

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

Filed at 2:23 P M  
9/23, 2019  
BCL  
DEPUTY CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA

MATHIS KEARSE WRIGHT, JR., )  
)  
Plaintiff, )  
)  
v. )  
)  
SUMTER COUNTY BOARD OF )  
ELECTIONS AND REGISTRATION, )  
)  
Defendant. )  
\_\_\_\_\_ )

CASE NO.: 1:14-cv-42 (WLS)

**ORDER**

On May 16, 2019, the Eleventh Circuit Court of Appeals issued a limited remand authorizing this Court to devise a remedy for the voting rights violation in advance of the May 2020 school board election (Doc. 250). This Court then issued a scheduling order for the remedial phase of this case. (Doc. 254.) Pursuant to that order, the parties filed supplemental briefs (Docs. 256 & 260) and a notice identifying one special-master candidate whom they agree is qualified to serve and who has confirmed that he is willing and able to serve as a special master in this case (Doc. 259).

After considering the parties' arguments and the nature of the limited remand, the Court gave notice of its intent to appoint the agreed-upon special-master candidate, Professor Bernard Grofman as a special master in this case under Rule 53(a)(1)(C) of the Federal Rules of Civil Procedure. (Doc. 261). Professor Grofman has filed the affidavit required by Rule 53(b)(3)(A) of the Federal Rules of Civil Procedure. (Doc. 262.) The parties have had an opportunity to object

to the Court's selection of Professor Grofman as a special master, and both parties have indicated that they do not object. (Docs. 263 & 264.)

Accordingly, pursuant to Rule 53 of the Federal Rules of Civil Procedure, it is hereby **ORDERED**<sup>1</sup> as follows:

1. Professor Bernard Grofman is appointed as a special master to submit a report and a proposed plan or plans to remedy the unlawful vote dilution identified in this Court's order of March 17, 2018 (ECF 198). His report is due no later than Monday, November 25, 2019. However, based on Professor Grofman's expectation that he may complete his work before then, the Court encourages the special master to present his report to the Court as expeditiously as possible, consistent with the need for careful analysis. Professor Grofman is also encouraged to inform counsel for the parties of his anticipated time-table for completing his work as soon as he is able to provide such an estimate.

2. In fashioning a remedy, the special master should:

a. Devise a new election plan or plans for the seven-member Sumter County Board of Education that completely remedies the Section 2 violation identified in this Court's orders;

b. Comply with the one-person, one-vote principle guaranteed by the Equal Protection Clause of the Fourteenth Amendment using data from the 2010 Census. Any remedy should strive to achieve the goal of population equality with little more than *de minimis* variation, though a total deviation of up to ten percent may be acceptable if

<sup>1</sup> This order was jointly proposed by the Parties (Doc. 266-1), and the Court has made only minor, non-substantive edits herein.

supported by a historically significant state policy or other unique feature of the jurisdiction.

c. Use single-member districts instead of multi-member districts unless there are unique features of the jurisdiction which justify a different result. Any districts should be reasonably compact, as measured by generally-accepted criteria, in comparison to the districts in the plan found to be unlawful.

d. Ensure that any remedial plan gives African-American voters a realistic opportunity to elect candidates of their choice to at least three seats on the school board. The special master should also consider whether it is possible to devise a remedial plan that gives African-American voters a realistic opportunity to elect candidates of their choice to four seats on the school board.

e. Make reasonable efforts to adhere to the following state policy objectives, so long as adherence to those policy objectives does not conflict with the primary obligations of ensuring that the remedial plans comply with the Constitution and the Voting Rights Act:

- i. The school board should have seven members with four-year terms elected on a non-partisan basis from single-member districts;
- ii. The districts should be comprised of contiguous territory;
- iii. The plan may consider municipal boundaries and precinct lines;
- iv. The plan should avoid pairing any incumbents who have not publicly announced an intention not to run for re-election, but only to the extent that doing so does not interfere with remedying the Section 2 violation and otherwise complying with state and federal law. This consideration should be a

distinctly subordinate consideration to the other state policy objectives outlined above.

f. Use racial and election data only to the extent necessary to ensure that a remedial plan cures the Section 2 violation and otherwise complies with state and federal law. The special master should not take into account any purely political considerations.

3. The special master may consider, as background, the plans submitted by the plaintiffs and the plan found to be unlawful. However, the special master should draw his or her own plans using the criteria set forth in the Court's order.

4. The special master's report shall contain at least one recommended remedial plan. The report shall also contain a color map of each recommended remedial plan, demographic data for each plan (including population deviations of each district, black voting-age population and any other relevant criteria), and a narrative analysis describing the plan and the basis of the special master's recommendation.

5. The special master shall not engage in any ex parte communication with the parties or their counsel except as expressly authorized by court order. The special master is also prohibited from discussing this matter with anyone else, other than assistants or advisors, except as expressly authorized by court order. The special master is allowed to communicate ex parte with the clerk of the court, the clerk's staff, and the Court about housekeeping, scheduling, and logistical matters. If necessary to clarify or supplement the special master's duties, the special master is allowed to communicate ex parte with the Court as long as the special master advises the parties of the communication and discloses any material guidance received.

a. Upon request from the special master, the parties shall promptly make available to the special master electronic copies of trial and hearing transcripts, trial exhibits, motions, briefs, and evidentiary material otherwise submitted to the Court. Such a request shall be communicated by way of an email message to counsel of record for all parties.

b. The parties shall promptly respond to the best of their ability to any reasonable request by the special master for supporting data or information as is reasonably necessary to carry out his assignment. All such requests and responses shall be made by email, with all counsel copied. Upon such a request, the requested party shall respond promptly to the best of its ability. The special master may, but is not required to, request briefs on such background matters as he would find helpful. The special master is not authorized to take new evidence, absent request to do so and approval from the Court.

c. The special master may, but is not required to, convene the parties for a discussion about logistics, software, data, and other housekeeping or technical issues. He may convene such a discussion upon reasonable notice at a time and place and in a method convenient to him, though if an in-person meeting or hearing is convened it shall occur in Georgia. He shall advise the parties of the time and other details by way of an email message to counsel of record for all parties.

6. The special master shall maintain orderly files consisting of all documents submitted to him by the parties and any written orders, findings, and recommendations. All other materials relating to the special master's work should be preserved until relieved of this obligation by the court. The special master should preserve all datasets used in the formulation of

redistricting plans, and any drafts considered but not recommended to the court, in their native format.

7. All reasonable costs and expenses of the special master, including compensation of the special master, his research assistants, and any other assistant or advisor he may retain, shall, subject to further order and approval by this Court, be paid in full by the defendant within 30 days after court approval. The special master shall keep detailed records of time and expenses incurred.

a. The special master has agreed and will be compensated at the rate of \$400 per hour for his time.

b. The special master is authorized to hire research and technical assistants and to purchase any software reasonably necessary to facilitate the special master's work.

8. The Court will report the special master's report under Rule 53(f) of the Federal Rules of Civil Procedure.

9. The parties may file any objections to the special master's report within seven days after its filing with the Court. Any response to another party's objections are due within seven days after any objections are filed. Any replies are due within three days after any response. The objections and responses shall be limited to twenty pages in length, and the replies shall be limited to ten pages in length.

10. The Court has provisionally reserved Friday, January 10, 2020, for any necessary conference or hearing on the special master's report. In their briefing on the remedial proposals,

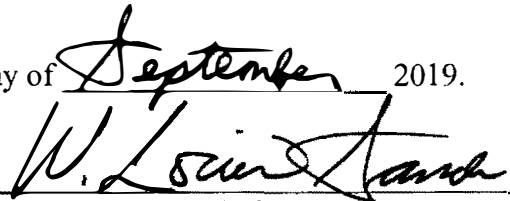
the parties should state their position on whether or not such a hearing/conference is necessary.

The Court anticipates that it will issue a final remedial plan no later than January 31, 2020.

11. The Court may modify this order pursuant to Rule 53(b)(4) of the Federal Rules of Civil Procedure. The parties may seek to modify this order for good cause shown, but no such motion shall be filed without first meeting and conferring with all other counsel.

12. Any objection to this order must be filed within three days of its entry.

SO ORDERED, this 20th day of September, 2019.

  
\_\_\_\_\_  
W. LOUIS SANDS, SR. JUDGE  
UNITED STATES DISTRICT COURT