

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

DYAMONE WHITE; DERRICK
SIMMONS; TY PINKINS;
CONSTANCE OLIVIA SLAUGHTER
HARVEY-BURWELL

PLAINTIFFS

VS.

CIVIL ACTION NO. 4:22-cv-00062-SA-JMV

STATE BOARD OF ELECTION
COMMISSIONERS; TATE REEVES
*in his official capacity as Governor of
Mississippi*; LYNN FITCH *in her
official capacity as Attorney General of
Mississippi*; MICHAEL WATSON *in
his official capacity as Secretary of
State of Mississippi*

DEFENDANTS

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO
PARTIALLY EXCLUDE DR. DAVID A. SWANSON AS AN EXPERT [DKT. #164]**

COME NOW the defendants, State Board of Election Commissioners, Tate Reeves, in his official capacity as Governor of Mississippi, Lynn Fitch, in her official capacity as Attorney General of Mississippi, and Michael Watson, in his official capacity as Secretary of State of Mississippi, (hereinafter collectively "Defendants") by and through counsel, and file this their response in opposition to *Plaintiffs' Motion to Partially Exclude Dr. David A. Swanson as An Expert* [Dkt. #164], and in support thereof would show unto the Court the following:

1. Plaintiffs' *Daubert* motion to exclude portions of the expert testimony of David A. Swanson, Ph.D. ("Dr. Swanson") should be denied because (1) *Daubert* is not implicated in a bench trial, and judicial economy favors admitting relevant expert testimony and giving it such

weight as the Court believes it deserves upon a full presentation of the evidence at trial; and (2) as an expert demographer, Dr. Swanson is qualified to offer the challenged testimony.

2. The Court should decline to entertain, and should therefore deny, Plaintiffs' motion to exclude small portions of the proposed testimony of Dr. Swanson because it makes no sense for this Court to review hundreds of pages of exhibits to determine whether to shorten this bench trial by perhaps an hour.

3. If the Court is nevertheless inclined to entertain Plaintiffs' motion, there are two particular reasons the Court should not exclude testimony by Dr. Swanson related to "electoral-map drawing." [Dkt. #164 at 1]. First, Dr. Swanson has not been offered as an expert on electoral-map drawing. However, as a skilled demographer, he can explain to the Court the nature and composition of the districts drawn by the Legislature and proposed by Plaintiffs. Second, there is no such thing as an expert on electoral-map drawing, at least where *judicial* districts are concerned. As defense counsel explained in repeated objections to questions about map drawers during Dr. Swanson's deposition, "the only map drawer of Mississippi supreme court districts in the last 200 years is the legislature." Swanson dep. at 150 [Dkt. #164-1 at 151].

4. Finally, Dr. Swanson is not offered as an expert on King's Ecological Inference analysis ("King's EI"). Defendants' political science expert, Christopher Bonneau, Ph.D., will testify that while King's EI is an improvement over other methods for estimating voter turnout, it still relies on unproven assumptions. Dr. Swanson does not need to be an expert on King's EI to point out the irrefutable fact that Plaintiffs' expert, Traci Burch, Ph.D., included the wrong counties in her King's EI analysis of Supreme Court District 1. Likewise, he can point out that while Plaintiffs are asking this Court to impose a district increasing the number of persons who classify

themselves on the census as any part black (“APB”), Dr. Burch chose not to analyze turnout for APB voters.

5. Defendants adopt and incorporate by reference, as if fully and completely set forth herein, the arguments and authorities set forth in the *Memorandum of Authorities in Support of Defendants’ Response in Opposition to Plaintiffs’ Motion to Partially Exclude Dr. David A. Swanson as An Expert [Dkt. #164]*, being filed contemporaneously herewith.

6. On the basis of the grounds asserted herein and as further set forth in the aforementioned memorandum of authorities, Plaintiffs’ *Daubert* motion to exclude portions of the expert testimony of Dr. Swanson should be denied.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court make and enter its Order denying *Plaintiffs’ Motion to Partially Exclude Dr. David A. Swanson as An Expert [Dkt. #164]* in its entirety.

THIS the 30th day of November, 2023.

Respectfully submitted,

STATE BOARD OF ELECTION
COMMISSIONERS, TATE REEVES, IN HIS
OFFICIAL CAPACITY AS GOVERNOR OF
MISSISSIPPI, LYNN FITCH, IN HER OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF
MISSISSIPPI, AND MICHAEL WATSON, IN HIS
OFFICIAL CAPACITY AS SECRETARY OF
STATE OF MISSISSIPPI, DEFENDANTS

By: LYNN FITCH, ATTORNEY GENERAL
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AS GOVERNOR OF MISSISSIPPI, LYNN
FITCH, IN HER OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF MISSISSIPPI, AND
MICHAEL WATSON, IN HIS OFFICIAL
CAPACITY AS SECRETARY OF STATE OF
MISSISSIPPI

CERTIFICATE OF SERVICE

I, Rex M. Shannon III, Special Assistant Attorney General and one of the attorneys for the above-named State Defendants, do hereby certify that I have this date caused to be filed with the Clerk of the Court a true and correct copy of the above and foregoing via the Court's ECF filing system, which sent notification of such filing to all counsel of record.

THIS the 30th day of November, 2023.

s/Rex M. Shannon III
REX M. SHANNON III