

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

**ASHLEY BROCK FARMER**

**PLAINTIFF**

**VS.**

**CAUSE NO. 4:22cv011-DMB-JMV**

**GREENWOOD TOURISM COMMISSION, d/b/a  
GREENWOOD CONVENTION AND VISITORS BUREAU  
and CITY OF GREENWOOD, MISSISSIPPI**

**DEFENDANTS**

**PLAINTIFF'S BRIEF IN SUPPORT OF HER RESPONSE IN OPPOSITION TO  
DEFENDANT GREENWOOD TOURIST COMMISSION d/b/a GREENWOOD  
CONVENTION AND VISITORS BUREAU'S MOTION FOR SUMMARY JUDGMENT**

**FACTS**

**1. Background**

This case arises out of Ashley Farmer's efforts to obtain the position of executive director of the Greenwood Convention and Visitors Bureau "CVB").

Ashley Brock Farmer (white) grew up in Greenwood, Mississippi, and graduated from high school in 1986. [Ex. "1," Farmer depo., pp. 6, 10; Ex. "2," Application for Executive Director position, with Resume]

In 1990, Farmer graduated from Ole Miss with a bachelor's degree in business administration, with a marketing major. [Ex. "1," Farmer depo., p. 17; Ex. "2," Application for Executive Director position, with Resume]

After living in Calhoun City from 1991 to 1997, Farmer moved back to Greenwood and has lived there since that time. [Ex. "1," Farmer depo., p. 20]

**2. Involvement in the Greenwood Community**

Farmer has been involved with the Greenwood community, including membership in the following organizations: 1) Museum of the Mississippi Delta, member since 1998, executive board

member since 2019; 2) Greenwood-LeFlore Chamber of Commerce, member since 1998, and has served as the chairman of four (4) different committees; 3) Leflore County Humane Society, member since 2019, and is currently the president; 4) First Presbyterian Women, member and treasurer since 2016; 5) Greenwood Garden Club, member since 2007, treasurer from 2012-2015; 6) Lifetime Junior Auxiliary of Greenwood, member since 1999; 7) United Way of Greenwood, member from 2007 to 2019, and has been a volunteer since that time; and 8) Delta Garden Club, member 1998 to 2006, president from 2002 to 2004. [Ex. “2,” Application for Executive Director position, with Resume]

Farmer, along with her husband Stephen, has owned and operated several businesses in Greenwood: 1) Fast Cash Unlimited, 1997 to 2019; Mattress Brokers (Sleepy Steve’s), 2014 to present; 3) Fast Cash Taxes, 1997 to present. [Ex. “1,” Farmer depo., pp. 35-36; Ex. “2,” Application for Executive Director position, with Resume]

### **3. CVB**

According to the statute creating the CVB, the CVB “shall function in an advisory capacity as a part of the executive branch of the municipal government of the City of Greenwood . . .”

[Docket 77 - 1] The CVB “shall study and advise the executive branch in areas of promoting conventions and tourism.” [Docket 77 - 1] The CVB “shall also be empowered to carry out such other tasks as the Mayor, by executive order, may assign to it from time to time.” [Docket 77 - 1] “The city attorney shall be the attorney for the [CVB]” [Docket 77 - 1]

The “governing authorities” for the CVB are the “Mayor and the City Council of the City of Greenwood.” [Docket 77 - 1] “Before the expenditure of funds . . . a budget reflecting the anticipated receipts and expenditures shall be approved by the governing authorities.” [Docket 77 -

1; Ex. “3,” Email from Butler] In fact, the City Council does approve the CVB’s budget every year. [Ex. “4,” CVB Budgets Approved by City Council]

The CVB Board consists of fourteen (14) members, with twelve (12) voting members and two (2) non-voting. One voting member from each of the seven (7) wards of the City is nominated by the mayor and subject to the advice and consent of the city council.<sup>1</sup> [Docket 77 - 1] Five (5) voting members are from 1) Greenwood/Leflore Industrial Board; 2) Leflore County Civic Center; 3) Greenwood Hotel/Motel Association; 4) Greenwood Restaurant Association; and 5) Mississippi Valley State University. Two (2) non-voting members from the Greenwood-Leflore County Chamber of Commerce and the Cottonlandia Education Foundation. [Docket 77 - 1; Ex. “5”, CVB Board]

In fact, a CVB Board member admitted that he asked the City Council why the CVB was paying to rent the pavilion when the CVB was part of the City. [Ex. “6,” Cates depo., p. 10]

#### **4. The City of Greenwood**

Carolyn McAdams (white) has been the mayor of Greenwood for thirteen (13) years and is currently serving her fourth term. [Ex. “7,” McAdams depo., p. 6] As the mayor, McAdams is the “executive branch” of the City. [Ex. “7,” McAdams depo., pp. 8-9] As the mayor, McAdams nominates the seven (7) members of the CVB that represents the seven (7) wards of the City, and the City Council has to approve the nominations. [Ex. “7,” McAdams depo., p. 9]

During her deposition, McAdams admitted that she nominates, subject to City Council approval, the other department heads such as the police chief, the fire chief, public works,

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<sup>1</sup>It should be noted that since seven (7) of the twelve (12) voting members of the CVB are appointed by the mayor and the city council, the City, in effect, can control the CVB because it appoints the majority of the voting members.

wastewater treatment and recycling. [Ex. “7,” McAdams depo., pp. 9-10] McAdams was asked since the CVB is part of the executive branch, why can’t she appoint the executive director. [Ex. “7,” McAdams depo., p. 10] McAdams responded: “Well, because, like I said, I saw that bill the other day and, to my knowledge, that was never my job.” [Ex. “7,” McAdams depo., p. 11] McAdams went on to say that she was not aware that was the law. [Ex. “7,” McAdams depo., p. 11] When asked whether Ashley Farmer was qualified to be the executive director, McAdams responded:

I do. I certainly do. Because she was from Greenwood, she has been in the tourism office for some time part-time and then full-time, and she knew Greenwood. She has lived here all her life. . . . So, she loves Greenwood and she could promote Greenwood. So, absolutely, I think she could have done a good job.

[Ex. “7,” McAdams depo., pp. 14-15]

Charles McCoy (black) has been on the City Council representing Ward 4 since 2005. [Ex. “8,” McCoy depo., p. 6] When McCoy was asked whether Farmer was “gung-ho about promoting Greenwood’s tourism and businesses,” he responded, “Ashley is wonderful for everything just about. She’s always talking up Greenwood.” [Ex. “8,” McCoy depo., p. 10]

## **5. Hired at the CVB**

In 2017, Farmer was approached by Danielle Morgan, the then executive director for the CVB, about working for the CVB because of her financial background. [Ex. “1,” Farmer depo., p. 41]

In December 2017, Farmer was hired by the CVB as a part-time business coordinator making \$14.00 per hour. [Ex. “1,” Farmer depo., pp. 39 - 41, 45] Farmer’s job duties were to work up to twenty (20) hours per week and help manage the office, including handling payroll and taxes. [Ex. “1,” Farmer depo., p. 43] Morgan testified that Farmer’s performance was good, and she never had

any problem with her, nor did she ever issue her a disciplinary action. [Ex. “9,” Morgan depo., p. 7]

In December 2020, Farmer became a full-time employee, handling both the financials that she had always handled, plus helping Morgan with the sales and marketing that Hodge had been doing. [Ex. “1,” Farmer depo., p. 51] Farmer felt that she had a good working relationship with Morgan, and they got along well. [Ex. “1,” Farmer depo., p. 54] Farmer was never counseled or disciplined while working at the CVB. [Ex. “1,” Farmer depo., p. 63]

## **6. Danielle Morgan Resigns**

In June 2021, Farmer decided she would go back to part-time at the CVB because things were still slow. [Ex. “1,” Farmer depo., p. 52] However, Morgan gave her two (2) week notice that she was leaving, so the CVB Board asked Farmer to work full-time. [Ex. “1,” Farmer depo., p. 52] Farmer became the only person working full-time for the CVB. [Ex. “1,” Farmer depo., pp. 52-53] Morgan was well-respected in the tourism/hospitality world, and when she left Greenwood, she became the executive director for the Mississippi Tourism Association, promoting tourism for the entire state. [Ex. “1,” Farmer depo., p. 54]

Farmer asked Morgan whether she should apply for the executive director position, and Morgan told Farmer that she should do it. [Ex. “1,” Farmer depo., p. 53] Farmer believed that she was prepared for the position and had learned all the jobs in the office.<sup>2</sup> [Ex. “1,” Farmer depo., p. 53] Before Morgan left working for the CVB, at the Board’s direction, she hired Sara Jones to work part-time. [Ex. “1,” Farmer depo., p. 112; Ex. “10,” Jones depo., p. 6]

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<sup>2</sup>City Councilman McCoy was asked why they didn’t just promote Farmer when Morgan left, and he responded, “No, I sure don’t. I have no idea why they didn’t hire her. [Ex. “8,” McCoy depo., p. 11]

## 7. Interim Executive Director

Farmer applied for the position to be the executive director of the CVB. [Ex. “1,” Farmer depo., p. 67; Ex. “2,” Application for Executive Director position, with Resume] However, from the time that Morgan left in July 2021, until the new executive director took over at the end of November 2021, Farmer was the “defacto” executive director for the CVB running the entire operation. In fact, in November 2021, the Board voted to officially name Farmer the “interim director” and paid her retroactive at that rate back to the middle of July 2021. [Ex. “1,” Farmer depo., p. 129]

According to Suresh Chawla, the Board chairman, “Ashley was very professional in her dealings with me. She’s a very, very good person and she comes from a very, very prestigious and prominent family in Greenwood.” [Ex. “11,” Chawla depo., p. 11] “Her father basically saved Greenwood, as the chairman of the industrial foundation.” [Ex. “11,” Chawla depo., p. 12] Ashley “did a good job . . . in her position filling the shoes when Danielle left.” [Ex. “11,” Chawla depo., p. 12]

Current CVB vice chair, Cyndi Long, was asked how she would evaluate Farmer’s job performance during her stint as interim executive director in 2021, and she responded:

I would certainly evaluate it very highly. I would have evaluated it highly when she was with Danielle and working second. It’s a very small office. And as a board member who chooses to get involved, I know who works and who doesn’t. And they were both very successful in their position . . .

[Ex. “12,” Long depo., p. 26]

The fact is that Farmer did an outstanding job and received a lot of praise for her work. [Ex. “13,” Facebook Post with Comments]

## 8. Mayor and City Council Replaces Six Board Members

In August 2021, the Mayor and the City Council replaced six (6) of the seven (7) board members that represented the seven (7) wards of the City, including the Board chairperson, Brittany Gray. [Ex. “14,” Gray depo., pp. 6-8]

One of the new CVB Board members was attorney Steven Cookston (white), representing Ward 2. [Ex. “15,” Cookston depo., pp. 6, 22] When Cookston was asked what type of job Farmer did as the *de facto* director of the CVB from the time Morgan left, until Ervin started (over four (4) months), he responded, “Excellent.” [Ex. “15,” Cookston depo., p. 27] Cookston further testified:

And I think she did an excellent job identifying with our target market and the people that are coming here to spend money, which is our goal. And it doesn’t matter white, black, brown, old, young, whatever, our goal is to market this city and to get tourists. There’s a defined definition of tourist in the legislation. Mr. Ervin was himself a tourist.

[Ex. “15,” Cookston depo., p. 27]

Another CVB Board members was Judge Betty Sanders (black), representing Ward 3. [Ex. “5,” CVB Board] At an official CVB board meeting, Judge Sanders said that “race was at the base” of all of the heated disagreements when she first came on the Board. [Ex. “16,” Newspaper Article Concerning CVB Hiring Firm to Search for New Director; Ex. “12,” Long depo., pp. 18-19; Ex. “17,” Video of CVB and Judge Sanders] Judge Sanders admitted making that statement. [Ex. “18,” Judge Sanders depo., p. 37] Steven Cookston responded, “Right, we are getting sued exactly for that. I appreciate you pointing that out.” [Ex. “17,” Video of CVB and Judge Sanders] Karyn Burrus then added, “That’s why we are getting sued.” [Ex. “17,” Video of CVB and Judge Sanders]

Karyn Burrus, representing Ward 1, was a new member of the CVB Board as of August 2021. [Ex. “19,” Burrus depo., p. 8] Burrus testified that Farmer did “great” running the CVB between the time Morgan left and Ervin started. [Ex. “19,” Burrus depo., p. 8]

## **9. Selection Committee**

A selection committee was appointed by the chairman of the CVB, Suresh Chawla, and it also included Ben Cox, Tracy Shelton<sup>3</sup>, and Andrew McQueen. [Ex. “20,” Shelton depo., p. 12]

The interviews with the selection committee were held in early October 2021. [Ex. “1,” Farmer depo., p. 73] Farmer told the selection committee that she loved Greenwood, had been here her whole life, loved what she was doing with the CVB, and wanted to continue to promote Greenwood. [Ex. “1,” Farmer depo., p. 76]

Three (3) persons were chosen by the selection committee for the final interview - Farmer, Patrick Ervin, and Cynthia Hoover. [Ex. “1,” Farmer depo., p. 78] However, Ervin originally was not selected by Shelton and McQueen, but both later changed their minds. [Ex. “12,” Long depo., p. 16] However, neither would ever tell the other members of the CVB Board why they changed their mind. [Ex. “12,” Long depo., p. 16]

## **10. Final Interviews**

On October 5, 2021, the final interviews were held. [Ex. “12,” Long depo., p. 60; Ex. “21,” Board Minutes October 5, 2021] The entire board conducted all of the final interviews, except for Debra Johnson (black), who did not attend Farmer’s interview, but attended the other two (2) interviews. [Ex. “1,” Farmer depo., p. 79] Even though Johnson did not attend all of the interviews, she still voted for the black candidate, Ervin. [Ex. “22,” Johnson depo., p. 7]

Each board member asked one question. [Ex. “1,” Farmer depo., p. 80] Dorothy Randle (black) asked, “I don’t want to make this a black and white thing, but what are you going to do – for

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<sup>3</sup>Tracy Shelton was the non-voting member of the Board representing the Museum of the Mississippi Delta. [Ex. “20,” Shelton depo., p. 6] Even though she was a non-voting member, she claims it was permissible for her to be on the selection committee. [Ex. “20,” Shelton depo., p. 6] Which begs the question - if the purpose of the selection committee is to determine who will be allowed to be interviewed for the job, how can she be a member?



our side of town (the south side of town).” [Ex. “1,” Farmer depo., p. 81] Eddie Cates (black) asked Farmer what she was going to do for the black peewee football team. [Ex. “1,” Farmer depo., p. 82] Farmer was taken aback and confused by the inappropriate racial questions and did not know what they wanted her to say. [Ex. “1,” Farmer depo., pp. 84-85] At the end, Judge Betty Sanders (black) repeated Randle’s question, “What are you going to do to promote south Greenwood?”<sup>4</sup> [Ex. “1,” Farmer depo., p. 85] Farmer was caught off guard and did not have an answer. [Ex. “1,” Farmer depo., pp. 85, 93] Farmer believed the questions were racially motivated. [Ex. “1,” Farmer depo., p. 96]

According to Chairman Chawla, both Patrick Ervin and Farmer were “very impressive” in their interviews. [Ex. “11,” Chawla depo., p. 13] However, some Board members were concerned because Ervin lived in Greenville, was not moving to Greenwood, and planned on commuting from Greenville, about an hour away. [Ex. “11,” Chawla depo., p. 29] Further, they were concerned about a lack of verification of some of the things Ervin said he could do, including being fluent in Spanish. [Ex. “11,” Chawla depo., p. 29]

Cyndi Long testified that both Ervin and Farmer did very well during their interviews. [Ex. “12,” Long depo., pp. 53-56] However, the whole process was chaotic. [Ex. “12,” Long depo., p. 54-56] After the interviews, Long voted for Farmer explaining that:

. . . she had better qualifications. I was familiar with her work. I’ve already said before that I promote from within if that person in my opinion is qualified. She has worked - - we had been winning a lot of awards and she had worked with Danielle in her sales position. So that in my opinion contributes to the success of the CVB, especially in a small office. So I really had no hesitation when I compared the three that Ashley was the best candidate for the job.

[Ex. “12,” Long depo., p. 56]

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<sup>4</sup>Tracy Shelton testified that Greenwood is divided by the Yazoo River, and south of the river is called south Greenwood, and it is predominantly black. [Ex. “20,” Shelton depo., p. 15] North of the river is predominantly white. [Ex. “20,” Shelton depo., p. 15]

Steven Cookston also voted for Farmer, as he testified:

Because I think without question she was the most qualified person that came before us. It became more evident during the interview process, which, unfortunately, I wasn't privy to until the time of the meeting. But she had righted the ship and run it very well up until that point. And I think she identified with the goals and commitment this organization has to the community, and I felt it was very important to keep our spokesperson in the community and have somebody that cares enough to be here to serve in that capacity.<sup>5</sup>

[Ex. "15," Cookston depo., p. 17]

When asked about Ervin's interview, Cookston responded, "He was well dressed and he presented us with what I would characterize as a bunch of corporate double speak or word salads without any meaningful responses to any questions." [Ex. "15," Cookston depo., p. 42]

Karyn Burrus voted for Farmer because, "you can look at both of their resume's then look at the job description of the qualifications, and it's a no brainer. She had pretty much every qualification and he had very few." [Ex. "19," Burrus depo., p. 10] Burrus also was concerned because Ervin lived in Greenville, "Because he's considered a tourist fifty miles away. He pays taxes in Washington County, not here . . ." [Ex. "19," Burrus depo., p. 10]

Ben Cox (white) voted for Farmer because "she was completing the job currently and had for a number of months. Her experience I thought was certainly valuable to continuing without a gap in the function of the board and the function of the CVB, and she was employed through numerous awards . . ." [Ex. "23," Cox depo., p. 12]

Mayor McAdams was asked whether she was concerned about the executive director not being a part of the community he was promoting, and she responded.

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<sup>5</sup>Cookston testified that it bothered him a lot and he felt for someone "to represent our small community we needed somebody that intimately identified with it and cared enough to be here." [Ex. "15," Cookston depo., p. 18]

I sure do. And, you know, I believe that strongly. Because . . . it would be hard for me to move to Greenville, . . . not live in Greenville and promote Greenville, because you don't know enough about it. I'm sorry. That's how I feel personally.

[Ex. "7," McAdams depo., pp. 15-16]

### **11. Patrick Ervin Was Selected Along Racial Lines**

The CVB Board vote was along racial lines with the seven (7) black Board members voting for Ervin, and the four (4) white members voting for Farmer. [Ex. "1," Farmer depo., p. 130; Ex. "20," Shelton depo., p. 17] The Chairman of the Board, Chawla (Asian Indian)<sup>6</sup> abstained, so by the rules his vote went to the majority. [Ex. "11," Chawla depo., p. 15] Mayor Adams testified, "the vote certainly appeared to be a black and white issue." [Ex. "7," McAdams depo., p. 20] Further, Cookston testified that before he became a member of the Board, he heard that there were discussions that the director needed to reflect the racial demographics of the town. [Ex. "15," Cookston depo., p. 49]

The whole process was so contentious, and there was so much division along racial lines that after the Board meeting, Chawla resigned. [Ex. "11," Chawla depo., pp. 7-9]

After the interviews, several CVB Board members contacted Ervin about taking the job. [Ex. "12," Long depo., p. 32] Ervin later told Cyndi Long this, and also told her that members of the Board begged him to take the job, and he wished he had never done so. [Ex. "12," Long depo., p. 32] Ervin also told Stephen Farmer that he turned down the job, but they came to his house twice to talk him into taking the job. [Ex. "24," Stephen Farmer depo., pp. 9, 50]

Ervin was hired on October 11th, but did not start working until November 29, 2021. [Ex. "1," Farmer depo., p. 136]

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<sup>6</sup> [Ex. "15," Cookston depo., p. 47]

## **12. Farmer Was More Qualified for the Job**

Farmer was more qualified for the position than Ervin. [Ex. "1," Farmer depo., p. 130] Ervin had no experience in hospitality or tourism prior to being hired to be the executive director of the CVB. [Ex. "1," Farmer depo., p. 97]

Even Ervin agreed that Farmer would have been a better executive director, since he told Sara Jones that he did not know what he was doing. [Ex. "10," Jones depo., p. 9] Further, Jones testified:

[Ervin] would just mention that he didn't feel like he ever knew what to do with himself. He wasn't really prepared and didn't feel - - I don't think he ever said specifically that he didn't feel qualified, but he did say at certain points that Ashley would have been a better candidate. I remember having that conversation once.

[Ex. "10," Jones depo., p. 9]

Ervin told Sara Jones that he should have stayed in Greenville. [Ex. "10," Jones depo., p. 9]

Finally, Ervin told Karyn Burrus that the Board should have just hired Farmer because she deserved the job. [Ex. "19," Burrus depo., p. 11]

## **13. Farmer's Pay is Reduced**

In December 2021, the first board meeting after Ervin began working, Farmer's salary was reduced by \$10,000.00. [Ex. "1," Farmer depo., p. 128] Farmer would still be doing all three (3) jobs and training the director; yet, the CVB Board arbitrarily cut her pay by \$10,000.00. [Ex. "1," Farmer depo., p. 134] The vote to cut Farmer's salary was along racial lines with five (5) black board members - Cates, McQueen, Johnson, Randle, and Sanders - voting to cut Farmer's salary; and the four (4) white members - Long, Cookston, Burrus, and Cox - voting against the motion. [Ex. "25," December 13, 2021, Board Minutes]

After the board meeting where Farmer's salary was cut by \$10,000.00, Ervin told Stephen Farmer, Plaintiff's husband, that he was afraid Ashley would quit and he could not do his job without her. [Ex. "24," Stephen Farmer depo., p. 9] Ervin also told Stephen Farmer that Ashley "was the person that should have had this job. I can't even believe that they interviewed me . . ." [Ex. "24," Stephen Farmer depo., p. 9]

#### **14. Farmer and Ervin Worked Well Together**

Notwithstanding that fact the Ervin's race was the only reason he was hired, Farmer never had any issues with Ervin, they got along well, and worked well together when he was the executive director. [Ex. "1," Farmer depo., pp. 64-65] Still, on multiple times, Ervin told Farmer that he did not know what his duties were or what he should be doing. [Ex. "1," Farmer depo., p. 65] In fact, Ervin told Farmer and Sara Jones, "I'm not sure what I'm doing here. They had their director, but you just needed help." [Ex. "1," Farmer depo., p. 66] The truth is that Farmer knew the office like the back of her hand, and she was trying to help Ervin learn the job. [Ex. "1," Farmer depo., p. 66]

Similarly, Ervin testified that he never had any issues with Farmer. [Ex. "26," Ervin depo., p. 10] Ervin further testified:

I always maintained that Ashley and I worked well together. She knew what she was doing, she was experienced, and she helped me quite a bit as executive director. So I have no issue from the five months or so that we spent working together.

[Ex. "26," Ervin depo., p. 10]

#### **15. Ervin Resigns**

In early April, 2022, Ervin notified the CVB he was resigning, effective April 14, 2022. Ervin told Farmer that he was going to speak to Andrew McQueen on her behalf and tell him that he thought Farmer should be made the executive director. [Ex. "1," Farmer depo., p. 126]

At the April 9, 2022, CVB Board meeting, Cookston tried to provide several letters to the Board from local business owners and leaders recommending that Farmer be made the executive director. [Ex. “1,” Farmer depo., p. 145; Ex. “27,” Letters in Support of Farmer] One of the persons who drafted and signed a letter in support of Farmer was Melisa Fincher, who owns and operates a retail business in Greenwood that sells clothes, wedding gifts, and home decor. [Ex. “28,” Fincher depo., p. 6] When asked why she wanted this letter given to the Board in support of Farmer, Fincher testified: “So I felt like we finally had someone in the position who truly had the community at heart and wanted to pursue watching it grow further, prosper.” [Ex. “28,” Fincher depo., p. 7]

When Fincher was asked whether Farmer had wide support among the business people of Greenwood, she responded, “Very much so.” [Ex. “28,” Fincher depo., p. 8]

Valour Cobbins owns a restaurant in Greenwood and she signed the letter that Fincher wrote for the Board in support of Farmer because she agreed with the letter. [Ex. “29,” Cobbins depo., pp. 5-7] Ex. “27,” Letters in Support of Farmer]

Beth Williams is the general manager for the Alluvian in Greenwood, which has a hotel, restaurant, spa, and cooking school. [Ex. “30,” Williams depo., p. 5] Williams testified that Farmer did a great job promoting the businesses in Greenwood. [Ex. “30,” Williams depo., pp. 6-7] Williams also wrote a letter for the Board in support of Farmer. [Ex. “27,” Letters in Support of Farmer]

However, the CVB Board refused to read these letters of support and would not consider them. [Ex. “1,” Farmer depo., p. 149] The Board indicated that it would not even consider Farmer

for the interim position while the Board sought a new executive director. [Docket 77-5]<sup>7</sup> In executive session, the issue was raised that Farmer could not be interim director because she currently has a lawsuit against the CVB. [Docket 77-5] Someone else asked whether Farmer would drop her lawsuit if she was placed in the interim executive director position. [Docket 77-5]

#### **16. Farmer Files Second EEOC Charge**

On May 3, 2022, Farmer filed a second EEOC charge claiming race discrimination, and retaliation for filing a previous EEOC charge and lawsuit claiming race discrimination. [Docket 77-5]

On May 9, 2022, only after Farmer filed her second EEOC charge, the CVB Board named Farmer the interim executive director. [Ex. “1,” Farmer depo., p. 111; Ex. “31,” May 9, 2022, Board Minutes] However, the Board also hired a company to begin a search for a new executive director.<sup>8</sup> [Ex. “31,” May 9, 2022, Board Minutes] Steven Cookston testified that this search committee has already spent more than \$20,000, which he believed to be a waste of taxpayer money. [Ex. “15,” Cookston depo., p. 25]

Steven Cookston was asked what type of job Ashley Farmer was doing during her second stint as the interim executive director, and he responded, “Excellent.” [Ex. “15,” Cookston depo., p. 27]

During Cyndi Long’s deposition on October 4, 2022, she was asked what type of job has Farmer been doing in this second stint as the executive director, and she responded, “She does an

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<sup>7</sup>See Farmer’s Second EEOC Charge filed May 3, 2022, and attached to the Third Amended Complaint, which was signed under oath making it sworn testimony and competent evidence to be considered in a memorandum in support of a response to summary judgment.

<sup>8</sup>Not surprisingly, one of the requirements for the executive director now is that he/she must live in or be willing to move to Greenwood. [Ex. “32,” McQueen depo., p. 18]

excellent job.”[Ex. “12,” Long depo., p. 37] When Long was asked whether she has any criticism or problems with Farmer’s work performance, she responded, “No, sir.” [Ex. “12,” Long depo., pp. 37-38]

Mayor McAdams opined that there should be good reason for not hiring a person who had already been doing the job:

Well . . . personally, when you have some people from Greenwood that are interested in the job and have served in the capacity of the job . . . I think that there should be a real good reason as to why they didn’t hire that person.

[Ex. “7,” McAdams depo., p. 18]

City Councilman McCoy was asked why the Board did another search for an executive director instead of offering the job to Ms. Farmer and he responded, “I have no idea why they did.” [Ex. “8,” McCoy depo., p. 12] When McCoy was asked if he could think of a nondiscriminatory reason why they would do that, and he responded, “I can think of no reason at all.” [Ex. “8,” McCoy depo., p. 13]

Similarly, CVB Board member Steven Cookston was asked whether he could think of any other reason, other than her race (white), that Farmer was not hired to be the executive director in October 2021 or April 2022, and he responded “No” to both questions. [Ex. “15,” Cookston depo., p. 31]

Even Edward Cates (black) testified that he had no criticism of Farmer’s work performance both times she has been the interim director. [Ex. “6,” Cates depo., pp. 8, 12]

Similarly, current chair of the CVB Andrew McQueen (black) had no criticism of the job Farmer did when she was the interim director in 2021, before Ervin was hired, or since April 2022, after Ervin left. [Ex. “32,” McQueen depo., pp. 7-8] In fact, when Burrus told McQueen that



Farmer was doing a great job and she should be the executive director, Board Chairman McQueen responded, “You’re right.” [Ex. “19,” Burrus depo., p. 15]

Karyn Burrus testified Farmer is doing great running the CVB, as she did the previous year. [Ex. “19,” Burrus depo., p. 12]

### **17. The CVB Board Still Votes Along Racial Lines**

In the summer of 2022, the Board had a vote on who would be the chairman. [Ex. “33,” Randle depo., p. 12] McQueen (black) and Long (white) were both nominated. [Ex. “33,” Randle depo., p. 12] McQueen was selected to be the chairman strictly along racial lines with the black members voting for him and white members voting for Long. [Ex. “33,” Randle depo., p. 13]

### **18. City Council Considers Race in Selecting CVB Board Members**

The Greenwood City Council has its own racial issues. At the December 20, 2022, city council meeting, there was argument between Council members, Dorothy Glenn (black) and Andrew Powell (black). [Ex. “34,” Newspaper Article from December 21, 2022; Ex. “35,” Editorial Reverse Racism; Ex. “36,” Video of City Council Meeting] After Powell re-nominated Cyndi Long (white) to be on the CVB, Glenn asked Powell, “Why don’t you select some other people that look like us?” [Ex. “34,” Newspaper Article from December 21, 2022; Ex. “36,” Video of City Council Meeting] Powell found out that in Greenwood local government, your vote must be for your own race, or there will be consequences.

## **STANDARD OF REVIEW**

FEDERAL RULE OF CIVIL PROCEDURE 56(a) requires that a court grant summary judgment only “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a).

## ARGUMENTS AND AUTHORITIES

### **I. Race Discrimination may be Proved with Various Types of Evidence.**

Race discrimination may be proven with either direct or circumstantial evidence.<sup>9</sup> *Fierros v. Texas Dept. of Health*, 274 F.3d 187, 192-92 (5th Cir. 2001); *Meinecke v. H&R Block of Houston*, 66 F.3d 77, 83 (5th Cir. 1995).

This case produces much evidence of both types. Most employment decisions have been made along racial lines. The vote to hire Ervin instead of Farmer was 7-4 along racial lines. The vote to cut Farmer's salary was 5-4 strictly along racial lines. The decision to make McQueen the chairman and not Long was along racial lines. In light of the undisputed evidence about Farmer's outstanding qualifications, a jury may reasonably infer that the black members are voting against Plaintiff because she is white. The CVB Board did not offer the job to Farmer after Ervin left, even though she finished second to him in October 2021. CVB Board member Judge Betty Sanders admitted that "race is the base" of the Board's disagreements. Board members Cookston and Burrus concurred with Judge Sanders. Even more importantly, none of the black members of the Board disagreed with Judge Sanders' admission against interest.

Other evidence from which a jury may draw a racially discriminatory intent is as follows:

1) Ervin admitted Farmer would have been a better candidate; 2) Ervin told Karyn Burrus that the Board should have just hired Farmer because she deserved the job; 3) Ervin told Stephen Farmer that he was afraid Ashley would quit and he could not do his job without her; 4) Ervin told Stephen Farmer that Ashley was the person who should have had this job and he cannot believe that they

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<sup>9</sup>Courts analyze race discrimination and race retaliation claims under 42 U.S.C. § 1981, using the same as Title VII claims. *Williams v. E.I. du Pont de Nemours and Co.*, 2015 WL 9581824, \* 11 (M.D. La. 2015); *Raggs v. Mississippi Power & Light Co.*, 278 F.3d 463, 468 (5th Cir. 2002).

interviewed him; 5) Ervin told Farmer that he did not know what his duties were or what he should be doing; 6) Ervin told Farmer, “I’m not sure what I’m doing here. They had their director, but you just needed help;” 7) After Ervin resigned, Ervin told Farmer that he was going to speak to Board Chairman Andrew McQueen on her behalf and tell him that he thought Farmer should be made the executive director; 8) and finally, when Burrus told McQueen that Farmer was doing a great job and she should be the executive director, Board Chairman McQueen responded, “You’re right.”

*Patterson v. McLean Credit Union*, 419 U.S. 164, 187 (1991), long ago held that proving pretext may take a variety of forms. *Patterson* specified that it is not necessary for Plaintiff to prove that she is better qualified than the successful applicant of another race in order to create a jury issue. As in *Patterson*, the facts have shown a variety of different reasons why a fact finder might find that any reason not to hire Plaintiff was “pretextual.” Thus, under *Patterson*, even should a jury determine that Plaintiff was not the better qualified candidate when she first applied, this would not mean that there’s not substantial evidence of race discrimination.

**II. *The requirements for liability under 42 U.S.C. § 1983 are met since the CVB Board is the policy maker for the City with respect to hiring decision in question.***

Race claims under Section 1981 and the Fourteenth Amendment must be brought under Section 1983. This statute does not permit *respondeat superior* liability. However, this case involves action by the official Board of the CVB. The CVB Board is the official policy maker for the CVB, just as a school board is the official policy maker for a school district. *Beattie v. Madison County School Dist.*, 254 F.3d 595, 602 (5th Cir. 2001).

Farmer sues the CVB under 42 U.S.C. § 1981 and under the Fourteenth Amendment. CVB claims it is asking for summary judgment on these claims “because Plaintiff failed to plead that these claims under, or otherwise invoke, Section 1983 when asserting her claims in her Third Amended

Complaint.” [Docket 120, p. 2] Plaintiff is confused by this assertion because paragraph 3 of the Third Amended Complaint states:

This Court has federal question jurisdiction under 28 U.S.C. § 1331 and civil rights jurisdiction under 28 U.S.C. § 1343, to redress a claim for damages under 42 U.S.C. § 1981, the Fourteenth Amendment of the United States Constitution, and Title VII. **This action is authorized by 42 U.S.C. § 1983.**

[Docket 77, p. 2; emphasis added] Of course, *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 11 (2014), establishes that 42 U.S.C. § 1983 action does not have to be cited in the complaint.

### **III. Farmer Met the Traditional McDonnell Douglas Model for Proving Race Discrimination.**

In order to make a circumstantial *prima facie* case of unlawful race discrimination in a failure to promote case, under the traditional McDonnell Douglas model, Ashley Farmer need only introduce evidence that:

- (1) she is a member of a protected class;
- (2) she applied and was qualified for a job for which the employer was seeking applicants;
- (3) despite her qualifications, she was rejected; and
- (4) after her rejection, the position was filled by someone of a different race or remained open and the employer continued to seek applicants from persons of complainant's qualifications.

*McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); *Medina v. Ramsey Steel Co., Inc.*, 238 F.3d 674 (5th Cir. 2001). This traditional method of proof has been met.

#### **(A) Protected Class**

Ashley Farmer is white/Caucasian, a protected class. For purposes of Title VII, the Fourteenth Amendment, and Section 1981, the white race is a protected class. *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273 (1976); *Byers v. Dallas Morning News, Inc.*, 209 F.3d 419, 425-26 (5th Cir. 2000).

**(B) *Qualified***

Farmer worked for the CVB for four (4) years, handling all aspects of the operation. Both times the executive director left, she became the interim director. In 2021, she became the *defacto* interim director in July, but then in October 2021, the Board made her the official interim executive director and paid her accordingly retroactively back to July. When Ervin left in 2022, Farmer was named the official interim director in May 2022, and as the time of the filing of this response (the end of 2022), she is still the interim director. By all accounts, from both the white and black members of the Board and City Council, she has done an excellent job both times.

**(C) *Adverse Employment Decision***

There have been multiple adverse employment actions in which Plaintiff rejected despite her obvious qualifications. By way of summary, these this include:

1. After Danielle Morgan resigned, the CVB Board did not replace her with Farmer, even though she would have been the logical choice. In October 2021, the CVB Board selected Ervin over Farmer strictly along racial lines.

2. In December 2021, the Board reduced Farmer's pay by \$10,000, strictly along racial lines.

3. In April 2022, Ervin resigned and the Board did not replace him with Farmer, even though she was second in the voting in October 2021. The Board told Farmer she would not even be considered to be the interim. That only changed when Farmer filed a second EEOC charge. In May 2022, the Board hired a firm to conduct a search for a new executive director, even though they already had Farmer doing a great job running the CVB as its interim director. At the time of the filing of this response to summary judgment, the Board still has not conducted interviews.

**(D) Replaced by Another Race/Treated Less Favorably**

The CVB Board selected Ervin (black) over Farmer (white) strictly along racial lines. The Board reduced Farmer's pay by \$10,000 in December 2021, strictly along racial lines. After Ervin left, the Board told Farmer she would not even be considered to be the interim director. That only changed after Farmer filed her Second EEOC Charge. The Board hired a search committee to find a new executive director while Farmer was doing an excellent job, by all accounts, the past seven (7) months. At the time of the filing of this response, no interviews have been conducted by the Board.

Farmer can make a *prima facie* case on all three (3) of the adverse employment decisions cited in section (3) above, which CVB does not dispute. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000) found that the court of appeals erred when it "disregarded critical evidence favorable to petitioner - namely, the evidence supporting petitioner's *prima facie* case..." 530 U.S. at 152. In light of *Reeves*, a *prima facie* case itself is "critical evidence." Obviously, the fact that Farmer has made three (3) different *prima facie* cases (proving that she was qualified and was rejected in favor of a black applicant, or that Defendant keeps looking for applicants) is "critical" evidence for Farmer.

**(E) Legitimate Non-Discriminatory Reason May be Found Pretextual**

Once a plaintiff has made his *prima facie* case, the burden of production shifts to the defendant to come forward with a legitimate, non-discriminatory reason for the adverse employment decision. *Nowlin v. Resolution Trust Corporation*, 33 F.3d 498, 507 (5th Cir. 1994).

The CVB claims Ervin was selected because of his qualifications, and his interview was superior. This only shows that there is some evidence supporting movant's position. It does not mean that the Court should enter judgment for the Defendant. The Court must "give credence to the

evidence favoring the movant, as well as that evidence supporting the moving party which is uncontradicted and unimpeached, at least to the extent the evidence comes from disinterested witnesses.” *Reeves*, 530 at U.S. 151 (2000). Defendant has produced no evidence that is “uncontradicted,” thus meaning that there is an issue of material fact for the jury under *Reeves*.

While it is true that Ervin has a masters degree and Farmer has a bachelor degree, Ervin’s masters degree is in community development, a degree that would not prepare him to be a director of marketing the City of Greenwood. Even Ervin’s bachelor degree was not helpful because it was in journalism and public relations. In contrast, Farmer’s degree was right on point in business administration with a marketing major.

Further, Farmer was born and raised in Greenwood, and has lived there most of her life. For decades, she has been a member, and sometimes an officer, in at least eight (8) civic clubs in Greenwood. With her husband, she has owed multiple businesses in Greenwood. In contrast, Ervin had no connection we know of with Greenwood. He has never lived in Greenwood, and was not moving there if he got the job. In effect, Ervin would himself be a “tourist” of Greenwood.

Farmer had worked at the CVB for four (4) years, and had been the defacto *interim* director for the previous three (3) months. She had never received a disciplinary action and there is no evidence that any Board member had any complaint about her job performance. In contrast, Ervin never worked for the CVB, and there is no evidence that he ever worked in a job promoting tourism.

Courts have held that “subjective” evaluations are suspect. *Medina v. Ramsey Steel Co., Inc.*, 238 F.3d 674 (5th Cir. 2001); *Oden v. Oktibbeha County, Miss.*, 246 F.3d 458, 469 (5th Cir. 2001) (whether an employer’s subjective hiring criteria serves as pretext for discrimination is an issue for the trier of fact to decide); *Crawford v. Western Electric Co., Inc.*, 614 F.2d 1300, 1315 (5th Cir. 1980) (skill requirement not based on any written evaluation or articulated standard is suspect);

*Parson v. Kaiser Aluminum & Chemical Corp.*, 575 F.2d 1374, 1385 (5th Cir. 1978) (promotional procedures that depend almost entirely upon subjective evaluation and a favorable recommendation are a ready mechanism for discrimination); *Carroll v. Sears, Roebuck & Co.*, 708 F.2d 183 (5th Cir. 1983) (predominately subjective promotional practices warrant strict scrutiny by the courts in employment discrimination suits).

*Gray v. City of Bruce, Miss.*, 523 Fed. Appx. 267 (5th Cir. 2012), reversed summary judgment in a race discrimination when the city had claimed it hired an outside applicant over an internal applicant because the outside applicant was more qualified. As in *Gray*, whether the CVB made its decision to accept a well-qualified outside applicant over an internal applicant with many years of experience working for the CVB is an issue of fact. Of course, the claim that the black applicant was better qualified does not explain why Farmer was not given the job when that successful black applicant quit.

A fact finder is entitled to rely upon the CVB Board member's questions about race. Dorothy Randle (black) asked, "I don't want to make this a black and white thing, but what are you going to do – for our side of town (the south side of town)?" Eddie Cates (black) asked Farmer what she was going to do for the black peewee football team. Judge Betty Sanders (black) asked, "What are you going to do to promote south Greenwood?" Farmer was confused by the inappropriate racial questions and did not know what they wanted her to say.

*Reeves* criticized the lower court for disregarding age-based comments because they "were not made in the direct context to Reeves' termination." *Reeves*, 530 U.S. at 139. In this case, the comments concerning race were made in the direct context of the employment decision. A fact finder may reasonably infer that the Board's questions about race means that they wanted a black



person in the position. *Reeves* holds that comments evidencing bias made be significant, even when not made in the direct context of an employment decision.

In *Kidd v. Mississippi Department of Human Services*, 2022 WL 17573423 (S.D. of Miss.), defendant discharged a long-time black employee claiming that since the Mississippi Department of Welfare was involved in a massive fraud investigation. It wanted a replacement employee with experience in investigating fraud. In denying summary judgment, Judge Jordan relied upon the fact that plaintiff had been an outstanding employee, stating: “Kidd worked for DHS for nearly thirty years, had risen from the bottom nearly to the top, and had a spotless record.” *Kidd*, at \*4. Judge Jordan stated that there was a question about whether the defendant’s explanation for firing plaintiff was “worthy of credence.” Similarly, in this case, given the fact that Farmer alone had experience in attracting tourists and businesses to the City of Greenwood, the question of whether Defendant’s claim that it wanted a more educated applicant is “worthy of credence.”

Of course, under the familiar principle of *Rachid v. Jack in the Box, Inc.*, 376 F.3d 305, 312 (5th Cir. 2004) even if a jury were to find that defendant relied upon the outside applicant’s education or interviews, a reasonable jury could find that this was “only one of the reasons” and another motivating factor is the plaintiff’s race.

Further evidence of racial animus may be found because of Defendant’s arbitrary decision to cut Plaintiff’s pay in the absence of any legitimate reason for cutting her pay. The Board cut Farmer’s pay by \$10,000 in December 2021. Farmer knew she would still be doing all three (3) jobs and training the director, and yet, they were cutting her pay by \$10,000.00. CVB claims that it was to reflect the change in her job duties. However, the evidence shows that Farmer’s job duties did not change in December. Farmer was still running the entire operation because Ervin had no idea what he was doing, or should be doing.

Ervin told Stephen Farmer that he was afraid Ashley would quit and he could not do his job without her. Ervin also told Stephen Farmer, Ashley was the person that should have been hired, and he could not believe that they even interviewed him.

Discriminatory evidence may also be inferred from the fact that Farmer was not given the job when the black successful applicant quit. In April 2022, Ervin resigned and the Board did not replace him with Farmer, even though she was second in the voting in October 2021. In fact, the Board told Farmer she would not even be considered to be the interim. Every member of the Board - both white and black - knew Farmer was qualified to be the executive director. Still, the Board refused to promote Farmer, and in fact, told her she would not even be considered for the interim executive director position.

Of course, that all changed after Plaintiff filed her second EEOC charge on May 3, 2022. On May 9, 2022, almost a month after Ervin left, and six (6) days after she filed her EEOC charge, Farmer was made the interim executive director. The CVB claims that the 11-0 vote to give Farmer the interim position proved it is not racial. Again, this only shows that there is some evidence favoring the Defendant. The fact that there is some evidence favoring the Defendant is not enough to justify summary judgment for the Defendant. This Court must consider that “evidence in the light most favorable to the non-movant draw inferences in her favor, and disregard all contrary evidence that the jury is not required to believe.” *Reeves*, 530 U.S. at 150-151. “Litigants are entitled to have the jury draw those inferences and conclusions that are appropriate grist for juries.” *Nunez v. Superior Oil Company Co.*, 572 U.S. 1119, 1124 (5th Cir. 1978).

Farmer was the *defacto* interim director for around four months in 2021. She has been interim director for seven (7) months in 2022, a position she currently holds. There have been no

criticism - from white or black Board members - about Farmer's work performance at any time she has run the CVB as the interim director, a span of almost a year.

Even though Farmer was clearly qualified the job, had ran the CVB for four (4) months in 2021 without criticism, and was second in the voting in the fall, the Board would not name Farmer to the position and hired a search committee to find other candidates.

The CVB claims that Cyndi Long, white, recommended hiring a search committee, so it is not racial. However, Long voted for Farmer in October 2021 and testified Farmer has always done a great job and was highly successful. Long suggested the search committee because she knew the black majority Board would still not select Farmer.

A repeated disfavoring of a member of the protected class is one means of establishing discrimination. *Stennett v. Tupelo Public School Dist.*, 619 Fed. Appx. 310 (5th Cir. 2015), reversed summary judgment in an age discrimination, in part, because of repeated examples of the defendant preferring a younger person to the plaintiff. The Fifth Circuit wrote: "As an initial matter, *Stennett* produced compelling evidence establishing her *prima facie* case with respect to each of the seven positions in question. This evidence and inferences properly drawn therefrom may be considered by the trier of fact on the issue of whether the Defendant's explanation is pretextual. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. at 255, Note 10, 101 S.Ct. 1089." *Stennett* at 317. Just as the Fifth Circuit found it significant that on seven (7) different occasions, a younger person had been preferred, the Defendant has repeatedly refused to hire the qualified Farmer for the vacant position.

#### IV. RETALIATION

##### A. *Prima facie*

Farmer establishes a *prima facie* case of retaliation by showing:

- (1) that she engaged in activity protected by Title VII;
- (2) that an adverse employment action occurred; and
- (3) that there was a causal connection between the participation in the protected activity and the adverse employment decision.

*Kwong v. American Flood Research, Inc.*, 132 Fed.Appx. 18, 20 (5th Cir. 2005) (citing *Shirley v. Chrysler First, Inc.*, 970 F.2d 39, 42 (5th Cir.1992)).

##### 1. *Protected Activity*

“Title VII and Section 1981<sup>10</sup> prohibits retaliation in instances of either protected opposition or protected participation.” *Alack v. Beau Rivage Resorts, Inc.*, 286 F.Supp.2d 771, 774 (S.D. Miss. 2003). In this case Farmer has engaged in the following protected activities: 1) EEOC Charge - December 20, 2021. [Docket 77-2]; 2) Complaint/Lawsuit - January 13, 2022. [Docket 1]

##### 2. *Adverse Employment Decision*

The range of employer actions prohibited by the opposition clause is broader than that covered by Title VII’s anti-discrimination provisions. *Burlington Northern & Santa Fe Ry. v. White*, 548 U.S. 53, 57 (2006). *Burlington Northern* held:

We also conclude that the provision covers those (and only those) employer actions that would have been materially adverse to a reasonable employee or job applicant. In the present context that means that the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting

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<sup>10</sup>The CVB correctly states that the current state of the law does not allow for a retaliation charge under the 14th Amendment. Farmer withdraws her retaliation claim under the 14th Amendment but it is still actionable under Section 1981.

a charge of discrimination.<sup>11</sup>

*Burlington Northern*, 548 U.S. at 57.

In early April, 2022, Ervin notified the CVB he was resigning, effective April 14, 2022.

At the April 9, 2022, Board meeting, Cookston provided several letters to the Board from local business owners and leaders recommending that Farmer be made the executive director. However, the Board refused to read these letters of support and would not consider them. The Board indicated that it would not even consider Farmer for the interim position while the Board sought a new executive director. In executive session, the issue was raised that Farmer could not be interim director because she currently has a lawsuit against the CVB. Someone else asked whether Farmer would drop her lawsuit if she was placed in the interim executive director position. All of this would certainly dissuade a reasonable person from making a claim of discrimination.

On May 3, 2022, Farmer filed a second EEOC charge claiming race discrimination, and retaliation for filing a previous EEOC charge and lawsuit claiming race discrimination.

On May 9, 2022, only after Farmer filed her second EEOC charge, did the Board name Farmer the interim executive director. However, the Board also hired a company to begin a search for a new executive director. As of the date of the filing of this response to summary judgment, Farmer is still serving as the interim director while the majority black Board desperately tries to find a black person to replace her.

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<sup>11</sup>The CVB incorrectly states that Farmer must prove an “ultimate employment action” for the retaliation to be actionable. That is not the standard. The case cited for its argument is the standard for a “discrimination,” not a “retaliation” claim. The entire sentence that CVB cites states: “For Title VII and § 1981 **discrimination** claims, we have held that adverse employment actions consist of “ultimate employment decisions” such as hiring, firing, demoting, promoting, granting leave, and compensating. *Thompson v. City of Waco, Texas*, 764 F.3d 500, 503 (5th Cir. 2014)(emphasis added). Judge Mills recently noted this error. See *Jackson v. Desoto County, Miss.*, 2022 WL 16640141 (N.D. of Miss.).

3. *Causal Connection*

Courts have looked to three (3) factors for guidance in determining causation. First, courts examine the employee's past disciplinary record. Second, courts investigate whether the employer followed its typical policy and procedures in terminating the employee. Third, courts examine the temporal relationship between the employee's conduct and discharge. *Nowlin v. Resolution Trust Corporation*, 33 F.3d 498, 507-08 (5th Cir. 1994).

a. *Past Disciplinary Record*

In this case, it is undisputed that in the over five (5) years that Farmer has worked for the CVB, she has an unblemished record, and has received nothing but accolades because of her job performance, even from black members who refuse to vote for her.

b. *Typical Policies and Procedures*

When Danielle Morgan left in 2021, instead of promoting Farmer to the position, it put an ad in the paper. After the final interviews, and Ervin was chosen along a racial line, two (2) of the black Board members still had to go to Greenville and beg him to take the job.

In 2022, after Ervin resigned, the CVB again did not promote Farmer, even though she had proven she could run the CVB, and was recommended by Ervin to do so, the Board originally told her they would not even consider her for the interim position. This time the Board did not put an ad in the paper, but instead, paid tens of thousands of dollars to hire a search firm to try and expand the search for a qualified black candidate. Seven (7) months later, there have not been any interviews conducted.

c. *Temporal Relationship*

Only three (3) months after Farmer filed her Complaint, the Board told Farmer she would not even be considered to be an interim director. Farmer was told this less than a month after Ervin

left. That only changed after Farmer filed an EEOC charge. Close timing between a protected activity and an adverse employment action permits the fact finder to draw an inference of discrimination. *Nero v. Industrial Molding Corp.*, 167 F.3d 921, 924 (5 th Cir. 1999).

**CONCLUSION**

For all the reasons stated herein, Farmer requests that Defendant CVB's Motion for Summary Judgment be denied.

RESPECTFULLY SUBMITTED, this the 30th day of December, 2022.

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**CERTIFICATE OF SERVICE**

This will certify that undersigned counsel for Plaintiff has this day filed the above and foregoing with the Clerk of the Court, utilizing the federal court electronic case data filing system (CM/ECF), which sent notification of such filing to the following:

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DATED, this the 30th day of December, 2022.

*/s/ Jim Waide*

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Jim Waide