NORTH CAROLINA GENERAL ASSEMBLY
HOUSE ELECTIONS COMMITTEE

TRANSCRIPT OF PROCEEDINGS BEFORE THE COMMITTEE

In Raleigh, North Carolina
Wednesday, March 13, 2013
Transcribed by Brad Worley

Worley Reporting
P.O. Box 91447
Raleigh, NC 27675
919-870-8070
everybody heard and have time for questions from members of the committee.

Without further ado, I will at least introduce the five, and then we'll start. We, first of all, have Keesha Gaskins, who is senior counsel with the Brennan Center for Justice.

Francis De Luca, who is president of the John W. Pope Civitas Institute. Rob Hall, who is the executive director of Democracy North Carolina. Allison Riggs, who is the staff attorney on voting rights for the Southern Coalition for Social Justice. And Hans von Spakovsky, who is the senior legal fellow with the Heritage Foundation. I want to welcome all five of our panelists here today. We thank you for giving of your time and being here to speak to us today.

We will start by hearing from Keesha Gaskins, who, again, is the senior counsel with the Brennan Center for Justice. Ms. Gaskins, welcome to the House Committee on Elections. We look forward to hearing your remarks, ma'am. And you are -- you are welcome to come here and speak if you want, or you may speak from where you are seated; it is up to you.

MS. GASKINS: Good afternoon. And on
behalf of the Brennan Center for Justice, NYU School of Law, I want to thank Chairs Moore and Lewis for the opportunity to speak with you all today on the important issue of requiring photo identification for in-person voting in North Carolina.

My name is Keesha Gaskins. I am senior counsel with the Brennan Center for Justice. We are a non-partisan public policy and legal advocacy organization. We focus on fundamental issues of democracy and justice.

As part of our work within the Democracy Program, we promote policies to encourage free, fair and accessible elections, to improve the security of elections, and to maximize citizen enfranchisement in participation in the election process. Our work towards these goals has included extensive research and the publication of studies, reports, public education, assistance to state and federal policymakers, and advice on electoral legislation, and, when necessary, litigation to protect the fundamental right to vote.

As part of this work, we have paid particular attention to the debate over strict voter identification laws. We have commissioned
research on the number of citizens who lack certain forms of documentary proof of identity and citizenship. We have participated as either amicus or party representatives in litigation over strict ID laws in Indiana, Georgia, Arizona, South Carolina, Texas and New Mexico.

The Brennan Center believes that eligible voters should not be prevented from voting because of strict ID requirements. A strict ID requirement in North Carolina is unjustified for a number of reasons. First, reasonable interest -- reasonable interests in improving ballot security are not furthered by strict photo ID requirements. Second, strict photo ID requirements create serious and unwarranted problems for voters that lack photo identification. And third, proper implementation of a strict no photo, no vote, photo ID requirement is a costly and serious burden to taxpayers, and in almost all other states passing these laws, it results in protracted litigation.

Like many states, North Carolina's election administrations are not problem-free. However, North Carolina does have some of the best election administration in this country. We've seen over time that the existing processes and
procedures in North Carolina have really resulted in increased turnout, and the existing systems do work very well.

We did see, however, in last year's elections, long lines for both early and election day voting. There were also concerns about bloated voter registration rolls that presented problems for election administrators, and these are issues that should be addressed.

In enacting any legislation related to elections, this body has a very heavy burden of determining what the problem is that needs to be solved, and whether the proposed solution actually serves to remedy the problem. In this case, a strict photo ID requirement cannot address problems related to long lines, inaccurate voter registration lists, voter malfeasance, like double voting, felon voting or vote buying. The only type of voter malfeasance that voter ID can address is one of voter impersonation.

The photo ID requirement is the worst kind of electoral policy solution in the face of the challenges. It creates an illusion of security that does not exist, while offering no real solution to any identified problem with electoral
administration, while simultaneously creating serious consequences for many legal and qualified voters.

According to the North Carolina Board of Elections, more than 21 million votes have been cast in North Carolina over the past 12 years. During that time, only one case of voter impersonation occurred, and certainly that is one case too many. But fortunately, North Carolina's systems identified -- identified the problem, referred the problem to appropriate law enforcement agencies, and took appropriate action.

Voter fraud is rare, and cases of voter impersonation are even more uncommon. There is no evidence of coordinated and systemic voter fraud that threatens Americans' elections anywhere in this country, and certainly there is no evidence here in North Carolina.

A strict photo ID law will not improve North Carolina's elections, but we do know that many of North Carolina's voters and eligible voters lack the kind of identification required by such a law. Brennan Center's research shows that one in ten eligible voters lack the necessary government-issued photo ID required by many no photo, no vote
laws. This includes 25 percent of African-American populations and 18 percent of our population of citizens over the age of 65.

This research is supported by the January 13th findings of the North Carolina State Board of Elections, in finding over 600,000 registered voters who do not have a North Carolina photo ID. What is most telling about the Board of Elections data is what types of voters would be most impacted by these laws. It's important to note that 82 percent of the voters identified in that report were active voters.

24 percent were North Carolina citizens over the age of 25, and 33 percent of the registered voters were identified as African American, Asian or American Indian. And according to the U.S. Census, those same minority groups make up only 23 percent of the voting age population in North Carolina.

For a person who lacks photo ID, obtaining new photo identification can be resource-intensive. Certainly, any photo ID law would require that North Carolina create some mechanism for the ID to be free to any and all voters who require one. The cost of the underlying
documentation to obtain a secure ID is significant, and for the 16 percent of North Carolina citizens currently living in poverty, prohibitive. Voters will have to travel some distance to obtain an ID, to get to an ID-issuing office. For rural voters and the 6.5 percent of North Carolina's residents who reside in households without access to a vehicle, the inability to access ID's may render voting impossible.

Assuring that voters are who they say they are is important and essential to conducting fair elections. There are, however, reasonable ways to confirm a voter's identity through documentation and mechanisms that are already available in North Carolina's elections systems.

Strict voter ID laws are controversial, and in almost every case where a state has passed a strict no photo, no vote law, protracted litigation has followed. To date, four states have imposed strict voter ID laws on voters: Indiana, Georgia, Kansas and Tennessee, with Georgia, Indiana and Tennessee having to defend these in state and federal court. In addition, Alabama, Mississippi, Missouri, South Carolina, Pennsylvania, Texas and Wisconsin have passed strict voter ID laws that
have been stayed, subject to delayed
implementation, or declared illegal under the
Voting Rights Act or under state constitutional
law.

Because specific legislation hasn't been
introduced in North Carolina this session, it's
impossible to say what provisions may run afoul of
state or federal law, but it is a mistake to
presume that the Supreme Court's 2008 decision in
Crawford v. Marion County means that any strict ID
law would unnecessarily be constitutional.

The acceptability of the burden on
individual voters involves a fact-specific inquiry,
including what exceptions to the ID requirement
would be available and whether the requirements are
for all voters. Any legal inquiry would include a
consideration of how expansive the list of
acceptable documents beyond photo ID would be,
whether there's a reasonable opportunity for voters
without ID to confirm their identity by a signature
match or a signature attestation, which already
exists, or by executing a declaration of identity
under penalty of perjury.

Moreover, the cost of public education
and outreach, a necessary, crucial component, is
significant. It is costly to ensure that all
voters are aware of any new requirements to vote
and have access to the free ID's offered by the
State, and there is also the cost of free ID
themselves. There are a number of estimates of the
potential cost to North Carolina in imposing a
strict ID requirement, and the total burden on
taxpayers will, of course, depend on this final
version of any bill. But the significant
litigation, public education and material costs in
imposing these laws will not be able to be avoided.

Brennan Center thanks the committee for
this opportunity to speak to you today and applauds
the efforts of this committee to enact changes
intended to improve North Carolina's elections.
However, we urge this body to consider legislation
that modernizes North Carolina's voter registration
systems, rather than to impose a law that will
unfairly and unjustifiably restrict access to the
polls and potentially leave thousands of North
Carolina voters disenfranchised. Thank you.

REP. T. MOORE: Ms. Gaskins, I failed to
ask you this. Would you mind introducing yourself,
as far as where you're from, a little bit about
you, also?
government-issued photo ID to vote like to talk about voter disenfranchisement. What they never mention is that by helping these very same folks get a valid government photo ID, they will be helping them more fully integrate into society. Or is it that they really don't care if they fully participate in life? Is it that they just want them to show up once every couple years to vote, and then slip quietly back into the shadows?

Do the right thing for everyone; pass photo ID. Thank you for your time and attention.

REP. T. MOORE: Thank you. Our next speaker is Bob Hall, who is the Executive Director of Democracy North Carolina. Mr. Hall, you are certainly welcome to come up to the front and speak. Welcome to the committee.

MR. HALL: Thank you. Thank you, Chairman, and thank you, members of the committee for allowing me to come today. Bob Hall, Democracy North Carolina, and I am the director of the organization that has spun off from Democracy South, the Institute for Southern Studies. We've been around for more than 20 years in one form or another. We've challenged pay to play -- pay to play politics and promoted greater voter
straight party ticket, to make it difficult for
groups to help people register to vote. Rather
than fanning hysteria about voter fraud, you should
be finding new ways to increase voter involvement.

You say you want to protect the integrity
of the election system by attacking fraud, but you
really have not even defined what the problem of
voter fraud is. What is the problem of voter
fraud? Is it the fact that we had in 19 -- in
2012, in the general election in 2012, we had over
2,500 voters given the wrong ballot. 2,500 voters
were given the wrong ballot, and their vote was,
essentially, useless. They were disrespected, they
were disenfranchised, they were defrauded of their
right to vote. You can ask the Board of Elections
about this.

And this comes largely because of the
complexity of splitting up precincts in these new
district plans that you've had. This -- an
excessive amount of precinct splitting that goes
way beyond anything that this state has ever seen
before. That has caused, in just that one
election, 25 -- more than 20 -- that's 2,500,
actually, in seven counties. They're still trying
to evaluate all the numbers that have been.
Voter fraud could be telling people that you can't vote in 2012 unless you register again, even though you voted in 2008. There's all kinds of misinformation that goes on, out to people. So we need to identify what exactly is fraud. The so-called fraud of voters, individual voters cheating, what is the preferred method that people use? And all the experts agree with this, is the mail-in, absentee ballot. Why wasn't that the focus, the first focus of this committee?

And last year, this year, look at the absentee ballot. The data shows that actually the fraud through -- is small, but is seven times the rate of what a mail -- a person coming in person is. 35 per million absentee fraud, versus five per million votes cast of in-person voting, 35 per million. You look at the 2,500 people that lost their right to vote in 2012 out of split precincts, you know, that's 600 per million, almost 600 million -- 600 per million, compared to the 35 or the five. So we got to -- where is the impact of fraud?

Really, the -- a conservative approach to this problem, a conservative would say, "Show me the problem that you want to fix. Document it
before you want to spend my money." A conservative
would say, "Before you spend the government's
money, show me the problem." If we said the
environment was being poisoned by something, some
factor, you would want us to document that. If you
say the political system is being poisoned by some
political factor, document it, show us. To say
that it's too difficult is a copout. You can do
this; you could invest some money. Give the Board
of Elections, give the SBI, give some agency you
trust some money to investigate and document fraud
before you begin to put in place these kinds of
strict measures.

And what is the measure you want to use;
what is the model you want to use? If you use the
Georgia model or the Indiana model, you're going to
the strictest model in the country. The most
exclusive, the most -- it's the elitist model, it
is, to try and cut down voting and make it more of
an elitist enterprise.

I would hope that you would look, even if
you're going to do a photo ID, you look at some of
the other states that have required a photo ID but
then provide other mechanisms, like Michigan,
Idaho, South Dakota, New Mex-- -- New Hampshire,
Michigan, Idaho, South Dakota, New Hampshire. Bring in some of the election administrators of those states, ask them if a person comes, they ask them for a photo ID, they don't have the photo ID, they can sign an affidavit. An affidavit attestation is good enough. It can be challenged by somebody, just as we can do that.

But if you go to the Georgia -- you look at these models about how Georgia's not supposed to have been impacted, the voter ID doesn't impact turnout, evaluating the impact of turnout is very, very difficult. All the different factors, the candidates, the TV advertising, the competitiveness of races. They compared 2006 and 2010, two non-presidential years, which is fair, except in 2006, when there was no ID law, there was also no Senate race in Georgia and a non-competitive Governor's race. The incumbent Governor was running for re-election. It was a very low turnout election in 2006 in Georgia.

Then, they look at 2010, and there's a much higher turnout, because there was a U.S. Senate race, there was a more competitive Governor, and there was also a photo ID. But the ID -- the increase in turnout is not caused by the ID or the
ID, people overcoming the ID; it's because of the energy in that race.

Same thing for 2004 and 2008, and they don't even look at the 2012. If you look at the 2012 numbers in Georgia and Indiana, voter participation has gone down, voter participation in Georgia has gone down in '12 versus '08, the same thing in Indiana.

So, I would encourage you -- if you want another way to look at these changes in turnout, North Carolina has consistently had a higher turnout than Georgia, about four percent over the last two decades from 1980 all the way through 2004. And then they had the ID. We were four percent above Georgia. In 2000, we were 5.2 percent above -- 5.2 percentage points above Georgia in our turnout. So, we are -- the gap, that gap grew after Georgia added their ID law.

In 2012, the gap between our turnout and Georgia's rate was 7.9 percentage points. Our turnout was much, much higher. So, I would like to just encourage you to go beyond this -- this Georgia ID.

There are even other states beyond looking at the number of free ID's that are handed
out. Look at the states where your person goes, is
asked for a photo ID; if they don’t have the photo
ID, they can sign the attestation. How many of
those are happening? That ranges from up to about
1 percent, 2 percent. As Francis said, people on
polling say, well, you know, only 2 percent don’t
have an ID. 2 percent in North Carolina, that’s
90,000 voters. 1 percent of voters in North
Carolina who turn out, that's 45,000 voters. So,
we need to watch what it is -- what is the
mechanism we're using, what is the range of ID’s
and all the rest, what is the education effort
being put in there?

Thank you very much.

REP. T. MOORE: Thank you, Mr. Hall. Our
next speaker is Allison Riggs, who is the Staff
Attorney for Voting Rights with the Southern
Coalition for Social Justice. Ms. Riggs, you are
welcome to come forward and speak to the committee.
Welcome to the Elections Committee.

MS. RIGGS: Good afternoon. Chairmen
Lewis and Moore, members of the committee, on
behalf of the Southern Coalition for Social
Justice, I thank you for holding this hearing and
for inviting us to share relevant information and
to respond to your questions. My name is Allison Riggs, and I'm a voting rights attorney at SCSJ.

A restrictive -- oh, I've brought written testimony with me. Given my limited amount of time, I'm going to hit some highlights, but there is more in my written submission.

A restrictive photo ID requirement in North Carolina threatens to exclude hundreds of thousands of registered North Carolina voters and will significantly deter those not yet registered from attempting to register and vote. As Ms. Gaskins mentioned, in January of this year, the State Board of Elections performed a comparison between voter registration data and data provided to them by the State Department of Motor Vehicles. That comparison indicated that over 600,000 registered voters or 9.25 percent of all registered voters may not have a DMV-issued license.

That comparison study indicated that a photo ID requirement could have a disparate impact on several population groups. Women comprise 54 percent of active voters, but comprise 66 percent of active voters on the no-match list. African-Americans comprise 22 percent of active registered voters, but comprise 31 of the active voters on the
no-match list. Seniors comprised 18 percent of active registered voters, but 26 percent of active voters on the no-match list. These results are very troubling.

The data available to us and to this body indicate that voters of color are likely to be disproportionately impacted by a strict photo ID requirement, which raises the potential for violations of both Section 2 and Section 5 of the Voting Rights Act. Indeed, based on the January matching analysis done by the State Board, the rate of no match in North Carolina's 40 covered counties is significantly higher than in the state as a whole, 10.2 percent versus 9.25 percent statewide.

To be sure, everyone on that no-match list, may not actually lack a driver's license, but just because someone shows up on the no-match list and they actually have a driver's license doesn't mean that they won't face barriers on Election Day if we implement a strict photo ID requirement.

The Winston-Salem Journal published an article on January 13th of this year, reporting on what they found when they reached out to some of the voters on the State Board's no-match list. A woman named Lena Gow was on the list because her
driver's license still had her maiden name on it, even though her voter registration had been updated. A man named Kirk Gardner was on the list because his last name was misspelled in his voter registration file. Both of these individuals have voter -- have photo ID, but the names on their photo ID's don't match the names on the voter rolls. These eligible voters may be forced to cast a provisional ballot on Election Day.

Data nationally and in North Carolina show that voter ID laws are more likely to burden voters of color and voters who live in poverty. In August of last year, a three-judge panel in the D.C. District Court rejected Texas's voter ID law as violating Section 5 of the Voting Rights Act because of those very reasons. The court in D.C. found that there are costs for voters associated with photo ID even when a quote-unquote "free" ID is provided. That court noted that a law that forces poor citizens to choose between their wages and their franchise unquestionably denies or abridges their right to vote.

Given that in Texas, the poor are disproportionately racial minorities, the court found that the ID requirement violated Section 5.
And this may be hard to believe, but African-
Americans and Latinos live in poverty at a greater
rate than they do in Texas. So the very reasons,
the factual underpinnings for a rejection of
Texas's voter ID law exists here in North Carolina.

A final note on data. On November 6th,
2012, Dr. Keith Reeves, a professor of political
science at Swarthmore College, conducted an exit
poll here in North Carolina, polling voters who
actually turned out, so not just registered voters,
turned out voters, participating in the 2012
Presidential election, to determine who had photo
ID and to learn more about the socioeconomic
demographics of those who lack ID. The full
analysis is not yet complete, but some preliminary
data are available.

The study collected surveys from 478
North Carolina voters in six counties, a mix of
covered and non-covered counties. Poll
participants were asked if they had ID and what
kinds of ID they had. The poll results indicated
that 8.8 percent of all voters who voted in that
election that day did not have a valid form of
photo ID. When the analysis is complete, we will
have more information, but the preliminary data
indicates that of the 8.8 percent who didn't have ID, an overwhelming majority were African-American. Again, this preliminary analysis of exit polling suggests that the State Board's analysis, released this January, is actually pretty correct.

A restrictive photo ID requirement in North Carolina is simply not justified by any serious or widespread problems. Here in North Carolina, we are in the unique and advantageous position of having data on alleged voter fraud, and that data is consistent with the national evidence of the rarity of in-person voter fraud. In 2011, the State Board of Elections issued a report on the types of voter fraud and the number of cases of voter fraud referred to district attorney's offices for prosecution by year over a 10-year period. In that time period, only two cases of in-person voter impersonation were identified and referred for prosecution.

Double voting and voting by ineligible voters with a felony conviction is, likewise, very, very rare, and is not prevented by a photo ID requirement. Even absentee voter fraud in North Carolina is very rare. We don't have to be content with hypotheticals or voter fraud stories from
other states. We have good data specific to North Carolina, and it indicates that voter fraud of whatever ilk is not a significant problem in this state.

Because the North Carolina state Constitution offers more rigorous protections for voters than does even the federal Constitution, the state must offer more than anecdotes and hysteria in order to justify a law that would restrict the right to vote.

An argument for a strict photo ID requirement is that it will help, quote-unquote, "restore integrity in elections." First, as we saw last night, as I saw and as this committee heard, there's a large segment of population that believes this proposed law is a means of trying to keep them of voting, reminiscent of Jim Crow. By my count, not one person of color stood up in front of this committee last night and asked for a photo ID requirement. This does not foster trust in the electoral process. To those voters, there's a lack of integrity in a system that is more about politicians choosing their voters rather than the other way around.

Beyond that, a recent study published in
the Harvard Law Review found no statistically significant correlation between public perception of the existence of in-person voter fraud and the propensity to participate in elections. Thus, there's no evidentiary support for the claim that the unproven potential for in-person voter fraud decreases voter turnout.

I understand the desire to run elections in a above-reproach manner, so that we can be confident in their administration and in the results. I share that sentiment. But the law does not tolerate disenfranchising eligible voters because they lack the resources necessary to comply with an unjustified law. One legitimate voter turned away is one too many.

In a state like ours with a sad history of racial discrimination in voting, including the use of literacy tests as recent as the mid-1970s, enacting a law that disproportionately burdens the right to vote of people of color is unjustified, and it perpetuates a tradition and a way of life that we should be happy to relegate to history books. I thank you again for the opportunity to testify before you, and I look forward to answering your questions.