An Evaluation of Supplemental Reports Estimating the Number of Incarcerated Registered Voters in Ohio Who Could Not Vote in the November 2012 General Election

Prepared by:

Stephen T. Mockabee, Ph.D.
Associate Professor and Graduate Program Director
Department of Political Science
University of Cincinnati

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Introduction and Overview

In my first report in connection with the Fair Elections Ohio v. Husted case ("Evaluating Estimates of the Number of Incarcerated Registered Voters in Ohio Who Could Not Vote in the November 2012 General Election," January 13, 2014), I examined the analysis in a report entitled, "Analysis of the Number of Incarcerated Registered Voters who could not Vote During Their Incarceration on the Weekend and Monday before the November 2012 General Election," authored by Dr. Mark Salling on October 30, 2013, at the request of the Ohio Justice and Policy Center (hereafter OJPC).

For the current report I was asked by the Ohio Attorney General’s office to provide my professional opinion on the data analysis conducted and conclusions reached in two subsequent reports authored by Dr. Mark Salling at the request of the OJPC. These two reports are: 1) “Supplement to Analysis of the Number of Incarcerated Registered Voters who Could Not Vote During Their Incarceration on the Weekend and Monday before the November 2012 General Election,” dated February 20, 2014; and 2) “Analysis of the Racial Composition of Incarcerated Registered Voters who Could Not Vote During Their Incarceration on the Weekend and Monday before the November 2012 General Election,” dated March 24, 2014. 1 The Ohio Attorney General’s office provided me with copies of these two reports. I did not receive any additional files related to these two supplemental reports.

The February 20th report offers a revised estimate of the number of registered voters statewide who were unable to vote because of their incarceration the three days prior to the election on November 6, 2012, using additional data not included in the original report of October 30, 2013. The revised statewide estimate is 438 persons, down from the original estimate of 479; this is a decrease of 8.6%. The March 24th report, identified by its author as a supplement to the February 20th report, examines the racial composition of the registered voters who were unable to vote because of their incarceration and asserts that there was a “disproportionate impact” on African Americans.

Based on the information given to me, my professional assessment is that the February 20th report represents an incremental improvement over the original OJPC report of October 30,

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1 For ease of presentation I will refer to these two reports by their dates of presentation rather than by their full titles.
2013, in terms of the accuracy of the statewide estimate of the number of registered voters who were unable to vote due to incarceration. However, this report still fails to address the central methodological critique about case selection that I offered in my January 13th report, and I have concerns about the quality of the jail inventory data used. With regard to the March 24th report, my assessment is that the report does not present sufficient information to reach a conclusion about the issue of disparate racial impact.

In the remainder of the report I provide a more detailed assessment of the data and methods used in the OJPC reports and further explanation of my conclusions.

Assessment of Data and Analysis

The February 20, 2014 Report

I begin by noting that what I wrote in my January 13th report (p. 2) about the original OJPC report is also true of the February 20th supplemental report: “The OJPC report does not provide the criteria that were used in selecting the nine counties used in the report, leaving the reader to speculate as to the possible reasons why these counties were chosen.” This absence of information is not consistent with best practices in social science research. The onus is on the researcher to justify the selection of particular cases to study.

The February 20th report draws on two additional data sources to generate a revised estimate of the number of registered voters who were unable to vote due to incarceration. First, data from two more jails in Cuyahoga County were included, resulting in the addition of five registered voters to the count of those unable to vote and a revised total of 207 in the nine counties examined. I was not provided these data and have not undertaken an analysis of the matching done in these cases to identify the additional five registered voters, so I do not have an opinion to offer regarding the accuracy of these matches. Second, the February 20th report uses annual jail inventories from the Department of Rehabilitation and Correction to measure the average number of incarcerated individuals in each county and in the state as a whole.

In my professional opinion, the way these jail inventory data were used may introduce error into the analysis. At a minimum, I would like to see more information about the data collection and analysis. First, although the relevant time period for purposes of the FEO v. Husted case is the weekend and Monday prior to the 2012 election, the jail inventory data were collected anywhere from 2004 to 2013. Footnote 2 of the report (p. 3) states: “For this analysis we used only the latest year of data available for each jail.” The report offers no rationale justifying this decision. The result of this approach is that data from various years are being combined in the analysis and treated as though all the data were from the relevant 2012 time period. This is an assumption that is not supported by any information in the February 20th report. In addition to this timing issue, the report does not provide the information needed to thoroughly evaluate the nature and quality of the jail inventory data used. The reader is not provided with information about when during each year the inventories were conducted, or if a uniform method of data collection was used across the counties.

Using the jail inventory data, the February 20th report calculates that the nine counties examined constituted 47.3% of the state’s total average daily prisoner count. As noted in the
original OJPC report and again in the February 20th report, adults in those nine counties made up 42.2% of the state’s 2010 adult population. This indicates that their share of the state’s jail population is disproportionately higher than their share of the overall adult population. In other words, the nine counties used in the OJPC analysis do in fact have higher rates of incarceration than the rest of the state. This confirms the suspicion I expressed in my January 13th report. Because these nine counties have higher rates of incarceration, the extrapolation made in the original report overstated the statewide estimate of registered voters unable to vote because of their incarceration. The revised estimate of 438 is 8.6% lower than the original estimate of 479.

Finally, it is worth noting that even if one accepts this revised estimate as reliable, the number is quite small relative to the statewide electorate. According to the official election results posted at the Ohio Secretary of State’s web site, there were 7,987,203 registered voters and 5,633,246 votes cast in the 2012 general election. Thus the revised OJPC estimate of 438 voters would be equal to 0.0055% of registered voters and 0.0078% of voters who cast ballots.

The March 24, 2014 Report

The March 24th report examines the racial composition of the registered voters who did not vote in the 2012 election due to their incarceration using data collected from jail inventories in the nine counties examined in the original OJPC report. I have not analyzed the data used for this analysis, and therefore I have no expert opinion to offer as to the accuracy of the race data in these files.

Assuming that the race data in these inmate files are accurate, it seems that there were more African Americans than whites among the incarcerated registered voters who did not vote. However, there are several aspects of the analysis provided in Table 1 of the March 24th report that require further clarification. First, the report does not explain which inmates the table includes. My best guess would be that the table would apply to the persons from the nine counties examined who were incarcerated during the three days prior to the 2012 election. However, the numbers in Table 1 are different from those in the February 20th report, Table 2. In the February 20th report there are 554 total persons incarcerated and 207 who were registered but did not vote. In the March 24th report the totals in Table 1 are 564 and 204. No explanation for this difference is provided, so I am not sure how to interpret the results of Table 1.

In addition, no explanation is offered for the percentage comparison made in the March 24th report’s Table 1. It is not clear why the relevant analysis is to compare the percentage of the total incarcerated population who were eligible to vote among blacks with the percentage of the

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2 In my January 13, 2004, report (p. 3) I stated: “There is reason to suspect that the nine counties used in the OJPC report may not be typical of Ohio counties in terms of their incarceration rates. These nine counties include the five most populous counties and the three largest urban centers in the state. If urbanicity is related to incarceration rates, then the OJPC sample of counties would overstate the extent of incarceration and therefore would over-estimate the number of registered voters unable to vote due to incarceration.”

3 http://www.sos.state.oh.us/SOS/elections/Research/elecResultsMain/2012Results.aspx, last accessed January 7, 2014

4 It should be noted that my report of January 13, 2004, contained a typographical error in reporting the percentage of registered voters comprised by the 479 registered voters identified in the original OJPC report of October 30, 2013. The correct figure is 0.0060%, not 0.0006%. I apologize for the error.
total incarcerated population who were eligible to vote among whites. The author does not explain why this comparison is the relevant one for establishing a disparate racial impact, and I do not see on its face why this is the case.

It seems to me that more information is needed in order to assess whether there is a disparate impact. For example, the author does not provide information on registration or absentee voting by race. The fact that there are more blacks than whites in the “eligible” column could be due in part to different rates of registration and of absentee voting among blacks compared to whites. But the author does not provide this information in the March 24th report, so the reader cannot make assessments regarding registration or absentee voting.