

Redistricting the Sumter County School Board

Bird v. Sumter County Board of Education
(*W. Louis Sands, M.D. Ga. 1:12-cv-76*)

On May 22, 2012, a Sumter County voter filed a federal complaint in the Middle District of Georgia, alleging malapportionment of the county's board of education districts.¹ According to the complaint, a preclearance request, pursuant to section 5 of the Voting Rights Act, for new districts reflecting the 2010 census was withdrawn on January 31 and the May 23–25 ballot qualification period was nigh.² The complaint sought injunctive relief, including a temporary restraining order.³

On May 25, Judge W. Louis Sands set the matter for hearing on May 31.⁴ Judge Sands instructed the attorneys to notify persons who qualified as candidates during the qualification period.⁵ A second hearing on the plaintiff's standing was set for June 15.⁶

On June 21, Judge Sands enjoined the July 31 primary elections, an action sought by both the plaintiff and the defendants.⁷ Although the seat for the plaintiff's district was not up for re-election in 2012, Judge Sands determined that the overpopulation of the district afforded the plaintiff standing to challenge the apportionment.⁸

The NAACP's Sumter County Branch and seven persons moved on July 18 to intervene and propose district lines.⁹ No party opposed intervention, although the plaintiff opposed the intervenors' plan, so Judge Sands granted intervention as of right.¹⁰

1. Complaint, *Bird v. Sumter Cty. Bd. of Educ.*, No. 1:12-cv-76 (M.D. Ga. May 22, 2012), D.E. 1; *see* Amended Complaint, *id.* (Aug. 24, 2012), D.E. 65 (substituting, pursuant to court order, the Sumter County School District for the Sumter County Board of Education).

2. Complaint, *supra* note 1, at 9; *see* Keven Gilbert, *No Decision Yet in Bird vs Board of Education, Elections*, Americus Times-Recorder, June 16, 2012 (reporting that the board was concerned by the legislature's creating two at-large seats, which history suggested could not be won by black candidates); *Hearing Held on Federal Lawsuit*, Americus Times-Recorder, June 2, 2012 (same); *see also* See Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 52 U.S.C. § 10304 (2015) (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination).

3. Complaint, *supra* note 1, at 16.

4. Hearing Order, *Bird*, No. 1:12-cv-76 (M.D. Ga. May 29, 2012), D.E. 19; *see* Transcript, *id.* (May 31, 2012, filed June 14, 2012), D.E. 46.

5. Hearing Order, *supra* note 4.

6. Injunction, *Bird*, No. 1:12-cv-76 (M.D. Ga. June 21, 2012), D.E. 50; Minutes, *id.* (June 15, 2012), D.E. 49; Minutes, *id.* (May 31, 2012), D.E. 21.

7. Injunction, *supra* note 6, at 10, 13; *see* Keven Gilbert, *Federal Judge Stops School Board Election*, Americus Times-Recorder, June 23, 2012.

8. Injunction, *supra* note 6, at 4–7.

9. Redistricting Motion, *Bird*, No. 1:12-cv-76 (M.D. Ga. July 18, 2012), D.E. 54; Intervention Motion, *id.* (July 18, 2012), D.E. 53.

10. Order, *id.* (Aug. 15, 2012), D.E. 60.

On March 28, 2013, Judge Sands appointed the Legislative and Congressional Reapportionment Office of Georgia's General Assembly as an adviser to help him draw district lines.¹¹ On the same day, he declined to adopt the NAACP's plan.¹²

On June 28, Judge Sands ordered the parties to brief the court on the impact of the Supreme Court's June 25 holding in *Shelby County v. Holder*¹³ that although section 5 remains good law, the criteria for which jurisdictions are covered by section 5, which are provided by section 4,¹⁴ are unconstitutional.¹⁵ Judge Sands dismissed the action on October 28 as rendered moot by *Shelby County*.¹⁶

11. Order, *id.* (Mar. 28, 2013), D.E. 70; see Keven Gilbert, *Federal Court to Propose District Map*, *Americus Times-Recorder*, Mar. 31, 2013.

12. Order, *Bird*, No. 1:12-cv-76 (M.D. Ga. Mar. 28, 2013), D.E. 71; see Gilbert, *supra* note 11.

13. 570 U.S. ____, 133 S. Ct. 2612 (2013).

14. Voting Rights Act of 1965, Pub. L. No. 89-110, § 4, 79 Stat. 437, 438, *as amended*, 52 U.S.C. § 10303 (2015).

15. Order, *Bird*, No. 1:12-cv-76 (M.D. Ga. June 28, 2013), D.E. 75.

16. Opinion, *id.* (Oct. 28, 2013), D.E. 82, 2013 WL 5797653