

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

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

**ORDER**

On November 20, 2017, the Court issued an order memorializing the pretrial conference in this action. The order directed the parties to “submit their views on the procedure required for an order implementing a redistricting plan in this action were Plaintiff to prevail . . . .” (Doc. 134.) Plaintiff Mathis Kearsé Wright, Jr. submitted his views first. (Doc. 140.) He argued the Court should give elected officials the first opportunity to remedy an unlawful plan, but that timing or other factors may make doing so impracticable. (*Id.* at 3.) Any new plan put in place, he noted, must not violate Section 2 of the Voting Rights Act. (*Id.* at 4.) Defendant Sumter County Board of Elections and Registration agreed that the legislature should have the first opportunity to remedy an unlawful plan. (Doc. 141 at 3.) If the legislature failed to do so, it noted, the Court would have to put a plan in place which would approximate the plan the legislature would have put in place. (*Id.* at 4.)

The Court then held a bench trial in this matter on December 11–14, 2017. (Docs. 144–146; 147.) Following the trial, the Court ordered the parties to submit a series of post-trial briefs, including proposed remedial plans. (Doc. 147.)

Wright filed his proposed remedial plans on January 22, 2018. (Doc. 174.) Sumter County filed a response on February 5, 2018, (Doc. 176), and Wright then filed a reply on February 14, 2018. (Doc. 180.) In the midst of that briefing, the Court filed an order

explaining that a series of motions filed and hearings requested by the parties would prevent it from determining liability and implementing a remedial plan prior to the scheduled May 2018 elections. (Doc. 179.) It ordered the parties to files brief no later than February 23, 2018, and no longer than five pages, addressing whether the Court should allow the upcoming election to proceed as planned with the current districts or enjoin the election. (Doc. 179.)

Wright responded that, in the event the Court found the current plan to violate Section 2, the election should be enjoined. (Doc. 181 at 1.) He suggested the election be moved to the general election on Tuesday, November 6, 2018. (*Id.* at 3.) Sumter County disagreed. (Doc. 182.) It suggested that, even if the Court ruled in Wright's favor on the merits, the elections should go forward as scheduled. (*Id.* at 1.) The Court held a status conference on February 28, 2018. Wright suggested the following timeline for a general election:

- July 23, 2018: Deadline for new district boundaries to be set.
- August 6–10, 2018: Candidate qualifying period.
- August 8, 2018: Approximate time ballots begin being created.
- September 21, 2018: Deadline for ballots to be made available.
- November 6, 2018: General election.

(Doc. 189.) The Court noted that those dates were reasonable in the event the election was enjoined. (*Id.*)

On March 17, 2018, the Court found that the current school board districts violate Section 2 of the Voting Rights Act. (Doc. 198.) The Court noted that the Georgia General Assembly would be in session through at least Thursday, March 29, 2018. S.R. 631, 154th Gen. Assemb., Reg. Sess. (Ga. 2018). It ordered Sumter County “to confer with Sumter County’s legislative delegation and inform th[e] Court no later than Monday, March 26, 2018 whether the General Assembly is inclined to enact a remedial plan before adjourning sine die or, if not, a timeline for when it believes a remedial plan could be adopted.” (Doc. 198 at 37.) Sumter County filed a status report on March, 26, 2018. (Doc. 201.) It spoke with Senator Freddie Powell Sims, the representative for Georgia Senate

District 12, who informed counsel that the Assembly would not be able to change the school board districts before it returned to session in January 2019. (*Id.*)

Also on March 26, 2018, the parties filed supplemental briefs regarding remedy proposals. Wright argued that, if the General Assembly failed to enact a remedial plan before adjourning, the Court should enact a remedial plan as an interim remedy and move the election date to November 6, 2018. (Doc. 199 at 1.) Again, Sumter County disagreed. (Doc. 200.) It suggested the Court leave the May 2018 election in place and permit the Assembly to enact a plan in 2019. (*Id.* at 29.) Further, it requested the Court issue a partial final judgment in accordance with Federal Rule of Civil Procedure 54(b) and reserve jurisdiction over remedial issues until after the Assembly has an opportunity to act. (*Id.* at 30.)

On March 30, 2018, Wright filed an Emergency Motion for a Temporary Restraining Order and Preliminary Injunction. (Doc. 202.) He informs the Court that, in the absence of an injunction, absentee ballots may begin being distributed on April 3, 2018. (*Id.* at 4.) The ballots for the election have already been printed and cannot be changed. (Doc. 202-1.) Wright requests that Sumter County: “(a) redact the names of school-board candidates by means of a sticker or permanent marker; (b) include a notice with the ballots that the school-board election has been cancelled; or (c) both. Alternatively, the Court could enjoin the defendant from distributing any ballots for a few days while the parties attempt to agree on a suitable procedure for cancelling the election.” (Doc. 202 at 8 (citation omitted).)

Later the same day, Sumter County filed a Notice Regarding Briefing. (Doc. 203.) It notes that Wright’s motion was filed the morning of Good Friday and seeks nearly-immediate Court action without response from the County. (*Id.*) It requests until Wednesday, April 4, 2018 to file a response. (*Id.*)

### **DISCUSSION**

At the outset, the Court notes that under the totality of the circumstances, including its resolving of dispositive motions, a bench trial, post-trial hearings, and extensive and ongoing briefing by the parties, it has an adequate record before it to consider injunctive relief consistent with its duty to protect the right at issue. Further, Sumter County—as will

be further explained—will be provided an opportunity to respond to this order consistent with the local rules.

Before delving into the appropriate remedy, the Court reviews the different forms of injunctive relief available in federal court. “[T]here are basically three types of injunctions that can be issued by a federal court[:] . . . the temporary-restraining order, the preliminary injunction, and the permanent injunction.” 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2941 (3d ed.).

- A temporary-restraining order typically is sought and issued on an ex parte basis and operates to prevent immediate irreparable injury until a hearing can be held to determine the need for a preliminary injunction.
- A preliminary injunction is effective until a decision has been reached at a trial on the merits.
- A permanent injunction will issue only after a right thereto has been established at a trial on the merits.

*Id.* (formatting altered). Because the Court has already decided the merits of this action in Wright’s favor, neither a temporary restraining order nor a preliminary injunction are appropriate. Rather, the Court must decide whether to issue a permanent injunction, the standards for which vary slightly from those cited by Wright. “[T]o obtain a permanent injunction, a party must show: (1) that he has prevailed in establishing the violation of the right asserted in his complaint; (2) there is no adequate remedy at law for the violation of this right; and (3) irreparable harm will result if the court does not order injunctive relief.”

*Alabama v. U.S. Army Corps of Engineers*, 424 F.3d 1117, 1128 (11th Cir. 2005).

To begin with, the Court agrees with the parties “that redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt.” *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978). The Georgia General Assembly should have the first opportunity to craft a remedial plan when doing so is “practicable.” *Id.* at 540. Here, it is clearly not practicable to defer to the Assembly for the 2018 election. Both the Georgia Senate and the Georgia House of Representatives have now adjourned sine die, and the senator representing Sumter County has informed the Court through Sumter County that the Assembly will not act on this issue until 2019.

“[O]nce a State's[—or here, school board's—]legislative apportionment scheme has been found to be unconstitutional, 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.” *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). Unsurprisingly, then, the Court finds that all three requirements for a permanent injunction have been met. First, Wright has prevailed in his claim. (Doc. 198). Second, there is no adequate remedy at law for a violation of Section 2 of the Voting Rights Act. *See Dillard v. Crenshaw Cty.*, 640 F. Supp. 1347, 1363 (M.D. Ala. 1986) (“it is simply not possible to pay someone for having been denied a right of this importance”). Likewise, and third, the loss of a meaningful right to vote creates an irreparable harm. *Id.*

Once the Court decides the standards for a permanent injunction are met, it “must undertake an ‘equitable weighing process’ to select a fitting remedy for the legal violations it has identified . . . .” *North Carolina v. Covington*, 137 S. Ct. 1624, 1625 (2017) (citation omitted). The Court must consider “a special blend of what is necessary, what is fair, and what is workable.” *New York v. Cathedral Acad.*, 434 U.S. 125, 129 (1977) (quoting *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973)); *see Covington*, 137 S. Ct. at 1625 (applying *New York* to the voting rights context). Relief is not automatic. A district court may permit an election to proceed even after a finding that the districts are unlawful when “an impending election is imminent and a State's election machinery is already in progress.” *Id.* There is no shortage of courts that have done so. *See, e.g.*, Order at 162–163, *Covington v. North Carolina*, No. 1:15-cv-399 (M.D.N.C. August 11, 2016).

The Supreme Court recently noted, in the context of a district court setting a special election to remedy a racial gerrymander, a non-exhaustive list of factors district courts may consider in deciding a proper equitable remedy. They include “the severity and nature of the particular constitutional violation, the extent of the likely disruption to the ordinary processes of governance if early elections are imposed, and the need to act with proper judicial restraint when intruding on state sovereignty.” *North Carolina v. Covington*, 137 S. Ct. 1624, 1626 (2017).

Here, the infringement of black voters' right to vote in Sumter County is severe. Despite African Americans constituting 49.5% of the voting age population in Sumter County, they are only able to elect their candidates of choice to 29% of the school board seats. (Doc. 198 at 2.) Were the Court to allow the election to proceed, this vastly disproportionate representation would continue for another two years. Second, the Court finds that enjoining this election and moving it to November would cause minimal disruptions to the ordinary processes of governance. New school board members do not begin their term until the January following the election, so moving the election date from May to November will not interfere with the regular terms of board members. (Doc. 153-85); *cf. Covington*, 137 S. Ct. at 1625 (vacating injunction which would have shortened legislators' terms from two years to one). The Court acknowledges that voters may be confused by the changed election date. However, the school board held elections in November as recently as 2010. (Doc. 153-61.) A November school board election will not be an unusual sight for Sumter County voters. Moreover, Wright is not proposing to move the election to an unusual, specially set election date. *Cf. Covington*, 137 S. Ct. at 1625 (setting special primary and general elections for the fall of 2017). Voters are used to elections taking place on the first Tuesday after the first Monday in November of even-numbered years. A number of races will already be on the ballot, and the addition of a school board election is unlikely to disrupt the election process.

Finally, the Court is acting with proper judicial restraint. It attempted to defer to the General Assembly to craft a remedy for the 2018 elections. (Docs. 198; 201.) It is only after learning that the Assembly would be unable to act that the Court considered an injunction. Any injunction and specially set election will be for the 2018 election only. The Court will again defer to the Assembly when it returns to session in 2019.

### **CONCLUSION**

Accordingly, the Court finds that the balance of equities weighs toward enjoining the May 2018 election as to the Board of Education. The Court construes Wright's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction (Doc. 202) as a motion for a permanent injunction. Pursuant to Middle District of Georgia Local Rule 7.7,

the Court finds that the extensive briefing on this issue, as outlined above, has allowed it to determine “the relative legal positions of the parties so as to obviate the need for the filing of opposition thereto.” The Court will entertain any objections to this order filed **no later than Friday, April 6, 2018**. Wright’s motion for a permanent injunction (Doc. 202) is **GRANTED**. The Sumter County Board of Education election scheduled for May 22, 2018 is **ENJOINED** and **RESET** for November 6, 2018. Defendant Sumter County Board of Elections and Registration is hereby **ORDERED** to redact the names of school-board candidates by means of a sticker or permanent marker on all ballots distributed for the May 22, 2018 election, include a notice with all ballots for the May 22, 2018 election that the school-board election has been cancelled, or petition the Court prior to distributing any ballots for the May 22, 2018 election of another method by which it intends to inform voters in the May 22, 2018 election that the races for the Sumter County Board of Education has been enjoined.<sup>1</sup> Defendant Sumter County Board of Elections and Registration is **ENJOINED** from tabulating the votes cast in the May 22, 2018 election for any position on the Sumter County Board of Education.

The Court will enter an order **no later than July 23, 2018** setting interim boundaries for the new Sumter County Board of Education districts. The election for all Sumter County Board of Education seats set for May 22, 2018 will instead take place on **November 6, 2018**. The candidate qualifying period for that election will begin **August 6, 2018** and end **August 10, 2018**. The parties should inform the Court as soon as practicable if any of these deadlines are unworkable or if additional deadlines need to be set by Court order.

**SO ORDERED**, this 30th day of March 2018.

/s/ W. Louis Sands  
**W. LOUIS SANDS, SR. JUDGE**  
**UNITED STATES DISTRICT COURT**

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<sup>1</sup> The Court notes that Sumter County does not believe it has sufficient time to print and prepare notices for each absentee ballot or to redact all of the Board of Education candidates’ names from the ballots. (Doc. 203 at 2.) The Court intends to be flexible with this requirement. In the event so many absentee ballots are to be distributed on April 3, 2018, that the County is unable to redact them all, the Court is not expecting Defendant’s counsel to “cancel[] their plans to be with their families this holiday weekend.” (*Id.*) Rather, Sumter County should formulate a reasonable plan to inform voters that the election has been enjoined and present it to the Court as soon as possible.