

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

MATHIS KEARSE WRIGHT, JR.

PLAINTIFF,

vs.

SUMTER COUNTY BOARD OF ELECTIONS AND
REGISTRATION

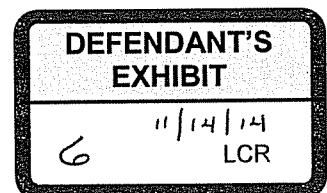
DEFENDANTS.

EXPERT REPORT OF KAREN L. OWEN

I. Introduction.

My name is Karen L. Owen, and I am an Assistant Professor in the School of Mathematics and Sciences at Reinhardt University. I also serve as the Director of the Master of Public Administration (MPA) program at Reinhardt University where I teach graduate courses including, research methods, public administration and policy, human services administration, and leadership and organizational behavior. Additionally, I teach undergraduate political science courses in Southern politics, Legislative politics, and American Government, and I have taught courses on Judicial Politics and Women in Politics. I have done extensive research in electoral and legislative politics, specifically women in politics, and state politics and redistricting. I have also published peer-reviewed journal articles in the areas of state politics and women in electoral and legislative politics.

Prior to my academic appointment, I worked in governmental affairs and legislative politics. In 2001 and 2002, I served as a Legislative Analyst for Ford Motor Company's Southeast Governmental Affairs unit. I created and reviewed legislative initiatives as well as lobbied state legislators on behalf of Ford Motor Company's interests. From 2004 to 2005, I worked for the U.S. House of Representatives serving as a Legislative Assistant to then



Congressman Nathan Deal (GA-9). Upon returning to Georgia in 2005, I worked as a Public Health Legislative and Policy Analyst at the Centers for Disease Control and Prevention. I have broad training in theoretical and practical legislative and administrative politics.

My academic record, publications and work experience are detailed in a copy of my curriculum vita which is attached at the end of this document. I am compensated for this work at the rate of \$250 per hour.

II. Scope and Plan.

I have been asked by counsel for Sumter County, Georgia to evaluate the expert opinions and data analysis offered by plaintiff's expert, Professor Frederick G. McBride, regarding a Voting Rights Act Section 2 vote dilution claim. Specifically, I have been asked to render my opinion on Professor McBride's analysis concerning the elections data that are probative and his findings of racial polarized voting that would meet the criteria of the *Gingles* test.

In the following sections, I evaluate the objective analysis of demonstrating a vote dilution claim as prescribed by Section 2 of the Voting Rights Act and preceding case law, and then I review McBride's data analysis. In the conclusion, I opine based upon an examination of McBride's report that there is insufficient support to satisfy the second and third prongs of *Gingles*.

III. Analysis.

A. Objective

The Supreme Court in *Thornburg v. Gingles* 478 U.S. 30 (1986) created a three-part test to determine the existence of minority vote dilution. Plaintiffs must demonstrate that the minority group is "politically cohesive" and that "the white majority votes sufficiently as a bloc to enable it... usually to defeat the minority's preferred candidate."¹ For matters regarding this case, the minority group in Sumter County, Georgia is identified as those individual voters within the

¹ *Thornburg v. Gingles* 478 U.S. 30 (1986).

population who identify as Black using the Department of Justice definition and are non-Hispanic.²

In order to show minority vote dilution and satisfy the requirements of the second and third *Gingles* prongs, experts must analyze the degree to which racial polarization has characterized voting in a jurisdiction's elections. Elections held with the secret ballot provide only election returns or the total votes cast from precincts and do not offer specific data on which voters have the same or different candidate preferences. Thus, experts must rely on statistical techniques to estimate racial voting patterns of individuals from aggregate election returns. Three commonly used methods to evaluate racially polarized voting are: (1) Homogeneity where election returns are examined in homogeneous precincts (2) Bivariate Regression analysis where models estimate the candidate preferences for racial groups and (3) Ecological Inference developed by Gary King³ where maximum likelihood estimates show participation and candidate support for racial groups. I have knowledge and experience using these statistical methods.

McBride used regression analyses (Goodman Single-Equation Ecological Regression and double equation regression) as well as Ecological Inference to analyze Sumter County voting patterns in recent primary and general elections for the local Board of Education positions.⁴ My report analyzes whether there is sufficient evidence in McBride's report to demonstrate a Section 2 claim and satisfy the conditions of the second and third *Gingles* prongs.

B. Testing for Vote Dilution Utilizing the *Gingles* test.

The *Gingles* test as set forth by the Supreme Court consists of three factors to analyze for a claim of minority vote dilution. The criteria are:

² Department of Justice. www.justice.gov. Accessed on September 8, 2014.

³ King, Gary, Ori Rosen and Martin A. Tanner. 2004. *Ecological Inference: New Methodological Strategies*. New York: Cambridge University Press, and King, Gary. 1997. *A Solution to the Ecological Inference Problem: Reconstructing Individual Behavior from Aggregate Data*. New Jersey: Princeton University Press.

⁴ Professor Frederick G. McBride, Expert Report, 2014, pages 1-27 and Appendix C, pages 41-52.

1. Minority group is of sufficient size and geographically compact to allow for the creation of a single-member district for the group in question;
2. Minority group is politically cohesive; and
3. The candidate of choice for the minority group is typically defeated by a majority (Anglo or white) voting bloc.⁵⁶

The following analysis concentrates on the extent to which Sumter County Board of Education elections meet the second and third prongs of the *Gingles* criteria as summarized above. In analyzing that question, I rely on a set of conditions that must be met in order to establish the basis for a successful Section 2 cause of action. For these Sumter County Board of Education contests (all involving at least one Black candidate), it is important to ascertain whether two conditions under *Gingles* are met for each contest analyzed. The first is *Gingles* Prong 2: Is there an obvious candidate of choice for Black voters? If that condition is met, then we proceed to determine whether the electorate was racially polarized for that election. If the condition is not met, then evidence of Black vote dilution is not present. *Gingles* prong 2 may detect the presence of racial polarization, but it alone is insufficient for a Section 2 claim.

In order to determine whether vote dilution exists in an election, the second condition, *Gingles* Prong 3, must also be met: Is the Black preferred candidate or candidate of choice usually defeated by a bloc of Anglo/white voters? If this condition (prong 3) is not met, then evidence of Black vote dilution is not present. For a vote dilution claim to hold, *Gingles* prong 3, where the minority preferred candidate of choice is *usually* defeated directly by a majority bloc of non-black or white voters who support another candidate, must be met. The Merriam-Webster Dictionary defines “usual” to mean “done, found, or used most of the time or in most cases.”⁷ I define “usually” to mean a condition that occurs more often than not.

⁵ *Thornburg v. Gingles* 478 U.S. 30 (1986).

⁶ Bullock, Charles S. 2010. *Redistricting, the Most Political Activity in America*. New York: Rowman & Littlefield Publishers, Inc.

⁷ Merriam-Webster Dictionary. www.merriam-webster.com. Accessed on September 8, 2014.

If both conditions (i.e. prongs 2 and 3 of *Gingles*) are satisfied, then for the electoral contest in question, there would be evidence of minority vote dilution. Conversely, if only one condition (either prong 2 or prong 3) is met, then evidence of Black vote dilution is not present.

Based upon the above stated preconditions and factors of the *Gingles* test, I was asked to analyze Professor McBride's report of electoral contests for the Sumter County Board of Education to ascertain whether these elections support a claim of racial polarized voting and thus minority vote dilution. McBride's report states that he uses data from the Georgia Secretary of State's website and the Census Bureau to create estimates of racial groups' voter preferences for specific candidates in twelve BOE elections from 2002 to 2014.⁸

Let us assume, *arguendo*, that McBride's data and estimations are reliable and valid. Assuming realistic and reliable estimates as presented in McBride's expert report, the pertinent question for expert analysis is whether the plaintiffs satisfied the factors of the *Gingles* test and therefore have sufficiently supported the claim of minority vote dilution in Sumter County. McBride's analysis of electoral contests demonstrates that these factors have not been satisfied because although voting in Sumter County in some contests is racially polarized that is not true in all contests examined, and furthermore, minority preferred candidates are usually successful.

Below is my analysis of Professor McBride's conclusions concerning the elections for the Board of Education in Sumter, County, Georgia and the Section 2 vote dilution claim.

1. *Gingles* Prong 2

There are inconclusive results from the plaintiff's report for support of *Gingles* prong 2 in four of the twelve elections (33% of the elections). These BOE elections are: BOE District #3 in May 2014, BOE District #2 in May 2014, BOE District #3 in 2006, and BOE District #3 in 2002. The following details each election, and the lack of support for prong 2 of *Gingles* (i.e. the minority group is politically cohesive).

⁸ Professor Frederick G. McBride, Expert Report, 2014, pages 1-27 and Appendix C, pages 41-52.

In the BOE District #3 contest in 2014, McBride reports the percentage of Black voter support for each candidate as greater than 50% of the vote. Fitzpatrick, who is the Black preferred candidate, receives 56.3% of the Black vote share, but the second candidate, Reid, receives 52.1% of the Black vote. Therefore, there is no clear indication of which candidate the minority group politically coalesced behind. It appears that based on these estimates alone the Black vote is not cohesive but split almost evenly between these two candidates.

In the BOE District #2 contest in 2014, McBride reports estimates where the percentage of the Black vote supporting the minority preferred candidate, Pride, is 50.5% and approximately 33% of the remaining Black vote is split between the other two candidates. This estimated vote share is barely above the majority (50%) of Black support for the preferred candidate, and further is not solid evidence of political cohesion among Black voters.

In the BOE District #3 general election in 2006, McBride reports 93.4% of the Black support for Darius Harris, while an estimated 57.7% of non-black voters supported Donna Minich. Nonetheless, this election had three candidates including two black candidates competing for the school board position. McBride reports that in addition to the 93.4% of Black voters who supported Harris, 43.6% of Black voters supported the other black candidate, Carolyn Seay. These estimates reveal that the Black support is split between the two black candidates, and therefore, this is not solid evidence that the minority group is politically cohesive.

Finally, in the BOE District #3 general election in 2002, McBride's analysis shows no racial polarization in the contest. McBride estimates that the minority vote is not politically cohesive, because Black voters split their ballots among the three candidates, Harris, Minich and Seay. The identified minority preferred candidate, according to the McBride report is Seay, but she receives less of the estimated vote share from Black voters than the white candidate and the other African American candidate. In his estimation, McBride estimates that the successful candidate, Minich, received approximately the same share of the Black vote (41.0%) and the non-black vote (43.7%). According to McBride's estimates neither prong 2 nor prong 3 is satisfied since the Black vote is split among the three candidates with no one receiving a majority and the candidate who polled a plurality among Black voters wins. There is no support in this election that the

minority Black voters are politically cohesive and support disproportionately one candidate over another.⁹ Thus, in these four Sumter County Board of Education elections, the second prong of *Gingles* is not met because Black voters are not cohesive or because Black and non-black voters support the same candidate.

2. *Gingles* Prong 3

In addition to the 2002 District #3 election, there are six other instances in which McBride's estimates show the black-preferred candidate succeeding and thus no support for *Gingles* prong 3. These elections are: BOE District #6 in May 2014, BOE District #1 in May 2014, BOE District #5 in 2014, BOE At-Large District (two-year term) in 2014, BOE District #3 in 2010, and BOE District #1 in 2008. In each of these elections, McBride reports that the black preferred candidate "wins".¹⁰ In the Sumter County BOE elections analyzed, the minority preferred candidate is not *usually* defeated. Instead, the black-preferred candidate **usually wins**, being successful in 7 of 12 contests. Therefore, the precondition of *Gingles* prong 3 had not been supported.

IV. Concluding Opinion

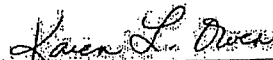
In evaluating Professor McBride's report on racial polarized voting in Sumter County, Georgia, it is my expert opinion that his interpretations and conclusions do not sufficiently support a Section 2 vote dilution claim. It is my expert opinion that the analysis of the election results from McBride's report shows the following: in four of the twelve elections the claim that the Black minority group is political cohesive is unsubstantiated because the estimated black and non-black voters' support is the same or the Black vote is split and not cohesive, thus not meeting the second prong of *Gingles*. Finally, and most importantly for a Section 2 claim, the preferred candidates of Black minority voters won 58.3% (seven of twelve) of the BOE contests from 2002 to 2014; therefore, the third prong of *Gingles* is not met because Anglo/white voters do not usually vote as a bloc to defeat the Black voters' preferred candidate.

⁹ Professor Frederick G. McBride, Expert Report, 2014, Appendix C, pages 41-52.

¹⁰ Professor Frederick G. McBride, Expert Report, 2014 pages 24-26.

Based upon these data in McBride's report and my analysis of those data, it is my expert opinion that the evidence does not support *Gingles* prong 2 and 3, and therefore, McBride's report does not demonstrate vote dilution in these Sumter County Board of Education elections.

Dated: September 12, 2014



Karen L. Owen