

**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 STATEMENT OF POSITION
ON THE SPECIAL MASTER’S PROPOSALS**

The parties previously agreed that “[a] special master is not likely to draw districts that both address the County’s objections and remedy its violation of Section 2 any better than” those proposed by Plaintiff. ECF No. 256 at 9 (Plaintiff’s supplemental remedial brief); ECF No. 260 at 1 (Defendant’s supplemental remedial brief). The special master’s impressive efforts notwithstanding, he has only proven this point. He admits that a plan affording the black community an equal opportunity to win a majority of the school-board seats is not possible through a seven single-member district regime in Sumter County:

Four of my five illustrative maps contain three “minority opportunity” districts. These assessments are based on my own independent analyses of a combination of factors, including Black VAP, Black registration, and Black turnout, and take into account the location of the homes of current incumbents and also the location of the Sumter Correctional Facility. The exception is Illustrative Map 2 which, in my view, has only two minority opportunity districts.

Report of the Special Master ¶ 35.¹ Thus, a year and a half after the Court identified three minority opportunity districts in Plaintiff’s original illustrative plan, ECF No. 198 at 34–36, and expressed hope that some more “creative” remedy might emerge, *id.* at 36, the Court remains left to choose among numerous competing plans that achieve only the same result as the initial illustrative remedy. The different plans reflect different arrangements of “trade-offs among competing criteria of traditional redistricting,” Report of the Special Master ¶ 37, but this is irrelevant, since the Court must do more than find that “lines could have been drawn elsewhere, nothing more.” *Johnson v. De Grandy*, 512 U.S. 997, 1015 (1994).

To be sure, the special master has somewhat meaningfully advanced this case in demonstrating that the Plaintiff could have done significantly more to try to establish his Section 2 claim in the first instance—a point underscored insofar as the special master was required to undertake all types of tasks that should have been done at the liability phase by the party bearing the liability burden.² *See, e.g.*, Report of the Special Master ¶¶ 1–12. But the special master’s report makes equally clear that this would not have moved the needle in a material way. The special master’s plans may be slightly better than the original illustrative plan but not by much and not in a way that affords the black community an equal opportunity (as defined in the liability opinion) to win a majority—a perplexing fact given the black community’s majority status.

¹ Although the special master posits that one map “by some criterion” might possibly provide four opportunity districts, he quickly concedes that this is highly speculative. Report of the Special Master ¶ 35 (“However, this district, District 2, includes the correctional facility, has no Black incumbent, but does have a White incumbent from the district of the same number in the Enacted Map, and it has the lowest Black turnout percentage of any of the four majority-minority voting age districts in Map 3.”).

² For this reason, the special master’s report does not touch on the County’s liability appeal, which will be judged by the record in place at the liability phase.

In short, the problems here are fundamental and stem from the liability ruling. The County therefore intends to continue prosecuting its appeal from that ruling. In the meantime, the County lodges no objection to the special master's report. To be clear, the County objects to the entire remedial proceeding. But the County does not object to any of the proposed plans in and of themselves. The County therefore requests that the Court promptly adopt whichever plan it deems the best and that it expeditiously return jurisdiction to the Eleventh Circuit.

For these reasons, the County also recommends that the Court not conduct a remedial hearing. In all events, the County has no evidence or argumentation it intends to present at such a hearing.

Submitted by:

s/ Katherine L. McKnight
E. Mark Braden (*pro hac vice*)
Katherine L. McKnight (*pro hac vice*)
Richard B. Raile (*pro hac vice*)
BAKER HOSTETLER LLP
1050 Connecticut Avenue NW
Washington, DC 20036
(202) 861-1500

**ATTORNEYS FOR DEFENDANT SUMTER
COUNTY BOARD OF ELECTIONS AND
REGISTRATION**

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2019 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
E. Mark Braden (*pro hac vice*)
Katherine L. McKnight (*pro hac vice*)
Richard B. Raile (*pro hac vice*)
BAKER HOSTETLER LLP
1050 Connecticut Avenue NW
Washington, DC 20036
(202) 861-1500