

Redistricting the Sumter County School Board

Bird v. Sumter County Board of Education

(*W. Louis Sands, M.D. Ga. 1:12-cv-76*)

The district court enjoined July 31, 2012, primary elections for Sumter County, Georgia's board of education on a May 22 federal complaint. The relief was sought by both the voter plaintiff and the county defendants because of the state's failure to seek timely preclearance for new district lines reflecting the 2010 census. The judge permitted an interest group to intervene for the purpose of proposing a new district plan, but the judge decided to draw his own plan with the assistance of the legislature's reapportionment office.

Subject: District lines. *Topics:* Malapportionment; enjoining elections; intervention; section 5 preclearance.

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a preclearance request—pursuant to section 5 of the Voting Rights Act—for new districts reflecting the 2010 census was withdrawn on January 31 and the May 23–25 ballot-qualification period was nigh.² The complaint sought injunctive relief, including a temporary restraining order.³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 He 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 reelection in 2012, Judge Sands determined

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 Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 52 U.S.C. § 10304 (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.

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, and Judge Sands granted intervention as of right.¹⁰

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 remained good law, the criteria for which jurisdictions were covered by section 5, which are provided by section 4,¹⁴ were unconstitutional.¹⁵ Judge Sands dismissed the action on October 28 as rendered moot by *Shelby County*.¹⁶

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.

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. 529 (2013).

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

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.