

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

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

PLAINTIFF’S BRIEF IN RESPONSE TO DEFENDANT’S MOTION TO EXCLUDE  
 PORTION OF PLAINTIFF’S EXPERT REPORT AND TESTIMONY

I. Introduction

Defendant seeks to exclude “all opinion testimony regarding the socioeconomic conditions in Sumter County offered by Plaintiff’s expert Dr. Frederick McBride, including opinions he derived from the American Community Survey attached to his report.” Br. in Supp. of Def.’s Mot. to Exclude Pl.’s Expert Test., Doc. 42-1 (“Def.’s Br.”), at 2. Defendant concedes, however, that even if its motion is granted, the court “can take judicial notice of [American Community Survey (ACS)] data because . . . the information is the product of the Census.” *Id.* at 5-6 (citing, *inter alia*, *United States v. Dreyer*, 767 F.3d 826, 834 n.12 (9th Cir. 2014) (“We may properly take judicial notice of United States Census Bureau data, as such data ‘can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.’” (quoting Fed. R. Evid. 201(b)(2))). Defendant further concedes that “Dr. McBride has the educational qualifications to testify regarding *the statistics* contained in his report.” Def.’s Br. at 5. Given Defendant’s concessions and the additional reasons stated below, Defendant’s

motion to exclude all of Dr. McBride's opinion testimony regarding the socioeconomic conditions in Sumter County is plainly frivolous.

II. Dr. McBride Has the Expertise to Offer Opinions on Socioeconomic Conditions in Sumter County

Defendant contends that Dr. McBride's work has not "focused . . . on evaluations of the totality of the circumstances," Def.'s Br. at 6, and that his "educational history does not include any socioeconomic training," *id.* at 7. To the contrary, as Dr. McBride's attached declaration makes clear, he has "studied socioeconomic data in over 30 states during my tenure at the ACLU as well as years before my ACLU employment in 2001." Decl. of Frederick G. McBride, attached hereto as Exhibit 1, at 1. Defendant also fails to acknowledge any of the education, experience, and research detailed in Dr. McBride's curriculum vitae, which includes:

[A] Doctorate Degree in Political Science; a Master's Degree in Public Administration; experience involving research and pretrial discovery for voting rights cases; a Clark Atlanta University teaching internship and research assistant [position]; a presentation on 'An Assessment of the Mis-Match Hypothesis and the Politics of Job Displacement in Atlanta, GA, 1980-1988;' other publications; and completion of a US Census Bureau statistics workshop conducted by the US Census Bureau.

*Id.* at 2. The workshop involved "how to understand the use and methodology of census data and how to apply it across various disciplines, including economic, political, education, and race and ethnicity studies." *Id.* at 2 n.2. As Dr. McBride further notes, "in my Master's thesis I discussed socioeconomic disparities in Louisiana: 'Any effort toward evaluating the effectiveness of Louisiana public schools must take into account the demographic and socioeconomic environment in which they operate; thus certain demographic and socioeconomic aspects of Louisiana will be presented.'" *Id.* at 2. Clearly, Dr. McBride's educational history includes socioeconomic training.

III. Dr. McBride Has Analyzed Socioeconomic Data in Prior Voting Cases

Defendant also claims that Dr. McBride’s “past involvement in analyzing voting cases was limited to the *Gingles* factors.” Def.’s Br. at 4. To the contrary, as Dr. McBride notes in his declaration:

My work was accepted in *Jackson v. Board of Trustees of Wolf Point, Montana, School District No. 45-45A*, CV-13-65-GF-BMM-RKS (D. Mont.), where I presented both geospatial analysis and socioeconomic data and analysis. Report of Frederick G. McBride, Doc. 44-1, pp. 6-11 (reporting on disparities in education, employment, income, housing, and mobility-access among American Indians and whites in Roosevelt County and the Wolf Point school district).

Exhibit 1 at 2.

In addition, Dr. McBride notes that:

During the time I worked for the ACLU I did extensive socioeconomic research and analysis in *Large v. Fremont County, WY*, No. 05-CV-0270 (D. Wyo.), and *Levy v. Lexington County School District Three*, No. 3:03-3093 (D. S.C.). As I explained in my deposition in this case, I gathered census data in the *Large* and *Levy* cases involving socioeconomic conditions of American Indians, African Americans, and whites, and data concerning all the Senate factors.

Exhibit 1 at 2-3; *see* Dep. of Frederick G. McBride, Doc. 38 (“McBride Dep.”), at 29:13-16 (“I spent a significant amount of time there [Fremont and Lexington Counties] doing research on history of discrimination, newspaper, county school board election minutes, as well as some socioeconomic data.”). Dr. McBride’s past involvement in analyzing voting cases was not limited to the *Gingles* factors but included an analysis of socioeconomic conditions.

IV. Dr. McBride’s Selection of ACS Data Was Based on His Own Expertise and Knowledge

Defendant further claims that Dr. McBride’s “ACS data selections in this case were not based on any expertise or knowledge but rather on what another individual, Bill Cooper, had used in other cases.” Def.’s Br. at 4. But as Dr. McBride provides in his declaration: “Given the numerous cases Cooper has testified in, as well as his wealth of knowledge and my experiences with him, I relied on his method as a guide. But my selection and use of data from the [ACS]

was not dependent on Cooper. He and I had very limited conversations about this case and I performed all socioeconomic data collection and analysis in this case.” Exhibit 1 at 3. As Dr. McBride explained in his deposition: “We didn't talk. I e-mailed him. I e-mailed him indicating to him that I may call on him just the same way I did Steve Cole. But I didn't. He e-mailed me back and said, hey, just know your -- just know your data. And we just left it at that.” McBride Dep. at 15:13-17.

The ACS contains a large volume of tables depicting various characteristics of communities. As the ACS Information Guide provides: “People use ACS estimates to answer questions they have about their own community and other communities. If a person wants to see how they compare with their neighbors or find a new place to live, they can look to the ACS to provide a wealth of information.” U.S. Census Bureau (2013), American Community Survey: Information Guide, at 5.<sup>1</sup> And as Dr. McBride explains in his declaration: “My use of tables was not merely based on another person’s example, but I selected the tables that were best suited to address the socioeconomic conditions of African Americans in Sumter County, GA, in relation to their white counterparts.” Exhibit 1 at 3-4. Other available ACS tables include: selected characteristics of foreign-born population; commuting characteristics by sex; grandparents; grandchildren characteristics; marital status; fertility; disability characteristics; veteran status; and language spoken at home. *Id.* at 4. McBride did not regard this data as relevant to the Senate factors detailing the socioeconomic conditions in Sumter County to determine if race plays a role in any potential vote dilution. *Id.* It is apparent that McBride’s ACS data selections in this case were based on his expertise and knowledge and not that of another individual.

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<sup>1</sup> Available at [http://www.census.gov/acs/www/Downloads/ACS\\_Information\\_Guide.pdf](http://www.census.gov/acs/www/Downloads/ACS_Information_Guide.pdf).

V. Dr. McBride's Report and Testimony of Socioeconomic Conditions Are Not Opinions But Statements of Facts

Defendant concedes Dr. McBride is qualified “to testify regarding *the statistics* contained in his report.” Def.’s Br. at 5. And in his report Dr. McBride states only what those statistics show. He is not stating his opinion that “[r]ates for the African American population in Sumter County remain significantly lower than rates for white counterparts of the county in . . . education, employment, income, and housing,” but only that that is what the ACS data in fact shows. McBride Report, Doc. 42-2, at 11; *see also id.* at 27.

As Dr. McBride further explains in his declaration:

[T]he socioeconomic data I offered details undisputed federal government data comprised by the nation’s leading source of quality data about the nation’s people and economy to assist the Court in understanding the evidence or determining a fact in issue. The data was retrieved by me, a social scientist with experience and education in both quantitative and qualitative research skills involving not only African American communities but also Hispanic and Native American communities as well. My socioeconomic testimony offered is based on sufficient federal government facts and data. The socioeconomic data I offered is based on reliable computing and mathematical principles, *e.g.*, percentage, addition, subtraction, and multiplication as well as the Census Bureau’s efforts to improve the quality and efficiency in its data collection, censuses, surveys, and data products. I applied principles and methods reliable to the facts of the case.

Exhibit 1 at 4-5. Again, Defendant’s motion to exclude all of Dr. McBride’s opinion testimony regarding the socioeconomic conditions in Sumter County is by definition irrelevant and frivolous.

VI. Dr. McBride is Qualified to Testify on Socioeconomic Conditions in Sumter County

Defendant also claims Dr. McBride admitted he was not “an expert on the socioeconomic conditions in Sumter County.” Def.’s Br. at 3. As Dr. McBride states in his declaration, “while I have not spent a lot of time in Sumter County, and as I explained in my deposition, ‘I consider myself knowledgeable’ on the socioeconomic conditions in Sumter County based on the census data I collected and analyzed.” Exhibit 1 at 5; *see* McBride Dep. at 53:21-23, 54:4. And again,

by Defendant's own admission, Dr. McBride is qualified "to testify regarding the statistics contained in his report." Def.'s Br. at 5.

In addition, as *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592 (1993), provides:

Unlike an ordinary witness, see Rule 701, an expert is permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or observation. See Rules 702 and 703. Presumably, this relaxation of the usual requirement of firsthand knowledge—a rule which represents "a 'most pervasive manifestation' of the common law insistence upon 'the most reliable sources of information,'" Advisory Committee's Notes on Fed. Rule Evid. 602, 28 U.S.C.App., p. 755 (citation omitted)—is premised on an assumption that the expert's opinion will have a reliable basis in the knowledge and experience of his discipline.

While Dr. McBride is not offering opinions but summarizing ACS socioeconomic data, even if he were offering opinions they would be admissible because they would be based on data that Defendant admits is reliable, and would have a reliable basis in the knowledge and experience of McBride's social science discipline. Dr. McBride's opinions would be admissible under Fed. R. Evid. 702 because he is "qualified as an expert by knowledge, skill, experience, training, or education," and his testimony: (1) "will help the trier of fact to understand the evidence or to determine a fact at issue;" (2) "is based on sufficient facts or data;" and (3) "is the product of reliable principles and methods;" and (4) he "has reliably applied the principles and methods to the facts of the case."

#### CONCLUSION

Defendant's motion to exclude all of Dr. McBride's opinion testimony regarding the socioeconomic conditions in Sumter County should be denied.

Dated: January 30, 2015

Respectfully submitted,

s/M. Laughlin McDonald  
M. LAUGHLIN McDONALD (#489550)

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CERTIFICATE OF SERVICE

This is to certify that I have on this day served the foregoing document on all the parties in this case using the CM/ECF system, which will send electronic notice of filing to the following:

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Submitted this 30th day of January, 2015.

s/M. Laughlin McDonald  
M. LAUGHLIN McDONALD (#489550)

ATTORNEY FOR PLAINTIFF

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SUMTER COUNTY BOARD OF	)	
ELECTIONS AND REGISTRATION,	)	
	)	
Defendant.	)	
_____	)	

DECLARATION OF FREDERICK G. MCBRIDE

This declaration is in response to the motion by defendant to exclude portions of my expert report and testimony. Defendant seeks to excluded all opinion testimony I might offer regarding the socioeconomic conditions in Sumter County, including opinions derived from the American Community Survey data. Defendant claims I have “no specialized skill” in deciding which categories of ACS data to use for my opinions.

To the contrary, I have studied socioeconomic data in over 30 states during my tenure at the ACLU as well as years before my ACLU employment in 2001. I am a social scientist. Merriam Webster Dictionary defines social science as “a branch of science that deals with the institutions and functioning of human society and with the interpersonal relationships of individuals as members of society; a science (as economics or political science) dealing with a particular phase or aspect of human society.”<sup>1</sup>

Defendant fails to recognize any of the education, experience, and research detailed in

<sup>1</sup> Merriam-Webster Dictionary. <http://www.merriam-webster.com/dictionary/social%20science>. Accessed on January 13, 2015.

my curriculum vitae, which includes: a Doctorate Degree in Political Science; a Master's Degree in Public Administration; experience involving research and pretrial discovery for voting rights cases; a Clark Atlanta University teaching internship and research assistant; a presentation on "An Assessment of the Mis-Match Hypothesis and the Politics of Job Displacement in Atlanta, GA, 1980-1988;" other publications; and completion of a US Census Bureau statistics workshop conducted by the US Census Bureau.<sup>2</sup> Additionally, in my Master's thesis I discussed socioeconomic disparities in Louisiana: "Any effort toward evaluating the effectiveness of Louisiana public schools must take into account the demographic and socioeconomic environment in which they operate; thus certain demographic and socioeconomic aspects of Louisiana will be presented."<sup>3</sup>

My work was accepted in *Jackson v. Board of Trustees of Wolf Point, Montana, School District No. 45-45A*, CV-13-65-GF-BMM-RKS (D. Mont.), where I presented both geospatial analysis and socioeconomic data and analysis. Report of Frederick G. McBride, Doc. 44-1, pp. 6-11 (reporting on disparities in education, employment, income, housing, and mobility-access among American Indians and whites in Roosevelt County and the Wolf Point school district). During the time I worked for the ACLU I did extensive socioeconomic research and analysis in *Large v. Fremont County, WY*, No. 05-CV-0270 (D. Wyo.), and *Levy v. Lexington County School District Three*, No. 3:03-3093 (D. S.C.).<sup>4</sup> As I explained in my deposition in this case,

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<sup>2</sup>The workshop involved how to understand the use and methodology of census data and how to apply it across various disciplines, including economic, political, education, and race and ethnicity studies.

<sup>3</sup> McBride, F. (1993) *Poverty and Education in Louisiana: A study of Educational Funding and Performance Among Louisiana Parishes*. Unpublished Master's thesis. Southern University.

<sup>4</sup> My curriculum vitae indicates over 12 years of employment at the ACLU, including monitoring, analysis, evaluation of redistricting and all voting rights matters, demographic analysis of redistricting plans, and research

I gathered census data in the *Large* and *Levy* cases involving socioeconomic conditions of American Indians, African Americans, and whites, and data concerning all the Senate factors. Deposition of Frederick G. McBride, Doc. 38, 29: 6-11 (“I spent a significant amount of time there [Fremont and Lexington Counties] doing research on history of discrimination, newspaper, county school board election minutes, as well as some socioeconomic data.”).

Defendant claims that my “ACS data selections in this case were not based on any expertise or knowledge but rather on what another individual, Bill Cooper, had used in other cases.” Doc. 42-1, p. 4. Given the numerous cases Cooper has testified in, as well as his wealth of knowledge and my experiences with him, I relied on his method as a guide. But my selection and use of data from the American Community Survey (ACS) was not dependent on Cooper. He and I had very limited conversations about this case and I performed all socioeconomic data collection and analysis in this case. McBride Dep., Doc. 38, 15:13-17 (“We didn't talk. I e-mailed him. I e-mailed him indicating to him that I may call on him just the same way I did Steve Cole. But I didn't. He e-mailed me back and said, hey, just know your -- just know your data. And we just left it at that.”)

The ACS contains a large volume of tables depicting various characteristics of communities. As the ACS Information Guide provides: “People use ACS estimates to answer questions they have about their own community and other communities. If a person wants to see how they compare with their neighbors or find a new place to live, they can look to the ACS to provide a wealth of information.”<sup>5</sup> My use of tables was not merely based on another person’s

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on the Senate Factors .

<sup>5</sup> U.S. Census Bureau. (2013). American Community Survey: Information Guide. Retrieved from

example, but I selected the tables that were best suited to address the socioeconomic conditions of African Americans in Sumter County, GA, in relation to their white counterparts. A listing of some other tables available include: selected characteristics of foreign-born population; commuting characteristics by sex; grandparents; grandchildren characteristics; marital status; fertility; disability characteristics; veteran status; language spoken at home, etc. I did not regard this data, as well as a variety of other available data, as relevant to the Senate factors detailing the socioeconomic situation in Sumter County, GA, to determine if race plays a role in any potential vote dilution.

In any event, the acceptance of another social scientist's method does not indicate that I do not possess the knowledge and expertise necessary to determine if any disparity between races exists. The socioeconomic data I offered details undisputed federal government data comprised by the nation's leading source of quality data about the nation's people and economy to assist the Court in understanding the evidence or determining a fact in issue. The data was retrieved by me, a social scientist with experience and education in both quantitative and qualitative research skills involving not only African American communities but also Hispanic and Native American communities as well. My socioeconomic testimony offered is based on sufficient federal government facts and data. The socioeconomic data I offered is based on reliable computing and mathematical principles, *e.g.*, percentage, addition, subtraction, and multiplication as well as the Census Bureau's efforts to improve the quality and efficiency in its data collection, censuses, surveys, and data products. I applied principles and methods reliable

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[http://www.census.gov/acs/www/Downloads/ACS\\_Information\\_Guide.pdf](http://www.census.gov/acs/www/Downloads/ACS_Information_Guide.pdf).

to the facts of the case.

Finally, while I have not spent a lot of time in Sumter County, and as I explained in my deposition, "I consider myself knowledgeable" on the socioeconomic conditions in Sumter County based on the census data I collected and analyzed. McBride Dep., Doc. 38, 53:19-20; 54:4.

January 20, 2015

A handwritten signature in black ink, appearing to read "Frederick G. McBride", written over a horizontal line.

Frederick G. McBride