

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

MATHIS KEARSE WRIGHT, JR.
PLAINTIFF,

vs.

SUMTER COUNTY BOARD OF ELECTIONS AND
REGISTRATION
DEFENDANT.

RESPONSE TO DEFENDANTS EXPERT REPORT OF KAREN L. OWEN

I. Scope and Plan

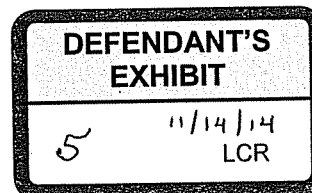
I have been asked by plaintiff counsel to respond to defendant's expert report offered by Dr. Karen L. Owen. I am specifically asked to address and evaluate claims offered by defendant's expert regarding the Voting Rights Act Section 2 vote dilution claim involving the Sumter County, Georgia School Board, with specific attention to racial polarization and other *Gingles* factors. This report will mainly refute the opinion offered by Dr. Owen: "I opine based upon an examination of McBride's report that there is insufficient support to satisfy the second and third prongs of *Gingles*."¹

II. Analysis

A. Objective

There is no issue with *Thornburg v. Gingles* 478 U.S. 30 (1986), and the three factors used to determine the existence of minority vote dilution: 1) whether the

¹ Dr. Karen L. Owen, Expert Report, 2014, pg 2.



“minority group ... is sufficiently large and geographically compact to constitute a majority in a single-member district,” 2) whether “the minority group ... is politically cohesive,” i.e., tends to vote as a bloc, and 3) whether “the majority votes sufficiently as a bloc to enable it – in the absence of special circumstances ... usually to defeat the minority’s preferred candidate.”² The minority group in Sumter County, Georgia, is the population identified as African American or Black Alone as designated by the U.S. Census Bureau.³

The propriety of experts relying on statistical techniques such as ecological regression (BERA) and ecological inference (EI) is not refuted by Dr. Owen. However in an effort to take a “totality of circumstances” approach required by *Thornburg v. Gingles*, I used not only statistical evidence but also socio-economic and historical evidence to provide a more concise and broader view of the possible hurdles faced by black voters in Sumter County that may provide more explanation than statistics alone. Seven factors were identified in the 1982 Senate report that may further vote dilution claims.⁴ Typical factors identified in the Senate report include:

- the history of official voting-related discrimination in the state or political subdivision;
- the extent to which voting in the elections of the state or political subdivision is racially polarized;

² *Thornburg v. Gingles* 478 U.S.30 1986), at 50.

³ Dr. Karen L. Owen indicates U.S. Department of Justice definition for individual voters identified as Black and are non-Hispanic though exact definition is not offered. See Karen L. Owen, Expert Report, 2014 pgs. 2-3.

⁴ S.Rep. No. 97-417, 97th Cong., 2d Sess. (1982), pages 28-29.

- the extent to which the state of political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet voting;

- the exclusion of members of the minority group from candidate slating processes;

- the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;

- the use of overt or subtle racial appeals in political campaigns;

and

- the extent to which members of the minority group have been elected to public office in the jurisdiction.⁵

Although Dr. Owen only addresses statistical issues, I rely on statistics and the “totality of circumstances” approach to address claims in Plaintiff’s Expert Report and throughout this response.

⁵ S.Rep. No. 97-417, 97th Cong., 2d Sess. (1982), pages 28-29.

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

As addressed above, *Thornburg v. Gingles* identified three factors to determine minority vote dilution. The first *Gingles* prong addresses whether the minority group is of sufficient size and geographically compact to allow for the creation of a single-member district for the group in question. Plaintiff's counsel provided defendant's counsel Plaintiff's Illustrative Plan demonstrating an alternative plan allowing black voters in Sumter County, Georgia a chance to elect candidates of their choice that complies with redistricting principles and the Voting Rights Act. Plaintiff's Illustrative Plan offers 7 single-member districts, an overall population deviation of 1.26 percent, and 3 districts with black voting age population over 50 percent. Plaintiff's proof of *Gingles* 1 is not rejected or questioned in Dr. Owen's expert report. Therefore, based on her exclusion of any discussion of the first *Gingles* factor, I infer that defendant's expert acknowledges that the minority group is of sufficient size and geographically compact to allow for the creation of single member districts.

With regard to the second and third *Gingles* prongs, Dr. Owen addresses whether there is an obvious candidate of choice for black voters (political cohesion among minority voters), and whether the black-preferred candidate of choice is *usually* defeated by a bloc of Anglo/white voters. Dr. Owen further makes note that if there is no obvious candidate of choice for black voters then evidence of black vote dilution is not present, and the presence of racial polarization alone is insufficient for a Section 2 claim.

Dr. Owen furthers her method of testing the *Gingles* factors by stating that if the third prong (*usual* defeat of minority-preferred candidate by bloc of Anglo/white voters) is not met, then black vote dilution is not present. Dr. Owen adds a Merriam-Webster Dictionary definition of “usual” to mean “done, found, or used most of the time or in most cases,” and furthers with her personal definition to mean “a condition that occurs more often than not.”⁶ Additionally Dr. Owen states that if both prongs 2 and 3 are satisfied then there would be evidence of minority vote dilution; if only one of prongs 2 and 3 are met then vote dilution is not present.

Dr. Owen concludes her section regarding testing for the *Gingles* factors by accepting, or at least not refuting, my data and basing her findings on my estimates for black and non-black voting population in many election outcomes involving split precincts and redrawn districts over a span of over 10 years, as well as my findings for black and white voting shares for specific candidates. Dr. Owen states: “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.”⁷ This statement suggests that only the data plaintiff provided in the expert report is considered; it accepts racial polarization in some contests, but not all, and it erroneously states that minority preferred candidates are usually successful.

⁶ Dr. Karen L. Owen, Expert Report, 2014, pg 4.

⁷ Dr. Karen L. Owen, Expert Report, 2014, pg 5.

Analysis of these claims is presented herein to further plaintiff's claim of minority vote dilution in Sumter County, Georgia.

1. *Gingles* Prong 2

Defendant's expert questions only four of twelve elections analyzed for *Gingles* prong 2: 1) May 2014 BOE District #3; 2) May 2014 BOE District #2; 3) 2006 BOE District #3; and 4) 2002 BOE District #3. Dr. Owen argues lack of minority political cohesion in only 33 percent of the cases analyzed.

In the 2014 BOE District #3 contest, ecological inference (EI) practically splits the minority vote share between black candidate Willa Fitzpatrick and white candidate J.C. Reid. Ecological regression estimates (BERA) generate black support for Willa Fitzpatrick over 100 percent and black support for J.C. Reid below 0 percent rendering estimates impossible to record with reliance. According to Bernard Grofman, minority voting share estimates above 100 percent or below 0 rarely happen unless there is overwhelming support for the minority candidate or miniscule nonminority support for the minority candidate.⁸

More attention must be given to the data when analysis yields these types of results. However, both BERA and EI give overwhelming white support to white candidate Reid and very little support to the black candidate Willa Fitzpatrick. To add, the white candidate won by a significant margin. While political cohesion may not be ascertained by statistics alone, it is apparent that white voters in this election voted as a bloc and defeated Willa Fitzpatrick, and one cannot directly

⁸ Bernard Grofman, Lisa Handley, and Richard G. Neimi, Minority Representation and the Quest for Voting Equality, Cambridge: Cambridge University Press, (1992), 101.

assume that black voters in this election were not cohesive given that BERA estimates are inconclusive with regard to black support for candidates.

In the 2014 BOE District #2 contest, Dr. Owen asserts that the estimated minority vote share for the black-preferred candidate Sarah Pride is barely above the majority (50%) and is not solid evidence of political cohesion. Owen offers no literature, case studies, or other evidence that there is a bright-line rule regarding what, if any, percentage of minority support a candidate must receive to satisfy minority cohesion, particularly if there are no other candidates at or near that 50 percent received by the minority-preferred candidate. In this election, the two other white candidates, Everette Byrd and Meda Krenson, receive some, although not significant, support from black voters. Byrd received 14.3 percent minority support (BERA) and 25.1 percent (EI), but Krenson only received 8.0 percent minority support (EI) and inconclusive results for BERA. Dr. Owen adds the minority support based on EI to record that 33 percent of remaining black vote is split between the two candidates, deeming the 50.5 percent share of minority support for Pride just barely above majority with only an 18 percent difference between combined support for the *two* [emphasis added] white candidates. The method offered here would seem to suggest that this calculation could also be used to combine minority support for two black candidates when either does not have over 50 percent minority support. Nevertheless, black candidate Sarah Pride lost the election.

Regarding the 2006 BOE District #3 contest, this election has two black candidates, Darius Harris and Carolyn B. Seay, both losing to the white candidate,

Donna Minich. I record overwhelming black support for minority candidate Darius Harris along with significant support for the minority candidate Carolyn B. Seay. BERA results are inconclusive for minority support for Minich. This contest presents a rare, but possible occurrence in statistics where large standard errors yield inconsistent results. It is unlikely that both Harris and Seay can have large and significant shares of minority support. Literature suggests that these unlikely occurrences may be due to aggregation bias, sample size, number of precincts involved, etc. Nevertheless, estimates must be viewed with caution and possibly additional analysis, but not merely dismissed.

The extremely large minority support for Darius Harris is consistent in both BERA and EI and even with a significant minority share of votes for Seay, the fact that minority voters supported the black candidates is not refuted by defendant's expert. A claim that minority voters are not politically cohesive if they split their share of votes between 2 or more minority candidates requires much more evidence involving inferential statistics as well as qualitative research methods. For a Section 2 claim, a belief that minority political cohesion cannot exist if, for example, two minority candidates seeking office each received 40-45 percent of minority support is somewhat of a stretch from *Gingles*. Grofman writes: "If one does not do a candidate-specific analysis, the plurality choice may not be identified. On the other hand, when there is more than one minority candidate, these candidates are competing with one another as well as with nonminority candidates. In such situations, failure to look at the level of minority support for the combined set of minority candidates may give a very misleading

picture of minority political cohesion. In this instance, candidate-specific analysis may be insufficient to assert a claim that there is no minority cohesion.”⁹

Statistical analysis alone was not intended to replace expert witness testimony of geographers, sociologists, historians, and concerned voters.

It is apparent that minority voters supported Harris by both BERA and EI as well as the fact that Harris received 140 precinct votes to Seay’s 41 precinct votes, over 3 times the number of votes received by Seay.¹⁰ Further, there is no question that overwhelming white support went to the white candidate, Donna Minich with 57.7- 80 percent support from nonminority voters.

Last, the 2002 BOE District #3 contest, as stated by Dr. Owen, and identified in Plaintiffs’ Expert Report, was deemed not racially polarized as there are significant estimates of minority share of votes for both black candidates and the one white candidate.

There is insufficient evidence offered by defendant’s expert that minority voters in these elections are not politically cohesive. The evidence shows that they are.

2. Gingles Prong 3

Dr. Owen asserts that in 6 elections the minority-preferred candidate succeeds (wins), thereby indicating lack of support for *Gingles* prong 3, i.e. that the

⁹ See Bernard Grofman, Michael Mialski, and Nicholas Noviello, “The Totality of Circumstances Test in Section 2 of the 1982 Extension of the Voting Rights Act: A Social Science Perspective,” Law and Society 7:2 (April 1985).

¹⁰ 26.4% of votes unaccounted for due to early/absentee votes not attributed back to respective precincts.

minority candidate is *usually* defeated, indicating that in Sumter County the minority candidate usually wins. This is not only in error, but an overstatement of the elections identified in Plaintiff's Expert Report that identified elections where black, and/or minority-preferred candidates gained electoral success.

May 2014 BOE District #6¹¹

- Black candidate Sarah Pride loses with 44.3 percent and 41.7 percent minority support
- White candidate, Michael Mock, appears to be the minority-preferred candidate with 55.7 and 58 percent minority support
- Michael Mock wins in a white majority district
- There is no white support for the black candidate
- District 6 is 28 percent black voting age population

May 2014 BOE District #1

- Black candidate and black-preferred candidate, Alice Green, wins election
- District is 62.7 percent black voting age
- White voters overwhelmingly supported white candidate Allen Smith

¹¹ Should read as March 18, 2014 BOE #6.

May 2014 BOE District #5

- Black candidate and black-preferred candidate, Edith Green, wins election
- District is 70.6 percent black voting age population
- White voters overwhelmingly supported white candidate Mark Griggs

May 20, 2014 BOE At-Large 2-Yr

- Black candidate and black-preferred candidate Michael Coley cannot be designated winner because race becomes a runoff between him and white candidate Sylvia Roland.
- There is split support among white voters for the two white candidates in the field of four (2 black and 2 white candidates)
- District has a total black population at 51.8 percent, 48.1 percent black voting age population.
- Black candidate Michael Coley loses in runoff to white candidate Sylvia Roland

2010 BOE District #3

- Black candidate and minority-preferred candidate Kelvin Pless wins election
- District total black population is 52.4 percent, 48.4 percent black voting age population
- White voters supported Donna Minich; black voters supported Kelvin Pless

2008 BOE District #1

- Black candidate and minority-preferred candidate Carolyn Whitehead wins election
- District is 51.3 percent total black population, 50 percent black voting age population
- 41.7 percent of votes unaccounted for due to absentee/early votes not attributed to precincts
- White vote is split between Whitehead and white candidate Stephanie McCook

III. Conclusion

Four black candidates have been successful in Sumter County, Georgia Board of Education elections since 2002, with 1 white candidate receiving a significant share of minority votes to, arguably, be deemed a minority-preferred candidate. This is roughly 42 percent (five of twelve) of the BOE contests from 2002-2014, thereby contradicting statements made by Dr. Owen that the minority-preferred candidate usually wins. An election resulting in a runoff cannot be designated a win for the minority-preferred candidate, particularly if the black candidate loses the runoff election. Further, in all but 1 election the successful minority-preferred candidates only won in districts where there were no white majorities. It is clear in most of these elections analyzed where white voters are a majority, the black candidate loses.

In 2014 BOE #6, May 20, 2014 BOE #2, May 20, 2014 BOE #3, 2006 BOE #3, and 2002 BOE #3, all black candidates lost in these districts where black voting age population ranged from 28-45 percent. The districts were significant white majority districts. It is noted that in the 2015 BOE #6 election the black candidate lost, but the minority-preferred white candidate did win the contest. This results in 5 districts where the black candidate lost, but four districts where the black minority-preferred candidates lost within this black voting age population range.

Black, and minority-preferred candidates, lost in 2 districts where black voting age population was under 50 percent (48.1 percent): May 20, 2014 BOE At-Large 4-Year, and July 22, 2014 BOE At-Large 2-Year Runoff election.

There are 2 elections where black, and minority-preferred candidates won in districts with majority black voting age population, 62.7 percent and 70.6 percent: May 20, 2014 BOE #1, and May 20, 2014 BOE #5.

There are 2 districts where black, and minority-preferred candidates won in districts just under majority black voting age population. In the 2010 BOE #3 and the 2008 BOE #1 election, the black, and minority-preferred candidate won in a district with 48.4 and 49.5 percent black voting age population, respectively.

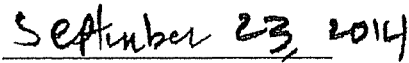
There is still no clear white majority in these districts.

Evidence presented makes it clear that where white voters constitute a majority and consistently vote as a bloc the black, and in most cases minority-preferred candidate, is usually defeated. In all but 1 election, minority electoral success is dependent on black voters in a district constituting a significant majority, or districts where there is no clear white majority. The black, and/or minority-preferred candidate clearly lost in 6 elections; there is no “winner” in the May 2014 BOE At-Large 2-Yr election due to the runoff requirement where the minority-preferred candidate later lost. Where there is a majority of black voters, black candidates have success. Plaintiff’s claim that white voters vote as a bloc to enable them – in the absence of special circumstances, e.g., where blacks are a majority in a single member district or where whites are not a majority in a single

member district - usually to defeat the minority's preferred candidate is met, thereby satisfying the third *Gingles* prong and establishing a Section 2 vote dilution claim involving the Sumter County, Georgia Board of Education elections.



Frederick G. McBride



September 23, 2014

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

MATHIS KEARSE WRIGHT, JR.,)

Plaintiff,)

v.)

CASE NO.: 1:14cv42 (WLS)

SUMTER COUNTY BOARD OF
ELECTIONS AND REGISTRATION,)

Defendant.)

Certificate of Service

I hereby certify that I have this day served PLAINTIFF'S RESPONSE TO
DEFENDANT'S EXPERT REPORT OF KAREN L. OWEN, upon counsel for Defendant by

U.S. Mail and email to the following attorneys of record:

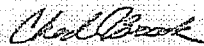
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