

One Wisconsin Institute, Inc. et al.

v.

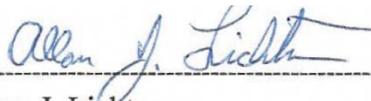
Judge Gerald C. Nichol, et al.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
Case No.: 15-cv-324

February 16, 2016

REBUTTAL EXPERT REPORT

ALLAN J. LICHTMAN



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In this report, I respond to analyses presented in the reports of defendants' experts Dr. M. V. Hood III (henceforth Hood Report) and Dr. Nolan McCarty (henceforth McCarty Report). Following the Court's order I do not attempt to respond to criticisms of my initial report (henceforth Lichtman Report) or to introduce new theories. Rather I analyze the methodology and findings of several analyses presented in the Hood and McCarty reports. I rely on data from the Cooperative Congressional Election Study (henceforth CCES), a source already used extensively in my initial report (Lichtman Report, pp. 42-45) and in the report of Dr. Hood (Hood Report, pp. 33-35). I also rely on data from the website of the Wisconsin Government Accountability Board, a source extensively mined by the experts in this litigation. Finally, I also utilize data on the process in Wisconsin for obtaining free IDs, which is relied upon by Dr. Hood (Hood Report, pp. 31-33). This data is updated with deposition testimony about the free ID process given by a representative of the Wisconsin Department of Transportation, Division of Motor Vehicles on January 29, 2016, together with DMV records about individual petitioners which have thus far been produced to the plaintiffs. I reserve my right to update and expand upon my analysis once the State has produced full documentation regarding voters who have been required to go through the process for obtaining free IDs.

I. DR. HOOD'S ANALYSIS OF THE PARTISAN EFFECTS OF WISCONSIN'S ACT 23 ON VOTER ID

In his report, Dr. Hood analyzes data from the 2014 CCES purporting to show that racial disparities in voter ID possession would not result in a disproportionate suppression of Democratic as compared to Republican identified registered voters in Wisconsin (including those leaning Democratic or leaning Republican). He concludes that among those lacking photo IDs, the estimated proportion of Democratic identified registered voters was no different than the proportion of Republican identified registered voters (Hood Report, pp. 32-33).

Dr. Hood does not report the actual numbers of respondents in the 2014 CCES identifying as Republicans or Democrats. His tables provide only percentages without reporting the underlying numbers on which those percentages are based. This is a serious problem because his percentages are incorrect, resulting in inaccurate findings. This flaw is apparent from an inspection of his partisan percentages for African Americans. Dr. Hood's partisan breakdown by race, reported in his Table 12, is replicated in my Table 1 below. It is implausible that in Wisconsin just 59.2 percent of African Americans identify as Democrats. The exit poll data for the 2014 general election for governor demonstrates that only 10 percent of African Americans voted Republican and correspondingly 90 percent voted Democratic (Lichtman Report, Table 8, p. 18). The percentage of African Americans identifying as Democrats need not match those voting Democratic, but it should be higher than 59.2 percent.

Table 1
Replication of Table 12 in Dr. Hood's Report

Table 12. Two-Party Breakdown by Race for Wisconsin

Party	White	Black	Hispanic
Democrat	37.9%	59.2%	71.4%
Republican	43.9%	24.5%	14.3%

The reanalysis of the 2014 CCES data presented below follows Dr. Hood's procedures but corrects for the omission of Independents and reports the actual numbers of respondents by race identifying as Republicans, Democrats, and Independents and the correct percentages. *The results demonstrate that, contrary to Dr. Hood's flawed analysis, Act 23 would work precisely as intended to suppress the votes of Democratic identifiers as compared to Republican identifiers.*

The first step in Dr. Hood's procedures is to partition 2014 CCES respondents in Wisconsin according to their party identification. Table 2 replicates this procedure, but for completeness includes Independents (who do not lean either Republican or Democratic) that are omitted in Dr. Hood's analysis. There will be some Independents among those who lack acceptable photo ID under Act 23. Table 2 also reports the actual numbers from which percentages are computed. The next steps follow Dr. Hood's methodology using these corrected percentages.

Dr. Hood says that in a hypothetical group of 1000 registered voters, based on the citizen-voting-age population in Wisconsin, an estimated 879.7 would be white (non-Hispanic), 55.6 black, and 32.5 Hispanic. (Hood Report, p. 34). To obtain the party affiliations of each racial group, Dr. Hood multiplies these numbers by the proportions of Democrats and Republicans in each group according to the CCES results (Hood Report, p. 32).

Table 3 replicates Dr. Hood's count of partisan identification by race using corrected percentages for Democrats, Republicans and Independents. Table 4 replicates the final step in Dr. Hood's procedure. It multiplies the numbers of partisan identifiers by race by the percentage of the members of each race lacking IDs. These percentages as utilized in Dr. Hood's analysis are .083 for whites, .098 for blacks, and .111 for Hispanics (Hood Report, p. 35), following estimates in the Report of Dr. Mayer.¹ Through this final step Dr. Hood estimates the partisan composition of registered voters lacking IDs.

The results of the analysis reported in Table 4 indicate that, contrary to Dr. Hood's results, the burden of non-possession of IDs falls far more heavily on Democrats and Independents than on Republicans, who comprise only 38.9 percent of registrants lacking IDs. Most telling are the two-party percentages, which now can be correctly computed. As indicated in Table 4, *for the two-party percentages, 55.3 percent of those lacking IDs are Democrats, +10.6 percentage points higher than the 44.7 percent of those lacking IDs who are Republicans.* Thus, Act 23 would work precisely as intended to disproportionately burden Democrats as

¹ Dr. Hood cites to Expert Report of Professor Kenneth Mayer. *One Wisconsin Institute v. Nichol* (3:15-cv-00324), December 10, 2015 (Hood Report, p. 35, fn 73).

compared to Republicans, according to Dr. Hood's methodology with appropriate additions and corrections.

Table 2
Breakdown by Race of Partisan and Independent Identification
2014 CCES Wisconsin, Registered Voters

Identification*	White Number	White Percent	Black Number	Black Percent	Hispanic Number	Hispanic Percent
Democrat	420	45.4%	37	74.0%	12	60.0%
Republican	381	41.1%	9	18%	5	25.0%
Independent	125	13.5%	4	8.0%	3	15.0%
* Following Dr. Hood's methodology, Democratic and Republican identifiers include Leaners (Hood Report, p. 34, fn 70)						

Table 3
Estimated Numbers of Democrats, Republicans and Independents Following Dr. Hood's
Procedure Using Corrected Percentages from Table 2

Identification*	White Number	Black Number	Hispanic Number
Democrat	$879.7 * .454 = 399.4$	$55.6 * .74 = 41.1$	$32.5 * .6 = 19.5$
Republican	$879.7 * .411 = 361.6$	$55.6 * .18 = 10.0$	$32.5 * .25 = 8.1$
Independent	$879.7 * .135 = 118.8$	$55.6 * .08 = 4.4$	$32.5 * .15 = 4.9$

Table 4
Estimated Number of Wisconsin CCES Respondents Without IDs Identifying
as Democrats, Republicans, and Independents

Race	Non-Possession Rate	Democrats	Republicans	Independents
White	.083	33.2	30.0	9.9
Black	.098	4.0	1.0	0.4
Hispanic	.111	2.2	0.9	0.5
Total Number	NA	39.4	31.9	10.8
Percentage		48.0%	38.9%	13.2%
Two-Party Percentage	NA	55.3%	44.7%	NA
The numbers of Democrats, Republicans and Independents in each racial category equals the numbers in Table 4 by race and identification multiplied by the non-possession rate for each racial group.				

II. DR. HOOD'S ANALYSIS OF NO-ID PROVISIONAL VOTING

Dr. Hood's report analyzes no-ID provisional voting in 2015 local and special elections. Through this analysis he attempts to measure the actual effects of the newly implemented voter photo ID requirement. Dr. Hood concludes that only .0011 percent of voters in these off-year local and special elections cast provisional ballots and therefore "almost no Wisconsin electors have been affected by the identification requirements of Act 23." (Hood Report, pp. 38-40, quotation on p. 40). There are several serious problems with this analysis.

First, although Dr. Hood indicates generally that these are low turnout elections he does not report the actual turnout, which is extremely low. The Wisconsin Government Accountability Board data upon which he relies also includes registration data from which turnout can be computed. Table 5 provides the turnout calculations for the legislative district elections included in Dr. Hood's analysis (Hood Report, Table 17) and for the largest municipalities. Table 5 does not include every election in Dr. Hood's Table 17, but the elections comprise 75 percent of the votes cast in Dr. Hood's Table 15 elections. The results reported in Table 5 demonstrate that for all included elections, 41,883 of 373,912 registrants voted, for a turnout rate of just 11.2 percent of registered voters. In contrast, according to the Wisconsin Government Accountability Board, in the 2012 general election 3,080,628 voters participated of 3,501,045 registrants, for a turnout

rate of 88 percent of registered voters, nearly eight times as high as rate in the 2015 local elections.²

Voters in the low turnout local off-year elections are atypical of the voters in a presidential year general election or even in a midterm year general election. Voting is conditioned by experience and low turnout voters tend to be the most dedicated and engaged of voters and tend to be disproportionately white rather than minority. Thus, the small percentage of no-ID provisional ballots cast in low turnout, off-year local elections cannot be projected to elections with a vastly higher and more diverse turnout.³

The backup data that Dr. Hood provided for his Table 17 on no-ID provisional voting in 2015 elections does not appear to sustain his findings. Of the 29 elections listed in Dr. Hood's backup table, three have zero listed as the number of non-ID provisional ballots cast and four have numbers greater than zero listed. Twenty-two of the elections have no entry for the number of no-ID provisional ballots cast, just a blank in that cell of the table. The table includes no reference to any specific Wisconsin Government Accountability Board data from which this table is derived. There is also a correction that needs to be made in Dr. Hood's data. For the 2015 Special Election in State Senate District 3, the Government Accountability Board reports 3 no-ID provisional ballots, not 1 as indicated by Dr. Hood.⁴ This raises the number of no-ID provisional ballots in his dataset from 6 to 8 and the percentage from .011 to .014.

Even taking Dr. Hood's analysis at face value the results would indicate the disenfranchisement of many more voters in a presidential election year. Although .014 percent is a small fraction of voters, when multiplied by the 3,080,628 voters turning out in the 2012 general election, the result is 431 voters casting no-ID provisional ballots, a substantial number when weighed against the absence of voter impersonation fraud in Wisconsin elections.

Finally, Dr. Hood's own scholarship contradicts the conclusion in his report that the small percentage of voters casting no-ID provisional ballots in local elections demonstrates that "almost no Wisconsin electors have been affected by the identification requirements of Act 23." In a 2012 article co-authored with Charles Bullock III, Dr. Hood concludes that study of provisional ballots does not fully capture the voter suppression effects of a photo voter ID law because it does not include persons deterred from attempting to vote in elections:

² Additional insight into the minimal turnout in Dr. Hood's sample of elections is obtained by noting that the 55,889 voters in his sample of elections is 1.3 percent of Wisconsin's voter eligible population as estimated for November 2014 and 1.6 percent of Wisconsin's 3,471,314 registered voters at the beginning of 2015. For the voter eligible population, see the United States Election Project, <http://www.electproject.org/2014g>, and for registered voters see Wisconsin Government Accountability Board, Voter Registration Summary Statistics, <http://www.gab.wi.gov/publications/statistics/registered-voters-2016-january>.

³ Zoltan Hajnal and Jessica Trountine, "Where Turnout Matters: The Consequences of Uneven Turnout in City Politics," *Journal of Politics* 67 (2005), 515-535; Donald P. Green and Ron Shachar, "Habit Formation and Political Behaviour: Evidence of Consuetude in Voter Turnout," *British Journal of Political Science* 30 (2000), pp. 561-73.

⁴ Wisconsin Government Accountability Board, "2015 Senate 33 Special Election Summary Statistics GAB-190NF: Election Voting and Registration Statistics Report," <http://www.gab.wi.gov/publications/statistics/gab-190/2015-senate-33-special>.

“Although studying provisional ballots is one method of trying to gauge the effect of photo ID laws, *this metric does not capture voter suppression that may be associated with implementation of such a statute*. In other words, provisional ballots are only a measure of those registrants who may have shown up to the polls lacking proper photo ID. Those lacking photo ID who may have been deterred from attempting to cast an in-person ballot are not captured by this measure” (emphasis added).⁵

In this article, Dr. Hood additionally acknowledges that voter photo ID laws may deter from voting even those who possess IDs: “Again, we acknowledge the possibility that some registrants who previously possessed photo ID may have been deterred from voting in 2008.”⁶ The results of the study of the 2014 election in Texas Congressional District 23, cited in Lichtman Report, pp. 30-31, indicate that the percentage of registrants who possess acceptable photo IDs but are confused about requirements is likely to be far higher than the percentage casting no-ID provisional ballots, with a disproportionate impact on minority voters.

Table 5
Voter Turnout as a Percentage of Registered Voters, Legislative District and Largest Municipal Elections, Post-May 2015

Election	# of Registered Voters	Total Votes Cast	Total Votes as Percentage of Registered Voters
Milwaukee-Special, Alderman, District 11	22,724	4,155	18.3%
Milwaukee-Special, Alderman, District 11	22,724	4,496	19.8%
Special Primary-Assembly 99	39,812	3,422	8.6%
Special-Assembly 99	39,812	1,593	4.0%
Special Primary-State Senate 33	112,190	11,449	10.2%
Special-State Senate 33	112,190	10,012	8.9%

⁵ M. V. Hood, III, and Charles S. Bullock, III, “Much Ado about Nothing: An Empirical Assessment of the Georgia Voter Identification Statute.” *State Politics and Policy Quarterly* 12 (2012) pp. 410-411 n. 6.

⁶ *Ibid.*, p. 409.

Germantown-Special Referendum	13,200	2,673	20.3%
Greenville-Referendum	6,835	2,208	32.3%
Windsor-Referendum	4,425	1,875	42.4%
Sum	373,912	41,883	11.2%
Source: This Table relies on the same source utilized by Dr. Hood for his analysis of 2015 elections, the reports of the Government Accountability Board on turnout and registered voters.			

III. DR. HOOD'S COMPARISONS OF VOTER ID REQUIREMENTS

In Table 16 of his report (Hood Report, p. 36), which is reproduced below, Dr. Hood provides a comparative analysis of photo voter ID requirements under Act 23 in Wisconsin with requirements in four other selected photo voter ID states. Dr. Hood concludes from this analysis that "Wisconsin's Act 23 is no different from similar state statutes." There are several problems with Dr. Hood's analysis and conclusion.

First, Dr. Hood's Table 16 and accompanying analysis is incomplete in significant ways. As noted in my initial report, Wisconsin adopted a "strict" photo voter ID law. Under such a strict law a voter lacking an acceptable photo ID has no recourse but to cast a provisional ballot and then present such an ID within a specified period of time. In Wisconsin voters must present an acceptable photo ID "to the poll workers by 8:00 p.m. on Election Day or the municipal clerk by 4:00 p.m. of the Friday following the election" (Lichtman Report, p. 26). Dr. Hood fails to note in his Table or his report that two of the four states that he selected for comparison with Wisconsin – North Carolina and South Carolina – have non-strict photo voter ID laws.

In both South Carolina and North Carolina a voter lacking an acceptable photo ID can still vote a regular ballot through an affidavit citing one of many "reasonable impediments" to obtaining such identification.⁷ Thus in two of four of Dr. Hood's comparison states, unlike Wisconsin, voting a regular ballot at the polls does not require the presentation of an acceptable photo ID. With respect to South Carolina, a unanimous three-judge federal court cited the importance of this non-strict option in pre-clearing the state's photo voter ID law under Section 5 of the Voting Rights Act:

"As we will explain, South Carolina's new law, Act R54, likewise *does not require a photo ID to vote*. Rather, under the expansive "reasonable impediment" provision in Act R54 - as authoritatively interpreted by the responsible South Carolina officials, an interpretation on which we base our decision today - voters with the non-photo voter registration card that sufficed to vote under preexisting

⁷ Lichtman Report, pp. 47-48; National Conference of State Legislatures, "Voter Identification Requirements," <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>.

law may still vote without a photo ID. Those voters simply must sign an affidavit at the polling place and list the reason that they have not obtained a photo ID.” (emphasis added)⁸

In addition, Dr. Hood also fails to note that one of the two remaining state photo ID laws that he chose for comparison – the Texas statute – was struck down for violating the Voting Rights Act both by a federal District Court and the Fifth Circuit Court of Appeals. The unanimous Circuit Court ruling stated, “We AFFIRM the district court’s finding that SB 14 has a discriminatory effect in violation of Section 2 of the Voting Rights Act and remand for consideration of the proper remedy.” The Court also remanded for reconsideration the question of whether the law was enacted with discriminatory intent.⁹

That leaves only one state statute remaining for comparison that is both strict and not the subject of an adverse court decision striking it down – the Georgia statute. Unlike Wisconsin, Georgia authorizes the use of government employee IDs under its general provision that authorizes for voting “any valid state of federal government issued photo ID.”¹⁰ Georgia also does not have the tight restrictions on the use of student IDs that are part of the Wisconsin law. Wisconsin mandates that a student ID must include the date of issuance, a signature of the student, and an expiration date no later than two years after date of issuance. The university or college ID must be accompanied by a separate document that proves enrollment (Lichtman Report, p. 25). In addition, unlike Wisconsin, a registered voter in Georgia lacking an acceptable photo ID can still vote a regular ballot through the mail-in, no-excuse needed absentee voting process. Also, in Georgia unlike Wisconsin requiring a birth certificate or another “ancient document” such as a baptism certificate, a voter can obtain a free photo ID card “by producing evidence that the voter is registered to vote in Georgia and by swearing an oath that the voter does not have another acceptable form of identification.”¹¹

In addition, unlike Georgia, the Wisconsin law does not authorize the use of an identification card for government in-kind or cash benefits, including veteran’s benefits, even if such cards include a photograph.¹² In fact, the Wisconsin legislature during its consideration of legislation to require photographs on benefit cards of FoodShare (food stamp) aid rejected an amendment to authorize such photo IDs for voting. This action is particularly significant given that 45.6 percent of blacks and 33.4 percent of Hispanics in Wisconsin were recipients of food assistance, as compared to just 9.8 percent of whites (Lichtman Report, pp. 35-36).

⁸ *State of South Carolina v. United States of America*, United States District Court, District of Columbia, Civil Action No. 12-203, (2012), at 2.

⁹ *Veasey et al. v. Abbott*, Fifth Circuit Court of Appeals, No. 14-41127 (2014), at 2. I was an expert witness for plaintiffs in this litigation.

¹⁰ Georgia Secretary of State, “Georgia Voter Identification Requirements,” http://sos.ga.gov/index.php/elections/georgia_voter_identification_requirements2.

¹¹ NCSL, “Absentee and Early Voting,” <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>; *Common Cause/Georgia, et al., v. Billups*, Nos. 07–14664, 08–10432, United States Court of Appeals, Eleventh Circuit, Jan. 14, 2009, at 1346.

¹² As correctly noted in Dr. Hood’s report, the Georgia statute authorizes for voting “any valid photo ID from any branch, department, agency, or entity of the U.S. Government, Georgia, or any county,” which would include IDs issued by government benefit agencies (Hood Report, p. 36, emphasis in original).

In addition to the four states that Dr. Hood chose for his comparison, the National Conference of State Legislatures (NCSL) identifies 15 other states with extant photo voter ID laws (photo voter ID laws in Pennsylvania and Arkansas were struck down by the Courts). Of these states, more than half (9) have non-strict laws under which a voter can vote a regular ballot without possessing an authorized photo ID.¹³

That leaves only the states of Indiana, Kansas, Mississippi, North Dakota, Tennessee, and Virginia. According to a recent extensive study by the respected non-partisan Government Accountability Office, voter photo ID laws in Kansas and Tennessee suppressed turnout overall. Furthermore, the study found that these laws disproportionately suppressed turnout for African Americans—by 3.7 percentage points as compared to whites in Kansas and by 1.5 percentage points in Tennessee. The study also found that such laws suppressed turnout to a greater extent among young voters.¹⁴ The Virginia law is currently under court challenge, but unlike Wisconsin voters can obtain a free photo ID without documentation.¹⁵ The Indiana law like the Georgia law authorizes for voting any photo ID issued by the state or federal government. Like Georgia and unlike Wisconsin, voters in Indiana without an acceptable photo ID can vote a regular ballot absentee by mail.¹⁶ Mississippi unlike Wisconsin authorizes for voting a government employee photo ID, a student ID without the restrictions of the Wisconsin law, and like Georgia and Indiana, “any other photo ID issued by any branch, department, agency or entity of the United States government or any state government.”¹⁷ That leaves only the sparsely populated state of North Dakota, which also authorizes no-excuse absentee ballots, with an “attestor” to a person’s identity acceptable in lieu of a photo ID.¹⁸

Dr. Hood also notes in this section of his report that on April 29, 2015 Wisconsin’s Government Accountability Board ruled that technical college IDs (initially excluded in Act 23) “are equivalent to university or college IDs for the purpose of voting and, therefore, acceptable as Act 23 identification for the purpose of voting.” As a result, he says that, “This fact would appear to make this claim by the plaintiffs moot.” (Hood Report, p. 37).

However, this was not an act of the legislature, which bears upon intent. Also, as noted in my initial report, the GAB, a national model for non-partisan election oversight (consisting of retired judges nominated by a committee of appellate judges, appointed by the governor and confirmed by two-thirds of the state Senate), was highly critical of various aspects of Act 23 (Lichtman Report, pp. 31-33). Moreover, after this ruling in December 2015 the Republican majority in the state legislature abolished the GAB and replaced it with two separate commissions, an Elections Commission and an Ethics Commission. Abandoning the non-partisan status of the GAB, the two new Commissions will consist of partisan members appointed by the governor from lists submitted by Democrats and Republicans. Modeled after

¹³ *Op Cit.*, NCSL, “Voter Identification Laws.”

¹⁴ United States Government Accountability Office, Report to Congressional Requesters, *Issues Related to State Voter Identification Laws*, September 2014, <http://www.gao.gov/assets/670/665966.pdf>.

¹⁵ Virginia Department of Elections, “Casting a Ballot,” <http://elections.virginia.gov/casting-a-ballot/in-person-voting/>.

¹⁶ Indiana does not provide no-excuse absentee ballots but includes a broad range of 11 excuses. Indiana Secretary of State, General Information on Absentee Ballots, <http://www.in.gov/sos/elections/2402.htm>.

¹⁷ Mississippi Secretary of State, Mississippi Voter ID, <http://msvoterid.ms.gov/Pages/VoterIDAcceptID.htm>.

¹⁸ North Dakota Secretary of State, “Identification Required for Voting,” <https://vip.sos.nd.gov/IDRequirements.aspx>.

the Federal Elections Commission (FEC), the state Commissions will consist of an equal number of members from the Democratic and Republican lists.¹⁹ Yet the FEC is a notoriously ineffective federal agency. As a recent text on American government and politics concluded, “The FEC is conspicuously ineffective and typically does not determine that a campaign has violated the rules until an election is over, if then.”²⁰ It remains to be seen how the new Election Commission in Wisconsin will deal with the voter ID law and other election issues.

Hood Report: Table 16. Types of Identification Allowed to Vote by State

	Wisconsin	North Carolina	Texas	Georgia	South Carolina
Drivers' License	X	X	X	X	X
State ID Card	X	X	X	X	X
U.S. Passport	X	X	X	X	X
U.S. Military ID	X	X	X	X	X
Free Photo ID for Purposes of Voting	X	X	X	X	X
Veteran's Affairs ID		X	X	X	
U.S. Citizenship Certificate	X		X		
Concealed Weapons Permit			X		
Tribal ID	X	X		X	
Federal/State/Local Government Employee ID				X	
University/College ID	X			X	

¹⁹ Patrick Marley and Jacob Stein, “Scott Walker Signs Bills On Splitting GAB, Campaign Finance,” *Milwaukee-Wisconsin Journal Sentinel*, 17 December 2015, <http://www.jsonline.com/news/statepolitics/scott-walker-signs-bill-on-splitting-gab-b99622842z1-362665541.html>.

²⁰ Steffen W. Schmidt, Mack C. Shelley, II, and Barbara A. Bardes, *American Government and Politics Today* (Cengage: 2014), p. 176.

IV. DR. HOOD'S ANALYSIS OF EARLY IN-PERSON VOTING

Dr. Hood provides an analysis of aggregate-level data on early-in-person voting that attempts to demonstrate that new restrictions did not have the purported intentional effect of imposing a disparate burden on urban areas, particularly those with substantial concentrations of minorities and Democrats. Dr. Hood chose as probative for his analysis the cities of Milwaukee and Madison, both of which are Democratic strongholds. According to the Government Accountability Board, in the presidential election of 2012 the vote for Obama was 79 percent in Milwaukee and 71 percent in Madison. Milwaukee is also the hub of the state's minority population. According to the 2010 U. S. Census, its black population of voting age was 36.4 percent compared to 5.7 for the state overall. Its Hispanic voting age population was 14.5 percent compared to 4.6 percent for the state overall. Nearly two-thirds of Wisconsin's African Americans of voting age live in Milwaukee (64.1 percent) and nearly one-third of the state's Hispanic voting age population lives in Milwaukee (31.5 percent). Taken together, Milwaukee and Madison include 68.9 percent of the state's African American voting age population and 36.8 percent of its Hispanic voting age population.

Dr. Hood correctly notes that any effects of new restrictions imposed after 2010 on early in-person voting should emerge in a comparison between general elections in the midterm years of 2010 and 2014, when the full range of restrictions were implemented. Dr. Hood's analysis shows only that in-person voting increased in the cities of Milwaukee and Madison from 2010 to 2014. Yet the use of in-person early voting rose throughout the state (and nationwide) and Dr. Hood's analysis fails to compare Milwaukee and Madison with the remainder of the state.

An appropriate analysis reported in Table 6 demonstrates that the new restrictions on in-person early voting in Wisconsin had a substantial disparate impact on the cities of Milwaukee and Madison as compared to the remainder of the state. According to data reported in Table 6, Milwaukee's 3.73 percentage point increase in voters voting early in-person between 2010 and 2014 was -3.29 percentage points lower than the 7.02 percentage point increase in voters voting early in-person in the remainder of the state, for a difference of -47 percent. Madison's 2.08 percentage point increase in voters voting early in-person was -4.94 percentage points lower than the 7.02 percentage point increase in voters voting early in-person in the remainder of the state, for a difference of -70 percent.

Thus the new restrictions on early in-person voting have worked as intended. Two sets of analyses based on the municipalities that Dr. Hood selected as probative demonstrate that these restrictions imposed a disparate burden on cities with heavy concentrations of Democrats and minorities.

Table 6
Differential Impact of New Restrictions on In-Person Early Voting in Municipalities of Milwaukee and Madison, Wisconsin, Changes from 2010 to 2014

Unit	% of Voters Voting Early In-Person 2010	% of Voters Voting Early In-Person 2014	Percentage Point Increase 2010 to 2014	Percentage Point Difference With Remainder of State	Percent Difference With Remainder of State
Milwaukee	3.64%	7.37%	+3.73%	-3.29%	-47%
Madison	5.07%	7.15%	+2.08%	-4.94%	-70%
Remainder of State	5.84%	12.86%	+7.02%	NA	NA

Source: The same source relied on in Dr. Hood's fn 15, 2010, 2012, and 2014 GAB-190 Election Voting and Registration Statistics Reports. Available at: <http://www.gab.wi.gov/elections-voting/statistics>.

V. DR. HOOD'S ANALYSIS OF FREE ID CARDS

Dr. Hood notes in his report that since 2011 the state has issued a total “of 413,342 no-cost state ID cards.” This includes original issues as well as duplicates and renewals. He additionally notes that African Americans and Hispanics are very disproportionately represented among those receiving such IDs and concludes that “To the degree that a racial gap in ID possession may exist in Wisconsin, it is clear that the no-cost state ID program is acting to alleviate any such disparity.” (Hood Report, pp. 31-32).

First, Dr. Hood's finding of the substantial overrepresentation of minorities among those receiving free IDs in Wisconsin provides confirmation that at the time of the passage of Act 23 minorities were similarly overrepresented among those lacking acceptable photo IDs. He offers no other plausible explanation for his finding that African Americans “who constitute 5.6% of the voting age population in Wisconsin ... make up 35.6% of those taking advantage of the free ID program.” Similarly, he offers no other plausible explanation for his finding that the Hispanic “share of free ID's issued, at 8.3%, exceeds their share of the citizen voting age population at 3.3%.” (Hood Report, p. 32). A social scientist cannot simultaneously affirm the substantively contradictory positions that there were no racial disparities in acceptable ID possession when Wisconsin adopted Act 23 and that the vast disproportion of African Americans and Hispanics obtaining free IDs demonstrates that the free ID program was alleviating earlier (non-existent?) racial disparities. In addition, Dr. Hood fails to demonstrate that the issuance of these IDs has eliminated the racial disparities in acceptable voter photo IDs that existed at the time of the enactment of Act 23.

Second, Dr. Hood fails to note that the state had been issuing non-driver's ID cards for many decades. The change after enactment of Act 23 is that if used for voting, such non-driver's IDs are issued free of charge, giving applicants an incentive to check the box in the application that the card would be used for voting. Nonetheless, despite this change, in 2010, the year before adoption of Act 23, the Wisconsin Division of Motor Vehicles (a source on which Dr. Hood said he relies) reports that there were already 481,810 persons in Wisconsin holding such IDs. The number had increased to 566,781 in 2014, the last full year for which the DOT reported data, an increase of just 84,971, far below what Dr. Hood's statistics would suggest.²¹

There is a clear explanation for this mismatch. Dr. Hood mentions in passing that his data on free IDs includes not just newly issued IDs but also renewals (a once in every 8-year process) and ID duplicates (for those who have lost or misplaced their IDs). However, he fails to quantify the share of IDs in his report that are newly issued IDs, renewal IDs and duplicate IDs. As indicated in Table 7, the great majority of non-driver IDs issued since July 2011 are in fact, *renewals and duplicates and not newly issued IDs*. As indicated in Table 7, *only 35.9 percent* of non-driver's IDs issued by the DMV from July 2011 through September 2015 (the last period for which data has been provided for this breakdown) were new IDs. Correspondingly 64 percent of these IDs were duplicates or renewals.

Third, there is a serious discrepancy in Dr. Hood's analyses of free voter IDs. He says on p. 31 of his report that "From July 2011 through November of 2015 the Wisconsin Division of Motor Vehicles has issued a total of 413,342 no-cost state ID cards." However, his Table 11 on p. 32 of his report that partitions the free IDs by race includes only 268,843 such IDs, a discrepancy of 144,499 IDs as compared to the 413,342 referenced above. Dr. Hood never explains the reason for this discrepancy. With respect to his calculations of the racial breakdown of free voter IDs Dr. Hood's footnote 60 on p. 32 of his report states: "These figures are calculated by author from the Wisconsin DMV state identification card database. The DMV does record the race/ethnicity of license or State ID holders." Dr. Hood provides no accounting of the methodology he used for this calculation or any explanation of why this methodology is reliable.

Fourth, this analysis and other analyses in Dr. Hood's report regarding photo IDs fail to take into account those who possess driver's licenses, but whose licenses are suspended or revoked. Although such licenses technically can be used for voting, there is likely to be a deterrent effect of presenting such a license to a state official at the polling place as well as voter confusion regarding this specific requirement. As documented in my initial report African Americans and Hispanics in Wisconsin are overrepresented among drivers with suspended and revoked licenses. Restoration of such licenses prior to expiration also requires the payment of all fees and costs, which imposes a disparate burden on minorities, given their lower incomes and higher poverty rates than whites (Lichtman Report). Again drawing on data reported by the Wisconsin Division of Motor Vehicles, the number of suspended and revoked licenses each year in Wisconsin is substantial, as indicated in Chart 1.²²

²¹ Wisconsin Division of Motor Vehicles, "Facts and Figures, 2014" p. 53, <http://wisconsindot.gov/Documents/about-wisdot/newsroom/statistics/factsfig/2014ff.pdf>.

²² The source for Chart 1 is Wisconsin Division of Motor Vehicles, "Facts and Figures, 2014" p. 63, <http://wisconsindot.gov/Documents/about-wisdot/newsroom/statistics/factsfig/2014ff.pdf>.

Fifth, Dr. Hood fails to note the impacts on persons who can only obtain free photo voter IDs in the petition process, which amounts to 1,062 persons according to the December 2015 Department of Transportation data on which Dr. Hood relies. As noted in my initial report, the petition process was not initially made available by the legislature under Act 23, but was later imposed by a decision of the Wisconsin Supreme Court and did not begin until late 2014. (Lichtman Report, p. 34) Moreover, the Department of Transportation data indicates that residents of the cities of Milwaukee and Madison, where minorities and Democrats are heavily concentrated, have been substantially overrepresented in the petition process.

As indicated in Table 8, 45.4 percent of petitioners have been from Milwaukee, 35.4 percentage points and 354 percent higher than Milwaukee's 10 percent of Wisconsin's voting age population. Moreover, 12.8 percent of petitioners have been from Madison, 8.4 percentage points and 191 percent higher than Madison's 4.4 percent of Wisconsin's voting age population. Thus, 58.2 percent of petitioners statewide have been from Milwaukee or Madison, 43.8 percentage points and 304 percent higher than their 14.4 percent of Wisconsin's voting age population.

Drawing on Department of Transportation data Dr. Hood observes that "only" 72 cases were still pending at the time of his report. (Hood Report, p. 33) He fails to mention, however, that this same source indicates that there have been 19 outright denials of IDs, 57 withdrawn by petitioners (likely because they had enough of the tortuous process described below), and 66 suspended because petitioners did not follow up in response to Department requests for additional proof.²³

Table 7
Percentages of Newly Issued, Renewal, and Duplicate, non-Driver's IDs,
July 2011-September 2015

	Total IDs	Newly Issued IDs	Duplicate IDs	Renewal IDs
Number for Each Category	498,244	179,078	217,935	101,231
Percent for Each Category	100%	35.9%	43.7%	20.3%
Source: DMV Monthly Reports, Provided by Defendants. The breakdown includes all non-driver's IDs. The report does not isolate the data on new IDs, renewals, and duplicates only for free IDs. However, the vast majority of IDs included in this analysis (80 percent) are free IDs.				

²³ "Petition Record Process Voter ID Monthly Report," provided by defendants.

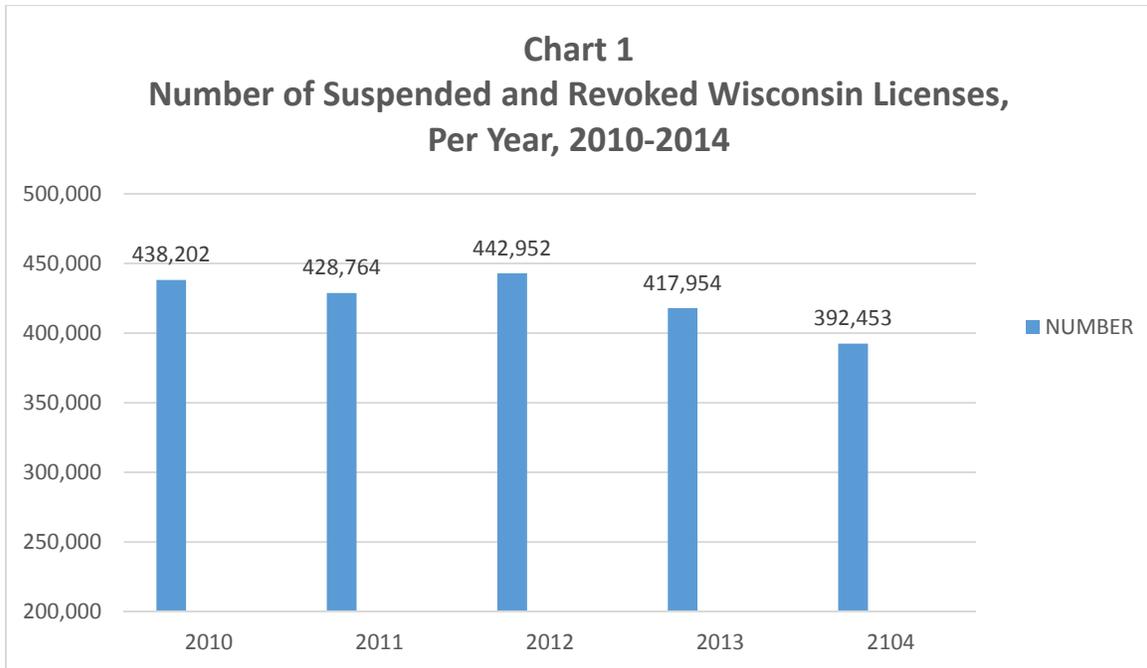


Table 8
Representation of Residents of Milwaukee and Madison in the Petition Process for Free Voter IDs

	Percent of Petitioners	Percent of State Voting Age Population	Percentage Point Difference	Percent Difference
Milwaukee	482/1062 45.4%	10.0%	+35.4%	+354%
Madison	136/1062 12.8%	4.4%	+8.4%	+191%
Milwaukee & Madison Combined	618/1062 58.2%	14.4%	43.8%	+304%
Source: Petition Record Process Voter ID Monthly Report, December 2015 Provided by Defendants.				

Although 19 outright denials may seem like a small number, as far as I know it represents the first time since the since the era of the literacy test that state officials have told eligible voters that they cannot exercise their fundamental right to vote – not in the next election, probably not ever. All of these persons could have voted in North Carolina and South Carolina – two of the four states that Dr. Hood chose for comparison with Wisconsin -- by signing an affirmation of a reasonable impediment to obtaining a photo ID. And they could have obtained a

photo ID in Georgia without having to track down ancient records from other jurisdictions, as required under the Wisconsin petition process -- all that would have been necessary was for them to swear an oath that they did not have other acceptable forms of identification.

Backers of voter ID often ask opponents to “name the names” of persons disenfranchised by a state’s voter ID law. In Wisconsin it is possible to name such persons: for example, [REDACTED] among many others. [Note: I understand that the protective order requires that these names be filed under seal, off the public record. I further understand that plaintiffs’ attorneys will file “redacted” versions of my report on the public record that will mask out individual names and any other information required to be kept private.] After a typically protracted back and forth process, in which each person made extraordinary efforts to gain their ID, state officials who never questioned their eligibility to vote denied their application for a free ID, in effect, telling them “you cannot vote in Wisconsin.” I am unaware in the post-voting rights era of other examples of state officials telling eligible citizens of their state that they cannot vote because they fail to meet an external criteria established by the state – unrelated to age, residency or other objective qualifications for voting.

Moreover, the criteria for obtaining a needed voter photo ID in Wisconsin is not strictly objective. First, Kristina Boardman, who is authorized to speak for the Department of Transportation, Division of Motor Vehicles in Wisconsin, confirmed in her recent deposition that supervisors across the state have discretion to decide who must go into the petition process:

- Q. Do those supervisors have discretion to accept proof that’s given to them and okay the issuance of an ID?
- A. They do.
- Q. And that’s without ever going into the IDPP? [ID petition process]
- A. Yes.
- Q. So if someone goes into the IDPP only, they haven’t satisfied the local supervisor?
- A. If they indicate that they do not have proof of name, date of birth or legal presence and it will cost a fee to obtain those documents, they are given the petition application.²⁴

In addition, once the petition process is initiated, supervisors have another level of discretion in deciding whether to issue a voter photo ID:

- Q. ...Are there any manuals or policy guidance documents that guide the DMV's discretion in this process? [petition process]
- A. With the Social Security match?
- Q. Broader than that. Just kind of a general is there a binder that you can pull out that guides, okay, here are the common problems and here's how they should be dealt with?
- A. No. It's really taken on a case by case basis and using discretion based on the documents that are presented.²⁵

²⁴ *One Wisconsin Institute v. Nichol*, Deposition of DMV Designee Kristina Boardman 19 January 2016, p. 52, l. 19-25, p. 53, l. 1-4. See also pp. 103-108 for additional demonstration of supervisorial discretion.

²⁵ *Ibid.*, p. 74, lines 4-14.

The process for deciding to grant or deny a free voter photo ID is also fraught with error according to the testimony of Ms. Boardman, referring to an audit of the petition applications (form MV3012):

Q. This study covered what time period?

A. March 22nd, 2015 through August 1st, 2015.

Q. And during that time period, what was determined to be the accuracy rate during that period?

A. Seventy-three percent.

Q. And just to check my math, does that mean – would that mean that the error rate would be 27 percent?

A. Correct.

Q. Okay.²⁶

Ms. Boardman additionally indicates that there are “minor” and “major” errors, but that the study does not quantify the extent of each type of error.

The following cases illustrate the difficulties faced by otherwise eligible voters denied a needed voter photo ID through the petition process.

In the case of ██████████, who submitted his application for a free voter ID on August 12, 2015 and was denied this ID nearly two months later on October 7, 2015, State officials found that his birth in the United States could be verified, but the name on the birth certificate was ██████████. State officials informed ██████████ that he would not be issued a voter photo ID and therefore could not vote in Wisconsin unless he changed his name with Social Security or went to court for a legal name change to conform to the name on the birth certificate. ██████████ declined to change his name and he was denied a voter photo ID.²⁷

██████████, a homeless woman with no income, submitted a petition for a free voter ID card indicating she had no documentation other than a Social Security card. ██████████ was born at home in Columbia, South Carolina and delivered by a midwife and then placed in the care of another home. She was educated at home and has no known living relatives. The state of South Carolina refused to respond to requests for verification of her birth, stating that they would release records only to the individual in question and that a record request required a \$12 fee and proof of identity. ██████████ had no such proof. So in a classic Catch-22 South Carolina, like Wisconsin, was a dead end. Wisconsin officials refused to issue ██████████ a photo ID for voting, noting significantly that this denial was “[t]hrough no fault of the petitioner” (emphasis added).²⁸

██████████ also applied for a free voter ID. She had a Social Security card and a school ID. The Social Security Administration (SSA) indicated that she had received a card

²⁶ *Ibid.*, p. 99, lines 21-25, p. 100, l. 1-4.

²⁷ See Appendix A to this Rebuttal Expert Report, Ex. 1. These and all other documents on ID petitioners were received from the state. Many records of the petition process for free ID cards have not yet been received from the state. I respectfully reserve the option to supplement this report if and when those records are received.

²⁸ Appendix A, Ex. 15.

through verification of a valid birth certificate. State officials contacted the Tennessee Office of Vital Statistics to obtain verification of her birth, after a lack of a match through the Department of Human Services. Tennessee verified “that [REDACTED] was issued a SSN with a valid BC when she was three months old. However, the BC used to obtain the SSN ([REDACTED]) has since been removed (is no longer valid).” It turns out that [REDACTED] was adopted and her name was legally changed. However, Tennessee never received notification of what the name change should be and her once valid birth certificate was voided. To get her Wisconsin voter photo ID officials said she would have “to produce those records to SSA in order to justify a name change. Nate believed that court orders or some sort of adoption paperwork backed up by court documents should be sufficient.” To add to the confusion [REDACTED] said she knew she had been adopted but did not believe that her name had been changed. When [REDACTED] did not produce additional documentation from Tennessee her application was suspended and she did not receive the ID needed to vote even though there was no doubt of her birth in the U. S. and the voiding of her valid birth certificate was due to no fault of her own. The process went on for more than two months, from November 6, 2014 to January 15, 2015.²⁹

[REDACTED] who applied for a free voter photo ID card was born in Puerto Rico, which automatically conferred U. S. citizenship. There was some confusion over this elderly woman’s date of birth and the Wisconsin DMV could not obtain verification of her birth certificate from Puerto Rico. Two daughters and a granddaughter tried to help by submitting birth certificates indicating [REDACTED] birth in Puerto Rico, but without confirmation from Puerto Rico of the birth certificate that was not deemed sufficient. [REDACTED] had no other documentation and her request for a free voter photo ID was denied. The process dragged on for 8 months from October 22, 2014 to June 15, 2015.³⁰

[REDACTED] applied for a free voter photo ID on January 20, 2015. The Department of Human Services could not verify a birth certificate match “with no reason given.” [REDACTED] explained that her mother’s name was [REDACTED] and that she was born in Illinois in the Cook County hospital. When state officials contacted the hospital they were told that records would only be released to [REDACTED] herself. [REDACTED] did not have other documentation in her possession. When [REDACTED] contacted the hospital they told her that they would not release information over the phone and that any information required payment of a fee. On May 15, 2015, four months after the process began, the record indicates that “[REDACTED] called and expressed frustration that we hadn’t solved her problem. I again asked if there was any other information she could provide us.” The record ends there.³¹

[REDACTED] entered the petition process on March 17, 2015. He says that he was born in Carthage, Mississippi during the Jim Crow era. He was delivered by a midwife so there are no hospital records. There are no baptismal records and his family Bible was destroyed in a fire. His older sister vouched for his birth in Mississippi and a friend brought in school records for [REDACTED]. Social Security records listed his name and date of birth. However, the Wisconsin

²⁹ Appendix A, Ex. 21.

³⁰ Appendix A, Ex. 30.

³¹ Appendix A, Ex. 19.

Department of Human Services could not verify his date of birth “due to first name error.” The seven month process ended on October 12, 2015, with a denial from state officials.³²

Based upon either self-identification or other evidence in the record, four of these six individuals are African American (████████████████████) and one is Hispanic (██████).³³ The race of the remaining individual (██████) could not be identified. However, a record check through internet service Intellius confirms that the only ██████████ living in Milwaukee is African American. Thus, all six are African American and Hispanic.

The predominance of African Americans and Hispanics among those unable to succeed in the petition process is verified by the 30 individual case histories that I understand have thus far been received from the state.³⁴ Within these records primarily through self-reported information or in one case (██████) through other information in the file (see fn. 33 of this report) it was possible to establish the racial identify of 19 petitioners (not counting ██████, an African American whose race was verified independently). Of these petitioners 13 (68 percent) are African American, 3 are Hispanic (16 percent), and 3 are white (16 percent). *Thus 84 percent of petitioners with race identified were African American or Hispanic. Only one of the 17 African American and Hispanic petitioners succeeded in gaining a free photo ID, whereas all 3 white petitioners were granted a free photo ID.* In addition, of 28 petitioners with a place of residence listed, 22 (79 percent) reside in Milwaukee. Of 24 petitioners indicating a place of birth in the United States, 17 (71 percent) indicated that they were born in a state of the former Confederacy or in Illinois (all but one of the Illinois-born petitioners specifying Cook County, IL).

Dr. Hood also fails to note in his report that in Wisconsin the right to vote is subject to the budgetary process that allocates funds to the DMV. In her deposition Ms. Boardman indicates that in a presidential year when applications for free voter photo IDs are likely to increase, the state has cut back on her budget.

- Q. Okay. Going back to Exhibit 129, so in response to Ms. Schilz’s inquiry about overtime, what was your response?
- A. I said that the administrator’s office does not have any overtime funding allocated at that point in time.
- Q. And could you read on then beginning with the word unfortunately?
- A. “Unfortunately, we’re going to have to cut funding from the salary line from which OT funding is based to meet our operating expenses this fiscal year, so moving new funding is not an option right now. Sorry.”

³² Appendix A, Ex. 8.

³³ Five of the six individuals provided a self-identification of their race in the record. The sixth individual ██████ reported her birthplace as Puerto Rico and possesses a Hispanic surname. See Appendix A, Ex. 30.

³⁴ I asked plaintiffs’ counsel to provide me with all letters from the DMV to individual petitioners, all “Case Activity Reports,” and all “IDPP adjudication reports” that the DMV has produced. Plaintiffs’ counsel have given me one or more of these documents for a total of 30 individuals. In some instances there is only one kind of document for an individual, in other instances there are two types of documents (for example, a Case Activity Report together with the DMV’s final action letter). I have asked plaintiffs’ counsel to prepare an appendix to this report containing the underlying documentation I have examined for each of these 30 individuals. Citations in this report to “Appendix A, Ex. ___” are to the 30 numbered exhibits in that accompanying Appendix A. Once again, I respectfully reserve the option to supplement this analysis as additional records are received from the state.

- Q. Over the past year, have there been reductions in DMV -- number of DMV staff?
A. Yes.
Q. Have there been reductions in central office staff?
A. Yes.
Q. Have there been reductions in the number of people assigned to the ID verification and petition process?
A. They have one current vacancy in the compliance, audit and fraud unit right now. I requested approval to fill that vacancy yesterday.
Q. How long has that slot been vacant approximately?
A. It could have been since October of 2015. There was a hiring freeze for most of November and all of December due to a Star project, the enterprise – ERP going on at the state level where any new personnel transactions were on hold.
Q. Tell me about that. So what's the ERP process?
A. Enterprise -- it's consolidating all HR and payroll billing, procurement at the state level. The human capital management portion of it went into effect December 31st, so there was a hold on any processing of any new personnel transactions after November 14th of 2015.³⁵

In addition, an email from Susan Schilz a supervisor at the DMV Compliance, Audit and Fraud Unit stated that, “We are falling behind on cases and our audit schedule.” In response Ms. Boardman said “that the administrator's office does not have any overtime funding allocated at that point in time.”³⁶

VI. DR. MCCARTY’S ANALYSIS OF VOTER TURNOUT BY PARTY

Dr. McCarty in his report provides an analysis purporting to show that Wisconsin’s changes in voter procedures did not produce a differential reduction in the voter turnout of Democrats as compared to Republicans. However, his analysis comparing the general elections of 2010 and 2014 does not include the full impact of these changes because the voter photo ID provisions of Act 23 were not yet implemented in 2014. Recent studies show that voter photo ID laws do disproportionately suppress the voting of both minorities and Democrats.³⁷

Dr. McCarty notes that he did not have individual level data available and so had to rely on aggregate turnout levels. However, aggregate turnout is influenced by many factors other than voting procedures and his aggregate level study cannot isolate the effects on partisan turnout of the changes implemented in Wisconsin after the 2010 election.

³⁵ Boardman Deposition, p. 64, l. 3-15, p. 65, l. 1-12

³⁶ *Ibid.*, p. 61, l. 24-25, p. 64, l. 6-7.

³⁷ *Op Cit.*, U. S. General Accountability Office, Report to Congressional Requesters; Zoltan Hajnal, Nazita Lajevardi, and Lindsay Nielson, “Voter Identification Laws and the Suppression of Minority Votes,” 2015, <http://pages.ucsd.edu/~zhajnal/page5/documents/voterIDhajnaletal.pdf>. This study by three San Diego University Professors uses individual level data on validated voting. They found that as compared to other states, in strict photo ID states, “Democratic turnout drops by an estimated 7.7 percentage points in general elections when strict photo identification laws are in place. By comparison, the predicted drop for Republicans is only 4.6 points.”

In addition, Dr. Hood chooses for his partisan measure not identification with the Democratic or Republican Party, but the vote for Republican gubernatorial candidate Scott Walker in 2010 and 2014. This creates a virtually determined outcome given that Walker received an identical 52.3 percent of the vote in both these general elections of 2010 and 2014, making it difficult to isolate turnout effects at the aggregate level. Also, there are very few municipalities in which Walker received less than 40 percent of the vote, so Democrats and Republicans cannot be reliably untangled in his analysis, which exemplifies the ecological fallacy in which results for individuals are based on results for aggregate units containing those individuals.³⁸

Another major problem with Dr. McCarty's aggregate-level analysis based only on the Walker vote – not on party identification -- is that he cannot distinguish between the changes in turnout and changes in partisan support for Walker from 2010 to 2014. Assume hypothetically that across the state, the percentage of voters in the electorate identified as Democrats, Republicans, and Independents did not change from 2010 to 2014 and each of these groups voted in the same proportions for Walker. At the aggregate level this individual level pattern of turnout and voting would correctly disclose no disparity in Democratic versus Republican turnout from 2010 to 2014.

However, an identical result at the aggregate level would derive from a very different hypothetical in which the Democratic component of the 2014 turnout declined relative to 2010, but this decline was offset by fewer Democrats voting for Walker. For Dr. McCarty's aggregate-level analysis these two patterns would be indistinguishable from one another. Table 9 provides a detailed example of this second hypothetical. According to the hypothetical described in Table 9, the percentage voters identified as Democratic declines by one percentage point from 2010 to 2014, whereas the percentage of Republicans increases by one percentage point, for a two percentage point swing in favor of Republicans, indicating that the new restrictions worked as intended. However, at the aggregate level this shift in turnout is masked by a 3 percentage point decline in the Walker vote among Democrats, offsetting the turnout decline of Democrats relative to Republicans.

In fact, this hypothetical described in Table 9 represents the actual exit poll results from 2010 and 2014.³⁹ Contrary to what Dr. McCarty says that his aggregate-level analysis discloses, this individual-level data discloses that the Democratic component of the vote for Walker declined from 2010 to 2014, whereas the Republican component increased. But at the aggregate level this individual-level shift in the partisan composition of the electorate was offset by declining Democratic votes for Walker.

³⁸ For a discussion of the ecological fallacy and means for overcoming it in statistical analysis see, Laura Irwin Langbein and Allan J. Lichtman, *Ecological Inference* (Sage: 1978) and Allan J. Lichtman, "Passing the Test: Ecological Regression in the Los Angeles Case and Beyond," *Evaluation Review* 15 (1991), 770-799; Allan J. Lichtman, "What Really Happened in Florida's 2000 Presidential Election," *Journal of Legal Studies*, 32 (2003), 221-243.

³⁹ <http://www.cnn.com/ELECTION/2010/results/polls/#WIG00p1>;
<http://www.cnn.com/election/2014/results/state/WI/governor#exit-polls>.

Table 9
Votes for Republican Scott Walker under Scenario of Reduced Democratic Relative to
Republican Turnout, 2010 to 2014

Voter Identification	Percent of Electorate 2010	Percent Vote for Walker 2010	Component of Votes for Walker 2010	Percent of Electorate 2014	Percent Vote for Walker 2014	Votes for Walker 2014
Democrat	37%	9%	3.3%	36%	6%	2.2%
Republican	36%	95%	34.2%	37%	96%	35.5%
Independent	27%	56%	15.1%	27%	54%	14.6%
Total			52.6%			52.3%
Within rounding error, these patterns of turnout and voting produce the correct identical results for Walker in 2010 and 2014.						