  
18 having a plan in place certainly by the end of month.  
19 That would, I believe, then give enough time for  
20 candidate -- and really certainly our client, Board  
21 of Elections has legitimate concerns about making the  
22 process work. This process will, in fact, be more  
23 complicated because large elections are easier to run  
24 than district elections. District elections which  
25 have overlapping districts with other types of

1 elections are easier to administrate.

2 So this process where we're getting rid of  
3 the at-large elections and drawing all new districts  
4 will, in fact, be more complicated to administer.  
5 But that's less of an concern, we can get it done if  
6 we have -- I believe our client can get it done if we  
7 have a plan in place certainly by the middle of  
8 February.

9 I believe for interests of the citizens  
10 and candidates it should be done earlier than that  
11 but certainly the middle of February would give us  
12 sufficient time to make this happen and have an  
13 election that would be well-administrated May 19th of  
14 this year.

15 We have no position on whether the  
16 election should be conducted on May 19th or in  
17 November. The only observation we have on that is,  
18 of course, this a point that was not part of the  
19 original litigation and only has arisen now. This is  
20 not an issue that was raised by the plaintiffs in  
21 this litigation.

22 In addition to that, on the notion of who  
23 remains it would -- it is a point in which we do not  
24 have a position. I read the statute, and -- I mean,  
25 we simply just don't have a dog in this fight because

1 the members aren't our clients, and it really doesn't  
2 make any difference to our client. But it seems  
3 clear that the way I read the statute that the  
4 individuals who are serving expired terms who are  
5 sitting in the office right now, that if there is an  
6 election in May 19th, that once that election is  
7 certified by the local county board, then there would  
8 no longer be a vacancy and those individuals elected  
9 then would take office at that time.

10 The individuals who would remain in office  
11 are those who have terms that extend to January 1st  
12 of 2021, and I have that as District 2, 4, and the  
13 at-large seat. I think that those could certainly  
14 conduct an election for those in May, but the  
15 individuals winning that race would not take the  
16 office I don't believe until January 1st, 2021.

17 Most of the other issues we're pretty much  
18 agnostic on except for timing. The sooner the better  
19 for election administration purposes, the sooner the  
20 better, and for people in the political process in  
21 the county, the sooner the better. Thank you.

22 **THE COURT:** All right. Thank you. Any  
23 further comment from the plaintiff based on the  
24 comments from Mr. Braden?

25 **MR. SELLS:** Just for the record, because I

1 know you can probably guess what's going to come out  
2 of mouth, we don't agree that Dr. Grofman's plans are  
3 not better than the existing one. They all have a  
4 third opportunity district, whereas the existing  
5 plan, the House Bill 836 plan, as you found, only has  
6 two opportunity districts. We think three is better  
7 than two.

8 And so all of Dr. Grofman's plans except  
9 for plan two, which we noted in our objections, have  
10 three opportunity districts and are therefore better  
11 than their current plan. So I just wanted to put  
12 that on record.

13 **THE COURT:** All right. Mr. Braden?

14 **MR. BRADEN:** Yes. I've been reminded of  
15 one other point, which is we have a requirement for  
16 publishing notices of qualifying fees, which is,  
17 there's a -- we have a significant push time-wise in  
18 that which is even more. We would like to go ahead  
19 and publish those on sort of a, here's the fee you're  
20 going to have to pay, we don't know what the district  
21 is going to look like, but if you decide to run  
22 here's what the qualifying fee is going to be, if the  
23 Court is amenable to sort of that vague reference in  
24 the qualifying fee, I think it makes the most sense.  
25 The qualifying fee would not -- the amount would not

1 be affected by the plan, but would probably be in  
2 everybody's interest to get it out to the public.

3 **THE COURT:** So that those who might be  
4 interested would know what that is?

5 **MR. BRADEN:** Yes, exactly right.

6 **THE COURT:** Does the plaintiff have an  
7 issue with that? Off the top of my head, I don't see  
8 a reason why --

9 **MR. SELLS:** No, I think that's a good  
10 idea.

11 **THE COURT:** I think that's appropriate,  
12 and the Court would have no objection, Mr. Braden.

13 **MR. BRADEN:** Thank you.

14 **THE COURT:** All right. Anything further?  
15 All right, I've kind of promised my schedule out to  
16 you, and I did that without being overly optimistic  
17 so it was a realistic schedule that I thought I could  
18 meet, and I expect to meet that. And I want to thank  
19 you all for being here today and for your comments,  
20 they are helpful to the Court, and I expect to get a  
21 final order dispatched very soon.

22 **MR. SELLS:** Your Honor, your order did  
23 indicate that you would be willing to take testimony  
24 from the public. I have no idea if anyone here has a  
25 comment.

1           **THE COURT:** I thank you for reminding me.  
2 I wanted to make sure that all those who might have  
3 interest would know about this hearing, and so if  
4 there is something that someone needed to make the  
5 Court aware of, I'm happy to hear it, although  
6 strictly speaking, you are not a party, but the Court  
7 thought there is public interest, and the Court  
8 certainly has no objection to hearing those.

9           Okay. If you have something to say, sir,  
10 if you would step forward to this first lectern and  
11 just state your name for the record and your county  
12 of residence.

13           **THOMAS MCFARLAND:** Thank you, Your Honor.  
14 My name is Thomas McFarland. I'm a residence of  
15 Sumter County since 1978. I had the honor of serving  
16 as Chief Magistrate of Sumter County in 1995 and '96.  
17 I lost an at-large election.

18           However, that is not true of today where  
19 the city-county antagonism has changed some of its  
20 dynamics as well as the makeup of many of our  
21 neighborhoods, which I'm sure will be revealed in the  
22 upcoming census.

23           What concerns me most is that one of the  
24 initial presumptions of the plaintiffs was that it  
25 would be impossible for an African American to be

1 elected in at-large election in Sumter County, and,  
2 in fact, today our clerk of court, Cortisa Barthell,  
3 is an African American and was elected overwhelmingly  
4 with an at-large countywide election, and that needs  
5 to be noted.

6 The at-large seats were a compromise  
7 between reducing the total number of representatives  
8 on our school board from the nine it had been to the  
9 five that had been proposed. African-American  
10 members of the board had participated in public  
11 hearings and it agreed to the reduction and to the  
12 at-large districts, and then when the white majority  
13 allowed an African American to be appointed to fill  
14 an unexpired term of someone who had had to resign  
15 due to moving out their district, then the  
16 controversy came up.

17 We think, or many of the people in Sumter  
18 County think the original plan was adequate and  
19 reduced the confusion that ultimately comes about  
20 when you have different districts for our county  
21 commissioners versus our Board of Education. People  
22 have a hard time even now telling you what number  
23 district they're in for their county commissioner.

24 Now, this new plan is going to make it  
25 even more complicated and probably discourage people

1 from voting. African Americans are voting in larger  
2 numbers in Sumter County, thankfully, because we have  
3 elections that matter and that's national elections  
4 and that's state legislative elections, and it is  
5 also as Ms. Barthell's election proved local  
6 elections. Thank you, Your Honor.

7 **THE COURT:** Thank you sir. Yes, sir, if  
8 you would come forward likewise and state your name  
9 and your county of residence.

10 **RICK BARNES:** Good evening, Your Honor.  
11 Rick Barnes, District 4, serving in the 2020, January  
12 1st of 2021.

13 **THE COURT:** Wait, just for the record,  
14 Sumter County, right?

15 **MR. BARNES:** Yes, sir. Sumter County  
16 Board of Education.

17 **THE COURT:** All right.

18 **MR. BARNES:** I did hear a couple of  
19 things, and I'd just like to make a comment about two  
20 of those.

21 Transition plan. The great state of  
22 Georgia has a good training program for board of  
23 educations members once you're elected. There are  
24 lots of different things you can and can't do as a  
25 Board of Education member.

1 I think it would be a disservice to our  
2 kids and our county if a full board of new members is  
3 seated at one time. A transition plan of experienced  
4 board members and new board members is my  
5 recommendation to see how we can get that done maybe.

6 A Board of Education member is important  
7 to our community. The fiduciary responsibilities are  
8 tremendous. The responsibility to the kids is  
9 tremendous. Learning how to work the three types of  
10 budgetary stuff, learning the personnel matters,  
11 learning how to do the three things that a board of  
12 education member is elected for, set policy, hire a  
13 good superintendent, take care of your lawyers and  
14 your papers. That's the only three things that a  
15 board of education member is duly elected to do.

16 Learning how to do those things correctly,  
17 and how to do it best for the kids is important. The  
18 first day on the job you're as lost as you can be  
19 because all the money is hitting you, all the  
20 personnel are hitting you, there's a lot of  
21 questions, and, of course, your community is calling  
22 you.

23 My recommendation is, please, do this with  
24 some offset if you can. If you can't, we understand  
25 it, but a board of education member is very key to

1 the community and to the kids and to our district.

2 Thank you.

3 **THE COURT:** Thank you, sir. All right. I  
4 believe there's one other person. Yes, sir, if you  
5 would come forward and state your name and county of  
6 residence and your position if you hold a position in  
7 the county.

8 **JIM REID:** Thank you, Your Honor. My name  
9 is James C. Reid, Jr.

10 **THE COURT:** Yes, sir.

11 **MR. REID:** I go by Jim. I represent  
12 District 3, currently serving on the Sumter School  
13 Board of Education. I am in one of the districts  
14 that, as I tell people, I'm serving at your pleasure.

15 I think one of the things that has -- I've  
16 never had the opportunity to testify before today,  
17 and we need to ask, and this question has never been  
18 asked, what is best for the students of Sumter  
19 County; are we interested in just getting someone  
20 elected by the color of their skin or by their  
21 qualifications and their interest in the students.

22 Now, I have a question for you, and I only  
23 received these maps on Friday afternoon. Are we  
24 talking, with projected plan, are you talking about  
25 Exhibit 3, or you go all the way over which is

1 Exhibit 6, Map 3?

2 **THE COURT:** I think it's Map 3, Exhibit 6  
3 is what it is.

4 **MR. REID:** So in other words, Exhibit 6,  
5 Map 3.

6 **MR. BRADEN:** That's correct.

7 **MR. REID:** Yes, sir. As I've looked at  
8 any of these, I currently prefer the plan as it  
9 exists. As Mr. McFarland addressed, I personally  
10 like the idea of the school board districts mirroring  
11 the county commissioner district two at-large. The  
12 argument that a person of color could not be elected  
13 to Sumter County was Ms. Barthell. You know, bottom  
14 line, she sawed the legs off of that stool because  
15 she had different opponents and she won. The people  
16 of Sumter County obviously elected the best candidate  
17 regardless of skin color. I think it would be more  
18 conducive.

19 The other is, I would like to reaffirm  
20 Mr. Barnes. When I first came it really took me  
21 somewhere between 2 and 3 years to get my feet or my  
22 legs under me to understand, to actually understand  
23 what was going on, and understand all the jargon and  
24 understand how everything works.

25 I think it would be a disservice if we put

1 a whole new board on. The other thing I think you  
2 need to understand is what's -- I don't know if  
3 you're aware or not of what is facing this board. We  
4 currently run a \$40 million budget, but we're  
5 building a \$58 million high school.

6 We have met with -- in the previous five  
7 years when this board came on, the school board  
8 system was in danger of losing its accreditation.  
9 We're getting all high marks now for any test we --

10 When this board came on there was less  
11 than \$2 million dollars in the general fund. As of  
12 Friday morning at 9:00 o'clock, we've got 12, over  
13 \$12 million dollars in the general fund.

14 When this board came on in January of --  
15 we had \$180,000 in the school lunchroom program.  
16 We've got 1.3 million now, plus we've bought over  
17 \$700,000 worth of equipment.

18 The citizens of Sumter County united  
19 around the One Sumter Foundation and the push for  
20 Sumter County School System to be awarded a  
21 \$3 million grant for a college and career academy to  
22 be added to the new high school that we're building.

23 The entire community came together to fund  
24 this. And when the technical school selected the  
25 three, Sumter County was the first one they selected,

1 and we were told that one of things that was in our  
2 favor was the unity of Sumter County.

3 The people in this county have come  
4 together and have tried to unite to educate our  
5 students and to move forward rather from the page --  
6 rather than trying to go back. If you follow our  
7 history there was -- when we named this new high  
8 school, there was a group that wanted us to keep  
9 Americus in the name of the high school, and we named  
10 it Sumter County High School. Our position was, and  
11 that vote was 7-0, and some of the board members  
12 being graduates of Americus High School. Because we  
13 felt like we was turning a new page, it was a new  
14 day.

15 This board came, the current board came  
16 together from all walks of life. Currently we have  
17 three retired educators. We have a physician, we  
18 have retired architect, and we have two businessmen.  
19 If you'll go back and look at our minutes, the  
20 majority of our votes are 7-0.

21 We have coalesced, and we are all working.  
22 Our question is, when we make a decision, our  
23 question is always what is best for our students and  
24 what is best for the citizens of Sumter County.

25 We currently, as we -- I currently remind

1 a lot people, I served as the financial chairman, and  
2 they talk about our money, and I said, you need to  
3 understand it's not our money. We are stewards, the  
4 people that are in my district, I am their steward, I  
5 am their voice.

6 And if you understand from the Bible,  
7 Joseph being a steward, his responsibility was to  
8 look after all the king's assets and make sure that  
9 he returned them in some form or fashion that was  
10 better than when he got them. So he was a steward.

11 And that's the way I take my position is I  
12 look at it, I'm a steward providing for the best  
13 education of these children and maintaining, being  
14 responsible to the taxpayers. As far as that goes,  
15 the first year, we ran a deficit budget and had to  
16 dip into reserves, but yet we had less than  
17 \$2 million.

18 The next year we balanced the budget, but  
19 we had to raise the tax millage rate by less than a  
20 quarter of a mill. And in the previous two years,  
21 when it came to December we never had enough money to  
22 make payroll, and we would always have to do what's  
23 known as a tax anticipation note. The bottom line is  
24 we had to borrow money against our proposed tax  
25 revenues.

1           The past three years we've had a balance  
2 budget, we've not once had to dip into reserves, and  
3 we maintained the same millage rate for the previous  
4 three years. And yet, as I pointed out to you, we've  
5 been able to grow the general fund and also the  
6 nutrition account.

7           As far as the educational opportunities,  
8 one of the biggest things, because I'm involved in  
9 agriculture, we are working, and one of the big  
10 things in our college career academy, it's going to  
11 be a big influence in agriculture and agribusiness  
12 because there's tremendous career opportunities  
13 there.

14           But we were able to hire actually an FFA  
15 director, teacher for the middle school grades. I  
16 lobbied hard for that, and we thought, we were hoping  
17 maybe we'd get 20. Well, the first year we got a  
18 hundred, a hundred young people signed up for FFA,  
19 and they're participating in all the different  
20 projects, and they're enjoying all the different  
21 opportunities that is afforded to them from that  
22 program.

23           A lot of them can't fund the dues for the  
24 jackets and whatever, but there's a teacher, the FFA  
25 director, lets the agribusiness community know those

1 funds are always supplied. They've never had to go  
2 lacking; he always had what he needed.

3 So, in summary, I'd like to see staggered,  
4 I would like to see staggered voting, if you could  
5 maintain. Also I would really prefer to wait to  
6 November, and let this board continue to function.

7 And actually, sir, I prefer what I have  
8 Exhibit 4 -- let me get back to the one I had. No,  
9 your exhibit -- mine would be Exhibit 3, Map 1-B.  
10 This is my personal opinion and I'm not speaking for  
11 anyone but me.

12 **THE COURT:** Map 1-B?

13 **MR. REID:** Yes, sir. Yes, sir. And I  
14 think that -- I think it would probably just give the  
15 -- it would be the best opportunity and I think the  
16 students and the citizens of the county would best  
17 served with that. But please understand, this is my  
18 personal opinion. I do not have the authority to  
19 speak for the board. We've not met.

20 **THE COURT:** I understand that.

21 **MR. REID:** And so that's just my personal  
22 opinion as I come because -- and by the way, I don't  
23 -- just so you know, I've lost count of the hours and  
24 the meetings because in this previous five years we  
25 hired a superintendent, and we had to narrow that

1 down from 38. We hired a construction management  
2 firm, and we had to narrow that down from over 20.  
3 And then we had to hire an architect and we had to  
4 narrow that down from eight. And which, we went, we  
5 took three Fridays and we toured three different  
6 schools that each architect had designed and built so  
7 we could get a feel for the architect of what we  
8 wanted. And after my taxes are deducted, I get \$184  
9 a month.

10 So, obviously none of us, none of the  
11 seven of us are in this for money, and I could say,  
12 one thing I am confident in speaking for the board as  
13 a whole is that we do have the education of our  
14 students at heart because it does not matter whether  
15 you're Chamber of Commerce or your One Sumter  
16 Foundation, or whatever you're doing to try and bring  
17 industry into your community, the school system is  
18 going to be one of the first things I believe that a  
19 company will look at.

20 We are currently working trying to improve  
21 our CCRPI scores. We are currently working on  
22 getting the right people on our bus, and we're  
23 constantly working trying to get the right people on  
24 the bus sitting in the right seat so that we can move  
25 Sumter County forward.

1           The previous year we were real excited.  
2           We actually moved from the bottom third of our  
3           district -- we moved all way to number three in our  
4           recent district, but this past year we fell back to  
5           number 11, and we're working on that. In fact, on  
6           December the 14th we had a special call retreat, we  
7           brought all the principals in.

8           The board members met with all the  
9           principals trying to figure out what happened and  
10          what we're going to do to turn it around, because I  
11          don't care what industry you're in, you always want  
12          to be minimum in the top third. If you can stay in  
13          top third you'll survive, but you're in bottom third,  
14          more than likely you will fail.

15          And so we don't want to fail our students  
16          because to me, the way I look at being involved in  
17          the agriculture, these students are the replacement  
18          herd for each of us in this room, and our country  
19          will only -- and each of our counties or whatever, it  
20          will only be as strong as we are able to train them  
21          to take our places and move forward.

22          So I thank you, you've been very patient  
23          to listen to me, and I thank you for your time, sir.

24                 **THE COURT:** Thank you, sir. Yes, ma'am.

25                 **MS. CRIMSON:** I'm Nita Crimson, and I'm

1 currently on the Sumter County School Board, District 2.

2 **THE COURT:** Yes, ma'am.

3 **MS. CRIMSON:** And I have just a couple of  
4 things to say. First of all, I'm in favor of having  
5 the elections moved back to November, it's higher  
6 election voter turnout. But the school board  
7 elections were previously in November until a number  
8 years ago, maybe seven years ago, we had another  
9 court case that things were changed, and so we  
10 started having that election in May and so somehow  
11 they started being in May.

12 What happens is you have a May to January  
13 lame duck period for people that either didn't want  
14 to run again, but they've got to be on it for all  
15 those months or someone who's new who can't serve yet  
16 has to wait until January. So that, whether this was  
17 going on or not, I think that change needed to be  
18 made.

19 The other thing is I would prefer Map 1-A  
20 or 1-B. 1-A has three black-three white in a  
21 definite swing district, and the other one is  
22 similar. But when you get to Map Number 3, it's the  
23 only one of the eight maps where District 2, it's  
24 vastly majority black. It's always historically been  
25 white. In fact, it's always been the South Lee

1 Street in the east side of it part of town, and --

2 But I just thought that was interesting  
3 that it was majority, vastly majority white on seven  
4 maps and then on one it's the other way. So that's a  
5 personal comment, but I think people who are in,  
6 quote, District 2 are used to it being that same  
7 neighborhood. So I just wanted to point that out.  
8 Thank you.

9 **THE COURT:** All right. Thank you, ma'am.  
10 All right. I believe I've heard from everyone. And  
11 I want to thank you for your comments. The Court is  
12 always interested, and, of course, as the Court  
13 stated earlier, it is a matter of public interest,  
14 and I know strictly speaking Sumter County is the  
15 defendant, but, of course, obviously has effect on  
16 those who hold office, and several of you have  
17 spoken.

18 I do note for the record, though, that I  
19 believe a number of the members did testify at the  
20 trial previous who did serve on the board. So the  
21 Court had the benefit of hearing from them.

22 Does either counsel have anything you wish  
23 to state or you think you need to say to the Court in  
24 light of any of the comments that were made? I think  
25 they were personal comments.

1           **MR. SELLS:** I do, Your Honor. There were  
2 a number of comments about the transition plan, and I  
3 want to make sure that you're aware and the public is  
4 aware that Dr. Grofman went to some length to ensure  
5 -- or to avoid pairing of incumbents, and I think  
6 it's accurate to say, and Professor Grofman can  
7 correct me if I'm wrong, that almost all of the  
8 incumbents in every plan have an opportunity to be  
9 reelected.

10           And so, to the extent that there's concern  
11 about an all new board coming in, I think that would  
12 depend just as much on the incumbents choosing not to  
13 run as anything that this Court chooses to do, and it  
14 might be worth finding out from the incumbents who  
15 are in the audience here today whether they intend to  
16 run again.

17           **THE COURT:** I wouldn't do that.

18           **MR. SELLERS:** Okay.

19           **THE COURT:** I wouldn't ask anyone to state  
20 that.

21           **MR. SELLS:** But it is certainly true that  
22 whatever transition plan you adopt there will be  
23 incumbents who have the opportunity to remain in  
24 office, and we -- none of the plans I think deviate  
25 from that, they're not intended to get people out.

1 There's an unavoidable pairing of one or two  
2 incumbents just because we're unraveling an at-large  
3 seat, that's just the nature of it. But beyond that,  
4 there should not be a jarring transition no matter  
5 which way the Court decides to go. I think that's  
6 the only thing I wanted to say in response.

7 **THE COURT:** All right. Mr. Braden,  
8 anything you want to add?

9 **MR. BRADEN:** No, I really don't have  
10 anything to say other than comment that both the  
11 board members who testified at the original trial and  
12 the board members that testified here, certainly the  
13 citizens of Sumter County are well represented on  
14 their school board presently. Thank you.

15 **THE COURT:** All right. And, of course,  
16 the Court is aware of the important role that they  
17 play and the importance to the public, and that's why  
18 the Court wanted them to know about this hearing  
19 today, that they would have an opportunity to express  
20 anything they wish to express.

21 I want to thank you all for being here.  
22 Dr. Grofman, I know you are not called as a witness  
23 but in light of the comments that have been made, is  
24 there anything you feel you need to say?

25 **PROFESSOR GROFMAN:** No, Judge. The only

1 thing I can say is that I am very grateful for the  
2 opportunity to be present at a public hearing. Every  
3 time I am a public hearing I am always impressed with  
4 the citizens and in this case the elected officials  
5 as well, so thank you.

6 **THE COURT:** Thank you, sir. All right.  
7 If there is nothing further then, we are adjourned,  
8 and you all will be hearing from the Court soon.  
9 Thank you very much. We are adjourned.

10  
11

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12 **CERTIFICATE OF OFFICIAL REPORTER**

13 *I, Sally L. Gray, Federal Official Court*  
14 *Reporter, in and for the United States District Court for*  
15 *the Middle District of Georgia, do hereby certify that*  
16 *pursuant to Section 753, Title 28, United States Code that*  
17 *the foregoing is a true and correct transcript of the*  
18 *stenographically reported proceedings held in the*  
19 *above-entitled matter and that the transcript page format*  
20 *is in conformance with the regulations of the Judicial*  
21 *Conference of the United States dated this 17th day of*  
22 *February, 2020.*

23 /s/ SALLY L. GRAY, CCR, RPR, USCR

24  
25

**FEDERAL COURT REPORTER**  
**UNITED STATES DISTRICT**  
**MIDDLE DISTRICT OF GEORGIA**