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

MATHIS KEARSE WRIGHT, JR., Plaintiff, v. SUMTER COUNTY BOARD OF ELECTIONS AND REGISTRATION, Defendant.	CIVIL ACTION NO. 1:14-CV-42 (WLS)

BRIEF IN SUPPORT OF SUMTER COUNTY BOARD OF ELECTIONS AND REGISTRATION'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

The Sumter County Board of Elections and Registration ("the County") is entitled to judgment as a matter of law because Plaintiff's own expert evidence demonstrates two insurmountable obstacles to survival of his claim under Section 2 of the Voting Rights Act, as prescribed by the United States Supreme Court in the three-pronged test of *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986). First, the statistical evidence offered by Plaintiff's expert fails to show the minority community is cohesive, because a preferred candidate cannot be consistently identified. Thus the second *Gingles* precondition is not met for one-third of the elections analyzed.

Second, even when a preferred candidate is identified, the evidence shows that the white community in Sumter County does not "usually" vote as a bloc to defeat the minority community's preferred candidates of choice because the candidate of choice succeeds as often as he or she fails. Thus the third *Gingles* precondition is not met.

Because Plaintiff's own evidence shows that he cannot establish the necessary requirements of the second and third prongs of *Gingles* and there are no disputes of material fact, the County is entitled to judgment as a matter of law on Plaintiff's Section 2 claim – the sole claim in this case.

II. FACTUAL AND PROCEDURAL BACKGROUND

At the 2010 Census, Sumter County had a total population of 32,819 residents and a majority of those residents (51.8%) are African-American. Report of Frederick G. McBride, attached as Ex. A ("McBride Report"), p. 4. The voting age population of Sumter County is nearly a majority, with 48.1% identifying as African-American, with an additional 5.2% identifying as Hispanic or Latino. *Id.* As of August 2014, there are more registered African-American voters in the county than registered white voters. Deposition of Frederick G. McBride [Doc. 38] ("McBride Dep.") at 50:4-51:23.

Sumter County elects its seven-member Board of Education. McBride Report, p. 11. Five members are elected from single-member districts, while the remaining two members are elected at-large by the county as a whole. *Id.* Plaintiff Mathis Wright brought this action seeking to invalidate this 5-2 plan and return the Board to its prior composition of nine members. [Doc. 1, ¶ 17]. However, he now seeks only to eliminate the two at-large districts, requiring the seven members be elected from single-member districts. Deposition of Mathis Wright [Doc. 37] ("Wright Dep"), at 36:14-22.

After this Court denied Plaintiff's attempt to enjoin the May 2014 nonpartisan elections, the parties engaged in discovery, which was completed on November 28, 2014. [Docs. 17, 35]. During discovery, the parties exchanged expert reports and took those experts' depositions on the *Gingles* preconditions, discussed below.

In his attempt to establish the second and third *Gingles* preconditions – political cohesion of the minority community and racial bloc voting by the majority to defeat the minority community's preferred candidate – Plaintiff relies exclusively on the expert testimony of Dr. Fred McBride. Dr. McBride performed a statistical analysis of twelve endogenous elections[1] for the Sumter County Board of Education that involved black candidates facing white candidates. McBride Dep. 47:3-7. Dr. McBride did not evaluate or review any exogenous elections[2] for Sumter County. McBride Dep. 96:5-8. Eight of the twelve elections Dr. McBride analyzed took place in 2014. McBride Report, pp. 21-22.

Dr. McBride used three statistical estimating methods to determine whether the minority community was cohesive, and if so, whether the minority-preferred candidate succeeded: (1) Goodman Single-Equation Ecological Regression, (2) double-equation regression analysis (referred to in his report as BERA), and (3) Ecological Inference (referred to as EI or King's). McBride Report, pp. 19-20; Expert Report of Karen L. Owen, attached as Ex. B ("Owen Report"), p. 3. If the minority population is cohesive and white voters vote as a bloc to defeat the minority community's preferred candidates, racially-polarized voting is present, which is circumstantial evidence of racial bias in the electoral system and can show a lack of equal access by minority voters. *Nipper v. Smith*, 39 F.3d 1494, 1524 (11th Cir. 1994). Statistical estimates are required to determine whether racially-polarized voting exists, because ballot secrecy prevents courts from reviewing exact numbers. Owen Report,

[1] "Endogenous elections" refer to elections that took place for the government body at issue, in this case, the Sumter County Board of Education. *See Cofield v. City of LaGrange, Ga.*, 969 F. Supp. 749, 760 (N.D. Ga. 1997) (defining terms).

[2] "Exogenous elections" refer to elections that occur within Sumter County but for other offices, such as President or sheriff. *Id.*; *Solomon v. Liberty Cnty. Comm'rs*, 221 F.3d 1218, 1227 (11th Cir. 2000) (noting that endogenous elections are often considered more probative than exogenous elections).

p. 3. Dr. McBride agreed in his deposition that the King numbers (estimates generated using Ecological Inference) provide the best estimates of minority cohesion and support for various candidates.[3] McBride Dep., 83:11-13, 175:16-22. Several district courts have agreed, finding the King (or EI) estimating method as reliable and an "improvement" on BERA. *See Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 1003 (D.S.D. 2004) (collecting cases using King).

In his initial report, Dr. McBride found that in six of the twelve elections analyzed, the minority-preferred candidate succeeded or was "not defeated." McBride Report, pp. 24-26; Owen Report, p. 7. At his deposition, Dr. McBride modified that original analysis, testifying that, *in at least* five of 11 elections (45.5% of the time), and *as many as* seven of 12 elections (58.3% of the time), the minority-preferred candidate succeeded. McBride Dep., 129:10-130:4. In addition, in at least four races, Dr. McBride's statistics revealed there was no minority-preferred candidate because the minority community divided over which candidate it preferred. Owen Report, pp. 5-7.

The elections Dr. McBride analyzed and the relevant findings are as follows:

1. 2014 Board of Education District 6

- There is a minority-preferred candidate, Michael Mock, who received 58% support from the African-American community under the King estimates, and he won the election, which was not racially polarized. McBride Report, 41; McBride Dep. 110:19-23.

[3] Dr. McBride also admitted that the estimates he created could have been more precise if he had used voter registration instead of voting age population as his metric. He did not use the more precise method. McBride Dep., 88:9-17.

2. 2014 Board of Education District 1

- There is a minority-preferred candidate, Alice Green, who received 87.9% of the African-American vote under the King estimates, and she won the election. McBride Report, p. 42; McBride Dep. 111:22-24.

3. 2014 Board of Education District 2

- In this race, the minority community's support for Sarah Pride was only 50.5% using the King estimates, McBride Report, p. 43. Dr. McBride agreed that with the standard error in his estimates, the support for Pride could have been as low as 43.6% and the standard error could lead to less reliable estimates. McBride Dep., 175:12-15, 114:25-115:16.

4. 2014 Board of Education District 3

- In this race, Dr. McBride's estimates showed that, using the King numbers, both candidates received more than 50% of the African-American vote, which Dr. McBride categorized as an error (but could not explain how the error occurred). McBride Report, p. 44; McBride Dep., 101:17-24; 116:4-12.

5. 2014 Board of Education District 5

- There is a minority-preferred candidate, Edith Green, who received 66.4% of the African-American vote under the King estimates, and she won the election. McBride Report, p. 45; McBride Dep. 116:15-19.

6. 2014 Board of Education At-Large Two-Year

- In this countywide race, there is a minority-preferred candidate, Michael Coley, who receives 68.2% of the African-American vote under the King

estimates. McBride Report, p. 46. Coley was one of the top two candidates and advanced to the runoff. *Id*.

- Dr. Owen explained that the race was an "electoral success" for the minority-preferred candidate based on social science literature on runoffs. Deposition of Karen Owen [Doc. 39] ("Owen Dep."), 27:22-29:2. Dr. Owen found that this election does not show defeat of the minority-preferred candidate, because Coley advanced to the next election and had the opportunity to build on his success in the first round. Owen Dep., 27:22-29:2.
- Dr. McBride originally reported the race as one where the minority-preferred candidate was not defeated, but later confessed confusion about that conclusion because the race was a runoff and he did not know the impact of that fact. McBride Dep., 117:6-11, 120:4-9, 121:16-122:3.
- In the end, there is no dispute of fact about this election because Dr. Owen was able to testify conclusively that the race should be counted as a success for the minority-preferred candidate, while Dr. McBride's testimony was simply that he did not know.

7. 2014 Board of Education At-Large Four-Year

- In this countywide election, Kelvin Pless received 72.9% of the African-American vote using the King estimates but was defeated. McBride Report, p. 47; McBride Dep., 122:4-7.

8. 2014 Board of Education At-Large Two-Year Runoff

- In the runoff for the two-year seat, Coley was still the minority-preferred candidate and was defeated, although Sylvia Roland received 35% of the

African-American vote under the King estimates. McBride Report, p. 48; McBride Dep., 122:8-13.

9. 2010 Board of Education District 3

- Kelvin Pless received 99.5% of the African-American vote in this election according to the King estimates and was successful. McBride Report, p. 49; McBride Dep., 122:14-18.

10. 2008 Board of Education District 1

- Carolyn Whitehead received 96.9% of the African-American vote in this election according to the King estimates and was successful. McBride Report, p. 50; McBride Dep., 122:19-22.

11. 2006 Board of Education District 3

- In this election, using the King estimates, Dr. McBride reports that Darius Harris received 93.4% of the African-American vote, while Donna Minich received 43.6% of the African-American vote. McBride Report, p. 51. Because these numbers total more than 100%, Dr. McBride identified them as having a high standard error. McBride Dep., 123:2-9.

12. 2002 Board of Education District 3

- In another election involving the same candidates as the 2006 race, no candidate received more than 50% support from African-American voters or white voters using the King estimates. McBride Report, p. 52. Because of the lack of bloc voting, Dr. McBride found the race was not racially polarized. *Id.*
- In spite of finding a lack of racial polarization, Dr. McBride selected Carolyn Seay, the candidate with the *least* amount of support from the African-

> American community (measured using the King estimates) as the minority-preferred candidate, and then determined she was defeated. *Id.* But later Dr. McBride agreed that it was "questionable at best" whether the minority-preferred candidate was defeated, because that question would require "more analysis." McBride Dep., 127:3-12. Dr. McBride also admitted he had performed no such further analysis and one could reasonably say the minority-preferred candidate succeeded in this race. McBride Dep., 127:13-15, 125:19-126:2.

Dr. McBride agreed with Dr. Owen that the word "usually" in the context of *Gingles* means something that happens "more often than not." McBride Dep., 138:1-14; Owen Report, p. 4. Dr. McBride conceded that, using his estimates, the total number of races in which the minority-preferred candidate was successful was *at least* five out of 11 races, and *possibly as high as* seven out of 12 races. McBride Dep., 129:10-130:4; *see* Owen Report, p. 7.

III. ARGUMENT AND CITATION OF AUTHORITIES

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. The moving party bears the initial burden but is not required to negate the opposing party's claims. Instead, the moving party may point out the absence of evidence to support the non-moving party's case. *Marion v. DeKalb County, Ga*. 821 F.Supp. 685, 687 (N.D. Ga. 1993). In this case, Plaintiff makes one claim: that Section 2 of the Voting Rights Act is violated by the Board of Education's seven-member composition (five from districts and two at-large).

Section 2 prohibits jurisdictions from diluting the strength of minority voters through a "standard, practice, or procedure" "which results in a denial or abridgement of the right of

any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a). Proof of illegal vote dilution is established through a "totality of the circumstances" analysis. 52 U.S.C. § 10301(b).

In order to show a Section 2 violation, a plaintiff bears the burden of first proving *each* of the three *Gingles* preconditions[4]:

> Specifically, plaintiffs in vote dilution cases must establish as a threshold matter: (1) that the minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) that the minority group is "politically cohesive"; and (3) that sufficient racial bloc voting exists such that the white majority usually defeats the minority's preferred candidate.

Nipper, 39 F.3d at 1510, quoting *Thornburg v. Gingles*, 478 U.S. at 50-51. Only after establishing the three preconditions does the reviewing court begin a review of the so-called "Senate Factors" to assess the totality of the circumstances. *Id*. at 1512; *Gingles*, 478 U.S. at 79; *Johnson v. De Grandy*, 512 U.S. 997, 1011, 114 S.Ct. 2647, 2657 (1994). Failure to establish one of the *Gingles* prongs is fatal to a Section 2 claim because each of the three preconditions must be met. *See Johnson v. DeSoto Cnty. Bd. of Comm'rs*, 204 F.3d 1335, 1343 (11th Cir. 2000); *Burton v. City of Belle Glade*, 178 F.3d 1175, 1199 (11th Cir. 1999); *Brooks v. Miller*, 158 F.3d 1230, 1240 (11th Cir. 1998); *Negron v. City of Miami Beach, Fla.*, 113 F.3d 1563, 1567 (11th Cir. 1997).

The undisputed evidence before the Court in this case demonstrates that Plaintiff cannot establish the second and third prongs of *Gingles*, *i.e.*, that the minority group is cohesive and that the white voters usually vote in a bloc to defeat the minority community's

[4] These preconditions are also frequently referred to in cases as the *Gingles* "prongs." *See, e.g., Bartlett v. Strickland*, 556 U.S. 1, 17, 129 S. Ct. 1231, 1244, 173 L. Ed. 2d 173 (2009); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 443, 126 S. Ct. 2594, 2624, 165 L. Ed. 2d 609 (2006) *Johnson v. Hamrick*, 296 F.3d 1065, 1073 (11th Cir. 2002).

preferred candidate. *Gingles*, 478 U.S. at 50-51. For that reason, the County is entitled to summary judgment.

A. Plaintiff's Section 2 Claim Fails Because Plaintiff's Own Evidence Demonstrates That Minority-Preferred Candidates Usually Succeed in Sumter County Elections.

In order to establish the third *Gingles* precondition, plaintiffs must demonstrate that the white voters in a jurisdiction usually vote as a bloc to cause the minority-preferred candidate to lose. This prong of *Gingles* is key, because the usual lack of electoral success in the challenged election system has to be "on account of race or color." 52 U.S.C. § 10301(a). The deprivation of the right to equal participation in elections must be based on race and not some racially-neutral cause. *Nipper*, 39 F.3d at 1515.

The Eleventh Circuit has explained that the plaintiff "must show not only that whites vote as a bloc, but also that white bloc voting *regularly causes* the candidate preferred by black voters to lose; in addition plaintiffs must show not only that blacks and whites sometimes prefer different candidates, but that blacks and whites *consistently* prefer different candidates." *Johnson v. Hamrick (Hamrick III)*, 296 F.3d 1065, 1074 (11th Cir. 2002) (emphasis in original). In addition, the racial bloc voting must be a pattern and more than just a single election. *Id*.

In *Hamrick III*, the Eleventh Circuit affirmed a district court evaluation of 11 elections in Gainesville, Georgia. *Id*. at 1077. In that Section 2 case, the minority-preferred candidate prevailed in five of 11 elections (45.5% of the time), while the minority-preferred candidate lost in five of 11 elections (45.5% of the time), leaving one election where there was no clear preference for black or white voters. *Johnson v. Hamrick*, 155 F.Supp.2d 1355, 1372 (N.D. Ga. 2001). The Eleventh Circuit determined that, when the evidence showed

the minority community's candidates of choice won as frequently as they lost, plaintiffs had failed to prove the third prong of *Gingles* because the minority-preferred candidate was not "usually" defeated by the white majority. *Hamrick III*, 296 F.3d at 1081.

Other Circuit Courts have reached similar conclusions in cases revolving around the third prong of *Gingles*. *See Cottier v. City of Martin*, 604 F.3d 553, 560 (8th Cir. 2010) (en banc) (finding that when Indian-preferred candidates succeed in "almost equal numbers" to non-Indian-preferred candidates, plaintiffs had not shown the white voters "usually" voted as a bloc to defeat them); *Lewis v. Alamance Cnty., N.C.*, 99 F.3d 600, 616 (4th Cir. 1996) (finding that, if minority-preferred candidates were successful 50% of the time, they were not "usually" defeated by white bloc voting); *Clay v. Bd. of Educ. of City of St. Louis*, 90 F.3d 1357, 1362 (8th Cir. 1996) (finding that 57.9% success rate of minority-preferred candidates did not meet third prong of *Gingles*); *Clarke v. City of Cincinnati*, 40 F.3d 807, 812 (6th Cir. 1994) (finding when 47% of black-preferred black candidates were elected, they were not "usually" defeated by white bloc voting).

In this case, Plaintiff's own unrebutted evidence shows numbers nearly identical to those reviewed by the Eleventh Circuit in *Hamrick III*. Here, Dr. McBride analyzed twelve endogenous elections. McBride Dep. 47:3-7. Of those elections, he originally concluded that the black-preferred candidate was not defeated in 6 of 12 elections, or 50% of the time. McBride Report, pp. 24-26; Owen Report, p. 7. In his deposition, he backtracked on one of the elections, but still agreed that in at least five of 11 elections (45.5%), and possibly as many as seven of 12 elections (58.3%), the minority-preferred candidate was successful. McBride Dep., 129:10-130:4.

The five elections where, using Dr. McBride's numbers, there is no question the minority-preferred candidate was successful are: (1) 2014 BOE District 6, (2) 2014 BOE District 1, (3) 2014 BOE District 5, (4) 2010 BOE District 3, and (5) 2008 BOE District 1. McBride Dep., 129:10-130:4. In addition to those five races, the 2014 BOE At-Large Two-Year seat shows success for the minority-preferred candidate, because Dr. Owen was able to testify conclusively that the race should be counted as a success for the minority-preferred candidate, Owen Dep., 27:18-29:14, while Dr. McBride's testimony was simply that he did not know. McBride Dep., 121:16-122:3. *See Penley v. Eslinger*, 605 F.3d 843, 848 (11th Cir. 2010) (finding a genuine dispute must exist over material fact and situations where "all that exists is 'some metaphysical doubt as to the material facts'" do not constitute such a dispute). In the seventh race, Dr. McBride agreed that it was reasonable to conclude that the minority-preferred candidate prevailed in the 2002 BOE District 3 contest, because no candidate received more than 50% of the African-American vote and the winning candidate may have been the candidate preferred by the minority community. McBride Dep., 125:19-126:3, 127:3-15. Thus, Dr. McBride agreed that in five of 11 races, the minority-preferred candidate succeeded, and the undisputed facts show that in seven of 12 races, the minority-preferred candidate succeeded.

Such a high success rate for minority-preferred candidates as found by Dr. McBride demonstrates that white voters in Sumter County do not *usually* vote as a bloc to defeat the minority-preferred candidate. In reality, the minority-preferred candidate succeeds either as often or more often than not—the definition of "usually" used by both experts and by the Eleventh Circuit. McBride Dep., 138:1-14; Owen Report, p. 4; *Hamrick III*, 296 F.3d at 1081.

In addition to matching and exceeding the percentage success rate of the elections in *Hamrick*, the Sumter County elections Dr. McBride analyzed also bear other similarities to the elections at issue in *Hamrick*. Just as the district court found in *Hamrick*, African-American and white voters in Sumter County expressed similar preferences for candidates in four of the 12 elections, specifically: 2014 BOE District 6 (McBride Report, 41; McBride Dep. 110:19-23), 2014 BOE District 3 (McBride Report, p. 44; McBride Dep., 101:17-24; 116:4-12), 2008 BOE District 1 (McBride Report, p. 50; McBride Dep., 122:19-22), and 2002 BOE District 3 (McBride Report, p. 52). *Hamrick*, 155 F.Supp.2d at 1373-74.

As in *Hamrick*, the Plaintiff here has failed to carry his burden on the third *Gingles* precondition, and the County is entitled to summary judgment. The undisputed evidence of Plaintiff's own expert shows that white bloc voting does not "regularly cause" the defeat of the minority-preferred candidate. Those candidates succeed at least 45.5% of the time and as much as 58.3% of the time, and African-Americans and white voters in Sumter County preferred the same candidates in at least one-third of the elections analyzed.

In short, the undisputed evidence demonstrates that Plaintiff cannot carry his burden on the third *Gingles* precondition. Thus summary judgment must be granted to the County because Plaintiff has failed to make his threshold showing. *Hamrick III*, 296 F.3d at 1073; *Nipper*, 39 F.3d at 1510; *Gingles*, 478 U.S. at 50-51.

B. Plaintiff's Section 2 Claim Fails Because the Minority Community is Not Cohesive in All Elections.

The second fatal flaw in Plaintiff's case is that, based on his own evidence, he also cannot prevail on the second prong of *Gingles*. To be successful on a vote dilution claim, the second prong requires that the minority population within the jurisdiction must be politically cohesive—consistently voting for the same candidate. *Gingles*, 478 U.S. at 59. The

exact amount of minority support required to be "legally significant" is not set in stone but generally over 70% is sufficient. *See Solomon*, 899 F.2d at 1019-1020 (plurality); *Hamrick*, 155 F.Supp.2d at 1370.; *Campos v. City of Baytown, Tex.*, 840 F.2d 1240, 1245 (5th Cir. 1988) (finding that merely getting 50% of the minority vote was not sufficient to be the candidate of choice). The necessary amount of support for cohesion is based on local circumstances, because in a jurisdiction like Sumter County where nearly all of the voting age population is African-American, only a small amount of white crossover support is necessary to elect a minority community's preferred candidate, thus making the amount of minority cohesion required to show the second prong of *Gingles* higher. *See Gingles*, 478 U.S. at 57-58; *Rangel v. Morales*, 8 F.3d 242, 249 (5th Cir. 1993) (finding no legally significant white bloc voting in part because the "evidence at trial revealed that Hispanic voters could control election outcomes with relatively little support from Anglo voters.")

Dr. McBride did not use this specific, localized approach and was unable to explain exactly what standard he used to determine whether there was political cohesion in the minority community in selecting a candidate in particular elections. He first testified that he only used statistical analysis to determine the minority-preferred candidate. McBride Dep., 78:18-24. Although he later testified that, in close races, "more investigation" was required beyond statistics, McBride Dep., 81:1-22, he admitted he never performed any type of additional analysis for those close races. McBride Dep., 81:23-25.

In relying on his statistics, Dr. McBride originally testified that the "sufficient number" of minority support for cohesion "could be 50" percent, but that it also could be "49, 48" percent. McBride Dep. 78:25-79:5. In one race, Dr. McBride designated a candidate as "minority-preferred" when that candidate received *the least* amount of African-

American support, according to the King estimates, *i.e.*, the 2002 BOE District 3 election in which candidate Carolyn Seay received only 24.3% of the African-American vote using the King estimates but was still designated by Dr. McBride as the minority candidate of choice. McBride Report, p. 52.

Conversely, Dr. Owen explained that the proper standard under the second prong of *Gingles* is whether there is "an obvious candidate of choice for Black voters." Owen Report, p. 4. That standard is consistent with Eleventh Circuit precedent setting the number as something higher than merely crossing the 50% threshold. *Solomon*, 899 F.2d at 1019-1020 (plurality); *Hamrick*, 155 F.Supp.2d at 1370.

Dr. McBride's statistics do not demonstrate that the minority community is politically cohesive in at least four of the 12 elections he analyzed, because his statistics do not reveal an "obvious candidate of choice" of African-American voters.

First, in the 2014 BOE District 3 race, Dr. McBride found one candidate was the candidate preferred by the minority community, despite finding that both candidates in the race, including the successful one, received more than half of the African-American vote, a finding Dr. McBride categorized as a statistical error. McBride Report, p. 44; McBride Dep., 101:17-24; 116:4-12. Dr. McBride simply picked the candidate with a higher percentage above 50 without any further analysis. McBride Dep., 116:4-11. With the African-American vote equally split according to the estimates, no minority-preferred candidate could have been identified, and this election does not show cohesion by the minority community. Owen Report, p. 6.

Second, in the 2014 BOE District 2 race, Dr. McBride identified Sarah Pride as the minority community's preferred candidate, despite his estimates showing she received only

50.5% of the African-American vote. McBride Report, p. 43. This level of support is not sufficient evidence of cohesion under the Eleventh Circuit's standard, in part because it means that at least 49.5% of the African-American population voted *against* her.[5] Because almost half of African-American voters voted against Ms. Pride in the election, the minority vote was not cohesive in its support for her. Owen Report, p. 6.

Third, in the 2006 BOE District 3 election, Dr. McBride's numbers indicate that the African-American vote was split between two different candidates, instead of coalescing around a single candidate. McBride Report, p. 51; Owen Report, p. 6.

Finally, in the 2002 BOE District 3 election, Dr. McBride's numbers show that African-American voters evenly split their ballots among three candidates and thus indicated no preference in that election. McBride Report, p. 52. Dr. McBride testified that determining the candidate of choice required a "judgment call," McBride Dep. 125:10-18, which falls short of an "obvious candidate of choice." Owen Report, pp. 6-7.

The lack of minority vote cohesion is relevant because in one-third of the elections Dr. McBride analyzed, the minority community was not cohesive. *Hamrick*, 155 F.Supp.2d at 1370. This lack of cohesion further demonstrates that Plaintiff has not carried his burden to show a pattern of racial bloc voting that is legally significant. *Gingles*, 478 U.S. at 57-58.

C. Plaintiff's Section 2 Claim Also Fails Because There is No Pattern of Racial Bloc Voting that Extends Over a Period of Time.

In *Gingles*, the Supreme Court required plaintiffs to demonstrate "a pattern of racial bloc voting that extends over a period of time" as opposed to a simple election loss. *Gingles*,

[5] Dr. McBride also testified that the margin of error on this particular estimate made it possible that Pride's support among African-Americans was as low as 43.6%. McBride Dep., 175:12-15, 114:25-115:16.

478 U.S. at 57. Plaintiff's expert also fails to demonstrate a pattern of racial bloc voting that extends of a period of time in Sumter County.

After removing the elections discussed previously that do not satisfy the second or third prongs of *Gingles*, Plaintiff is left with just two elections out of 12 that would provide any support for a claim of a pattern of racial bloc voting: (1) the 2014 Board of Education At-Large Four-Year election and (2) the 2014 Board of Education At-Large Two-Year Runoff. In a Section 2 case, the Eleventh Circuit requires a review of the "larger trends," *Hamrick III*, 296 F.3d at 1074, and a single election—such as the 2014 election—does not provide evidence that the district experiences racial bloc voting that "extends over a period of time." *Gingles*, 478 U.S. at 57.

Plaintiff's expert testimony does not reveal any pattern of racial bloc voting that extends over time, and in fact shows just the opposite. Sumter County, which is almost a majority-minority county on voting age population, is a place where the African-American community is not always politically cohesive. But when the African-American community coalesces around a candidate, its preferred candidates usually succeed. Far from showing a violation of Section 2, Plaintiff's evidence demonstrates the 5-2 election system of Sumter County does not dilute minority voting strength.

IV. CONCLUSION

Based on the undisputed testimony of Plaintiff's own expert, Plaintiff has failed to make his threshold showing under *Gingles*. The African-American community is not politically cohesive in all elections, and the candidates preferred by the African-American community succeed as often as they fail.

There are no material facts in dispute. The County is entitled to judgment as a matter of law because (1) Plaintiff has not shown the second prong of *Gingles*, political cohesion, is met and (2) Plaintiff has not shown the third prong of *Gingles*, that the white voters *usually* vote as a bloc to defeat the preferred candidate of the minority community. The failure to prove any one of the *Gingles* prongs requires judgment as a matter of law in favor of the County.

Therefore, this Court should grant summary judgment to the County.

This 12th day of January, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day electronically filed the within and foregoing BRIEF IN SUPPORT OF SUMTER COUNTY BOARD OF ELECTIONS AND REGISTRATION'S MOTION FOR SUMMARY JUDGMENT 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:

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This 12th day of January, 2015.

s/ Anne W. Lewis
Anne W. Lewis
Georgia Bar No. 737490