

EXHIBIT B

EXPERT REPORT

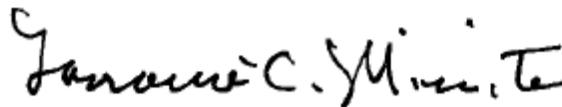
North Carolina State Conference of the NAACP

v.

McCrorry, et al.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
Case No.: 1:13-cv-00658-TDS-JEP (D. N.C.)
Judge Thomas D. Schroeder
Magistrate Judge Joi Elizabeth Peake

December 4, 2015

A handwritten signature in black ink that reads "Lorraine C. Minnite". The signature is written in a cursive, flowing style.

LORRAINE C. MINNITE, Ph.D.

This report supplements my February 12, 2015 expert report in *North Carolina Conference of the NAACP v. McCrory*¹ to take account of recent changes to North Carolina's challenged voter identification requirements.

On June 23, 2015, Governor McCrory signed HB 836 into law creating a "reasonable impediment" option for those voters who do not comply with the new photo identification requirements. Although the precise details of how this option will be administered are unclear,² it appears from the text of the law that such voters may now cast a provisional ballot upon signing a declaration stating that they suffer from a "reasonable impediment" in obtaining photo identification, such as a disability, family responsibilities, lost or stolen identification, lack of a birth certificate or other supporting documents. If the voter is challenged or fails to provide the last four digits of his or her Social Security number and date of birth, or an acceptable document bearing his or her name and address, the provisional ballot is not counted.

As such, the amended law does not change the photo identification requirement for casting a *regular* ballot. Rather, by carving out more opportunities to cast provisional ballots in place of regular ballots, it only increases the inconsistency and therefore, the irrationality of the existing law.

A voter's right to receive and submit a provisional ballot upon written affirmation that he or she is a registered and eligible voter is mandated by Section 302 of the Help America Vote Act of 2002 (HAVA).³ According to an early advisory from the U.S. Election Assistance Commission, "[t]he nature and procedures associated with a provisional ballot are wholly distinct from those of a traditional ballot."⁴ Primarily, voter identification requirements or challenges to voter eligibility by election officials or private actors may not prevent the receipt and submission of a provisional ballot, as it is the question of voter eligibility that triggers the provisional ballot in the first place.

That said, federal law does not mandate that a provisional ballot be counted.⁵ Typically, once cast, provisional ballots are set aside, to be counted after an election, giving election

¹ *North Carolina State Conference of the NAACP v. McCrory*, United States District Court for the Middle District of North Carolina, Case No.: 1:13-CV-00658, Declaration of Lorraine C. Minnite, Ph.D., February 15, 2015.

² As of the time of writing of this Report, I understand that the State of North Carolina has not provided responses to the discovery requests served upon them as to the details of the requirement or the State's plans as to administering the photo identification requirement or the new provisions pursuant to HB 836.

³ 42 U.S.C. § 15842 states: "If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot..." See also, *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 574 (6th Cir. 2004).

⁴ U.S. Election Assistance Commission, "EAC Advisory 2005-006: Provisional Voting and Identification Requirements," September 13, 2005, p. 2; available at http://www.eac.gov/assets/1/workflow_staging/Page/337.PDF.

⁵ *Ibid.* "The bottom line is that the casting of a proper, traditional ballot constitutes a vote, while the casting or submission of a provisional ballot does not. A traditional ballot is cast only after voter eligibility has

officials more time to determine voter eligibility according to state law. In North Carolina, official ballot counting begins at the close of polls;⁶ provisional ballots are returned to county boards for verification and resolved before the official canvass, which occurs seven to ten days after an election (depending on the type of election).⁷

Table 1 summarizes provisional balloting statistics for North Carolina across the four federal general elections conducted between 2008 and 2014.

Table 1
Provisional Balloting in North Carolina

	2008		2010		2012		2014	
	#	%	#	%	#	%	#	%
Total Votes Counted	4,338,197		2,700,706		4,539,729		2,918,052	
Provisional Ballots	53,976		26,257		51,192		18,749	
Counted in Full	22,188	41.1	12,083	46.0	18,041	35.2	8,388	44.7
Partially-Counted	4,319	8.0	3,611	13.8	5,321	10.4	564	3.0
Rejected	27,469	50.9	10,563	40.2	27,830	54.4	9,797	52.3
Reason for Rejection:	27,469		10,563		27,830		9,797	
Wrong Precinct Voter	0	0	49	.5	0	0	1,390	14.2

Source: U.S. Election Assistance Commission, Election Administration and Voting Survey Comprehensive Reports for the 2008, 2010, 2012, and 2014 Elections.

A regular ballot cast is a ballot counted. As noted above, a provisional ballot is merely a claim to preserve the right to cast a ballot and “postpone the voter eligibility determination to a time when more perfect or complete information may be provided.”⁸ Therefore, provisional ballots may or may not be counted. Table 1 shows that in three of the last four federal elections, North Carolina rejected more than half of all provisional ballots cast. The State’s provisional ballot rejection rate is much higher than the national average, which was 19.2 percent in the 2014 election,⁹ and 24.1 percent in the 2012 election.¹⁰

Moreover, prior to the passage of HB 589, only 49 provisional ballots out of more than 130,000 cast in the 2008, 2010, and 2012 elections were rejected because a voter voted in the wrong precinct. In 2014, after HB 589 eliminated the fail-safe provisions that

been determined by the State. Hence, the moment it is cast, it becomes an individual’s vote. On the other hand, the submission or casting of a provisional ballot is not a vote. Rather, it is a claim that the potential voter who submitted it has the right to vote and reserves that right.” (p. 2).

⁶ N.C. Gen. Stat. § 163-182.2 (2015).

⁷ N.C. Gen. Stat. § 163-182.5 (2015).

⁸ U.S. Election Assistance Commission, “EAC Advisory,” p. 2.

⁹ U.S. Election Assistance Commission, “The 2014 EAC Election Administration and Voting Survey Comprehensive Report, 2014,” A Report to the 114th Congress, June 30, 2015, p. 15; available at http://www.eac.gov/assets/1/Page/2014_EAC_EAVS_Comprehensive_Report_508_Compliant.pdf.

¹⁰ U.S. Election Assistance Commission, “The 2012 Election Administration and Voting Survey,” September 2013, p. 12; available at http://www.eac.gov/assets/1/Page/990-050%20EAC%20VoterSurvey_508Compliant.pdf.

permitted the full or partial counting of “out-of-precinct” ballots cast by otherwise eligible voters, North Carolina rejected 1,390 such provisional ballots, or more than 28 times as many provisional ballots as had been rejected for this reason in the previous three federal elections combined. Given these patterns, in North Carolina, any rule that channels voters into casting provisional ballots increases the odds that their ballots will not be counted.

According to political scientist Charles Stewart, “African Americans are more likely to be given provisional ballots in North Carolina than whites, by roughly a factor of two. This is true of all provisional ballots as a general matter, and of out-of-precinct provisional ballots specifically.”¹¹ Stewart’s conclusions are based on his analysis of state voting records in North Carolina for the 2006 through 2012 federal elections. According to political scientist Allan Lichtman, among out-of-precinct voters whose ballots were partially counted in the three federal elections prior to the passage of HB 589 (2008, 2010 and 2012), African Americans were over-represented compared to their share of the regular voting electorate by 7.9, 36.5, and 12.0 percentage points, respectively.¹² Thus, HB 836, which channels voters lacking government-issued photo identification into provisional voting, where African Americans are already disproportionately represented – coupled with the elimination of the out-of-precinct provisional ballot option, as proscribed by HB 589 – will disproportionately negatively impact African American voters.

One example of an inconsistency resulting from HB 589 and HB 836 is that the primary requirement to show a government-issued, current photo identification to vote, does not apply to voters casting mail-in absentee ballots (which are more heavily used by white voters than black voters¹³), nor does it apply to persons who, due to age or physical disability, are unable to enter the polling place and permitted to vote from a vehicle (“curbside” voters). And yet, there is no evidence to suggest that these types of voters are any less likely to willfully misrepresent their identity or eligibility and to commit voter fraud than the types of voters to whom the requirement does apply. In fact, to the extent that there have been cases of absentee ballot fraud in North Carolina, the opposite is true. According to the North Carolina State Board of Elections (SBE), although there are very few documented cases of absentee ballot fraud in recent elections in the state, there were more cases of this type of fraud investigated by that agency between 2000 and 2012 that

¹¹ *U.S. v. State of North Carolina*, U.S. District Court for the Middle District of North Carolina, Civil Action No. 1:13-CV-861, Declaration of Charles Stewart III, Ph.D., May 2, 2014, p. 96.

¹² *North Carolina State Conference of the NAACP v. McCrory*, United States District Court for the Middle District of North Carolina, Case No.: 1:13-CV-00658, Declaration of Allan J. Lichtman, Ph.D., April 11, 2014, pp. 42-47.

¹³ Other experts in this case have reported that in recent elections in North Carolina, whites are more likely to vote by mail-in absentee ballot than blacks or Latinos. For example, see *North Carolina State Conference of the NAACP v. McCrory*, United States District Court for the Middle District of North Carolina, Case No.: 1:13-CV-00658, Declaration of Barry Burden, Ph.D., April 11, 2014, p. 15 (“In the 2012 election...[whites] were almost twice as likely to vote this way as were Latinos and more than three times as likely to use the option as were blacks. Similar patterns were apparent in the 2008 and 2010 elections.”).

merited referral to local prosecutors (N=47) than there were cases of in-person voter impersonation (N=2), the type of fraud targeted by photo identification requirements.¹⁴

Another example of an inconsistency under HB 589 and HB 836 is that although most of the limited number of acceptable forms of photo identification must be unexpired, an expired North Carolina-issued (but not other state-issued) driver's license, may be accepted as long as the expiration date is not more than four years before the election in which a voter wishes to vote; or, if the voter is over the age of 70, an expired North Carolina driver's license may be proffered as long as it was not expired before the voter reached the age of 70. Again, there is no evidence to suggest that individuals in these latter categories of expired identification holders are any more or less likely to willfully misrepresent their identity or eligibility and to commit voter fraud than the types of voters to whom the requirement does apply.

Fundamentally, as no new facts have come to light concerning the incidence of voter fraud in North Carolina since I compiled my expert report in this case, the new "reasonable impediment" option, like the underlying photo identification requirement itself, serves no rational public policy purpose. I therefore reiterate the conclusions of my earlier report, which remain in force in light of the current requirements under HB 589 and HB 836:

- A.** The empirical evidence makes clear that fraud committed by voters either in registering to vote or at the polls on Election Day is exceedingly rare, both nationally and in North Carolina.
- B.** Between 2000 and 2014, the North Carolina State Board of Elections referred just two cases of voter impersonation to county district attorneys for prosecution. Over the same period, there were no federal indictments for voter impersonation in North Carolina. More than 35 million votes (35,134,262) were cast in the 16 primary and federal elections alone between 2000 and 2014 in North Carolina. If we count the two referrals as cases of voter impersonation, the rate of voter impersonation fraud in these elections is .000005692449.
- C.** Given the lack of evidence substantiating a problem of voter fraud, stringent photo identification requirements, including those in North Carolina, are not justified to reduce or prevent voter impersonation and other forms of voter fraud.

¹⁴ *North Carolina State Conference of the NAACP v. McCrory*, United States District Court for the Middle District of North Carolina, Case No.: 1:13-CV-00658, Declaration of Lorraine C. Minnite, Ph.D., February 15, 2015, p. 87.

Moreover, even with the reasonable impediment option, North Carolina's stringent photo identification requirements remain a deterrent to voting for those citizens who lack the requisite identification – a group of people evidence has shown are disproportionately African American.¹⁵

¹⁵ Michael C. Herron and Daniel A. Smith, "Race, Shelby County, and the Voter Information Verification Act in North Carolina," *Florida State University Law Review* (forthcoming, 2015).