

Multiple Documents

Part	Description
1	30 pages
2	Exhibit 1 - First Trende Rep.
3	Exhibit 2 - Trende Supplement
4	Exhibit 3 - Second Trende Rep.
5	Exhibit 4 - Trende Dep. Excerpts
6	Exhibit 5 - Burden Sur-Rebuttal
7	Exhibit 6 - Burden Rep.
8	Exhibit 7 - Gronke 2014 Sur-reply
9	Exhibit 8 - Hood Dep. Excerpts
10	Exhibit 9 - Stewart 2014 Surrebuttal
11	Exhibit 10 - Dep. Ex. 117
12	Exhibit 11 - Dep. Ex. 116
13	Exhibit 12 - Dep. Ex. 110
14	Exhibit 13 - Dep. Ex. 109
15	Exhibit 14 - Bernstein et al.
16	Exhibit 15 - McKee et al.
17	Exhibit 16 - Dep. Ex. 378

EXHIBIT 5

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
Judge Thomas D. Schroeder
Magistrate Judge Joi Elizabeth Peake

March 24, 2015

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

Barry C. Burden, Ph.D.

I submitted a report in this case to explain how the disparate impacts of SL 2013-381 on minority voters in North Carolina implicate Section 2 of the Voting Rights Act. In this sur-rebuttal, I respond to the declarations of M.V. Hood III and Sean P. Trende.

Response to M.V. Hood III

Using Voter Turnout Inappropriately to Assess the Burdens of SL 2013-381

Professor Hood’s report examines how the voter ID requirement in SL 2013-381 is likely to affect voter turnout. He dismisses the notion that an unequal burden that could be imposed by such a law is consequential in itself. Rather, Professor Hood asserts that “ID disparity only matters; [sic] however, if it ultimately causes a gap in voter turnout” (3/16/15 Hood Decl. ¶ 26). This is not a comprehensive or effective indicator of the law’s impact.

My report does not conclude that SL 2013-381 will necessarily have an instantaneous effect on the relative rates of voter turnout for whites, blacks, and Latinos. I instead contend that minority voters are “more likely to be deterred or prevented from voting by the new law” (2/12/15 Rep. at 1) and that the law is “likely to exacerbate differences in political participation of whites on the one hand[,] and[] black and Latino residents on the other” (*id.* at 4). That is because SL 2013-381 imposes “lopsided costs [that] cumulate across the various provisions to create hurdles that are more significant for blacks and Latinos” (*id.* at 6) and “leads to a more significant cumulative burden that disproportionately falls on the minority population” (*id.* at 26).

I do not claim that the effect of the law can be assessed by examining voter turnout *per se*. In fact, using rates of voter turnout to evaluate how the law reflects on the Senate factors is misleading. As I explain at length in section F of my report, simply comparing elections that took place before and after the implementation of the law is mostly uninformative because doing so does not measure the burden that the law imposes, only whether certain individuals were willing and able to overcome those hurdles (*id.* at 29-30). As I explain, in an earlier era “poll taxes were deemed to be unconstitutional even though some black residents managed to pay them and vote” (*id.* at 29). Professor Hood’s approach, therefore, makes a fundamental methodological mistake by assuming that all other factors are held constant rather than controlling them directly or examining the burden of the law.

As Professor Hood, Mr. Trende, and I agree, voter turnout is the result of multiple variables. If the many forces that affect voter turnout—factors such as campaign efforts, the characteristics of candidates and issues involved, and mobilization activities by groups—could all be held fixed, it would be possible to observe in a rather direct fashion the degree to which a law influences voter turnout. However, if those factors are not adequately controlled, then any results are likely to be spurious due to the confounding influences of other variables. This is a widely understood concern that must be considered in any serious social scientific analysis. As my report explained, comparing the 2010 and 2014 general elections without accounting for other factors that might have

changed between the two elections will falsely attribute all of the change to SL 2013-381. This is precisely the mistake that Professor Hood makes throughout his report.

Elections Chosen by Hood for Analysis Are Uninformative and Misleading

Professor Hood examines recent elections in North Carolina and several other southern states to assess the effects of SL 2013-381 and how strict photo ID laws generally affect voter turnout.

The elections Professor Hood analyzes are a set of primary elections, special elections, and general elections in Georgia, Mississippi, South Carolina, Texas, and North Carolina. His analysis of these elections, however, is problematic for several reasons.

Elections in Other States

First, most of the elections in Professor Hood's analysis involved highly selective participation by a small number of voters. Voters in these contests are not representative of the general electorate and are least likely to be deterred or dissuaded by costs imposed by the state. By my approximate calculations, none of the elections analyzed by Professor Hood saw turnout higher than 20% and several were below 10%. Therefore, it is problematic to generalize about how the photo ID provisions in SL 2013-381 will operate in a statewide general election based on several elections in three states where 80% to 90% of voters did not participate.

Professor Hood's examination of the 2014 general elections in Mississippi, South Carolina, and Texas are more meaningful, but they too were low turnout events that do not generalize to the more intense presidential elections in more politically competitive states such as North Carolina. Turnout was 29% in Mississippi, 35% in South Carolina, and 28% in Texas. These are some of the lowest rates in the country¹ and the lowest in those same states in years.²

In such low turnout elections, the voters most likely to be impeded by a strict photo ID law are already less likely to participate. Voters who participate in lower profile elections tend to possess characteristics that make them least likely to have their voting habits interrupted by a change in the law. Put in terms of the calculus of voting, voters in low turnout elections have more of the resources needed to overcome the "costs" of voting and see more benefit from participating. In contrast, the electorate in a presidential contest includes voters who do not participate in other elections, who are by definition marginal and more likely to be influenced by costs imposed by election laws. Thus, it is inappropriate to generalize these low turnout elections selected by Professor Hood to a broader set of federal elections.

¹ See the figure in "The Worst Voter Turnout in 72 Years," The Editorial Board, *The New York Times*, November 11, 2014, <http://www.nytimes.com/2014/11/12/opinion/the-worst-voter-turnout-in-72-years.html> (last visited March 20, 2015).

² See <http://www.electproject.org/2014g> (last visited March 20, 2015).

Second, most of the electoral activity in Professor Hood's select set of elections was focused on Republican candidates and the Republican Party. But Latino voters are more likely to vote in Democratic primaries; this is even truer for black voters.³ Professor Hood's analyses are mostly studies of white voters. In all three states that Professor Hood considers (Mississippi, South Carolina, and Texas), the primaries either saw higher participation in the Republican balloting or were exclusively for Republican voters. Participants in these unrepresentative, idiosyncratic, low-turnout races involve mostly highly resourced white voters. Thus, these elections have little to say about the burdens of SL 2013-381 on minority voters or its likely effects on turnout in a general election.

Third, in Professor Hood's analysis of Georgia, most of the data analysis is misleading. He investigates the effects of Georgia's voter ID law by comparing the 2004 and 2008 elections (3/16/15 Hood Decl. Tables 2 and 3). This initially seems like a reasonable approach because 2004 and 2008 are the two presidential elections that bracketed the adoption of the law. However, this overly simplistic method suffers from what social scientists call a "confound," specifically the problem of "history."⁴ In other words, there are other forces working simultaneously that make it inappropriate to conclude that the photo ID law is the only factor responsible for changes in turnout. This makes the analysis unreliable for determining the causal effects of the law.

Specifically, the 2008 election differed from 2004 in two important ways that are distinct from the photo ID law. First, Barack Obama was on the ballot in 2008. As the first black candidate to be nominated by a major political party, his candidacy generated unusually high levels of enthusiasm and participation among black voters. Second, Georgia was much more politically competitive in 2008. The final vote share margin between the two parties fell from 16.6 percentage points in 2004 to 5.2 percentage points in 2008. This made Georgia the seventh most competitive of the 50 states and helped to increase campaign activity and voter participation. Because of Obama's presence on the ballot and a more competitive campaign environment, it is unsurprising that black turnout rates in Georgia increased between 2004 and 2008 despite the introduction of the voter ID law. Professor Hood's inference from this data that voter ID did not impose a significant barrier to participation is unwarranted. As I explain later in this report, Georgia's voter ID law is much more accommodating than North Carolina's, so comparing the two states directly is problematic.

Fourth, Figure 1 of Professor Hood's report compares black and white turnout in the 2000-2006 period (before the photo ID law was in effect) to the 2008-2014 period

³ As but one reminder of the overall preference among these groups for Democratic candidates, the 2012 national election exit polls indicate that the share voting Democratic for president was 41% among Anglos, 71% among Latinos, and 93% among blacks.

⁴ Concerns about the "history" threat to causal inference and related confounds are standard topics covered in courses on empirical research design. The classic statement appears in the textbook, Donald T. Campbell and Julian Stanley (1963), *Experimental and Quasi-Experimental Designs for Research*, Chicago, IL: Rand McNally.

(after the photo ID law was in effect).⁵ This approach is problematic because it lumps together presidential elections (in which black turnout is often close to white turnout) and midterm elections (when white turnout often far exceeds black turnout). It also places both of the Obama elections, which “did bolster black turnout” (3/16/15 Hood Decl. ¶ 41), in the “after” category. As a result, any disproportionate effect that the voter ID law had on black turnout is masked by the mobilizing effects of the Obama candidacy and cannot be disentangled from Professor Hood’s misguided comparison. Figure 2 improves on this approach by limiting the analysis to midterm elections, but it too does not account for other factors that influence turnout, and thus improperly assumes that turnout rates are a perfect reflection of the burden imposed by Georgia’s voter ID law.

North Carolina Election Analysis

Professor Hood presents voter turnout rates by race in the 2010 and 2014 Democratic primaries in North Carolina (3/16/15 Hood Decl. Table 13). As with the Georgia analysis, this would seem like a sensible way to assess any disparate effects caused by SL 2013-381 (minus the voter ID requirement). Unfortunately, there are two problems with these simple comparisons. First, although black turnout increased and white turnout decreased, there remains a disparity of 22 percentage points in the turnout rates of the two groups in 2014 (37.3% versus 59.1%).⁶ Second, although both were midterms, the 2010 and 2014 elections differed in many ways, including ways that had racial consequences. As I highlight later in this report, the 2014 election was far more intense and featured significant efforts to mobilize black voters.

The 2014 U.S. Senate primary featured a black candidate in the U.S. Senate primary where there had only been white candidates in 2010. In addition, the unusual primary in the 12th congressional district featured two simultaneous and highly visible primaries involving black candidates. To fill a vacancy, there was a regular primary and an election to fill an unexpired term. The former was a seven-way contest with turnout of 34,623 and the latter was a six-way contest with turnout of 33,850.⁷ Both featured several black candidates and the victor in both contests was a black candidate. In 2010, the incumbent faced no opposition and a Democratic primary election was not even held in the district.

Mischaracterization of Specific Voter ID Laws

The value of Professor Hood’s analysis is further undermined by the substantive differences between the Georgia and North Carolina voter ID laws. Professor Hood compares photo ID laws in four states in Table 1. The Xs in the table imply that North Carolina’s photo ID law is at least as accommodating as the laws in Georgia, South

⁵ Professor Hood does not explain how he estimated turnout for each election period. I assume that he averaged the four elections in each period, but no summary measure compensates for the fundamental problems with his approach.

⁶ Professor Hood does not report turnout for Latinos.

⁷ See http://enr.ncsbe.gov/ElectionResults/?election_dt=05/06/2014 (last visited March 19, 2015).

Carolina, and Texas. But the final row conceals a great number of acceptable forms of ID that are allowed in Georgia under the heading of “Federal/State/Local Government Employee ID,” that are not acceptable for voting in North Carolina, including forms of ID that have nothing to do with employment. As Professor Hood acknowledges, this includes “any ‘valid photo ID from any branch, department, agency, or entity of the U.S. Government, Georgia, or any county, municipality, board, authority or other entity of this state’ including state universities and colleges (3/16/15 Hood Decl. ¶ 20 (citations omitted)). Acceptable forms of ID in Georgia thus include a wide range of federal employee IDs, Georgia employee IDs, county employee IDs, municipal employee IDs, and 62 state universities and colleges’ IDs.⁸ The dozens, or perhaps scores, of IDs permitted in Georgia make the law much more forgiving than North Carolina’s. In addition, Georgia’s law allows the use of driver’s licenses that are expired. Even if Professor’s Hood’s analysis of the effects of the Georgia law was methodologically sound, I would not expect the conclusions to transfer to North Carolina.

Next, Professor Hood describes the ID exception for absentee voters as an “accommodation” because an excuse is not required to vote by mail (*id.* ¶ 9). In contrast, my report showed that the absentee exception is “tenuous,” runs contrary to the State’s interest in reducing voter fraud, and disproportionately benefits white voters, who are more likely to use the provision (2/12/15 Rep. at 23-24 & Table 2). While the exception is surely helpful for some voters, it requires those voters who are unable to acquire ID to vote using a particular method. A person who votes absentee must also act earlier and with more effort to vote. The voter or a “near relative” must complete an absentee ballot request form, and submit it to a county elections office by 5:00 p.m. on the Tuesday before the election. After receiving the ballot, it must be marked in the presence of two witnesses or one notary public witness before the voter submits it to the election authority.⁹ The voter must also acquire and pay postage to mail the absentee ballot back to the Board of Elections.

An Uneven Review of Scholarly Research

Professor Hood conducts a review of scholarship on the effects of voter ID laws on voter turnout (3/16/15 Hood Decl. ¶¶ 27-39). As I briefly explained in my report, these studies are not particularly informative in this case, for two reasons.

First, the studies, such as Rocha and Matsubayashi’s article,¹⁰ inappropriately lump together quite different kinds of ID laws, much in the way that Mr. Trende does in his report.

Second, Erikson and Minnite’s article demonstrates that the inability to establish the statistical significance of voter ID laws is largely an artifact of limited statistical

⁸ See <http://sos.ga.gov/admin/files/acceptableID.pdf> (last visited March 20, 2015).

⁹ See <http://www.ncsbe.gov/ncsbe/absentee-voting-mail> (last visited March 20, 2015).

¹⁰ Rene R. Rocha and Tetsuya Matsubayashi (2014), “The Politics of Race and Voter ID Laws in the States: The Return of Jim Crow?,” *Political Research Quarterly* 67:666-79.

power.¹¹ In particular, they remind researchers that there are simply too few states with comparable laws to produce precise estimates, at least as of the time they wrote the article in 2009. As they warn, “[u]ntil we have more experience with restrictive voter ID laws that are already on the books, and therefore, more data to analyze, survey findings and database matching showing thousands, perhaps millions of citizens lacking government-issued photo ID should raise red flags for policy-makers and voting rights advocates alike that these laws could prevent eligible voters from voting” (Erickson at 98).

Although he surveyed older studies, it is surprising that Professor Hood did not review the most recent analysis of how voter ID laws affect turnout conducted by the U.S. Government Accountability Office (GAO).¹² Professor Hood is no doubt aware of the GAO report because it was published in September 2014, cites his work, and is described in my report. It is a high quality analysis that relied on a team of trained social scientists and allowed potential critics to comment on the result in a transparent fashion. Using a quasi-experimental design, a careful selection of comparison states, and multiple data sources, the study found that strict photo ID laws decreased generally voter turnout. More relevant for this case, the report concluded that photo ID laws decreased black turnout by 1.5 to 3.7 percentage points more than that of whites. The GAO report also summarizes additional academic studies that were excluded from Professor Hood’s review.¹³

Limited Value of Provisional Ballot Data

Professor Hood also examines use and treatment of provisional ballots in other states with strict voter ID laws. This suffers from the fundamental problem of excluding people who did not attempt to vote because they lacked ID, and thus fails to account for the law’s deterrent effect. As Professor Hood himself has noted, studying provisional ballots to evaluate the effects of a voter ID law “does not capture voter suppression that may be associated with the implementation of such as statute” and “[t]hose lacking photo ID who may be been deterred from attempting to cast an in-person ballot are not captured by this measure.”¹⁴ In addition, some voters will choose not to cast a provisional ballot when they are informed at the polling place that it is their only option. Accordingly, he chose not to report the evidence he gathered on provisional ballots in his own article.

Evidence of Racial Polarization

¹¹ Robert S. Erikson and Lorraine C. Minnite (2009), “Modeling Problems in the Voter Identification-Voter Turnout Debate,” *Election Law Journal* 8:85-101.

¹² U.S. Government Accountability Office, “Issues Related to State Voter Identification Laws,” September 2014, Washington, DC.

¹³ See the listing on p. 121-3 of the GAO report.

¹⁴ M.V. Hood III and Charles S. Bullock III (2012), “Much Ado about Nothing? An Empirical Assessment of the Georgia Voter Identification Statute,” *State Politics & Policy Quarterly* 12:394-414, p. 411.

Professor Hood tries to dismiss my conclusion that North Carolina elections display high levels of racial polarization (3/16/15 Hood Decl. ¶ 94). It is true that partisanship plays an important role in contributing to the voting choices of blacks and whites. This is why my report examines voting in the 2008 Democratic presidential primary. By “holding party constant,” an analysis of primary voting reveals racial polarization without the confounding influence of partisanship. In that election the gap between black and white voting rates for Barack Obama was 54 percentage points, larger than generally all other demographic factors and on par with the gaps observed in general elections where partisanship is a factor. Professor Hood ignores this evidence.

Latinos in the General Assembly

Professor Hood claims that there are two Latinos rather than one Latino serving in the state legislature (3/16/15 Hood Decl. ¶ 98). This is debatable. North Carolina Center for Public Policy Research specifically names only one Hispanic in the 2011-2012 session of legislature (Daniel McComas, who left the legislature in 2012) and specifically does not list Marilyn Avila (who appears elsewhere on the page).¹⁵ One national organization indicates that there were two Latinos in the state legislature in 2011, one of whom was probably McComas.¹⁶ A recent media report states that as of mid-2014 only one member of the state legislature – Senator Tom Apodaca – was Latino.¹⁷ I documented in my report that Senator Tom Apodaca does not consider himself Hispanic. Depending on how one identifies Latinos, the number in the General Assembly could plausibly be zero, one, or two out of 170 members. Regardless of which number is correct, the share of Latinos serving in the state legislature falls below their share of the electorate and thus does not impact my conclusion about underrepresentation. Latinos comprise about 3% of the state’s eligible voter population.¹⁸

Response to Sean P. Trende

Mis-portrayal of How Habit Affects Voter Turnout

Mr. Trende’s declaration contends that black voters will 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 report suggests that black turnout rates in North Carolina have risen to levels similar to those of whites because of a complex combination of increasingly competitive campaigns, Barack

¹⁵ See <http://www.nccppr.org/drupal/content/articleiiipage/nc-legislature/1086/demographics-and-leadership-of-the-nc-house> (last visited March 20, 2015).

¹⁶ See <http://almanac.usli.org/states/north-carolina/> (last visited March 23, 2015).

¹⁷ See <http://www.wral.com/few-women-latinos-in-general-assembly/13784129/> (last visited March 23, 2015).

¹⁸ See <http://www.pewhispanic.org/2012/10/01/latinos-in-the-2012-election-north-carolina/> (last visited March 23, 2015).

Obama's candidacy, and favorable election practices that expanded opportunities to vote, many of which were eliminated or reduced by SL 2013-381. As a result of these forces, black voters have indeed "adapted" to the use of election practices 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 recent presidential elections. The 2008 and 2012 elections are the only general elections in North Carolina's 225-year history in which black turnout exceeded white turnout. In recent midterm elections, including 2014, however, black turnout continued to lag behind white voters, as Mr. Trende observes. In line with research cited in my report on the calculus of voting and the habitual nature of electoral participation, I expect that 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 voting habits and establish barriers that must be overcome with resources that blacks are less likely to possess.

Next, Mr. Trende references a scholarly journal article in which my coauthors and I examine how the introduction of various election laws affects voter turnout (3/16/15 Trende Decl. ¶ 50). He attempts to use our conclusions to argue that the North Carolina election measures repealed by SL 2013-381 would not decrease voter turnout. This logic is flawed in two ways.

First, our study did not examine the relative effects of election laws on different racial and ethnic groups. That was not the purpose of the study.

Second, it is inappropriate to draw inferences from our study to situations where voting opportunities are removed. In our study, we examined how the *introduction* of "convenience voting" options such as early voting or SDR affects turnout. In contrast, this litigation is about the *elimination* of such options after reliance on these options by voters is formed.

Based on scholarly research that conceives of voting as a "habit," I expect the removal of options being used by voters to have quite different effects than when they are introduced. Once a person becomes a voter, he or she tends to remain a regular voter, at least in major elections and as long as the process remains the same.¹⁹ This is because the voting process displays "context stability" when it remains unchanged from one election to the next.²⁰ 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

¹⁹ 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.

²⁰ John H. Aldrich, Jacob M. Montgomery, and Wendy Wood (2011), "Turnout as a Habit," *Political Behavior* 33:535-63.

altered, it disrupts the habit. Unsurprisingly, as I explained in my report, research has shown that voter participation is deterred when people move, when polling places are relocated, when they are forced to vote by mail rather than in person, when new registration requirements are imposed, and when they are drawn into new legislative districts (2/12/15 Rep. at 4-6). This case is not about whether North Carolina should offer new convenience options for voters, but instead whether it should be permitted to eliminate *existing* options that have been actively used by voters and disproportionately relied on by black voters. In my testimony during the preliminary injunction hearing I offered an analogy between voting options and transportation options.²¹ Being provided an additional way to travel to one's workplace each day may be a convenience, but it does not require a change in behavior. In contrast, removing a method of travel is a serious disruption that requires a person to change their behavior regardless of how difficult it might be.

Statistical Analysis Has Multiple Flaws That Bias It Toward Finding Insignificant Results

Mr. Trende attempts a statistical analysis to determine the effects of election laws on black voter turnout. After wading through many simple comparisons of states with and without various provisions, he conducts a multivariate regression analysis based on recent data from the states. That analysis could be informative in this case if it carefully measured the variables of interest and controlled for potentially confounding influences so that the effects of specific election laws could be detected. This is not an easy task and Mr. Trende's analysis falls short of being conclusive, even if one believed that turnout is the proper metric for evaluating whether provisions of SL 2013-381 violate the Voting Rights Act.

It is not surprising that the bottom line of his statistical analysis is that early voting has no effect on black voter turnout. The array of regression models that are reported on pages 72 and 73 suggest no relationship between early voting and black turnout. But these models suffer from inadequate sample sizes, measures of turnout that are filled with error and bias, and measures of election laws that are inappropriate.

First, those models are "underpowered" statistically because of the small sample sizes. With data from only about two-thirds of the states (3/16/15 Trende Decl. Fig. 12), it is difficult to estimate coefficients precisely enough to judge them as statistically significant.

Second, state estimates of black turnout from the Current Population Survey ("CPS") have low reliability because they are based on small sample sizes that render them less reliable (3/16/15 Trende Decl. ¶ 235). Mr. Trende does not report margins of error or confidence intervals for the turnout estimates in Figure 12 even though they are quite consequential due to small sample sizes. For example, black turnout in Arizona is estimated in 2012 as 46.0% with a margin of error of 12.6 percentage points; the 2000

²¹ Direct examination by Bridget O'Connor, July 9, 2014, Volume 3, p. 122-3.

estimate is 32.7% with a margin of error of 16.2 points.²² Pennsylvania is estimated in 2012 as 65.2% with a confidence interval of 5.6 points; in 2000 the estimate is 61.3% with a confidence interval of 6.3 points. Mr. Trende computes the *difference* between these numbers, which magnifies the sampling error. It is widely understood among quantitative social scientists that error in the dependent variable induced by small sample sizes unfortunately harms the efficiency of the model and biases the results against finding statistically significant results.²³

Third, the CPS estimates of turnout among blacks have been shown to be problematic due to overreporting of turnout, particularly in the 2012 election. Later in this report I document this problem in more detail.

Fourth, the regression models do not consider the *combined* effects of provisions in SL 2013-381. As my coauthors and I have demonstrated in peer-reviewed research,²⁴ combinations of laws such as same day registration and early voting often operate differently than each law on its own. Early voting, for example, does little to lessen the registration burden unless it is paired with same day registration.

Mr. Trende makes the mistake of lumping together considerably different kinds of laws into a single category. For example, he lists 19 states that require photo ID to vote (3/16/15 Trende Decl. ¶ 55). As noted in my discussion of Professor Hood's report, these laws vary substantially from one state to another in ways that make a meaningful difference. His approach forces the North Carolina photo ID law to be equivalent to that in, among other states, Rhode Island. But Rhode Island's law permits a far broader range of IDs than North Carolina, including those issued by any U.S. educational institution (including those outside the state), cards issued by the U.S. government or state government (including such things as a municipal bus pass), and a government-issued medical card—none are which are acceptable for voting under SL 2013-381.²⁵ In addition, a Rhode Island voter who is unable to provide proof of identity may cast a provisional ballot that will be counted if the voter's signature on the provisional ballot application matches the signature on the voter's registration form. The National Conference of State Legislatures (NCSL) categorizes Rhode Island along with several other states that Mr. Trende lists as being "non-strict;" the NCSL does not even consider the New Hampshire and South Carolina laws as requiring a photo ID.²⁶

²² I assume that Mr. Trende is relying on estimates for citizens who identify as "black alone" in the CPS. This is found in Table 4a for 2000 and Table 4b for 2012 for each election year at the web sites that Mr. Trende references (3/16/15 Trende Decl. ¶ 148).

²³ For a textbook-style summary of this issue, see Gary King, Robert O. Keohane, and Sidney Verba (1994), *Designing Social Inquiry: Scientific Inference in Qualitative Research*, Princeton, NJ: Princeton University Press, p. 150-68.

²⁴ 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.

²⁵ See <http://sos.ri.gov/elections/voterid/acceptableID/> (last visited March 20, 2015).

²⁶ See <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> (last visited March 20, 2015).

Mr. Trende compounds this problem by adding up the number of election laws in a state into a “laws” index. This problematically makes the availability of same day registration, early voting, and voting out of precinct of exactly equal value when it comes to affecting voter turnout.²⁷ His modeling strategy blithely ignores important differences across the states in how laws such as voter ID operate and demands that having Election Day registration in Minnesota contributes to voter turnout to the exact same degree as pre-registration for 16- and 17-year-olds in the District of Columbia. After building the “laws” index, he finds that the index has an insignificant relationship with black turnout when comparing the 2000 and 2012 elections (3/16/15 Trende Decl. ¶¶ 221-24). This is unsurprising given the many problems with the analysis discussed above.

Use of Black Voter Turnout Estimates that Are Known to be Biased

Mr. Trende compares black turnout rates in North Carolina and Mississippi to argue that SL 2013-381 would have little to no effect on black participation rates. As he states, “[i]f 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 experienced similar increases in African American registration and participation.” (3/16/15 Trende Decl. ¶ 159.) This statement is incorrect for two reasons.

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. Whether SL 2013-381 would put North Carolina in or out of the “mainstream” in terms of election laws adopted in other states is somewhat beside the point. Each state has a unique historical and demographic profile. My report does not address whether existing laws made black turnout “increase dramatically.” Instead, I contend that SL 2013-381 would disproportionately burden black and Latino voters by imposing new restrictions that particularly disrupt and restrict the voting of minority residents.

Second, Mr. Trende’s analysis relies on data from the November election supplements of the CPS. The CPS is a valuable and widely used resource for understanding patterns in voter registration and turnout. As Mr. Trende 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 “tend to be systemic” (3/16/15 Trende Decl. ¶ 165). That is, Mr. Trende is implying that although the CPS might generally overestimate participation rates, that problem affects all parts of the country and all subpopulations equally. That is not the case.

²⁷ Contrary to Mr. Trende’s assertion (3/16/15 Trende Decl. ¶ 240), claiming that the provisions in SL 2013 have a “cumulative” impact in burdening voters does not justify simply summing them into a single index that assume they all have equal effect.

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.²⁸ 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.²⁹ McDonald further documents the inaccuracies in CPS data in a recent academic paper.³⁰ Related research concludes that CPS turnout estimates were inflated due to disproportionate overreporting by black respondents in the South.³¹ They find that Mississippi has some of the highest overreporting rates in the country. This conclusion conforms with research that repeatedly show more overreporting of turnout by blacks than by whites.³²

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 although white turnout in North Carolina is estimated quite accurately by the CPS, 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” as Mr. Trende asserts, the CPS errors vary in consequential ways according to the size of the black population in each state. (3/16/15 Trende Decl. ¶ 165).

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.		

²⁸ 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 March 21, 2015).

²⁹ 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 (last visited March 21, 2015).

³⁰ 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.

³¹ 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.

³² 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.

“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.

Given the size 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 report avoided use of CPS data for making voter turnout comparisons between blacks and whites in North Carolina or between groups in different states. I highlighted the problem in my response to Mr. Trende’s 2014 report, but he continues to use data that are known to be severely biased.

Concern About Using the Word “Obama” a Sufficient Number of Times

Mr. Trende is concerned that I do not use the word “Obama” a sufficient number of times, pointing to just three references in my initial report (3/16/15 Trende Decl. ¶ 35). It is unclear how the number of mentions of the President’s name affects my argument that many factors, including campaign activity, affect voter turnout. The final section of my recent report (2/12/15 Rep. Section F) highlights a number of campaign activities in the 2014 election, when Barack Obama was not on the ballot in North Carolina. For example, I report that campaign spending in 2014 was 7.4 times the level in 2010, the number of campaign TV ads was 7.8 times as much as in 2010, and there were specific and substantial efforts to increase black turnout in what became a much closer election than in 2010. Mr. Trende does not engage this material.

General Information

Court	United States District Court for the Middle District of North Carolina; United States District Court for the Middle District of North Carolina
Federal Nature of Suit	Civil Rights - Voting[441]
Docket Number	1:13-cv-00660