

# EXPERT REPORT

*North Carolina State Conference of the NAACP*  
v.  
*McCrary, et al.*

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

**April 11, 2014**

A handwritten signature in black ink that reads "Barry Burden". The signature is written in a cursive style with a large, prominent 'B' at the beginning.

**Barry C. Burden, Ph.D.**

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## I. SUMMARY OF OPINIONS

I closely monitored the development and implementation of North Carolina House Bill 589, the Voter Information Verification Act, which became Session Law (SL) 2013-381 in August 2013. The law made multiple significant changes to state election law. Among other changes, SL 2013-381 imposed a new requirement that residents show photo identification (ID) to vote, reduced the early in-person voting period from 17 days to at most 10 days (including the elimination of the final Sunday before Election Day), eliminated same day voter registration, ended pre-registration of 16 and 17-year olds, expanded the number of people who can challenge ballots, ended the annual state voter registration drive, and ended the practice of “out-of-precinct” voting, or the counting of provisional ballots from individuals who appear to vote in the wrong precinct.

The federal Voting Rights Act (VRA) bears directly on SL 2013-381. Passed in 1965, the VRA’s Section 2 prohibits voting practices that discriminate on the basis of race, color, or language group. Unlike some other portions of the VRA, Section 2 is permanent.

The VRA was modified in 1982 with overwhelming votes in both chambers of Congress and being signed into law by President Ronald Reagan. The amendments made clear that discriminatory intent was not necessary for the law to be violated; only discriminatory results are necessary.

The U.S. Senate Committee on the Judiciary issued a report at the time, declaring that the law would be violated if the “totality of the circumstances of the local electoral process” had the effect of denying equal opportunities to participate in the political process. The committee report identified an illustrative list of seven “Senate factors” and two unenumerated factors for courts to consider when evaluating the “totality of the circumstances.” I have spent considerable time examining the Senate factors, drawing upon my expertise and training as a scholar of electoral politics.

It is my considered opinion that elements of SL 2013-381 in North Carolina, both individually and jointly, implicate the Senate Report factors in ways that demonstrate how the state’s black and Latino voters are more likely to be deterred or prevented from voting by the new law. The dramatic disruption of voting practices induced by SL 2103-381 is likely to negatively affect minority voters more than white voters.<sup>1</sup>

This is precisely what happened in Florida – another politically competitive battleground state with a sizeable minority population – when early voting was restricted there.<sup>2</sup> SL 2013-381, which is far more sweeping than the changes in Florida, or any other state in recent memory, will disproportionately harm black and Latino voters because, among other grounds, of the concrete costs it imposes on them in terms of the alternative and additional measures they will now need to undertake in order to attempt to vote and because of the chilling effect of the message it sends to minority voters in North Carolina.

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<sup>1</sup> I use the terms Hispanic and Latino interchangeably in this report.

<sup>2</sup> Michael C. Herron and Daniel A. Smith. Forthcoming. “Race, Party, and the Consequences of Restricting Early Voting in Florida in the 2012 General Election.” *Political Research Quarterly*.

The following sections outline how SL 2013-381 interacts with social and economic conditions affecting racial minorities in North Carolina in a way that disproportionately deprives them of the ability to participate in the political process and to influence the outcome of elections.

## **II. BACKGROUND AND QUALIFICATIONS**

I am a Professor of Political Science at the University of Wisconsin-Madison. I earned my Ph.D. at The Ohio State University in 1998. From 1999 to 2006 I was a faculty member in the Department of Government at Harvard University. I have been on the faculty as a full professor at the University of Wisconsin-Madison since 2006. A copy of my curriculum vitae is attached. I am being compensated \$250 per hour for my effort.

My expertise lies generally in American politics with a focus on elections and voting, public opinion, representation, partisanship, and research methodology. I teach courses on these topics at both the undergraduate and graduate levels. I am author of the book *Personal Roots of Representation* (2007 Princeton University Press), co-author of *Why Americans Split Their Tickets* (2002 University of Michigan Press), and co-editor of *The Measure of American Elections* (2014 Cambridge University Press). I have also published articles in respected scholarly peer-reviewed journals such as the *American Political Science Review*, *American Journal of Political Science*, *Electoral Studies*, *Public Opinion Quarterly*, *Legislative Studies Quarterly*, *Public Administration Review*, *Election Law Journal*, and *Political Analysis*. I serve on the editorial boards of *Electoral Studies* and *Election Law Journal*, and have served as a manuscript reviewer for many academic journals. I am a member of the American Political Science Association and have been active in the profession, giving presentations at many conferences and universities. My research has been supported by grants won from sources including the Pew Charitable Trusts, National Science Foundation, and Dirksen Congressional Center.

I have particular expertise in elections and election administration. I am the co-founder of the Election Administration Project at the University of Wisconsin-Madison. This collaboration has produced research on election administration around the country. I have testified before state officials and the bipartisan Presidential Commission on Election Administration. I conducted the first independent evaluation of the Electronic Registration Information Center (ERIC), an initiative launched by seven states to modernize voter registration systems. I am frequently contacted by journalists and civic organizations to speak about election administration. In recent years I have been quoted in several national media outlets such as *USA Today*, *The Wall Street Journal*, and *The New York Times*.

## **III. MATERIALS REVIEWED**

To establish an expert opinion in this case, I reviewed variety of materials from academic, governmental, legal, and media sources. Building on my existing knowledge, expertise, and experience, I consulted scholarly research on the general causes and effects of changes in state election laws. My review also included data sources and statutes made available by agencies in North Carolina government and the federal government. I also reviewed news

coverage of HB 589 and SL 2013-381. The sources on which I relied are cited in footnotes and listed together in the appendix to this document.

## IV. DISCUSSION

### A. The Calculus of Voting

The likely effects of SL 2013-381 may be understood using the “calculus of voting.” The “calculus of voting” is the dominant theoretical framework used by scholars to study voter turnout. Dating back at least to Anthony Downs’s seminal 1957 book, *An Economic Theory of Democracy*, researchers typically view the likelihood of voting as a formula. A person votes if the probability of one’s vote determining the outcome multiplied by the net psychological benefit of seeing one’s preferred candidate win is greater than the “costs” of voting. These costs include the effort needed to become informed about the candidates and issues. But they also include the time, resources, and activity needed to overcome the administrative requirements and other barriers to registering to vote and successfully casting a ballot.<sup>3</sup> These are costs controlled by the state administering the vote.

This “calculus of voting” framework suggests that for many individuals the decision to vote is made “on the margins.” Small changes in benefits or costs may alter the likelihood of voting dramatically. The decision to vote is sensitive enough to costs that even Election Day weather has been shown to depress turnout.<sup>4</sup> Costs are especially consequential for less educated individuals and non-habitual voters for whom the complications of registering, finding the polling place, and making time to vote are frequently quite costly. In general, disruptions to voting habits raise costs and deter participation. It is little surprise, then, that changes to election procedures is enough to deter voting.<sup>5</sup> SL 2013-381 increases an array of voting costs. The law is likely to exacerbate differences in political participation of whites on the one hand and, especially for black and Latino residents on the other because blacks and Latinos have fewer of the socioeconomic resources necessary to navigate restrictions imposed on the voting process.

Scholarly research has demonstrated how increasing the costs of voting depresses voter turnout. These negative effects are usually greater for racial and ethnic minorities who frequently benefit from fewer socioeconomic resources and have shorter histories of electoral participation upon which to support their continued voting habit. A study of the 2000 election showed that increasing the costs of voting by shortening polling hours and not mailing sample ballots decreased turnout by 4 percentage points among whites, 4.8 points among blacks, and 6.8

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<sup>3</sup> Some formulations add a “duty” term to indicate the positive effect of norms supporting the democratic system. Aldrich shows that this is not necessary because the cost term can be viewed as the net costs that encompass one’s sense of duty. See John H. Aldrich (1993), “Rational Choice and Turnout,” *American Journal of Political Science* 37:246-78.

<sup>4</sup> Thomas G. Hansford and Brad T. Gomez (2010), “Estimating the Electoral Effects of Voter Turnout,” *American Political Science Review* 104:268-88.

<sup>5</sup> Henry E. Brady and John E. McNulty (2011), “Turnout Out to Vote: The Costs of Finding and Getting to the Polling Place,” *American Political Science Review* 105:1-20. John E. McNulty, Conor M. Dowling, and Margaret H. Ariotti (2009), “Driving Saints to Sin: How Increasing the Difficulty of Voting Dissuades Even the Most Motivated Voters,” *Political Analysis* 17:435-55. Moshe Haspel and H. Gibbs Knotts (2005), “Location, Location, Location: Precinct Placement and the Costs of Voting,” *Journal of Politics* 67:560-73.

points among Latinos.<sup>6</sup> These are examples of how SL 2013-381 can be understood using the “calculus of voting” and how underlying differences across racial and ethnic groups create a disparate effect on minority residents in North Carolina. What may appear to be “equal” costs imposed by a restriction on voting practices are in fact more acute for black and Latino voters because they lack the resources to overcome them.

## **B. The Effect of Habit**

Political science research demonstrates that voting participation is largely a product of habit. As long as the habit is not disrupted, voting in an election makes voting in the next election more likely. Once a person becomes a voter, he or she tends to remain a regular voter, at least in major federal elections.<sup>7</sup> The power of habit comes in part from the fact that once having voted, the costs of participating again are much lower. A successful voter has already figured out where, how, and when to register and where, how, and when to cast a ballot. If one of these parameters is altered, it is a disruption that adds new and unexpected costs to the voting calculus. Following this logic, it is unsurprising that people who relocated recently are significantly less likely to vote, in part because it entails updating or initiating a new registration.<sup>8</sup> Changing polling places has been shown to decrease turnout by several percentage points.<sup>9</sup> Mandating (rather than simply offering) vote-by-mail has been shown to reduce turnout.<sup>10</sup> Implementing new registration requirements deters turnout.<sup>11</sup> Drawing new legislative district lines also depresses voter participation.<sup>12</sup>

This pattern highlights an asymmetry in the effects of election laws. Research by myself and others has shown that introducing additional convenience for registering or voting has mixed effects on turnout.<sup>13</sup> This is largely because voting behavior is habitual and slow to respond to

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<sup>6</sup> Raymond E. Wolfinger, Benjamin Highton, and Megan Mullin (2005), “How Postregistration Laws Affect the Turnout of Citizens Registered to Vote,” *State Politics & Policy Quarterly* 5:1-23.

<sup>7</sup> Alan S. Gerber, Donald P. Green, and Ron Shachar (2003), “Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment,” *American Journal of Political Science* 47:540-50. Eric Plutzer (2002), “Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood,” *American Political Science Review* 96:41-56.

<sup>8</sup> Peverill Squire, Raymond E. Wolfinger, and David P. Glass (1987), “Residential Mobility and Voter Turnout,” *American Political Science Review* 81:45-65. Richard J. Timponi (1998), “Structure, Behavior, and Voter Turnout in the United States,” *American Political Science Review* 92:145-58.

<sup>9</sup> Brady and McNulty (2011). McNulty, Dowling, and Ariotti (2009). Hapsel and Knott (2005).

<sup>10</sup> Elizabeth Bergman and Philip A. Yates (2011), “Changing Election Methods: How Does Mandated Vote-By-Mail Affect Individual Registrants?,” *Election Law Journal* 10:115-27.

<sup>11</sup> Barry C. Burden and Jacob R. Neiheisel (2013), “Election Administration and the Pure Effect of Voter Registration on Turnout,” *Political Research Quarterly* 66:77-90.

<sup>12</sup> Danny Hayes and Seth C. McKee (2009), “The Participatory Effects of Redistricting,” *American Journal of Political Science* 53:1006-23.

<sup>13</sup> Adam J. Berinsky (2005), “The Perverse Consequences of Electoral Reform in the United States,” *American Politics Research* 33:471-91. Barry C. Burden, David T. Canon, Kenneth R. Mayer, and Donald P. Moynihan (2014), “Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform,” *American Journal of Political Science* 58:95-109. Melanie J. Springer (2012), “State Electoral Institutions and Voter Turnout in Presidential Elections, 1920-2000,” *State Politics & Policy Quarterly* 12:252-83. I note that the Burden et al. (2014) study does not focus on North Carolina specifically or differences across racial and ethnic groups.

new opportunities. In contrast, the studies cited in the previous paragraph demonstrate that removing options consistently reduces participation, especially among those with fewer resources to navigate the disruption.

As Green and Shachar’s study of the voting habit explains, the foreignness of the voting experience can itself deter participation. They explain that, “[t]he registered non-voter may regard going to the polls with a certain amount of apprehension. Will I know how to work the voting machine? Will the poll workers treat me respectfully? Will I know where to go and which line to stand in?”<sup>14</sup> There would be a similar set of concerns for a potential voter interested in registering to vote. Apprehension is lowered if the voting process is predictable, allowing the “costs” paid in the past to facilitate participation in the future. Changes in voting processes naturally inhibit the reliance on habit and sunk costs.

The wide range of election law changes in SL 2013-381 are targeted at practices that are used more by blacks and Latinos than by whites. A recent statistical analysis by political scientists Michael Herron and Daniel Smith provides a careful and comprehensive understanding of how the law will affect black and white political participation in North Carolina. Their report concludes the following:

Our study indicates that [SL 2013-381] will have disparate effects on black voters in North Carolina. Specifically, we find that in presidential elections the state’s black early voters have traditionally cast their ballots disproportionately often in the first week of early voting, a week eliminated by [SL 2013-381]; that blacks disproportionately have registered to vote during North Carolina’s early voting period and in the run-up to Election Day, something now prohibited by [SL 2013-381]; that VIVA’s photo identification provision falls disproportionately on registered blacks in North Carolina; that the special identification dispensation for North Carolina voters who are at least 70 years old disproportionately benefits white voters; and, that prior to the implementation of [SL 2013-381] young blacks were disproportionately more likely than whites to avail themselves of the opportunity to preregister to vote.<sup>15</sup>

### **C. The Senate Factors**

Considering the “calculus of voting” and related research on how election practices affect turnout among blacks and Latinos in particular, several of the “Senate factors” indicate how SL 2013-381 will predictably and disproportionately depress black and Latino voting. What follows is a discussion of several Senate factors and the two additional, unenumerated factors that inform my analysis of the effect of SL 2013-381 on black and Latino voters.

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<sup>14</sup> Donald P. Green and Ron Shachar (2000), “Habit Formation and Political Behaviour: Evidence of Consuetude in Voter Turnout,” *British Journal of Political Science* 30:561-73, p. 570.

<sup>15</sup> Michael C. Herron and Daniel A. Smith (2014), “Race, *Shelby County*, and the Voter Information Verification Act in North Carolina,” manuscript, version 2 dated February 12, 2014, p. 44.



## 1. History of Official Voting-Related Discrimination

Senate Factor One considers whether there is history in the jurisdiction of “official voting-related discrimination.”<sup>16</sup> Because this issue overlaps considerably with the criteria in Factor Three, it will be discussed there.

As background, it is important to understand that black and Latino voter turnout in North Carolina has long lagged behind that of whites. While Latino turnout continues to be far below that of other groups, black turnout has only recently approached parity with whites as black voters have made use of same day registration and early voting opportunities in North Carolina. SL 2013-381 puts new restrictions on these practices that have over time facilitated greater minority participation.

Turnout rates for each racial and ethnic group can be computed by dividing the number of votes cast by size of the population eligible to vote. For the eligible population, I use the Citizen Voting Age Population (CVAP) as estimated by data from the U.S. Census Bureau.<sup>17</sup> Other reliable measures show similar patterns.

Over the last four presidential elections – 2000 through 2012 – white turnout in North Carolina was 54.9%, 63.5%, 65.6%, and 64.4%, respectively. Black turnout in those same elections was 43.1%, 55.0%, 69.3%, and 67.8%. Latino turnout in those same elections was 3.3%, 15.0%, 31.2%, and 28.8%.

Over the last three midterm federal elections – 2002, 2006, and 2010 – white turnout in North Carolina was 43.9, 35.6%, and 42.0%, respectively. Black turnout in those same elections was 33.7%, 23.8%, and 36.8%. Latino turnout in those same elections was 3.3%, 5.8%, and 8.3%.

To summarize, the data indicates that white turnout exceeds black turnout in every election but the last two presidential elections. Aside from 2008 and 2012, white turnout has been 5 to 12 points higher than that of blacks. White turnout far exceeds Latino turnout in every federal election, typically by 30 to 50 percentage points. Blacks and especially Latinos have yet to establish voting habits that are as robust as those of whites.

Black turnout surpassed white turnout only in 2008 and 2012. This is a combination of two factors. One is surely the candidacy of Barack Obama, the first black candidate to be nominated for President by a major political party. The other factor is that black turnout has been steadily approaching levels of white turnout in North Carolina. This has been possible in part because black residents have made increasing and disproportionate use of early voting and same day registration. I characterize the recent parity in black and white turnout in presidential elections as fragile, dependent as they are on the particular candidates and issues as well as

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<sup>16</sup> Senate Committee on the Judiciary, S. Rep. 417, 97th Cong., 2nd Sess. (1982).

<sup>17</sup> For the 2000, 2002, and 2004 elections, CVAP is drawn from the 2000 Census Special Tabulation STP-76. For the 2006, 2008, 2010, and 2012 elections, CVAP is drawn from the American Community Survey 1 Year table B050003. For years in which is reported turnout by race, the North Carolina State Board of Elections reports somewhat higher turns rates, but gaps between blacks and whites are similar to those apparent in my calculations.



increasing adoption of voting practices offered by the state that are under threat of disruption under SL 2013-381.

## 2. Racial Polarization

Senate Factor Two addresses whether voting is “racially polarized.”<sup>18</sup> Following the standard established by the U.S. Supreme Court in *Thornburg v. Gingles* (1986), racial polarization may be defined as a “consistent relationship between [the] race of the voter and the way in which the voter votes.”

Racial polarization in voting patterns is easily observed in North Carolina. Media exit polls from the 2012 presidential election indicated that 96% of black voters in North Carolina voted for the Democratic presidential ticket while only 31% of whites did so, a gap of 65 percentage points.<sup>19</sup> The gap between blacks and whites was 60 points in 2008, 58 points in 2004, and 59 points in 2000. These large disparities far exceed other demographic comparisons including income, education, and sex. Moreover, because the voting patterns were apparent in 2000 and 2004, polarization is not simply an artifact of the 2008 and 2012 election in which one of the major party candidates was black.

It is important to note that racially polarized voting is more than a simple reflection of partisanship. Evidence from Democratic primary elections demonstrates this. In the 2008 Democratic presidential primary in North Carolina, exit polls showed that 91% of blacks voted for Barack Obama while 37% of whites did so.<sup>20</sup> This 54-point gap between blacks and whites that dwarfs other demographic differences and mimics the polarization observed in general elections where partisanship is a major factor.

## 3. Enhanced Opportunity for Discrimination

Senate Factor Three concerns whether voting practices have “enhanced the opportunity for discrimination” against minority groups. North Carolina has a long and pronounced history of election practices that facilitate discrimination. These patterns of discrimination are addressed in detail in the reports of other experts, and are so widely known and documented that they require only brief reference here as reminder of their widespread use.

Following the Civil War and emancipation of most black slaves, passage of the 15th Amendment to the U.S. Constitution in 1870 promised voting rights regardless of race. During the Reconstruction period that ensued, the federal government installed officials in North Carolina and other former Confederacy states in part to facilitate electoral participation of black men. Like other southern states, North Carolina was required to give blacks the right to vote as one of the terms for readmission to the Union. As a result, under Republican control by the late

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<sup>18</sup> Senate Committee on the Judiciary, S. Rep. 417, 97th Cong., 2nd Sess. (1982).

<sup>19</sup> Exit polls are conducted by the National Election Poll (NEP), a consortium of major television networks and the Associated Press. Latinos were judged to be too small of a group for exit pollsters to produce reliable estimates of voting patterns.

<sup>20</sup> The survey contained too few Latinos to provide reliable statistics for that group.

1800s, North Carolina saw ample voting by black men and had “probably the fairest and most democratic election law in the post-Reconstruction South.”<sup>21</sup>

Around the turn of the century, backlash to this success led white Democrats to impose new restrictions to deter black voters. These included changing the date of Election Day to August, allowing registrars to exclude voters, and introducing other complications such as multiple ballot boxes to confuse black voters.<sup>22</sup> These restrictions were part of a larger, explicit “white supremacy” campaign by the party as it settled in to long-term control of state government.<sup>23</sup> The *Raleigh News and Observer* argued at the time that the state legislature should “make it impossible for any element of white voters to appeal to the Negro voters upon any question.”<sup>24</sup> Indeed, in 1899 the state’s voters approved a “suffrage amendment” to the Constitution that added a literacy test for registration and poll tax for voting. The literacy test, which required that “[e]ach person presenting himself for registration shall be able to read and write any section of the Constitution in the English language,” was ratified by the state legislature the following year.<sup>25</sup> The provision was used selectively by vote registrars to discriminate against blacks.<sup>26</sup> In response to these changes and the violence used to enforce them, black turnout fell from 87% in 1896<sup>27</sup> to “the complete elimination of black turnout over an eight-year period, between the Presidential elections of 1900 and 1904.”<sup>28</sup> It would take decades to recover. Governor Charles Aycock bragged in a 1903 speech that, “I am proud of my State...because there we have solved the negro problem...We have taken him out of politics and have thereby secured good government under and party.”<sup>29</sup>

The poll tax lasted until 1920 but the literacy test remains on the books to this day. The literacy test persisted even after the VRA was passed in 1965 and literacy tests were explicitly banned nationwide by congressional amendment five years later. To implement the amended VRA in 1970, a statewide referendum was put on the ballot asking voters to remove the literacy test from the state constitution. That referendum failed, and the provision remains in the North

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<sup>21</sup> J. Morgan Kousser (1974), *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910*. New Haven, CT: Yale University Press, p. 187.

<sup>22</sup> Kousser (1974).

<sup>23</sup> The white supremacy movement in late 19th Century North Carolina has been widely documented. For a representative portrayal, see Eric Anderson (1981), *Race and Politics in North Carolina, 1872-1901*, Baton Rouge, LA: Louisiana State University Press or James Beeby (2008), *Revolt of the Tar Heels: The North Carolina Populist Movement*, Jackson, MS: University Press of Mississippi.

<sup>24</sup> Kousser (1974), p. 190.

<sup>25</sup> N.C. Const. art VI, § 2.

<sup>26</sup> William R. Keech and Michael P. Siström (1994), “North Carolina,” in *Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990*, ed. Chandler Davidson and Bernard Grofman, Princeton, NJ: Princeton University Press.

<sup>27</sup> Jeffrey J. Crow and Robert Franklin Durden (1977), *Maverick Republican in the Old North State*, Baton Rouge, LA: Louisiana State University.

<sup>28</sup> Richard H. Pildes (2000), “Democracy, Anti-Democracy, and the Canon,” *Constitutional Commentary* 17:295-319, 302.

<sup>29</sup> Learn NC, Governor Aycock on “the Negro Problem,” available at <http://www.learnnc.org/lp/editions/nchist-newsouth/4408> (last visited March 24, 2014).

Carolina Constitution. A bill (HB 311) to repeal the provision was introduced in the state legislature in 2013. Despite incorporating a long list of other election-related changes in HB 589, the State Senate did not even bring this measure up for a vote.

Since the passage of the VRA in 1965, there continue to be incidents in which black and Latino residents are intimidated or potentially deterred from voting by administrative actions.<sup>30</sup> Between 1971 and 2012, the U.S. Department of Justice (DOJ) issued 64 “objection letters” to officials in the 40 North Carolina counties that had been required to get preclearance under Section 5 of the VRA.<sup>31</sup> Because of the U.S. Supreme Court ruling in *Shelby County v. Holder*,<sup>32</sup> actions that would have been stopped in advance by the DOJ because of their discriminatory effect may now proceed.

The North Carolina legislature moved hastily to pass new voting restrictions after the *Shelby County* decision. The decision was issued on June 25, 2013; less than a month later, the legislature quickly moved a radically different form of HB 589. As a local television station reported, “House Bill 589 sat idle for three months since the House approved it before undergoing an extreme makeover in recent days” after which “[t]he Senate Rules Committee passed the bill on a hasty voice vote before members rushed off to a floor session.”<sup>33</sup> HB 589 was ratified by the state legislature on July 26, 2013 and signed into law on August 12, 2013. The resulting law may be the most dramatic example of a state rushing to implement new policies once inhibited by the preclearance requirement. In a review of recent election laws adopted across the country, the *Washington Post* editorial board described SL 2013-381 as an “especially draconian bill” that differs from restrictions in other states because of “how much further it goes.”<sup>34</sup>

#### 4. Effects of Discrimination on Minority Group Members and Participation in Electoral Process

Senate Factor Five assesses the extent to which “minority group members bear effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process.”<sup>35</sup> Stemming in large part from historic legacies of unequal treatment, segregation, and discrimination, blacks, Latinos, and whites experience markedly different outcomes in these areas. The state’s history of racial discrimination and disparities bears directly on the impact that voting practices have on the ability of minority voters to participate in the political process and influence the outcomes of elections. As the U.S.

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<sup>30</sup> See “Voting Rights in North Carolina 1982-2006,” a report of RenewtheVRA.org prepared by staff at the University of North Carolina Center for Civil Rights, available at <http://www.protectcivilrights.org/pdf/voting/NorthCarolinaVRA.pdf> (last visited March 24, 2014).

<sup>31</sup> Lawyers’ Committee for Civil Rights under Laws, “Voting Rights Act: Objections and Observers,” available at [http://www.lawyerscommittee.org/projects/section\\_5/](http://www.lawyerscommittee.org/projects/section_5/) (last visited March 25, 2014).

<sup>32</sup> *Shelby County v. Holder*, 570 U.S. \_\_\_\_ (2013).

<sup>33</sup> WRAL, “Elections Changes Advance in Senate.” <http://www.wral.com/elections-changes-advance-in-senate/12693772/>

<sup>34</sup> “A Tar Heal Travesty,” *Washington Post*, August 16, 2013, p. A16.

<sup>35</sup> Senate Committee on the Judiciary, S. Rep. 417, 97th Cong., 2nd Sess. (1982).

Supreme Court explained in *Thornburg*, Section 2 of the VRA is violated when a voting practice “interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.”<sup>36</sup> That is exactly how SL 2013-381 affects minority voting in North Carolina. Following the logic of the “calculus of voting,” the greater voting costs imposed on blacks and Latinos by their socioeconomic disadvantages continue to inhibit their political participation. These disadvantages are pervasive and enduring. Only a sampling is offered here to indicate their prevalence.

Employment data from the U.S. Census Bureau indicates that racial and ethnic disparities in unemployment are sizable in North Carolina. As of the fourth quarter of 2012, the state unemployment rates were 6.7% for whites, 17.3% for blacks, and 7.4% for Latinos.<sup>37</sup> Preliminary 2013 annual unemployment rates in North Carolina show similar patterns: 6.5% for whites, 12.6% for blacks, and 9.6% for Latinos.

Experiences with poverty are sharply differentiated between whites and minorities in North Carolina. A report based on U.S. Census Bureau data shows that poverty rates, defined as those living below the federal poverty level in 2011-2012, were 13% for whites, 34% for blacks, and 36% for Latinos, or nearly three times as high for minority residents than for whites.<sup>38</sup>

Educational attainment varies significantly by race and ethnicity in North Carolina. Standardized test scores compiled for fourth and eighth graders shows that blacks and Latinos in North Carolina have lower scores in both reading and mathematics.<sup>39</sup> These tests show, for example, that for fourth grade reading scores, 81% of white students were deemed to meet “basic” standards in 2013 while only 55% of blacks and 56% of Latinos met those standards.<sup>40</sup> Compared to whites, high school dropout rates in 2011 to 2012 were 42% higher for blacks and 51% higher for Latinos.<sup>41</sup> Data reported by the state’s Department of Public Instruction show that long-term suspensions for Latino students were 1.9 times those of whites and the rate of long-term suspensions for black students was 4.1 times that of whites.<sup>42</sup>

A recent study by Editorial Projects in Education Research Center and *Education Week* shows that for 2010, high school graduation rates for the class of 2010 were 89% for whites,

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<sup>36</sup> *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).

<sup>37</sup> Economic Policy Institute (2013), “Ongoing Joblessness in North Carolina,” Issue Brief No. 359, May 16.

<sup>38</sup> The Henry J. Kaiser Family Foundation, “State Health Facts,” available at <http://kff.org/other/state-indicator/poverty-rate-by-raceethnicity/> (last visited March 25, 2014).

<sup>39</sup> *Achievement Gaps: How Black and White Students in Public Schools Perform in Mathematics and Reading on the National Assessment of Educational Progress*, 2014, U.S. Department of Education. *Achievement Gaps: How Hispanic and White Students in Public Schools Perform in Mathematics and Reading on the National Assessment of Educational Progress*, 2014, U.S. Department of Education.

<sup>40</sup> *Achievement Gaps* reports, cited in previous footnote.

<sup>41</sup> State Board of Education, Department of Public Instruction, Data Report, 2011-2012, March 15, 2013. Figure D5.

<sup>42</sup> State Board of Education, Department of Public Instruction, Consolidated Data Report, 2011-2012, March 15, 2013. Figure S11.

81% for blacks, and 74% for Latinos.<sup>43</sup> Another report shows that although 71% of white male students graduated from high school in North Carolina in 2009-2010, the rates were 58% for black males and 50% for Latino males.<sup>44</sup> Unsurprisingly, an analysis of Census Bureau's 2009-2011 American Community Survey reports that 43% of whites held two- or four-year college degrees, while only 27% of blacks and 16% of Latinos held such degrees.<sup>45</sup> The November 2012 Current Population Survey indicates that bachelor's degrees (or their equivalent) were attained by 28% of North Carolina whites but only 17% of blacks and 10% of Latinos.

Numerous studies have shown that educational attainment is often the single best predictor of whether an individual votes.<sup>46</sup> This is largely because education lowers the "costs" of voting by providing language skills, direct information about the electoral process, and a sense of confidence of efficacy that facilitate participation even when the rules are changed.<sup>47</sup> Income also affects voter participation. Individuals with lower household incomes are significantly less likely to vote because it is comparably more burdensome for them to make time to do so.<sup>48</sup> A majority of states, for instance, require employers to give employees time off from work to vote. Most of those states also mandate that the employee must be paid for time taken to vote.<sup>49</sup> North Carolina does neither. Education and income are, therefore, predictive in large part because they lower the "costs" of voting when the voting habit is interrupted.

There are also widespread disparities between whites and blacks and Latinos in terms of health outcomes. On an array of official state health indicators that include such diverse measures as infant deaths, heart disease, and homicides, blacks and Latinos routinely fare worse than whites. More general measures such as the rate at which groups are rated as having "fair" or "poor" overall health show the same patterns. The "fair" and "poor" categories apply to only 16% of whites in North Carolina, as compared to 24% of blacks and 29% of Latinos.<sup>50</sup> Finally, recent research shows that health influences voter participation. For example, a disability makes

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<sup>43</sup> *Education Week* and the Editorial Projects in Education Research Center, *Diplomas Count – Second Chances: Turnout Dropouts into Graduates*, June 6, 2013.

<sup>44</sup> Schott Foundation for Public Education, *The Urgency of Now*, Cambridge, MA, 2012 report using data from the U.S. Department of Education's National Center for Education Statistics.

<sup>45</sup> Lumina Foundation, "A Stronger North Carolina through Higher Education," June 2013.

<sup>46</sup> Steven J. Rosenstone and John Mark Hansen (1993), *Mobilization, Participation and Democracy in America*, Macmillan. Sidney Verba, Kay Lehman Schlozman, and Henry E. Brady (1995), *Voice and Equality: Civic Volunteerism in American Politics*, Harvard University Press. Rachel Milstein Sondheimer and Donald P. Green (2010), "Using Experiments to Estimate the Effects of Education on Voter Turnout," *American Journal of Political Science* 54:174-89.

<sup>47</sup> For example, see *See, e.g.*, Sidney Verba, Kay Lehman Schlozman, and Henry E. Brady (1995), *Voice and Equality: Civic Volunteerism in American Politics*, Cambridge, MA: Harvard University Press.

<sup>48</sup> See references in previous footnotes.

<sup>49</sup> See the League of Women Voters Education Fund web site, [vote411.org](http://www.vote411.org), available at [http://www.vote411.org/search-by-topic?topics\\_tid%5B%5D=60#.U0QVPq1dVhl](http://www.vote411.org/search-by-topic?topics_tid%5B%5D=60#.U0QVPq1dVhl) (last visited April 9, 2014).

<sup>50</sup> For example, see North Carolina Department of Health and Human Services, "Racial and Ethnic Health Disparities in North Carolina: 2010 Report Card," June 2010; "North Carolina Vital Health Facts: Population and Health Data by Race and Ethnicity," available at <http://www.schs.state.nc.us/schs/pdf/NCPopHealthDataByRaceEthDec2012.pdf> (last visited March 28, 2014).

the average person approximately 20 points less likely to vote, likely because it increases the burdens and costs associated with voting.<sup>51</sup>

Blacks and Latinos also suffer from unequal treatment by the criminal justice system. An analysis by Brennan and Spohn finds that of those convicted for drug offenses in North Carolina in 2000, white offenders received less severe punishments than blacks and especially Hispanics.<sup>52</sup> Similarly, analysis of data on all traffic stops in the state between 2000 and 2011 also shows substantial racial disparities. Blacks and Latinos were far more likely to be searched and arrested.<sup>53</sup> Compared to white motorists who were stopped, blacks were 77% more likely to be searched and Latinos were 96% more likely to be searched.

Data from the National Prison Statistics, collected under the auspices of the U.S. Department of Justice, show glaring disparities in incarceration among these same racial and ethnic groups. In 2011, the last year for which annual data are publicly available, whites accounted for only 35% of those under custody in North Carolina while blacks were 56% and Latinos were 6%. U.S. Census Bureau data show that blacks and Latinos make up 22% and 9% of the North Carolina population in 2012. Prison Policy Institute shows that North Carolina blacks are incarcerated at six times the rate of whites.<sup>54</sup>

Criminal justice is an area where discrimination has the most immediate effects on political participation. Felon disenfranchisement laws in North Carolina, which prohibit voting by inmates, parolees, and probationers, disproportionately remove voting rights for blacks relative to whites. One recent report indicates that such laws disenfranchise over 46,000 black residents, or 2.84% of the black voting age population. The disenfranchisement rate was only .68% for the rest of the population of the state (*i.e.*, all non-blacks).<sup>55</sup> Research shows that ex-felons are further discouraged from voting even after they are “off papers” due to the social stigma of a criminal record, financial consequences of incarceration, and lack of support from the state in reactivating their voting rights.<sup>56</sup>

These glaring disparities in outcomes have a direct bearing on the impact of state election laws on minority voting rates. Decades of political science research show that voter participation

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<sup>51</sup> Lisa Schur, Todd Shields, Douglas Kruse, and Kay Schriener (2002), “Enabling Democracy: Disability and Voter Turnout,” *Political Research Quarterly* 55:167-90.

<sup>52</sup> Pauline K. Brennan and Cassia Spohn (2008), “Race/Ethnicity and Sentencing Outcomes among Drug Offenders in North Carolina,” *Journal of Contemporary Criminal Justice* 24:371-98.

<sup>53</sup> Frank R. Baumgartner and Derek Epp, “North Carolina Traffic Stop Statistics Analysis,” Final Report to the North Carolina Advocates for Justice Task Force on Racial and Ethnic Bias, February 1, 2012.

<sup>54</sup> Prison Policy Initiative, “North Carolina,” available at [http://www.prisonpolicy.org/articles/north carolina.html](http://www.prisonpolicy.org/articles/north%20carolina.html) (last visited March 25, 2014).

<sup>55</sup> Christopher Uggen, Sarah Shannon, and Jeff Manza, (2012), “State-Level Estimates of Felon Disenfranchisement in the United States, 2010,” report for The Sentencing Project, Washington, DC. The non-black disenfranchisement rate was computed by taking the differences between Table 3 and Table 4. Data on Latinos were not provided in the report.

<sup>56</sup> Jeff Manza and Christopher Uggen (2006), *Locked Out: Felon Disenfranchisement and American Democracy*, New York, NY: Oxford University Press. Erika Wood and Rachel Bloom (2008), *De Facto Disenfranchisement*, American Civil Liberties Union and Brennan Center for Justice.



is significantly affected by the very demographic characteristics that so strongly separate whites from minorities in North Carolina. As a result, although the limits on voting practices imposed by SL 2013-381 appear to be uniform, they are in fact more consequential for black and Latino residents because the restrictions interact with disparities in education, employment, and health.

In summary with regard to Senate Factor Five, North Carolina displays substantial and enduring racial disparities in areas such as education, income, employment, criminal justice, and health. These are highly relevant to Section 2 of the VRA. Demographic markers such as these are strongly associated with the likelihood of an individual being deterred from voting by a new and burdensome voting practice. Because they bear the effects of discrimination in these areas, blacks and Latinos in North Carolina are more likely than whites to be deterred from voting by the restrictions imposed by SL 2013-381.

#### 5. Extent of Minority Election to Public Office in Jurisdiction

Senate Factor Seven evaluates the extent to which members of the minority group have been elected to public office in the jurisdiction.”<sup>57</sup> Blacks and Latinos have long been underrepresented and have only recently approached parity with their prevalence in the electorate.

Blacks have not been well represented in North Carolina public life. As of early 2014, the North Carolina Legislative Black Caucus had 10 members in the State Senate and 22 in the House of Representatives. This corresponds to 20% of the Senate and 18% of the House. Between 1900 and 1968, there were no black members of the General Assembly. As recently as 1989, blacks comprised only 8% of the Senate and 11% of the House.<sup>58</sup> Prior to the retirement of Representative Melvin Watt, the state’s congressional delegation had two black members out of 13 (15%), but it now has one (8%). During the 20th Century no blacks had been elected to Congress or statewide office until 1992. Election of black representatives that year was a direct consequence of the VRA.<sup>59</sup> Among its nine statewide constitutional officers and two U.S. senators, only one has been black in the 225-year history of the state (State Auditor Ralph Campbell, 1993-2005). This level of representation is particularly notable considering North Carolina’s status as one of the states with the largest share of black residents.<sup>60</sup>

Latinos have also been unrepresented. The National Hispanic Caucus of State Legislators reports just one member in the General Assembly.<sup>61</sup> Latinos thus make up just 2% of the Senate and 0% in the House.

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<sup>57</sup> Senate Committee on the Judiciary, S. Rep. 417, 97th Cong., 2nd Sess. (1982).

<sup>58</sup> Milton C. Jordan (1989), “Black Legislators: From Political Novelty to Political Force,” *North Carolina Insight* December: 40-58.

<sup>59</sup> Daniel P. Tokaji (2008), “Representation and Raceblindness: The Story of *Shaw v. Reno*,” in *Race Law Stories*, ed. Rachel F. Moran and Devon W. Carbado. New York, NY: Foundation Press.

<sup>60</sup> Historic data from the U.S. Census Bureau indicate that over the past century the black share of the population has ranged between about 22% and 30%

<sup>61</sup> The member listed as Hispanic is State Senator Tom Apodaca, but his status as a Latino is ambiguous. After winning election to the State Senate in 2002, he explained that “I am probably the only half-Mexican in the state



Academic research has shown that blacks and Latinos are more likely to vote when their state legislatures have larger percentages of black and Latino representatives.<sup>62</sup> The state's history of underrepresentation of these groups has contributed to their lower levels of electoral participation and contributes to the likelihood that adding burdens to the voting process will more likely deter blacks and Latinos from voting because the perceived benefits of voting are not as high as they would be if minority-preferred candidates enjoyed greater electoral success.

It is not surprising that in recent years, black voter turnout and their representation in the state legislature have risen in tandem. Academic research has shown that blacks and Latinos are more likely to vote when their state legislatures have larger percentages of black representatives, and each trend (increased voter turnout and increased representation in the legislature) reinforces the other.<sup>63</sup> To the degree that SL 2013-381 deters minority voter participation, black and Latino representation among elected officials will be inhibited as well.

#### **D. Lack of Responsiveness on the Part of Elected Officials**

The first additional, unenumerated factor the Senate report is whether “there is a lack of responsiveness on the part of elected officials to the particularized needs of minority group members.”<sup>64</sup> Evidence for a lack of responsiveness is provided in the discussion of Senate Factor Five and elsewhere in this document. Blacks and Latinos suffer severe and enduring disparities in education, health, employment, income, and criminal justice in part due to state policies. The legislative debate over HB 589 made clear that blacks and Latinos would be disproportionately affected and that the legislation could have been altered to respond to their particularized use of existing election practices.

#### **E. Tenuousness of the Policy**

The second additional, unenumerated factor identified in the Senate report is whether the policy is “tenuous.” Footnote 117 the Senate Report explains further. “If the procedure markedly departs from past practices or from practices elsewhere in the jurisdiction, that bears on the fairness of its impact. But even a consistently applied practice premised on a racially neutral policy would not negate a plaintiff's showing through other factors that the challenged practice denies minorities fair access to the process.”<sup>65</sup>

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who speaks very, very little Spanish” and “I've never considered myself Hispanic. But I've never considered myself not Hispanic.” (as quoted in David Rice, “Hispanic Legislators May Be Pacesetters,” *Winston-Salem (NC) Journal*, December 13, 2002.)

<sup>62</sup> Rene R. Rocha, Caroline J. Tolbert, Daniel C. Bowen, and Christopher J. Clark (2010), “Race and Turnout: Does Descriptive Representation in State Legislatures Increase Minority Voting?,” *Political Research Quarterly* 63:890-907; Kenny J. Whitby (2007), “The Effect of Black Descriptive Representation on Black Electoral Turnout in the 2004 Elections,” *Social Science Quarterly* 88:1010-23.

<sup>63</sup> Rene R. Rocha, Caroline J. Tolbert, Daniel C. Bowen, and Christopher J. Clark (2010), “Race and Turnout: Does Descriptive Representation in State Legislatures Increase Minority Voting?,” *Political Research Quarterly* 63:890-907; Kenny J. Whitby (2007), “The Effect of Black Descriptive Representation on Black Electoral Turnout in the 2004 Elections,” *Social Science Quarterly* 88:1010-23.

<sup>64</sup> Senate Committee on the Judiciary, S. Rep. 417, 97th Cong., 2nd Sess. (1982).

<sup>65</sup> Senate Committee on the Judiciary, S. Rep. 417, 97th Cong., 2nd Sess. (1982).

SL 2013-381 lacks a factual basis and is an abrupt departure from voting practices in North Carolina. The massive scope of the law indicates its tenuousness. As election law expert and University of California-Irvine Chancellor's Professor of Law and Political Science Richard Hasen explained, SL 2013-381 is "the most sweeping anti-voter law in at least decades." As he explains in measured terms, "I'm not big on using the term 'voter suppression,' which I think is overused and often inaccurate, but it is hard to see this law as justified on anti-fraud, public confidence, or efficiency grounds. The intent here is to make it harder for people – especially non-white people and those likely to vote Democratic – to register or cast a vote that will be counted."<sup>66</sup>

All evidence indicates that SL 2013-381 was enacted primarily for political gain and not because of a compelling state interest such as enhancing security of the election system, reducing costs, or alleviating the administrative burden on election officials. An extensive statistical analysis by Bentele and O'Brien shows that recent state-level restrictions on voting such as those in SL 2013-381 are primarily a response by Republican office holders to rising or high minority voter turnout rather than to genuine concern for improving the electoral system.<sup>67</sup> By disrupting the very aspects of the state's electoral system that are most used by black and Latino voters, it is as if the new restrictions imposed by SL 2013-381 were selected precisely to disproportionately disrupt the voting habits of minority voters:

For instance, SL 2013-381 eliminates same day registration (SDR) as part of the early voting process, and effectively removes 7 days of early voting (also known as one-stop absentee voting). Both SDR and early voting were disproportionately used by racial and ethnic minorities in North Carolina. The law does require the same number of hours for early voting as in prior general elections but concentrates those hours in a smaller number of days. In addition, a county may reduce the number of early voting hours if the county board votes unanimously to do so and is granted a waiver by the State Board of Elections. Even setting aside these waivers, this redistribution of early voting time still leads to the elimination of early voting on the Sunday before Election Day, which has been more heavily used by minority voters.<sup>68</sup>

It is notable that SL 2013-381 does not restrict absentee voting by mail in a significant way. In fact, the law creates two standards depending on how one votes absentee. A photo ID is required for early in-person absentee voting (used disproportionately by blacks and Latinos) but not for mail absentee voting (used disproportionately by whites). In the 2012 election whites comprised approximately 86% of all absentee mail voters. They 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. This highlights the tenuousness of the law. Studies of security in voting systems indicate greater concerns for mail ballots than in-person ballots,<sup>69</sup> but SL 2013-381 applies greater restrictions to the latter.

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<sup>66</sup> Election Law Blog entry, July 25, 2013. <<http://electionlawblog.org/?p=53461>>

<sup>67</sup> Keith G. Bentele and Erin E. O'Brien (2013), "Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies," *Perspectives on Politics* 11:1088-116.

<sup>68</sup> See Figure 2 and 3 in Herron and Smith (2014).

<sup>69</sup> See R. Michael Alvarez, Dustin Beckett, and Charles Stewart III (2012), "Voting Technology, Vote-by-Mail, and Residual Votes in California, 1990-2010," *Political Research Quarterly* 66:658-70. Martha Kropf (2013), "North

SL 2013-381 restricts the counting of provisional ballots cast in the incorrect precinct. Before the law, ballots cast in the wrong precinct were still counted for non-precinct-specific elections. Under SL 2013-381 this is no longer permitted. In the 2008, 2010, and 2012 general elections, blacks and Latinos were more likely than whites to cast provisional ballots in the wrong precinct, all of which is compounded by the fact that blacks have been found on average to change residences more frequently than whites.<sup>70</sup>

SL 2013-381 also implements a photo ID requirement for in-person voters. Two studies by the State Board of Elections indicates that blacks are less likely than whites to possess the required ID, even when the analysis is limited to those who are already registered. Where blacks comprise about 22% of registered voters, two SBOE analyses found that they comprise 31% to 34% of those who could not be matched with Department of Motor Vehicle records, and thus apt to lack ID.<sup>71</sup> When compared to their shares of registered voters, this implies that registered blacks are twice as likely as whites to lack proper ID.

Compounding these additional bureaucratic hurdles is that minority voters are warier of interacting with the election system. It is unsurprising that a minority population disenfranchised from voting by violence until at least the 1960s and still feeling defensive about modern practices around redistricting and voting procedures would be more easily deterred from a novel and burdensome voter ID requirement.

In short, SL 2013-381 imposes restrictions on precisely those key elements of the state's electoral system that black and Latino voters have disproportionately adopted in recent years. The abrupt withdrawal or curtailing of the options represents a more acute disruption in the habits of black and Latino voters and will thus deter their participation to a larger degree.

A sharp break with existing election law might be acceptable if the state had compelling reasons for imposing new, dramatic restrictions. The benefit to the state of such a dramatic change in law appears to be minimal. Indeed, it is not even clear that key elected officials were aware of the full contents of the bill that became law. After he "praised the bill" in a July 26, 2013 press conference, Governor McCrory was asked about specific provisions. His answers indicated that he was unaware of much of the content of the bill he was about to sign into law. When questioned about new restrictions on pre-registration of 16 and 17-year olds, he responded, "I don't know enough. I'm sorry, I haven't seen that part of the bill."<sup>72</sup> He also stated that limits on same day registration were not problematic because "[t]here is plenty of opportunity for voter registration – online, offline, through many methods" despite the fact that

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Carolina Election Reform Ten Years After the Help America Vote Act," *Election Law Journal* 12:179-89. Charles Stewart III (2010), "Losing Votes by Mail," *NYU Journal of Legislation and Public Policy* 13:573-602.

<sup>70</sup> See, e.g., U.S. Census Bureau, *Geographic Mobility: 2012 to 2013*, available at <http://www.census.gov/hhes/migration/data/cps/cps2013.html>.

<sup>71</sup> See summary in Table 6 in Herron and Smith (2014). The SBOE reports did not report data for Latinos.

<sup>72</sup> Governor Patrick McCrory on CNN's "Crossfire," as quoted in Gary D. Robertson, "N.C. Counties Reduce Early Voting Hours for Primary," *The (Elizabeth City) Daily Advance*, February 27, 2014.

North Carolina still does not permit online registration.<sup>73</sup> In multiple interviews touting the law, McCrory repeatedly stated that under SL 2013-381: “[w]e have every political precinct open the week before election” and “[w]e have two weeks of early voting and we changed some of the rules where every precinct has to be open.” Ten days is not the same as “two weeks,” and under §25.3 of SL 2013-381 a county may in fact reduce the number of hours if the county board votes unanimously to do so and obtains a waiver from the State Board of Elections. In addition, only early voting locations – not the more numerous local precinct polling places – are open during early voting.<sup>74</sup>

McCrory appears to hold the same erroneous beliefs even months after the law was adopted. In February 2014 McCrory elaborated more recently that “[w]e didn’t shorten early voting. We compacted the calendar, but we’re going to have the same hours in which polls are open in early voting and we’re going to have more polls available.” Over 30 of the state’s 100 counties had already received approval from the SBOE to reduce hours when these statements were made. This continuing misinformation suggests that the law was not thoughtfully crafted to meet compelling state interests but rather was rushed through the legislative process. This points to the tenuous nature of the law.

The state’s rationale for the restrictions in SL 2013-381 as a means to combat election fraud is also tenuous at best.<sup>75</sup> A thorough analysis of voter fraud allegations by the News21, an investigative reporting project based at Arizona State University, shows little evidence of criminal activity by potential voters. They found 22 allegations of fraud of various kinds in North Carolina between 2000 and 2012. Of these, only 15 implicated voters rather than campaign or election officials; just two cases were settled by plea and none led to conviction.<sup>76</sup> This compares to the millions of votes cast without criminal charges during that time.

Following the logic of the “calculus of voting,” the “costs” of these crimes are high because they come with legal penalties. The “benefit” of casting a ballot and “probability” of being decisive in most elections are comparatively low.

The legislative history of HB 589 makes clear that the black and Latino communities opposed the law on the grounds that it would impose a disproportionate burden on minority electors. Black and Latino legislators spoke out directly against the legislation. For example, members of the Legislative Black Caucus expressed alarm that what was originally a voter ID

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<sup>73</sup> Michael Biesecker, “McCrory Not Familiar with All of Bill He’s to Sign,” *The (Raleigh) News & Observer*, July 27, 2013. Several bills that would have introduced online registration in North Carolina were defeated in 2013. See <<http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx>>

<sup>74</sup> Mark Binder, “Precincts Versus Early Voting Locations,” August 13, 2013, WRAL <<http://www.wral.com/precincts-versus-early-voting-locations/12772554/>>

<sup>75</sup> Lorraine C. Minnite (2010), *The Myth of Voter Fraud*, Cornell University Press. See also Ray Christensen and Thomas J. Schultz (forthcoming), “Identifying Election Fraud Using Orphan and Low Propensity Voters,” *American Politics Research*.

<sup>76</sup> See [votingrights.news21.com](http://votingrights.news21.com).

law had become a “voter suppression” tool.<sup>77</sup> Legislators would have been well aware of these concerns in minority communities when the bill was passed.

## V. CONCLUSION

I conclude that, if it is implemented, SL 2013-381 will have a disproportionate impact on voting participation by blacks and Latinos in North Carolina. The law disproportionately increases the costs of voting on minority voters for whom voting is already significantly more costly with fewer perceived benefits. For all of the reasons outlined above, it is my opinion that SL 2013-381 will result in minority voters being denied an equal opportunity to participate in, and influence the outcome of, elections in North Carolina.

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<sup>77</sup> Annalise Frank, “Voter ID Turns into ‘Voter Suppression,’ Says Legislative Black Caucus,” *The News & Observer*, Under the Dome blog, July 24, 2013 (last visited March 28, 2014).

**APPENDIX A**  
**Curriculum Vitae**

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**Authored or Co-Authored Books**

Burden, Barry C. 2007. *Personal Roots of Representation*. Princeton, NJ: Princeton University Press. [Reviewed in *Choice*, *Democratization*, *Journal of Politics*, *Legislative Studies Section Newsletter*, *Political Studies Review*, & *Polity*]

Burden, Barry C., and David C. Kimball. 2002. *Why Americans Split Their Tickets: Campaigns, Competition, and Divided Government*. Ann Arbor, MI: The University of Michigan Press. [Reviewed in *Campaigns & Elections Magazine*, *Choice*, *Journal of Politics*, *Legislative Studies Section Newsletter*, *National Journal*, *Party Politics*, *Perspectives on Politics*, *Political Science Quarterly*, *Public Choice*, & *VOX POP*.]

## Edited Books

- Burden, Barry C., and Stewart, Charles III, eds. Forthcoming. *The Measure of American Elections*. New York, NY: Cambridge University Press.
- Hershey, Marjorie Randon (editor), Barry C. Burden (associate editor), and Christina Wolbrecht (associate editor). Forthcoming. *CQ Guide to Political Parties*. Thousand Oaks, CA: Sage Publications.
- Burden, Barry C., editor. 2003. *Uncertainty in American Politics*. New York, NY: Cambridge University Press. [Reviewed in *Choice*, *Perspectives on Political Science*, *Political Studies Review*, & *Public Choice*.]

## Refereed Journal Articles

- Burden, Barry C., and Amber Wichowsky. Forthcoming. "Economic Discontent as a Mobilizer: Unemployment and Voter Turnout." *Journal of Politics*.
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## Book Chapters

- Vidal, Logan, and Barry C. Burden. Forthcoming. "Voter Registration." In *American Governance*, ed. Stephen L. Schechter. Farmington Hills, MI: Cengage Learning.
- Burden, Barry C., and Charles Stewart III. Forthcoming. "Introduction to the Measure of American Elections." In *The Measure of American Elections*, eds. Barry C. Burden and Charles Stewart III. New York, NY: Cambridge University Press.
- Burden, Barry C. Forthcoming. "Registration and Voting: A View from the Top." In *The Measure of American Elections*, eds. Barry C. Burden and Charles Stewart III. New York, NY: Cambridge University Press.
- Hillygus, D. Sunshine, and Barry C. Burden. 2013. "Mass Polarization During the Bush Presidency." In *Taking the Measure: The Presidency of George W. Bush*, ed. Donald R. Kelley and Todd G. Shields. College Station, TX: Texas A&M University Press.
- Burden, Barry C. 2013. "The Nominations: Ideology, Timing, and Organization." In *The Elections of 2012*, ed. Michael Nelson. Washington, DC: CQ Press.
- Berry, Christopher R., Barry C. Burden, and William G. Howell. 2012. "The Lives and Deaths of Federal Programs, 1971-2003." In *Living Legislation: Political Development and Contemporary American Politics*, ed. Jeffrey A. Jenkins and Eric M. Patashnik. Chicago, IL: University of Chicago Press.
- Burden, Barry C., and Amber Wichowsky. 2010. "Local and National Forces in Congressional Elections." In *The Oxford Handbook of American Elections and Political Behavior*, ed. Jan E. Leighley. New York, NY: Oxford University Press.
- Burden, Barry C. 2009. "The Puzzle of the Japanese Gender Gap in LDP Support." In *Political Changes in Japan: Electoral Behavior, Party Realignment, and the Koizumi Reforms*, ed. Steven Reed, Kenneth Mori McElwain, and Kay Shimizu. Stanford, CA: Shorenstein Asia-Pacific Research Center.
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- Burden, Barry C. 2005. "Laws Governing Suffrage." In *Guide to Political Campaigns in America*, ed. Paul S. Herrnson. Washington, DC: CQ Press.

- Burden, Barry C. 2005. "Family Feud in Massachusetts: How Intraparty Dynamics Influence Redistricting." In *Redistricting in the New Millennium*, ed. Peter F. Galderisi. Lanham, MD: Lexington Books.
- Burden, Barry C. 2005. "The Nominations: Technology, Money, and Transferable Momentum." In *The Elections of 2004*, ed. Michael Nelson. Washington, DC: CQ Press.
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- Burden, Barry C. 2003. "Everything but Death and Taxes: Uncertainty and American Politics." In *Uncertainty in American Politics*, ed. Barry C. Burden. New York, NY: Cambridge University Press.
- Burden, Barry C. 2001. "The Polarizing Effects of Congressional Primaries." In *Congressional Primaries in the Politics of Representation*, ed. Peter F. Galderisi, Michael Lyons, and Marni Ezra. Lanham, MD: Rowman and Littlefield.
- Mughan, Anthony, and Barry C. Burden. 1998. "Hillary Clinton and the President's Reelection." In *Reelection 1996: How Americans Voted*, ed. Herbert F. Weisberg and Janet M. Box-Steffensmeier. Chatham, NJ: Chatham House Publishers.
- Burden, Barry C., and Aage R. Clausen. 1998. "The Unfolding Drama: Party and Ideology in the 104th House." In *Great Theatre: The American Congress in the 1990s*, ed. Herbert F. Weisberg and Samuel C. Patterson. New York, NY: Cambridge University Press.
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## Book Reviews

- Burden, Barry C. 2014. Review of *Getting Primaried: The Changing Politics of Congressional Primary Challenges* by Robert G. Boatright. Ann Arbor, MI: University of Michigan Press. *Congress & the Presidency* 41:132-4.
- Burden, Barry C. 2009. Review of *Minority Report: Evaluating Political Equality in America* by John D. Griffin and Brian Newman. Chicago, IL: University of Chicago Press. *Public Opinion Quarterly* 73:590-2.
- Burden, Barry C. 2009. Review of *The American Voter Revisited*, ed. Michael S. Lewis-Beck, William G. Jacoby, Helmut Norpoth, and Herbert F. Weisberg. Ann Arbor, MI: University of Michigan Press. *Political Science Quarterly* 124:344-6.

- Burden, Barry C. 2003. Review of *Learning by Voting: Sequential Choices in Presidential Primaries and Other Elections* by Rebecca B. Morton and Kenneth C. Williams. *Public Choice* 114:248-51.
- Burden, Barry C. 2002. Review of *Elements of Reason: Cognition, Choice, and the Bounds of Rationality*, ed. Arthur Lupia, Mathew D. McCubbins, and Samuel L. Popkin. *Journal of Economic Literature* 40:928-9.

## Reports

- Burden, Barry C., and Brian J. Gaines. 2013. "Administration of Absentee Ballot Programs." Testimony and report to the Presidential Commission on Election Administration. Hearing in Denver, CO. August 8.
- Burden, Barry C., and Jeffrey Milyo. 2013. "The Recruitment and Training of Poll Workers." Testimony and report to the Presidential Commission on Election Administration. Hearing in Cincinnati, OH. September 20.
- Burden, Barry C. 2010. *Polling Place Incidents in the November 2008 General Election*. Report to the Wisconsin Government Accountability Board.
- Burden, Barry C., David T. Canon, Stéphane Lavertu, Kenneth R. Mayer, and Donald P. Moynihan. 2009. *2008 Wisconsin Election Data Collection Grant Program Evaluation Report*. Report to the Wisconsin Government Accountability Board.
- Burden, Barry C., and Janet M. Box-Steffensmeier. 1998. "Vote Likelihood and Institutional Trait Questions in the 1997 NES Pilot Study." Report to American National Election Study Board of Overseers.

## Other Publications

- Burden, Barry C. 2014. "How Political Scientists Informed the President about Election Reform." The Monkey Cage blog. Posted January 23.
- Burden, Barry C., and Kevin J. Kennedy. 2013. "State Ranks High on Election Performance." *Milwaukee Journal Sentinel*. February 7.
- Burden, Barry C., David T. Canon, Kenneth R. Mayer, and Donald P. Moynihan. 2012. "Election-Day Registration Works Here." *Milwaukee Journal Sentinel*. December 26.
- Burden, Barry C. 2012. "A Portrait of the Wisconsin Municipal Clerk." *The Municipality*. Volume 106, Number 5.

- Burden, Barry C. 2011. "Polarization, Obstruction, and Governing in the Senate." *The Forum*. Volume 9, Issue 4.
- Burden, Barry C., and Kenneth R. Mayer. 2010. "Voting Early, but Not So Often." *The New York Times*, October 25.
- Burden, Barry C. 2009. "Representation as a Field of Study." In *The Future of Political Science: 100 Perspectives*, ed. Gary King, Kay Lehman Schlozman, and Norman Nie. New York, NY: Routledge.
- Burden, Barry C. 2004. "An Alternative Account of the 2004 Presidential Election." *The Forum*. Volume 2, Issue 4.
- Burden, Barry C. 2003. "Chronology of the 2000 Presidential Campaign." In *Models of Voting in Presidential Elections: The 2000 U.S. Election*, ed. Herbert F. Weisberg and Clyde Wilcox. Stanford, CA: Stanford University Press.
- Burden, Barry C. 1998. "Chronology of the 1996 Presidential Campaign." In *Reelection 1996: How Americans Voted*, ed. Herbert F. Weisberg and Janet M. Box-Steffensmeier. Chatham, NJ: Chatham House Publishers.
- Burden, Barry C. 1995. "Chronology of the 1992 Presidential Campaign." In *Democracy's Feast: Elections in America*, ed. Herbert F. Weisberg. Chatham, NJ: Chatham House Publishers.

## Honors and Awards

- Robert H. Durr Award – *given by the Midwest Political Science Association for the best paper applying quantitative methods to a substantive problem in political science* – "Election Laws and Partisan Gains: The Effects of Early Voting and Same Day Registration on the Parties' Vote Shares," with David Canon, Kenneth Mayer, and Donald Moynihan (2014)
- H. I. Romnes Faculty Fellow, UW Graduate School (2010-2015)
- Licking Valley Schools "Wall of Pride" Award (2009) – *given annually to alumni who distinguished themselves professionally or made notable contributions to society*
- Hamel Family Faculty Fellow, UW College of Letters and Science (2008-2013)
- University Residence Hall Favorite Instructor Award (2007)
- Nominated for Harvard University Everett Mendelsohn Excellence in Graduate Mentoring Award (2006)
- Emerging Scholar Award (2005) – *given by the Political Organizations and Parties section of APSA for significant research by a scholar receiving her or his doctorate within the past seven years*

Wittenberg University Outstanding Young Alumnus Award (2002) – *given to a graduate of the last decade to recognize professional achievement*

Council of Graduate Schools/University Microfilms International Distinguished Dissertation Award (2000) – *given to recognize best dissertation completed nationwide in the social sciences between 1998 and 2000*

Nominated for Harvard University Joseph R. Levenson Memorial Teaching Prize (2000)

ΑΑΑ Award for superior instruction of freshman students (1999)

OSU Presidential Fellow (1998)

Francis R. Aumann Award for best OSU graduate student conference paper (1996 & 1997)

Malcolm Jewell Award (1996) – *best graduate student paper presented at the 1995 Southern Political Science Association meeting*

Ohio Board of Regents Fellow (1993-1995)

ΦBK (1993)

Wittenberg University Student Leader of the Year (1992-1993)

Jeffrey Y. Mao Alumni Award in Political Science (1992)

## **Grants**

UW Graduate School Research Committee, “Political Participation among Older Americans” (2014-2015, co-PI with Moynihan)

Center for Demography of Health and Aging, “Political Participation of Older Americans: The Role of Social and Genetic Factors” (co-PI with Jason M. Fletcher and Donald P. Moynihan, 2013-2014)

Pew Charitable Trusts, \$46,400 for “Measuring Elections Performance Project,” (with head PI Charles Stewart III, 2012-2013)

Wisconsin Government Accountability Board, \$43,234 for “Analysis of Polling Place Incident Logs” (head PI with Canon, Mayer, and Moynihan, 2011-2012)

UW Graduate School Research Committee, “The Consequences of Electing Election Officials” (2009-2010)

Pew Center on the States, Making Voting Work: \$49,400 for “Early Voting and Same Day Registration in Wisconsin and Beyond” (head PI with Canon, Mayer, and Moynihan, 2008-2009)



U.S. Election Assistance Commission, Election Data Collection Grant Program: responsible for \$212,442 of \$2,000,000 grant to the Wisconsin Government Accountability Board (head PI with Canon, Mayer, and Moynihan, 2008-2010)

UW Graduate School Research Committee: “The Puzzling Geography of Federal Spending,” (2007-2008)

UW Graduate School Research Committee: “The Political Economy of the Japanese Gender Gap” (2006-2007)

CAPS faculty research conference: \$36,500 for “Democracy, Divided Government, and Split-Ticket Voting” (2006)

Joseph H. Clark fund award: “The Limits of Representation” (2004-2006)

Reischauer Institute of Japanese Studies: “Accountability, Economics, and Party Politics in Japan” (2004-2006)

Time-sharing Experiments in the Social Sciences: “Affect and Cognition in Party Identification” (with Casey A. Klofstad, 2004)

Harvard Faculty of Arts & Sciences Course Innovation Funds: “The Practice of Political Science” (2003)

Dirksen Congressional Center Congressional Research Award: “The Discharge Rule and Majoritarian Politics in the House of Representatives” (2002-2003)

Reischauer Institute of Japanese Studies Curriculum Enrichment Grant: “Electoral Politics in America and Japan” (2002)

CBRSS research program grant: “Affect and Cognition in Party Identification” (2001)

Joseph H. Clark fund award: “Affect and Cognition in Party Identification” (2001-2002)

Joseph H. Clark fund award: “Ideology in Congressional Elections” (2000-2001)

National Science Foundation Doctoral Dissertation Improvement Grant: “Candidates’ Positions in Congressional Elections” (1997)

## **Teaching and Advising**

Undergraduate courses:

- Introduction to American Politics
- Elections and Voting Behavior
- Political Behavior
- American Public Opinion
- Election Reform in America
- The Politics of Congress/The Legislative Process
- Techniques of Political Analysis

Electoral Politics in America and Japan  
The Practice of Political Science Research

Graduate courses:

American Politics Field Seminar  
Mass Political Behavior  
Congress and Legislative Politics  
American Electoral Politics  
Readings on Advanced Statistical Methods  
Quantitative Research Design  
American Political Institutions  
Readings on Interest Group Politics  
Research Workshop in American Politics  
Political Science as a Discipline and Profession

Harvard Ph.D. advising (year and placement):

Benjamin Deufel (2006 Greenberg Quinlan Rosner Research)  
Tammy M. Frisby (2006 Stanford University-Lane Center)  
Michael Kang (2009 Emory University-School of Law)  
Andrew Karch (2003 University of Texas & University of Minnesota)  
Casey A. Klofstad (2005 University of Miami)  
Robert Van Houweling (2003 University of Michigan & UC-Berkeley)  
*Carl Albert Dissertation Award for best dissertation in legislative studies*

Wisconsin Ph.D. advising (year and placement):

Danna Basson (2007 Mathematica Policy Research)  
Amy Bree Becker, Journalism & Mass Communication (2010 Towson University &  
Loyola University Maryland)  
Deven Carlson (2012 University of Oklahoma)  
Amnon Cavari (2011 Interdisciplinary Center–IDC Israel)  
*George C. Edwards III Dissertation Award for best dissertation in presidency research*  
Meghan Condon (2012 Loyola University Chicago)  
*APSA section on Experimental Research best dissertation award*  
William Egar (ABD)  
Erika Franklin Fowler (2006 RWJ Scholar in Health Policy & Wesleyan University)  
Hannah Goble (2009 Texas Christian University)  
Matthew Holleque, *chair* (2012 Obama for America)  
Bradley Jones, *chair* (ABD)  
Dimitri Kelly, *chair* (2013 Linfield College)  
Yujin Kim, *chair* (ABD)  
Paul Lachelier, Sociology (2007 Stetson University)  
Ruoxi Li (ABD)

Jeremy Menchik (2011 Stanford Shorenstein Center post-doc & Boston University)  
Daniel Metcalf  
Jacob Neiheisel, *chair* (2013 Denison University & University of Buffalo)  
Joel Rivlin (ABD MSHC Partners & Pivot)  
Rajen Subramanian (2008 Abt Associates)  
Amber Wichowsky, *chair* (2010 Yale CSAP Fellowship & Marquette University)  
*Carl Albert Dissertation Award for best dissertation in legislative studies*

## Reviewing Activities

### Journal manuscript reviews:

*Acta Politica, American Journal of Political Science, American Political Science Review, American Politics Quarterly, American Politics Research, American Review of Politics, British Journal of Political Science, Comparative Political Studies, Congress & the Presidency, Election Law Journal, Electoral Studies, European Journal of Political Research, International Journal of Forecasting, International Organization, Journal of Law, Economics, and Organization, Journal of Politics, Journal of Theoretical Politics, Journal of Women, Politics, & Policy, Legislative Studies Quarterly, Party Politics, Perspectives on Politics, Political Analysis, Political Behavior, Political Communication, Political Psychology, Political Research Quarterly, Political Science Quarterly, Politics & Gender, Politics and Policy, Presidential Studies Quarterly, Public Choice, Public Opinion Quarterly, Rationality and Society, Research and Politics, Quarterly Journal of Political Science, Social Science Quarterly, Sociological Forum, Sociological Methods and Research, State Politics & Policy Quarterly, Statistical Science, & World Politics*

### Book manuscript reviews:

Addison Wesley Longman, Atomic Dog Publishing, Brookings Institution Press, Cambridge University Press, CQ Press, Oxford University Press, and University of Chicago Press

### Tenure and promotion reviews:

Dartmouth College, Florida State University, Fordham University, Louisiana State University, Temple University, Texas Tech University, Tulane University, University of British Columbia, University of California-Berkeley, University of California-Riverside (twice), University of Chicago (public policy), University of Houston, University of Massachusetts-Dartmouth, University of Maryland (twice), University of Missouri-Columbia, University of Missouri-St. Louis, University of North Carolina at Charlotte, University of Notre Dame, University of Pennsylvania, University of Texas-Dallas, & Washington State University

External review committee, Union College Department of Political Science (*chair*, 2010)

Other reviews:

Canada Research Chair College of Reviewers, Radcliffe Institute Fellows, National Science Foundation, Robert Wood Johnson Scholars in Health Policy, Time-sharing Experiments in the Social Sciences (TESS)

## Professional and University Service

Journal editorial boards:

*Election Law Journal* editorial board (2013-present)  
*Electoral Studies* editorial board (2011-present)  
*Political Research Quarterly* (2014-present)  
*Legislative Studies Quarterly* editorial board (2011-2013)

Other boards and councils:

Election Performance Index Advisory Board, Pew Center on the States (2010-2014)  
Elections, Public Opinion, and Voting Behavior section Communications Director (2012-2015)  
Legislative Studies section council (2009-2011)  
Political Organizations and Parties section council (2005-2007)  
Ad Hoc Committee on Member Communications (2013)  
Project Vote Smart Advisory Board (2007-)

Conference program organizer:

Political Organizations and Parties, APSA annual meeting (2006)  
Political Methodology, SPSA annual meeting (2001)

Award committees:

Political Organizations and Parties/*Party Politics* award committee for the best paper presented at the 2006 APSA annual meeting (*chair*, 2007)  
Political Organizations and Parties Emerging Scholar Award committee (*chair*, 2013)

Campus presentations:

Dartmouth College, Northwestern University, Stanford University, SUNY-Stony Brook, University of Houston, University of Minnesota, University of Missouri-Columbia, University of Notre Dame, University of Rochester, University of Texas at Austin, Utah State University (twice), Wittenberg University, & Yale University (twice)

Public and community presentations:

Boston Museum of Science, Brookings Institution, Civitas, National Legislative Program Evaluation Society, Newton Center for Lifetime Learning, Reach Out Wisconsin, Senior

Summer School, UW-Extension College Days, Vantage Point, Wisconsin Academy of Sciences, Arts, and Letters, Wisconsin Department of Revenue, and alumni events in Wisconsin and New York City

Affiliations:

Election Administration Project (*co-founder*, 2008-present)  
Wisconsin Advertising Project team (2008-present)  
La Follette School of Public Affairs, Faculty Associate (2007-present)  
Center for Demography of Health and Aging (2013-present)  
Political Behavior Research Group (2006-present)  
Institute for Quantitative Social Science, Faculty Associate (1999-2006)  
Political Psychology and Behavior Workshop (*co-founder*, 2000-2006)  
Center for American Political Studies, Executive Committee (2001-2006) & Steering Committee (2003-2004)  
Program on US-Japan Relations, Faculty Affiliate (2004-2006)  
Weatherhead Center for International Affairs, Faculty Associate (2005-2006)  
Harvard Kennedy School, Mid-Career MPA Summer Program (2001-2005 & 2007-2012)  
Summer Institute in Political Psychology (1995 & 1997)

Harvard committee service:

American Politics Faculty Search (1998-1999, 2001-2002, 2002-2003, & 2005-2006)  
Graduate Admissions (1999-2000)  
Government Concentration/Board of Senior Examiners (2000-2001 & 2004)  
Teaching Fellow Coordinator (2003-2004)  
American Politics Field Coordinator (2005-2006)  
Center for Government and International Studies, Subcommittee on Teaching and Conference Spaces (2003)  
Truman Scholarship Nomination (2000-2001)  
Eben Fiske Studentship Nomination (2004-2005)  
Political Communication Faculty Search, Kennedy School of Government (2004-2005)

Wisconsin committee service:

Faculty Senate (2006-2007)  
Associate Chair/Director of Graduate Studies (2007-2012)  
    Graduate Admissions and Fellowships, *chair*  
    Graduate Program Committee, *chair*  
    Teaching Assistant Evaluation Committee, *chair*  
L&S Teaching Fellow Anniversary Symposium Planning Committee (2009-2010)  
L&S C-GRS Faculty Executive Committee (2009-2010)  
Graduate School Social Studies Fellowships Committee (2010-2013)  
Social Studies Divisional Executive Committee (2013-2014)  
Faculty Recruitment Committee (2013-2014)

American Politics Search Committee, *chair*  
Preliminary Examination Appeals Committee (2013-2014)

Occasional source for media coverage of politics including abcnews.com, *Atlanta Journal-Constitution*, Associated Press, *The Baltimore Sun*, *The Baton Rouge Advocate*, Bloomberg News, *The Boston Herald*, cbsnews.com, *Campaigns & Elections Magazine*, *Chicago Tribune*, *Christian Science Monitor*, *Cleveland Plain Dealer*, *Congressional Quarterly Weekly Report*, *The Daily Caller*, *Dallas Morning News*, *Des Moines Register*, forbes.com, Fox News, *Glamour*, *The Globe and Mail* (Canada), *The Guardian* (UK), *The Harvard Crimson*, *Harvard Political Review*, *The Hill*, *International Herald Tribune*, *Kansas City Star*, *Los Angeles Times*, *The London Times*, *Le Monde*, *The New Orleans Times-Picayune*, *National Journal*, *The New Republic*, *New Scientist*, *New York Post*, *The New York Times*, *Newsday*, *Newsweek*, *el Nuevo Herald*, *Omaha World Herald*, *PBS NewsHour*, *Pittsburgh Post-Gazette*, Politico.com, Reuters, Salon.com, States News Service, *USA Today*, *Veja* (Brazil), *The Wall Street Journal*, *The Washington Post*, *The Washington Times*, *Wisconsin Law Journal*, *Yomiuri Shimbun*, *Greater Boston* on WGBH, NECN, *Nitebeat with Barry Nolan*, *Odyssey* on Chicago Public Radio, and many local television, radio, and newspaper outlets

Featured in *An Unreasonable Man*, an independent documentary film about the life and career of Ralph Nader (2006)

## **Consulting**

Research consultant, via Research Triangle International Institute and the Pew Charitable Trusts, for evaluation of the Electronic Registration Information Center (2012-2014)

Expert witness, *League of United Latin American Citizens of Wisconsin et al. v. Judge David G. Deininger et al.*, case 12-CV-00185, U.S. District Court, Eastern District of Wisconsin (2013)

Expert witness, *North Carolina State Conference of the NAACP et al. v. Patrick Lloyd McCrory et al.*, case 13-CV-658, U.S. District Court, Middle District of North Carolina (2014)

Academic researcher, Presidential Commission on Election Administration, established by presidential Executive Order 13639 (2013)

## APPENDIX B Reliance Materials

### Books and Articles

- Michael C. Herron and Daniel A. Smith (forthcoming) "Race, Party, and the Consequences of Restricting Early Voting in Florida in the 2012 General Election." *Political Research Quarterly*.
- John H. Aldrich (1993), "Rational Choice and Turnout," *American Journal of Political Science* 37:246-78.
- Thomas G. Hansford and Brad T. Gomez (2010), "Estimating the Electoral Effects of Voter Turnout," *American Political Science Review* 104:268-88.
- Henry E. Brady and John E. McNulty (2011), "Turnout Out to Vote: The Costs of Finding and Getting to the Polling Place," *American Political Science Review* 105:1-20.
- John E. McNulty, Conor M. Dowling, and Margaret H. Ariotti (2009), "Driving Saints to Sin: How Increasing the Difficulty of Voting Dissuades Even the Most Motivated Voters," *Political Analysis* 17:435-55.
- Moshe Haspel and H. Gibbs Knotts (2005), "Location, Location, Location: Precinct Placement and the Costs of Voting," *Journal of Politics* 67:560-73.
- Raymond E. Wolfinger, Benjamin Highton, and Megan Mullin (2005), "How Postregistration Laws Affect the Turnout of Citizens Registered to Vote," *State Politics & Policy Quarterly* 5:1-23.
- Alan S. Gerber, Donald P. Green, and Ron Shachar (2003), "Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment," *American Journal of Political Science* 47:540-50.
- Eric Plutzer (2002), "Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood," *American Political Science Review* 96:41-56.
- Peverill Squire, Raymond E. Wolfinger, and David P. Glass (1987), "Residential Mobility and Voter Turnout," *American Political Science Review* 81:45-65.
- Richard J. Timpone (1998), "Structure, Behavior, and Voter Turnout in the United States," *American Political Science Review* 92:145-58.
- Elizabeth Bergman and Philip A. Yates (2011), "Changing Election Methods: How Does Mandated Vote-By-Mail Affect Individual Registrants?," *Election Law Journal* 10:115-27.
- Barry C. Burden and Jacob R. Neiheisel (2013), "Election Administration and the Pure Effect of Voter Registration on Turnout," *Political Research Quarterly* 66:77-90.
- Danny Hayes and Seth C. McKee (2009), "The Participatory Effects of Redistricting," *American Journal of Political Science* 53:1006-23.

- Adam J. Berinsky (2005), "The Perverse Consequences of Electoral Reform in the United States," *American Politics Research* 33:471-91.
- Barry C. Burden, David T. Canon, Kenneth R. Mayer, and Donald P. Moynihan (2014), "Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform," *American Journal of Political Science* 58:95-109.
- Melanie J. Springer (2012), "State Electoral Institutions and Voter Turnout in Presidential Elections, 1920-2000," *State Politics & Policy Quarterly* 12:252-83.
- Donald P. Green and Ron Shachar (2000), "Habit Formation and Political Behaviour: Evidence of Consuetude in Voter Turnout," *British Journal of Political Science* 30:561-73, p. 570.
- Michael C. Herron and Daniel A. Smith (2014), "Race, *Shelby County*, and the Voter Information Verification Act in North Carolina," manuscript, version 2 dated February 12, 2014, p. 44.
- J. Morgan Kousser (1974), *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910*. New Haven, CT: Yale University Press, p. 187.
- Eric Anderson (1981), *Race and Politics in North Carolina, 1872-1901*, Baton Rouge, LA: Louisiana State University Press.
- James Beeby (2008), *Revolt of the Tar Heels: The North Carolina Populist Movement*, Jackson, MS: University Press of Mississippi.
- William R. Keech and Michael P. Sstrom (1994), "North Carolina," in *Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990*, ed. Chandler Davidson and Bernard Grofman, Princeton, NJ: Princeton University Press.
- Jeffrey J. Crow and Robert Franklin Durden (1977), *Maverick Republican in the Old North State*, Baton Rouge, LA: Louisiana State University.
- Richard H. Pildes (2000), "Democracy, Anti-Democracy, and the Canon," *Constitutional Commentary* 17:295-319, 302.
- Learn NC, Governor Aycock on "the Negro Problem," available at <http://www.learnnc.org/lp/editions/nchist-newsouth/4408> (last visited March 24, 2014).
- "A Tar Heal Travesty," *Washington Post*, August 16, 2013, p. A16.
- Economic Policy Institute (2013), "Ongoing Joblessness in North Carolina," Issue Brief No. 359, May 16.
- Education Week* and the Editorial Projects in Education Research Center, *Diplomas Count – Second Chances: Turnout Dropouts into Graduates*, June 6, 2013.
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# **SUR-REBUTTAL EXPERT REPORT**

*North Carolina State Conference of the NAACP*

v.

*McCrary, 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

**May 2, 2014**

A handwritten signature in black ink that reads "Barry Burden". The signature is written in a cursive, flowing style.

**Barry C. Burden, Ph.D.**

JA1134

I previously submitted an expert report in this case to explain how the disparate impacts of SL 2013-381 on minority voters in North Carolina implicates Section 2 of the Voting Rights Act. I now submit this rebuttal expert report to respond to the declarations of Thomas H. Fetzer, Jr., Thomas Brooks Hofeller, Janet R. Thornton, and Sean P. Trende.

**Thomas H. Fetzer, Jr.**

Mr. Fetzer’s declaration asserts that early voting “drives up the costs of a campaign by tens of thousands of dollars at the local and legislative level and by hundreds of thousands at the state level” (paragraph 10) (emphasis added). It is not clear how this point is related to the state’s interest in SL 203-381 or if the statement is even true.

Mr. Fetzer seems to imply that the state has an interest in controlling the cost of campaigns, although this is never articulated. Putting aside that the cost of campaigns is primarily a private, rather than public, sector concern, there are also benefits of having more intense campaigns. A series of scholarly studies has shown that higher campaign spending is correlated with higher voter participation.<sup>1</sup>

More importantly for this case, academic analysis finds little relationship between longer periods of early voting and greater campaign spending. In *Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform*, my coauthors and I suggest that early voting may be associated with less campaign advertising.<sup>2</sup> More directly, a statistical analysis by Johanna Dunaway and Robert Stein finds evidence that “early voting does not have a substantial or consistent effect on either the incidence or cost of campaign advertising.”<sup>3</sup> It is difficult to reconcile these studies with increases of tens or hundreds of thousands of dollars at the local and state levels.

**Thomas Brooks Hofeller**

Mr. Hofeller’s expert report contends that many of the individuals identified by the State Board of Elections as registered to vote but without a license or state ID (*i.e.*, not Department of Motor Vehicles (“DMV”) matches) are college students. Table 10 of Mr. Hofeller’s report states that college students made up about 6.68% of the adult population, but comprised 9.53% to 10.94% of registrants who were unmatched to a DMV record. This is not surprising and does

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<sup>1</sup> For a few examples, *see*: David Hill and Seth C. McKee (2005) “The Electoral College, Mobilization, and Turnout in the 2000 Presidential Election,” *American Politics Research* 33: 700-25. Samuel C. Patterson and Gregory A. Caldeira (1983), “Getting Out the Vote: Participation in Gubernatorial Elections,” *American Political Science Review* 77:675-89. Robert E. Hogan (2013), “Campaign Spending and Voter Participation in State Legislative Elections,” *Social Science Quarterly* 94: 840-64.

<sup>2</sup> Barry C. Burden, David T. Canon, Kenneth R. Mayer, and Donald P. Moynihan (2014) “Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform,” *American Journal of Political Science* 58:95-109.

<sup>3</sup> Johanna Dunaway and Robert M. Stein (2012), “The Effects of Early Voting on Campaign Advertising,” p. 14, paper presented at the annual meeting of the State Politics and Policy conference, Houston, TX, February 16-17, available at [http://2012sppconference.blogs.rice.edu/files/2012/02/SPPC2012\\_DunawayStein.pdf](http://2012sppconference.blogs.rice.edu/files/2012/02/SPPC2012_DunawayStein.pdf) (last visited April 29, 2014).

not alleviate concerns about SL 2013-381 violating the Voting Rights Act. College students in particular often have less need for a license than do other young people because they live on a relatively self-contained campus and might attend schools that prohibit students from having cars. Regardless, the analysis indicates that roughly 90% of registrants without DMV records are not college students, so students are not responsible for the thousands of registered individuals without licenses or state ID cards.

The report demonstrates that “Sunday voting” was more likely to be available in counties where blacks (and perhaps Latinos) were a larger share of the population. (Ms. Thornton makes a similar point.) This is precisely why SL 2013-381’s reduction of Sunday voting implicates the Voting Rights Act. Aided by greater availability of Sunday voting in their communities but also other reasons, black voters use Sunday voting at a higher rate than whites.<sup>4</sup> As I explain in my expert report, voting is largely a habitual behavior. Because it raises the cost of voting, disruption of established processes are likely to interrupt the habit and deter participation. Thus, elimination of Sunday voting is likely to have a double impact on minority voters, first because more of them are in the habit of voting on that day and second because they suffer from fewer resources that allow them to overcome such hindrances. These expectations are consistent with the “calculus of voting” theory that organizes my opinions.

Mr. Hofeller states that “In my opinion, placement and hours of operation of the One-Stop [Sunday voting] centers was designed to favor the Democrats in the 2012 General Election” (§ 67). His expert report says nothing about hours of operation beyond examination of one of the state’s 100 counties (Wake County). It is true that the black share of the population was larger in counties that implemented Sunday voting in 2008, but it is speculation to suggest that this is the result of an effort to favor one political party. One might also speculate that Sunday voting was offered in counties where demand was greatest. Without a more thorough analysis of these various factors, one cannot confidently conclude that partisan motives explain where Sunday voting was offered. The data show clearly that blacks make great use of Sunday voting and would thus experience more disruption to their established voting habits under SL 2013-381.

Mr. Hofeller’s report states:

There are strong indications that North Carolina’s voter registration rolls still contain significant numbers of voters who are not really legally residing in North Carolina. The method for removing voters from the registration rolls is convoluted and dependent on positive actions taken by the actual registrants or on returned mail which may never be returned as undeliverable at the registered address. Effective U.S. Postal delivery may be weak at delivery locations at the same address or when multiple mail boxes are at the same location.

(Paragraph 75).

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<sup>4</sup> This point is made clearly in Michael C. Herron and Daniel A. Smith (2014), “Race, *Shelby County*, and the Voter Information Verification Act in North Carolina,” manuscript, version 2 dated February 12, 2014

This paragraph contains a number of assertions that are not supported by any evidence. In fact, available evidence suggests that these assertions may not be factual. A careful statistical analysis of voter files estimates that in North Carolina only about 3.5% of registered voters have addresses that would cause mail to be returned as undeliverable, only and 1% to 1.5% of those on the registration list are deceased, and just about 5% are “likely” or “probably” classified as “deadwood” entries that are out of date.<sup>5</sup>

It is perhaps a matter of opinion whether the registration list maintenance process in North Carolina is “convoluted.” The process is similar to that in many other states. It reflects federal law, namely the National Voter Registration Act (“NVRA”), that establishes standards for voter list maintenance.

The effectiveness of U.S. Postal Service delivery is not documented in any way in Mr. Hofeller’s report.

The report provides substantial information about the distances of DMV offices from residents’ homes. It also draws a comparison between those distances and the distances to large retail establishments such as Walmart and Target. This comparison is problematic. Those “big box” retailers are private entities designed to earn profits from sales to consumers who are willing and able to spend money on products. DMV offices are public agencies serving all constituents regardless of means. In addition, big retailers are typically open for business many more hours than a DMV, sometimes even on a 24-hour basis. And they are generally open 7 days a week, and not limited to a particular set of weeks. Mr. Hofeller’s report offers no information about the hours of North Carolina DMV offices.

### **Janet Thornton**

Ms. Thornton’s expert report contends that many factors beyond election laws affect voter turnout. Most experts would agree. My expert report uses the “calculus of voting” theory to explain how factors such as demographics, campaign activity, information, and election laws all affect voter participation (a point also made by Mr. Trende). Notably, only the last of these, election laws, is under the direct control of the state and is the subject of this case. Whether other factors such as a person’s natural interest in politics or the weather also affect turnout is beside the point because SL 2013-381 does not bear on those variables.

Ms. Thornton’s analysis relies on an unorthodox method for computing voter turnout rates. For aggregate analyses, the standard approach divides the number of votes cast by the number of people eligible to vote (or the best proxy for it that is available, such as the Citizen Voting Age Population). This is the approach used in the declaration by Mr. Trende. Instead, Ms. Thornton chose to divide the number voters by the number of registrants. This is problematic because it prevents fair comparisons to other reports and data. It also creates general problems of inference because the resulting percentages are affected by changes in the registration rate. In effect, it is measuring two things at once. At some points (*e.g.*, paragraph

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<sup>5</sup> Stephen Ansolabehere and Eitan Hersh (forthcoming August 2014) “Voter Registration: The Process and Quality of Lists,” in Barry C. Burden and Charles Stewart III, *The Measure of American Elections*, New York: Cambridge University Press. (Figures 3.1, 3.5, and 3.6, respectively).



20) the report focuses on changes in registration rates, but elsewhere in the report the focus is on turnout, which is measured in terms of registration. It is not clear why this non-standard approach is used or how the results would differ using conventional measures of turnout.

Finally, Ms. Thornton mentions greater and increasing use of out-of-precinct provisional voting by black voters relative to white voters. As with other election-related behaviors, there are multiple reasons why black voters would be more likely to cast out-of-precinct provisional ballots. A simple explanation that she does not acknowledge is that blacks and Latinos move more frequently than do whites. The Census Bureau's 2012 American Community Survey shows that rates of moving within county in North Carolina over a 12-month period were 11.9% for blacks, 11.2% for Latinos, and 6.9% for non-Hispanic whites. It is not surprising that groups such as blacks who have greater residential mobility would make greater use of provisional ballots to vote out-of-precinct. The elimination of this option will have disproportionate impact on black and Latino voters.

### **Sean P. Trende**

Mr. Trende's expert report contends that black voters would readily adapt to the election law changes imposed by SL 2013-381. He claims that other factors such as the increasing competitiveness of campaigns in North Carolina have contributed to rising black turnout, especially in presidential elections. On this point we agree. My expert report suggests that black turnout rates in North Carolina have risen to levels similar to those of whites only because of a complex combination of more competitive campaigns, Barack Obama's candidacy, and election practices that permit the exercise of the right to vote. As a result of these forces, black voters have indeed "adapted" to the use of options such as same day registration and early voting. But black participation rates remain fragile because they depend on this particular constellation of forces and have only recently risen to levels on par with whites in presidential elections. In midterm elections they continue to lag behind white voters, as Mr. Trende observes. In line with research cited in my expert report on the calculus of voting and the habitual nature of electoral participation, SL 2013-381 will impose greater hurdles on black voters than white voters, disproportionately deterring their voting participation. This is because the removal of and restrictions on election processes used more heavily by black voters both interrupt newly-established habits and establish barriers that must be overcome with resources that blacks are less likely to possess.

Mr. Trende compares black turnout rates in North Carolina and Mississippi. This is done to argue that SL 2013-381 would have little to no effect on black participation rates. As he states in paragraph 80, "If plaintiffs' experts theory is correct, what we would expect to see in such circumstances is that African American participation would increase dramatically in North Carolina, while lagging badly in Mississippi. Instead, despite two entirely different voting regimes, both states experience similar increases in African American registration and participation." I challenge this method of argument and identify two grounds below.

First, Mr. Trende's statement is not an accurate portrayal of my opinions or the opinions of other plaintiffs' experts. My report focuses on the "Senate factors" to explain how SL 2013-381 interacts with historical and demographic elements in North Carolina. The Senate factors

would apply differently in Mississippi and other states. As a result, examining voter turnout statistics in isolation is not especially informative. Whether SL 2013-381 would put North Carolina in or out of the “mainstream” in terms of election laws adopted in other states (a point made most directly by another defense expert, Donald Schroeder) is somewhat beside the point. Each state has a unique historical and demographic profile.

In addition, my report does not address whether existing laws made black turnout “increase dramatically.” Instead, I contend that SL 2013-381 would harm black and Latino turnout by imposing new restrictions that particularly disrupt and restrict the voting of minority residents.

The data in Mr. Trende’s declaration actually support his portrayal of the plaintiffs’ view that black turnout increased dramatically as a result of North Carolina’s expansive voting laws. Figure 11 in his declaration shows that between 2000 and 2012 black turnout rose by 32.3 percentage points in North Carolina (the largest increase in the nation) but only 24.0 points in Mississippi. Thus, by Mr. Trende’s measures black turnout increased 34% more in North Carolina, precisely during the time when same day registration, forgiving provisional ballot rules, and early voting became available in the state.

Second, Mr. Trende’s analysis relies on data from the November election supplements of the Current Population Survey (“CPS”). The CPS is a valuable and widely used resource for understanding patterns in voter registration and turnout. As he correctly notes, the CPS is also “imperfect” because of non-response patterns and because respondents overreport their participation rates. But he is incorrect in asserting that the problems are “systemic, albeit at a national level.” Mr. Trende concludes that although the CPS might generally overestimate participation rates, that problem affects all parts of the country, and perhaps all subpopulations, equally. That is not the case. Although the CPS was probably more accurate in earlier elections, an analysis by journalist Nate Cohn shows that the 2012 data revealed serious problems in measuring differences between black and white turnout rates in the South in particular.<sup>6</sup>

Specifically, the 2012 CPS overestimated turnout most in states with more “diverse” (*i.e.*, larger black and Latino) populations. Indeed, Mississippi – Mr. Trende’s key comparison state – shows the largest overestimate: 23.6% percentage points. Professor Michael McDonald has explained how this overreporting occurs and what might be done to resolve it.<sup>7</sup> McDonald further documents the inaccuracies in CPS data in a recent academic paper.<sup>8</sup> Related research concludes that CPS turnout estimates were inflated due to disproportionate overreporting by black

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<sup>6</sup> Nate Cohn, “Black Turnout in 2012 Might Not Have Been Historic: The Inherent Flaws of the Census’s Population Survey,” *New Republic*, May 15, 2013, available at <http://www.newrepublic.com/article/113224/black-turnout-2012-census-population-survey-might-be-wrong> (last visited April 29, 2014).

<sup>7</sup> For example, *see* Michael P. McDonald, “2012 Turnout: Race, Ethnicity, and the Youth Vote,” *The Huffington Post*, May 8, 2013, available at [http://www.huffingtonpost.com/michael-p-mcdonald/2012-turnout-race-ethnicity\\_b\\_3240179.html](http://www.huffingtonpost.com/michael-p-mcdonald/2012-turnout-race-ethnicity_b_3240179.html) (last visited April 29, 2014).

<sup>8</sup> Michael P. McDonald (2014), “What’s Wrong with the CPS?”, paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 3-6. *See also* Aram Hur and Christopher H. Achen (2013), “Coding Voter Turnout Responses in the Current Population Survey,” *Public Opinion Quarterly* 77:985-93.

respondents in the South.<sup>9</sup> They find that Mississippi has some of the highest overreporting rates in the country. This conclusion conforms with research from other high-quality national surveys comparing voter reports with actual voting records, which repeatedly show more overreporting of turnout by black than by whites.<sup>10</sup>

These well-established tendencies would likely be exaggerated in 2012 due to the presence of Barack Obama’s name on the ballot. Excitement about his candidacy and social pressure in the black community to support Obama likely heightened the overreporting problem.<sup>11</sup> Research indicates that black overreporting often increases when a black respondent is represented by a black office holder,<sup>12</sup> and when a black candidate is on the ballot.<sup>13</sup>

As an example of the problem, Table 1 shows how the CPS measures compare to “official” turnout rates. The official estimates rely on state and Census data to compute turnout rates. The table shows that white turnout in North Carolina is estimated quite accurately by the CPS but black turnout is overestimated by almost 11 percentage points. By all indications the errors would be even greater in Mississippi. Rather than being merely “systemic” and “national” as Mr. Trende asserts, the CPS errors vary in consequential ways according to the size of the black population in each state.

**Table 1. Comparing CPS and Official State Turnout Statistics on the 2012 Election**

	White	Black
CPS	65.2%	78.7%
Official	64.4%	67.8%
CPS Overestimate	.8 points	10.9 points
Note: “CPS” data are from the 2012 version of Table 04b. “Official” data use the number voting as reported by the North Carolina State Board of Elections in the numerator and estimates of the Citizen Voting Age Population from the Census Bureau’s American Community Survey in the denominator.		

Other data sources also suggest that the CPS estimates of black turnout are inaccurate. The best estimates of overall state voter turnout are produced by Professor McDonald. Professor

<sup>9</sup> Robert A. Bernstein, Anita Chadha, and Robert Montjoy, (2003), “Cross-State Bias in Voting and Registration Overreporting in the Current Population Surveys,” *State Politics & Policy Quarterly* 3:367-86.

<sup>10</sup> For example, see Paul R. Abramson and William Claggett (1991), “Racial Differences in Self-Reported and Validated Turnout in the 1988 Presidential Election,” *Journal of Politics* 53:186-97. Stephen Ansolabehere and Eitan Hersh, (2011), “Who Really Votes?,” in *Facing the Challenge of Democracy*, ed. Paul M. Sniderman and Benjamin Highton, Princeton: NJ: Princeton University Press.

<sup>11</sup> Seth C. McKee, M.V. Hood III, and David Hill (2012), “Achieving Validation: Barack Obama and Black Turnout in 2008,” *State Politics and Policy Quarterly* 12:3-22.

<sup>12</sup> McKee, Hood, and Hill (2012).

<sup>13</sup> Benjamin J. Deufel and Orit Kedar (2010) “Race and Turnout in U.S. Elections: Exposing Hidden Effects,” *Public Opinion Quarterly* 74:286-318. McKee, Hood, and Hill (2012). Stephen Ansolabehere and Eitan Hersh (2013), “Gender, Race, Age, and Voting: A Research Note,” *Politics and Governance* 1:132-7.

McDonald carefully works through available data to compute voter turnout in the highest office on the ballot as a percentage of the voting age population. His methodology and data are publicly available at [elections.gmu.edu](http://elections.gmu.edu). For the 2012 general election he reports turnout at 64.6% in North Carolina and 59.7% in Mississippi. North Carolina ranked 11th highest nationally (and second only to Virginia among states in the South). Mississippi ranked below the median at 26th nationally.<sup>14</sup>

Given the sizes of the black populations in these states and historical patterns, it is simply not credible to conclude that black registration and turnout rates have been higher in Mississippi than in North Carolina. This is why my expert report avoided use of CPS data for making voter turnout comparisons between blacks and whites in North Carolina or between groups in different states.

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<sup>14</sup> Mississippi is notorious for lagging behind most other states in how well its elections are run, including levels of voter registration and turnout. For the 2012 election, the Pew Center on the States' Election Performance Index ranked it last out of all 50 states (and the District of Columbia). See [http://www.pewstates.org/uploadedFiles/Flash\\_Library/PCS/Interactives/ElectionsPerformanceIndex/template.html#state-MS](http://www.pewstates.org/uploadedFiles/Flash_Library/PCS/Interactives/ElectionsPerformanceIndex/template.html#state-MS) (last visited April 29, 2014).