

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 OBJECTIONS TO THE SPECIAL MASTER’S REPORT

As provided in paragraph 9 of the order appointing a special master (ECF 267), plaintiff Mathis Kears Wright, Jr. respectfully submits these objections to the special master’s report dated November 22, 2019 (“Report”). Wright objects to two of the special master’s remedial proposals.

First, Wright objects to Map 2. According to the special master, Map 2 “has only two minority opportunity districts.” (Report ¶35.) Wright agrees. The map therefore does not comply with this Court’s instruction to draw maps that give African-American voters “a realistic opportunity to election candidates of their choice to at least three seats on the school board.” ECF 267 at 3.) Indeed, Map 2 is not significantly better than the HB 836 plan that the Court has already found to violate Section 2, which also has only two opportunity districts. As a result, Map 2 fails the first test of any proposed remedial plan: Does it remedy the violation? *See United States v. Dallas Cnty. Comm’n*, 850 F.2d 1433, 1437–38 (11th Cir. 1988); *Dillard v. Crenshaw Cnty.*, 831 F.2d 246, 250 (11th Cir. 1987). *See also Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1022

(8th Cir. 2006) (“the first and foremost obligation of the district court is to correct the Section 2 violation”).

Wright also objects to Map 1a.¹ The special master’s report suggests—without extended discussion—that Map 1a has three opportunity districts. (Report ¶35.) Wright disagrees. Specifically, Wright believes that majority-black District 6 may not be a genuine opportunity district for at least two reasons.

First is that the district would have a white incumbent, Rick Barnes, who is currently the vice chairman of the school board. The special master notes in his report that political scientists estimate the value of the incumbency advantage in other kinds of elections to be between 3 and 10 percentage points. (Report ¶61(a).) He further states that he would expect the incumbency advantage to be even higher in school board elections because they are non-partisan and therefore lack partisan cues. (*Id.*) And, looking at the pattern of election results in recent school board elections, the special master concludes that “School Board incumbents who seek re-election are likely to win re-election. (*Id.*) While District 6 does have a sizeable African-American majority, that majority is not so large as to ensure that a non-incumbent candidate preferred by African-American voters—particularly if that candidate is herself African American—would have a realistic chance of defeating the incumbent, who was the choice of white voters in his last election (ECF 198 at 9). (Report ¶61(a).)

¹ It is possible—perhaps even likely—that the special master’s report has mixed up two districts (4 and 6) in Map 1a. The summary statistics in exhibit 2 of the special master’s report indicate, for example, that 0% of District 4 lies within Americus and 100% of District 6 lies within Americus, but visual inspection of the maps suggest that neither is the case. The shapefiles included with the special master’s report also suggest that the summary statistics transpose Districts 4 and 6. However, for purposes of these objections, Wright takes the special master’s report at face value. If the special master can confirm this error, Wright would likely withdraw his objection to Map 1a.

Table 1 below identifies the race of the incumbent in each of the districts that the special master considers to be minority opportunity districts. It is readily apparent that Map1a is the only plan proposed by the special master that suffers this possible defect. There is thus no reason to support this plan over any other.

Table 1. Race of Incumbent(s) in Minority-Opportunity Districts				
Map 1a	Map 1b	Map 1c	Map 2	Map 3
B	B	B	B	B
B, W	B	B	no incumbent	B,W
W	no incumbent	no incumbent		no incumbent

The second reason for Wright’s objection to Map1a is that District 6 is geographically quite large. It extends from the southern part of Americus and encompasses virtually the entire southeastern quadrant of the county, including the towns of Desoto and Leslie. It would be difficult for any candidate to cover so much territory. One would likely need substantial resources or high name recognition, which are two things that non-incumbent minority candidates often do not have. For this reason, large election districts are considered to be an electoral mechanism that has the opportunity to enhance or reinforce minority vote dilution. *See, e.g., United States v. Charleston County*, 365 F.3d 341, 352 (4th Cir. 2004). (*See also* ECF 198 at 28.) Visual inspection of the plans proposed by the special master reveals that Map1a is the only one that suffers this possible defect. The other maps have large districts, to be sure, but they are not the minority opportunity districts in those plans.

Given these two apparent defects in Map 1a, this plan is clearly inferior to Maps 1b, 1c, and 3. It does not “[e]nsure that [African-American voters have] a realistic opportunity to elect candidates of their choice to at least three seats on the school board” (ECF 267 at 3) and

therefore does not comply with the special master’s remedial mandate. Wright objects to its use as the remedy in this case.

The remaining remedial proposals to which Wright does not object—Maps 1b, 1c, and 3—are virtually indistinguishable from the perspective of Section 2.² Each would give African-American voters a realistic opportunity to elect three members of the school board. That opportunity may be slightly more robust under Maps 1b and 1c than under Map 3, particularly if the school-board election continues to be held in May. But all of them would give African-American voters in Sumter County a greater opportunity to elect candidates to the school board than they currently have under the unlawful plan.

However, only Map 3 would address the County’s objection that a three-seat plan would “lock[] the black community into a permanent *minority* on the school board.” (ECF 200 at 27.) While Map 3 contains only three opportunity districts, it does contain a fourth district majority-black district that African-American voters might be able to win if the right circumstances present themselves (such as an increase in African-American turnout or a decision by the white incumbent not to seek re-election), and particularly if the school-board election were held in November instead of May. (Report ¶35.) Map 3 would give African-American voters a slightly more robust shot at a fourth seat than would the plaintiff’s Remedial Proposal 4, which also contains four majority-black districts.

The Court should therefore adopt Map 1b, 1c, or 3 as an interim remedy for use until the Georgia General Assembly adopts a lawful plan to replace it. Because Map 3 is the weakest of

² The special master’s report also mentions a five-district plan (Map 5) which contains three majority-black districts. The special master’s report does not contain any in-depth analysis of this plan (to indicate, for example, which of the majority-black districts he considers to be minority opportunity districts), and it clearly falls outside the special master’s mandate to draw a plan for a seven-member board. (ECF 267 at 2-3.) Wright therefore will not address its merits unless the Court indicates that it may wish to change the mandate to include five-member plans.

these if the school-board election is held in May, however, the Court should only choose Map 3 if it also orders the school-board election to be held in November.

Date: November 29, 2019

Respectfully submitted by:

/s/ Bryan L. Sells
BRYAN L. SELLS
Georgia Bar #635562
The Law Office of Bryan L. Sells, LLC.
P.O. Box 5493
Atlanta, GA 31107-0493
(404) 480-4212 (voice/fax)
bryan@bryansellsllaw.com

M. LAUGHLIN McDONALD
American Civil Liberties Union
Foundation, Inc.
2700 International Tower
229 Peachtree Street, N.E.
Atlanta, Georgia 30303
Tel: (404) 500-1235
Fax: (404) 565-2886
lmcdonald@aclu.org

AKLIMA KHONDOKER
Georgia Bar No.: 410345
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF GEORGIA
P.O. Box 77208 77208
Atlanta, Georgia 33057
(770) 303-8111
akhondoker@acluga.org

ATTORNEYS FOR PLAINTIFF
MATHIS KEARSE WRIGHT, JR.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing PLAINTIFF'S OBJECTIONS TO THE SPECIAL MASTER'S REPORT 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:

E. Mark Braden
mbraden@bakerlaw.com

Katherine L. McKnight
kmcknight@bakerlaw.com

Richard B. Raile
rraile@bakerlaw.com

Kimberly A Reid
kimberly.reid@lawsonreidlaw.com

Trevor Stanley
tstanley@bakerlaw.com

Dated this 29th day of November, 2019.

/s/ Bryan L. Sells
BRYAN L. SELLS
Georgia Bar #635562
P.O. Box 5493
Atlanta, GA 31107-0493
(404) 480-4212 (voice/fax)
bryan@bryansellsllaw.com