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

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

DEFENDANT'S RESPONSE STATEMENT OF POSITION ON THE SPECIAL MASTER'S PROPOSALS

The parties agree that the Court can proceed by selecting one of the Special Master's remedial proposals. It should do so promptly and without a hearing to return this case to the Eleventh Circuit and to allow the County to pursue its appeal.[1]

The County notes for the record that Plaintiff's objections to two of the Special Master's proposals, *see* ECF No. 269 at 2–3, underscore his failure at the liability stage to show that an "alternative" would "enhance the ability of minority voters to elect the candidates of their choice." *Abbott v. Perez*, 138 S. Ct. 2305, 2332 (2018). Plaintiff claims that District 6 in the Special Master's Map 1a "may" not be an "opportunity district," ECF No. 269 at 2, and the black voting-age population (BVAP) in that district is 69%, Report of the Special Master ¶ 86 & Table 13. He similarly objects to Map 2, which contains majority-minority districts of 63%, 56%, 55%, and 55% BVAP, *id.* ¶ 92 & Table 16, as having only *two* opportunity districts (a point the

[1] Plaintiff and the Special Master have both mentioned the prospect of a court-ordered change in election date from May to November. The County has no position on or objection to this proposal, but simply notes for the record that the election date was not the predicate of Plaintiff's Section 2 effects claim.

Special Master concedes), ECF No. 269 at 1. In other words, Plaintiff contends that districts of 55% and even 69% BVAP do not constitute "opportunity" districts. But Plaintiff took, and won on, the position at the liability phase that a third opportunity district could be drawn at 54% BVAP. ECF No. 198 at 15, 34–38. Plaintiff's own positions in this case show that he has failed to provide the Court with the necessary *Abbott* "alternative." *Abbott*, 138 S. Ct. at 2332.

It is true that Plaintiff provides district-specific reasons to object to the 69% BVAP district (though not to the 55% BVAP districts). ECF No. 269 at 2–4. But he supplied no district-specific support, addressing unique geographical issues, for his illustrative district, and the Court's liability ruling simply found that a "five percentage point increase in African American voters over the current at-large district" established his third district as an opportunity district for Section 2 purposes. ECF No. 198 at 34. Plaintiff bore the burden at the liability phase, and his recent abandonment of the idea that a mere five percentage point increase in BVAP—or a much higher increase as occurs in Map1a—establishes that burden shows beyond cavil that the Court found "§ 2 effects violations on the basis of *uncertainty*." *Abbott*, 138 S. Ct. at 2333 (emphasis in original). The Eleventh Circuit is likely to agree.

In short, the Court should promptly adopt a remedy to allow the County to prosecute its position on appeal.

Submitted by:

s/ *Katherine L. McKnight*
E. Mark Braden (*pro hac vice*)
Katherine L. McKnight (*pro hac vice*)
Richard B. Raile (*pro hac vice*)
BAKER HOSTETLER LLP
1050 Connecticut Avenue NW
Washington, DC 20036
(202) 861-1500

ATTORNEYS FOR DEFENDANT SUMTER COUNTY BOARD OF ELECTIONS AND REGISTRATION

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December, 2019 the foregoing was filed and served pursuant to the Court's electronic filing procedures using the Court's CM/ECF system.

s/ *Katherine L. McKnight*_____
E. Mark Braden (*pro hac vice*)
Katherine L. McKnight (*pro hac vice*)
Richard B. Raile (*pro hac vice*)
BAKER HOSTETLER LLP
1050 Connecticut Avenue NW
Washington, DC 20036
(202) 861-1500