EXHIBIT 1

Exhibit 1

Plaintiffs' Exhibit 44

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, *et al.*, *Plaintiffs*, v. ROY ASBERRY COOPER III, in his official capacity as the Governor of North Carolina, *et al.*, *Defendants*.	No. 1:18-cv-01034

PRELIMINARY EXPERT REPORT OF ALLAN J. LICHTMAN FOR PURPOSES OF PRELIMINARY INJUNCTION

CONFIDENTIAL DRAFT, ATTORNEYS ONLY

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I. STATEMENT OF PURPOSE

I have been asked to consider whether S. 824's requirement of voter photo identification and increased number of challengers was enacted with the *intent* to discriminate against African American would-be voters (collectively "African American") in North Carolina. My expected fee in this matter is $500 per hour. I have enclosed an updated CV and a table of cases in which I have provided written or oral testimony.

II. QUALIFICATIONS

This study draws on my experience in voting rights litigation and expertise in political history, political analysis, and historical and statistical methodology. I am Distinguished Professor of History at American University in Washington, D.C., where I have been employed for 45 years. Formerly, I served as Chair of the History Department and Associate Dean of the College of Arts and Sciences at American University. I received my BA in History from Brandeis University in 1967 and my Ph.D. in History from Harvard University in 1973, with a specialty in the mathematical analysis of historical data.

I am the author of numerous scholarly works on quantitative methodology in social science. This scholarship includes articles in such academic journals as *Political Methodology*, *Journal of Interdisciplinary History*, *International Journal of Forecasting*, *and Social Science History*. In addition, I have coauthored *Ecological Inference* with Dr. Laura Langbein, a standard text on the analysis of social science data, including political information. I have published articles on the application of social science analysis to civil rights issues. This work includes articles in such journals as *Journal of Law and Politics*, *La Raza Law Journal*, *Evaluation Review*, *Journal of Legal Studies*, and *National Law Journal*. My scholarship also includes the use of quantitative and qualitative methods to conduct contemporary and historical studies, published in such academic journals as *Proceedings of the National Academy of Sciences*, *American Historical Review*, *International Journal of Forecasting*, *International Journal of Information Systems & Social Change*, and *Journal of Social History*.

Quantitative and historical analyses also ground my books, including, Prejudice and the Old Politics: The Presidential Election of 1928, The Thirteen Keys to the Presidency (co-authored with Ken DeCell), The Keys to the White House, White Protestant Nation: The Rise of the American Conservative Movement, and FDR and the Jews (co-authored with Richard Breitman). My most recent books are The Case for Impeachment, and The Embattled Vote in America: From the Founding to the Present. This latter book, published in September 2018 by Harvard University Press, examines the history and current status of voting rights in America.

My book, *White Protestant Nation*, was one of five finalists for the National Book Critics Circle Award for the best general nonfiction book published in America. My book, *FDR and the Jews*, was published under the Belknap Imprint of the Harvard University Press, reserved for works of special significance and lasting impact. This book was an editor's choice book of the New York Times in 2013, the winner of the most prestigious prize in American Jewish Studies, the National Jewish Book Award, and a finalist for Los Angeles Times Book Prize in history. My book, *The Case for Impeachment* was an independent bookstore bestseller. In 2018, I was the

winner of the Alfred Nelson Marquis Life Time Achievement Award for top 5% of persons included in Marquis WHO'S WHO.

I have worked as a consultant or expert witness for both plaintiffs and defendants in more than ninety voting and civil rights cases. My work includes more than a dozen cases for the United States Department of Justice and cases for many civil rights organizations. I have also worked as a consultant or expert witness numerous times for state and local jurisdictions. In the U. S. Supreme Court case, *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006), the majority opinion written by Justice Kennedy authoritatively cited my statistical work. My work includes testimony in several cases for plaintiffs and defendants on the issues of intentional discrimination in the adoption of state redistricting plans and photo identification laws.

I have considerable expertise in voting rights matters in the state of North Carolina. Among other cases, I testified for the prevailing parties in the challenge to North Carolina's 2013 Voter Information Verification Act (VIVA), which included a photo voter ID provision. (*North Carolina State Conference of NAACP v. McCrory*, 1:13CV658 (M.D.N.C.)) and in the challenge to North Carolina's post-2010 state legislative redistricting plan *Sarah Little Covington v. North Carolina*, 316 F. R. D. 117, 176 (M.D.N.C. 2016), where I testified on the racial packing of districts. In the *NAACP* litigation my testimony, as in this matter, focused on intentional discrimination. I have also testified on the issue of intentional discrimination for both plaintiffs and defendants in several other cases. These include, *Committee for a Fair and Balanced Map, et al. v. Illinois State Board of Elections,* 835 F Supp 2d 563 (N.D. Ill. 2011), *State of Texas v. United States and Eric H. Holder*, 887 F. Supp. 2d 133 (D.D.C. 2012), *Perez v. Texas*, 891 F.Supp.2d 808 (2012), *Veasey v. Perry*, 71 F.Supp.3d 627 (2014), *One Wisconsin Institute v. Thomsen*, 198 F.Supp.3d 896 (2016), *Lee v. Virginia Board of Elections*, 188 F. Supp. 3d 577 (E.D. Va. 2016), *Feldman v. Arizona Secretary of State's Office*, 2:16-cv-01065 (2016), *Anne Harding v. County of Dallas, Texas*, No. 3:2015cv00131 (N.D. Tex. 2018).

III. EVIDENCE, METHODOLOGY, AND SUMMARY OF OPINIONS

My analysis draws upon the North Carolina State Board of Elections' online data base of registration statistics, as well as the individual voter files provided by the state. The report additionally draws upon other sources standard in historical and social scientific analysis. These include scholarly books, articles, and reports; newspaper and other journalistic articles; demographic and socio-economic information; election returns; voter registration and turnout data; court opinions, briefs, and reports; emails and letters; government and organizational documents; and scientific surveys and studies.

The report closely follows the methodological guidelines of the United States Supreme Court in *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977). In *Arlington Heights*, the Court focused on five non-exhaustive actors that are relevant to ascertaining intentional discrimination. These include the historical background for the current decisions, the discriminatory impact of challenged law, the sequence of events leading to the current decision; procedural and substantive deviations from the normal decision-making process, and contemporaneous viewpoints expressed by decision-makers.

This litigation involves special circumstances because of the previous enactment of photo voter ID by the General Assembly in 2013 and the 2016 Fourth Circuit opinion that found it had both the effect and intent of discriminating against African Americans. Given these circumstances and consistent with the considerations of the Arlington Heights framework, this report will probe the issue of intent by first considering the recent history of voter ID in North Carolina and examining the recent actions by the North Carolina General Assembly that demonstrate racially discriminatory intent in enacting the 2018 constitutional amendment and enabling legislation for a voter photo ID requirement. It then explores the discriminatory effects of voter photo ID and the substantive changes to the current law from earlier versions that demonstrate discriminatory intent and effect. It traces the sequence of events leading to adoption of the constitutional amendment and S. 824 and substantial procedural deviations in the rushed process of enactment. It considers historic and ongoing discrimination against African Americans in North Carolina and its lingering effects in substantial social-economic disparities between whites and African Americans. The report concludes with a study of the justifications by decision-makers for the new initiative on voter photo ID. This latter consideration is especially important for explaining how the current effort fails from the same infirmities that the Fourth Circuit identified for the 2013 legislation.

The purpose of this report is not to make legal conclusions, but to establish substantive findings about discriminatory intent. The *Arlington Heights* methodology is consistent with standard causal analysis in history, which I have followed in my substantive scholarship and written about in my theoretical work (*see* Section II, above). As in historical scholarship the *Arlington Heights* factors, although not exhaustive establish the context for an intent analysis.

My major opinions are summarized below:

1. ***The Recent History Of Voter ID In NC And Actions By The North Carolina General Assembly Demonstrate Continuing Racially Discriminatory Intent in Adopting the Voter Photo ID Constitutional Amendment and Legislation That the Fourth Circuit Found in Its Adoption of the Voter Information and Verification Act (VIVA, H. 589) in 2013***

Evidence of the consistency of the intent is clear from statements by the legislative sponsors of Voter ID in 2018.

- At no time did the legislative leaders who created H. 589 disavow or renounce the discriminatory intent of H. 589; on the contrary, they denounced the Fourth Circuit decision on racial intent as mistaken or politically motivated and insisted that they had adopted a "good law" in 2013.

- Within days of the Supreme Court's denial of the General Assembly's petition for certiorari in *NAACP v. McCrory*, the Republican caucus announced that they would begin work on passing a new photo voter ID bill.[1]

- Racial intent is also evident from the partisan and racial gerrymandering of legislative districts, which enabled the enactment of S. 824. Many of the same legislative leaders and members who led the efforts to enact H. 589 led or participated in the development of SB824. All of the Republicans who voted for H. 589 in 2013 and remained in the legislature in 2018 also voted for the constitutional amendment, the enabling legislation (S. 824), and the override of the governor's veto intent.

- The Republicans in the General Assembly cloaked their racial intent with a constitutional amendment to insulate discriminatory action from effective court review. The Republican Chair of the House Elections Committee publicly revealed that leadership would seek to enact the photo voter ID requirement as a state constitutional amendment to "mute future court challenges."[2]

- The waning strength of white voters in North Carolina combined with racially polarized voting provides motivation for Republicans in the General Assembly to limit the voting power of African Americans.

- The General Assembly maintained its super-majority in both chambers through illegal racial and partisan gerrymanders and by deceiving a federal court about its capacity to redraw districts in 2017 in time for a special election. The supermajority gave it the three-fifths needed to propose a constitutional amendment and the ability to override the governor's veto of S. 824.

During the same time period, the legislature considered but failed to adopt a measure to remove the literacy test from the North Carolina constitution, reduced early voting by imposing uniform hours state-wide, and eliminated Saturday early voting.

All of these instances, considered cumulatively, demonstrate that the same unconstitutionally gerrymandered North Carolina legislature in 2018 acted not only to readopt voter photo ID, but also acted other times as well to reduce the voting influence of African Americans. This clear record of multiple, consistent actions all aimed at reducing the political power of African Americans is indicative of intent. The legislature undertook these actions with full knowledge that these laws would reduce the voting power of African Americans.

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[1] Blythe, Anne, Supreme Court won't rescue NC voter ID law; GOP leaders say they will try again with new law, THE NEWS & OBSERVER (May 15, 2017), available at http://www.newsobserver.com/news/politics-government/politics-columns-blogs/under-the-dome/article150554992.html.

[2] Tiberii, Jeff, NC Lawmakers Consider Another Voter ID Bill, WUNC, (July 13, 2017), available at https://www.wunc.org/post/nc-lawmakers-consider-another-voter-id-bill.

2. The Impact of SB824 Bears More Heavily on African Americans than Whites in North Carolina

Multiple sources of data demonstrate that voter photo ID as adopted by the General Assembly disproportionately impacts African Americans as compared to whites.

- The State Board of Elections' own recent matching evidence confirms that African Americans and others are far less likely than whites to be unmatched to unexpired DMV IDs, the most common form of photographic identification.

- Additional evidence from a standard political survey, the Survey of the Performance of American Elections (SPAE) demonstrates that African Americans as compared to whites have a substantially lower possession of the photo IDs authorized in S. 824, including driver's licenses, U.S. passports, tribal, military and veteran's IDS, student IDs, and state and local government issued IDs.

- The survey data also indicates that public assistance IDs, which like the 2013 law, the 2018 law excludes, would have reduced the disparity in ID possession between whites and blacks.

- Evidence from the 2016 presidential primary elections, the only contest in which voter photo ID was in effect, indicated that this requirement disenfranchised 1,353 registered voters in North Carolina who lost the right to vote, even though they showed up at the polls.

- The impact of this disenfranchisement fell much more heavily on African Americans than whites.

- A recent study specific to North Carolina by Stanford University researchers, published online in July 2019, documents that voter photo ID has a substantial effect on deterring voters from going to the polls and that this effect falls most heavily on minority voters.

3. The Substance Of S. 824 Reveals An Intent To Create The Appearance Of Addressing Some Of The Factors Identified By The Court Of Appeals As Indicia Of Racial Intent, While In Practice Preserving And Even Enhancing The Core Elements And Discriminatory Impact Of VIVA (H. 589)

- Core discriminatory elements were retained including rejecting public assistance IDs, non-employee state IDs, US Naturalization Certificates, federally issued IDs, with the exception of military and veteran's IDs, and IDs for firemen, EMS (Emergency Medical Services) and hospital workers and law enforcement personnel, (unless they possessed an authorized state or government employee ID).

- Added discriminatory elements include substantially reducing the duration for expired IDs from four years to one year and eliminating drivers' permits.

- The legislators thus only partially addressed the exclusions the Fourth Circuit found evidenced "surgical" racial intent. And while college student and state government IDs were authorized, the new law includes onerous requirements that must be met for these forms of ID to be acceptable.[3]

4. The Sequence of Events Leading to Enactment of the Voter ID Law

- As noted above, the sequence of events included a continuation of the declining white voter strength that was already evidenced in 2013, and a continuation of racially polarized voting.

- Racial disparities in voting in North Carolina far exceed disparities for other politically salient characteristics of voters, such as sex, age, education and income. This relationship holds true both for *black versus white* and broadly for *all non-whites versus whites*.

- New evidence on racial polarization comes from a survey of voting positions on the constitutional amendment in 2018. Contrary to assertions by backers of voter photo ID that it had strong support across racial lines, a substantial minority of whites, but only a small minority of African Americans and all minorities backed the amendment.

- The adoption of voter photo ID in 2018 followed a long sequence of efforts to adopt such legislation, including a major revision of H. 589 in 2013 after the Supreme Court struck down preclearance under the Voting Rights Act. This revision made the photo ID requirement far more restrictive than before.

- As in earlier efforts, there was Republican solidarity in both chambers on the 2018 constitutional amendment, enabling legislation, and veto override.

- The sequence of events also includes the Fourth Circuit opinion on H. 589, that Republicans in the General Assembly sought to circumvent in 2018. It also included additional evidence from an updated 2014 State Board of Elections matching analysis which showed that African Americans were much less likely than whites to be matched to photo DMV IDs. The Fourth Circuit opinion and evidence that African American voters would be disproportionately burdened by the forms of ID allowed under S. 824 was (1) available to the legislators who enacted Voter ID in 2018, (2) in the public record; and (3) referenced in the debates surrounding the bill.

5. Substantial Procedural Deviations from Normal Decision-Making Process

Like the enactment of VIVA, the adoption of S. 824 is marked by substantial procedural deviations in a rushed an unusual process.

[3] *See* S.B. 824, Section 1.2(b).

- The General Assembly adopted the constitutional amendment quickly with no chance for extensive review, unlike the nearly one-year process that the legislature had implemented when first considering photo ID six year earlier.

- The General Assembly adopted the constitutional amendment without indication of its implementation.

- The General Assembly unusually adopted the constitutional amendment along with five other amendments at the same time.

- The General Assembly that enacted implementing legislation in the lame duck session in the fall of 2018 was weeks away from being replaced by a new General Assembly elected in November 2018 under district maps adopted to remedy the unconstitutional racial gerrymander.

- The process to approve the implementing legislation was even more rushed than the implementation of the 2013 VIVA legislation.

- The Republican majority circumvented the ability of Democrats to introduce ameliorating amendments.

- The Republican majority sharply restricted the opportunity for critics of photo voter ID in the public to provide input.

- There was no public policy reason for Republicans in the General Assembly to rush through either the constitutional amendment or the implementing legislation. Republicans had been considering the adoption of new voter photo ID laws for several years and there were no regularly scheduled statewide elections in 2019.

6. Historic and Ongoing History of Discrimination Against African-Americans

- The 2018 enactment of a new voter photo ID law followed a long and ongoing history of discrimination against African Americans in North Carolina.

- This ongoing history is reflected in persistent racially polarized voting and substantial socio-economic disparities between African Americans and whites in North Carolina, which impacts the availability of acceptable photo voter ID under the newly enacted statute.

7. Evidence of Pretext

- Both the General Assembly's actions and statements made it clear that their justification for the new law were pretextual and that they were pursuing the same racial intent as in 2013.

- Republican House Speaker Tim Moore publicly acknowledged that a non-photo voter ID law would meet all of the state's interests. Yet, he was instrumental in pushing through the General Assembly the 2018 photo ID-only law, just as he had been in 2013, rejecting alternative non-photo ID options.

- Republican leaders presented a pretextual and inconsistent position on rejecting public assistance IDs, saying that it did not control federal IDs which are not uniform. Yet it accepted veteran's IDs which it did not control and were not uniform and rejected state-issued public assistance IDs as well as non-military federal IDs.

- In placing a voter photo ID requirement in the constitution, the General Assembly of North Carolina did not conform to standard practice. Only one other state – Mississippi – has a voter photo ID amendment in its constitution.

- Republican leadership in the General Assembly asserted that photo voter ID was needed to address in-person voter fraud, even though legislators possessed new definitive evidence from the State Board of Elections that voter impersonation at the polls was essentially non-existent in North Carolina, with just one outlier case out of nearly 4.8 million ballots cast in the 2016 general election. Members of the General Assembly presented no evidence that the use of non-photo forms of ID would facilitate voter fraud as compared to photo-only IDs.

- Members of the General Assembly presented no evidence that voter ID was needed to uphold the integrity of elections. They made essentially the same arguments, with no new evidence, that the Court of Appeals had rejected in 2016.

- Although the legislature went to great lengths in attempting to solve the non-problem of voter impersonation at the polls, as in 2013, it avoided addressing the issue of electoral fraud through absentee balloting. The General Assembly only considered individual absentee ballot fraud when compelled to do so when confronted by egregious absentee ballot election fraud uncovered in the 2018 election in the 9th Congressional district. Only then did it require photo ID to validate absentee ballots, which are disproportionately cast by whites.

- The claim that North Carolina was conforming to the practice of other states fails because only a third of the states had voter photo ID, and only Mississippi had such a requirement in its constitution.

- The argument that voter photo ID is common sense because of the need for such IDs in other contexts is factually in error.

IV. THE RECENT HISTORY OF VOTER ID IN NC AND THE RECENT ACTIONS BY THE NORTH CAROLINA GENERAL ASSEMBLY DEMONSTRATE RACIALLY DISCRIMINATORY INTENT IN ENACTING S. 824

The overall history, context and circumstances underlying the enactment of S. 824 provide several lines of evidence indicating a racially discriminatory intent. The Fourth Circuit court of

appeals already in 2016 concluded that the General Assembly acted with discriminatory intent in enacting H. 589 in 2013. The legislative leaders of the effort to enact S. 824, many of whom were also leaders of the effort to enact H. 589, make clear in their own statements that they still endorse the 2013 law, believe the court's decision striking H. 589 was incorrect, and that their 2018 voter ID law was developed not to cure the flaws in H. 589 that rendered it discriminatory, but to pass essentially the same law and render it immune from judicial review. Moreover, indicia of discriminatory intent are also evident from other contemporaneous actions by the state legislature to arrest their declining voting power by limiting the voting power of African American and minority voters, most notably the actions to implement a partisan, and racially-biased, gerrymander of legislative districts.

A. Fourth Circuit Found Discriminatory Intent in 2013 Voter ID Law

In 2016 the Fourth Circuit court of appeals concluded that the North Carolina legislature enacted a photo voter identification law in 2013 based on racially discriminatory intent in violation of the Voting Rights Act. According to the court, the legislature, in the immediate aftermath of the Supreme Court decision *Shelby v. Holder* that struck down the pre-clearance provisions of the Voting Rights Act, "vastly expanded an earlier photo ID bill and rushed through the legislative process the most restrictive voting legislation seen in North Carolina since enactment of the Voting Rights Act of 1965."[4] It ruled that the provisions of the voter ID law "target African Americans with almost surgical precision," and provide "inapt remedies for the problems assertedly justifying them and, in fact, impose cures for problems that did not exist. Thus, the asserted justifications cannot and do not conceal the State's true motivation." [5]The Court concluded that "In sum, assessment of the Arlington Heights factors requires the conclusion that, at least in part, discriminatory racial intent motivated the enactment of the challenged provisions in SL 2013-381."[6]

According to the Fourth Circuit opinion, the evidence did "unmistakably reveal that the General Assembly used SL 2013-381 to entrench itself. It did so by targeting voters who, based on race, were unlikely to vote for the majority party. Even if done for partisan ends, that constituted racial discrimination."[7]

B. Legislative Leaders' Statements Demonstrate that the Same Intent Animates the 2018 Voter ID Law

Three years later, the North Carolina General Assembly enacted a new photo voter ID law. The consistency of the intent underlying S. 824 with the intent underlying H. 589 is clear from statements by the legislative sponsors of S, 824.oter ID. At no time did the legislative leaders who created H. 589 disavow or renounce the discriminatory intent of H. 589; on the contrary, they denounced the Fourth Circuit decision. Immediately after the McCrory decision was announced, Senate Leader Phil Berger and House Speaker Tim Moore issued a statement disparaging the

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4 *McCrory,* 831 F.3d at 227.

5 *Id.,* at 214.

6 *Id.,* at 233.

7 *Id*., at 233.

ruling, calling it a decision "by three partisan Democrats" with "the intent to reopen the door to voter fraud."[8] Similarly, Rep. David Lewis, the 2018 Chair of House Committee on Elections and Ethics Law who backed both the 2013 bill and the 2018 constitutional amendment on voter photo ID, said flatly in June 2018 shortly before voting for that amendment, "I think (the judge) was wrong."[9] On the day that Republicans filed a bill proposing the constitutional amendment, in a June 7, 2018 interview, Representative Moore defended the 2013 law by questioning the legitimacy of the Fourth Circuit opinion, saying that the district court ruling was appealed to the Circuit, "which unfortunately has a more liberal political bent … and in my opinion acted outside of what has been upheld by the U.S. Supreme Court in similar matters."[10]

Immediately after the U.S. Supreme Court declined to review the Fourth Circuit's H. 589 decision, two key legislative leaders responsible for H. 589 announced their plan for enacting a new photo voter ID requirement. As described by local news media: "Within hours of the release of the [Supreme Court] order, N.C. Republican Party leaders were calling for a new law that would incorporate some of the same ideas in a manner that they thought could withstand judicial review."[11] In a joint statement posted on N.C. House Speaker Tim Moore's Facebook page, he and Senate Leader Phil Berger said that "all North Carolinians can rest assured that Republican legislators will continue fighting to protect the integrity of our elections by implementing the commonsense requirement to show a photo ID when we vote."[12]

The legislative sponsors of S. 824 did not assert that S. 824 had different goals or objectives than H. 589 or indicate any intention to remedy the discriminatory effects identified by the Fourth Circuit. Rather, the legislative sponsors defended H. 589 and proposed S. 824 as a continuation of the effort to enact H. 589. Republican Representative Harry Warren said that "Now this last voter ID we passed required reasonable photo IDs." About a week before final passage of the proposed constitutional amendment in June 2018, Chairman Lewis said that "The reason we are asking voters if they want to do this or not is, frankly, we think we passed a good law before."[13]

The principal goal of the legislative leaders was to re-enact H. 589, but in a manner so as to protect it from judicial challenge. Representative Lewis attempted to justify the proposed

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[8] Blake, Paul, "Controversial North Carolina Voter ID Law Struck Down By Federal Appeals Court," *ABC News*, 29 July 2016, https://abcnews.go.com/Politics/controversial-north-carolina-voter-id-law-struck-federal/story?id=41000614.

[9] Brown, Joel, "Republicans Resurrect the Battle Over Voter ID in North Carolina,"*ABC11*, 11 June 2018, https://abc11.com/politics/republicans-resurrect-the-battle-over-voter-id-in-nc/3591863/

[10] "Interview: Rep. Time Moore on Proposed Voter ID Legislation,"*Spectrum News*, 7 June 2018, https://spectrumlocalnews.com/nc/triangle-sandhills/news/2018/06/07/tim-moore-interview.

[11] Blythe, Anne, Supreme Court won't rescue NC voter ID law; GOP leaders say they will try again with new law, THE NEWS & OBSERVER (May 15, 2017), available at http://www.newsobserver.com/news/politics-government/politics-columns-blogs/under-the-dome/article150554992.html

[12] *Id*.

[13] Tiberii, Jeff, "NC Lawmakers Consider Another Voter ID Bill," *WUNC*, 13 July 2017, https://www.wunc.org/post/nc-lawmakers-consider-another-voter-id-bill; "Bill Advances That Would Put Voter ID Referendum on November Ballot," NBC - 17 *WNCN*, 21 June 2018; Audio Transcript of Legislative Day 151, (House Floor Consideration of H. 1092) at 2:04:57 - 2:05:07 (June 25, 2018), available at https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018

constitutional amendment on the ground that the legislature had adopted a sound photo voter ID bill in 2013 and needed to replicate that effort. He said in July 2017, "We are a hundred percent committed to the idea of voter ID and we are still working out the logistics of what we believe to be the most sure-fired way to get voter ID implemented that will withstand the inevitable challenges that will come from the left."[14]

Representative Lewis stated that the purpose of enacting a Voter ID constitutional amendment was to "mute future court challenges."[15]Lawyer Gerry Cohen, who had served for four decades as Special Counsel to the General Assembly under both Democratic and Republican majorities said that, "What this amendment really is intended to do is to withdraw from the state court system or Supreme Court [which had a Democratic majority] the power to rule on voter ID."[16] Representative John Blust, in floor debate, similarly defended the constitutional amendment to protect it from judicial challenge. Blust stated that a constitutional amendment is required "so that the North Carolina Supreme Court can't simply get rid of it by saying 'Oh, the legislature just added an additional qualification to vote. It wasn't in our constitution, therefore, that law is null and void." Very simple. And the court could do that."[17]

C. Many of the Same Individual Legislators Lead 2013 Voter ID and 2018 Voter ID

Many of the same individuals who were leaders in sponsoring and enacting H. 589 in 2013 were also the principal legislators promoting the measure for a Constitutional Amendment, H. 1092, and the Voter ID law, S. 824. Representative Lewis was Chair of the House Elections Committee in 2013 and was Chair of the House Committee on Elections and Ethics Law in 2018. Representative Moore was a primary sponsor of H. 589 and Speaker of the House in 2018. Senator Warren Daniel, a staunch supporter of H. 589, was a primary sponsor of s. 824.

Not only did Republican votes enact photo voter ID in both 2013 and 2018, but as indicated in Table 1, a clear majority of Republicans, ranging from 53 percent to 64 percent who voted for the 2018 constitutional amendment, the implementing legislation, and the veto override had also been in the legislature in 2013 and voted for the post-Shelby voter ID legislation at that time. No Republican holdovers from 2013 voted against the 2018 voter photo ID constitutional amendment, the implementing legislation, or the veto override.

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[14] Tiberii, Jeff, NC Lawmakers Consider Another Voter ID Bill, WUNC, (July 13, 2017), available at https://www.wunc.org/post/nc-lawmakers-consider-another-voter-id-bill.

[15] *Id*.

[16] Clayton Henkel, Interview, "Gerry Cohen, Former Special Council to the North Carolina General Assembly,"Radio Interviews, *NC Policy Watch*, 19 August 2018, http://www.ncpolicywatch.com/2018/08/19/gerry-cohen-former-special-counsel-to-the-nc-general-assembly/.

[17] Audio Transcript of Legislative Day 151, (House Floor Consideration of H. 1092) at 2:49:46 - 2:50:04 (June 25, 2018), available at https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018

D. The Voting Strength of White Voters is Waning in the Context of Racially Polarized Voting

Critical to understanding the actions of the North Carolina General Assembly in enacting H. 589, in approving the referendum for the Constitutional Amendment and in passing the voter photo ID law is a sharp decline in white voting strength relative to African American voting strength and generally non-white voting strength since 2004. Also critical is a political realignment in North Carolina such that it is now Republicans, not Democrats, who benefit politically from limitations on the African American vote. These dual realignments of North Carolina's demographic voting base, and its political allegiances, help explain why the Republican-dominated state legislature enacted once again measures that place a disparate burden on African American voters relative to white voters in North Carolina. Data documenting both the decline of white voting strength and polarized voting is presented below in Section VII, A and B.

TABLE 1
NORTH CAROLINA REPUBLICANS STATE HOUSE AND SENATORS VOTING FOR PHOTO VOTER ID IN 2013 AND 2018

ROLL CALL VOTES IN 2018	# OF REPUBLICANS VOTING YES ON 2018 BILL & ALSO ON 2013 POST-SHELBY BILL	% OF REPUBLICANS VOTING YES ON 2018 BILL & ALSO ON 2013 POST-SHELBY BILL
SENATE: CONSTITUTIONAL AMENDMENT	21 of 33	64%
SENATE: IMPLEMENTATION	16 of 30	53%
SENATE VETO OVERRIDE	19 of 33	58%
HOUSE: CONSTITUTIONAL AMENDMENT	44 of 74	59%
HOUSE: IMPLEMENTATION	41of 67	61%
HOUSE: VETO OVERRIDE	42 of 72	59%

Sources: North Carolina General Assembly, 2013-2014 Session, House Bill 589, "Election Reform/VIVA," https://www.ncleg.gov/BillLookup/2013/h589; 2017-2018 Session, House Bill 1092, "Constitutional Amendment – Require Photo ID to Vote," https://www.ncleg.gov/BillLookup/2017/H1092; 2017-2018 Session, Senate Bill 824, "Implementation of Voter ID Constitutional Amendment," https://www.ncleg.gov/BillLookup/2017/S824.

E. The General Assembly Engaged in Racial and Partisan Gerrymandering and other Instances of discrimination against African Americans in Voting and Elections Since 2013

To address the declining voting strength of white voters, the North Carolina General Assembly took numerous measures to reduce the political power and voting strength of African American and other minority voters in recent years. One of the most significant of these efforts

is the purposeful, racially-based, drawing of gerrymandered legislative districts to maintain a Republican majority, which enabled the General Assembly to implement voter ID in 2018 and override the Governor's veto.

i. Racial and Partisan Gerrymandering of State Legislative Districts

In 2016, a three-judge federal court found that 28 state legislative districts in North Carolina were drawn as a result of an unconstitutional racial gerrymander.[18] The U.S. Supreme Court summarily affirmed this finding.[19] A subsequent three-judge court found that North Carolina had implemented one of the "largest racial gerrymanders ever encountered by a federal court."[20] Given an opportunity to remedy this violation, the North Carolina General Assembly drew new districts that were substantially similar to the constitutionally infirm districts. As a result, a court-appointed special master was required to redraw the districts. The Supreme Court affirmed these new districts in 2018, with the exception of 5 districts in Wake and Mecklenburg counties.[21]

New evidence emerged in 2019 indicating that after the 2017 *Covington* decision, Republican leaders of the General Assembly misled the federal court, other members of the General Assembly and the public about their capacity to redraw new state legislative districts in 2017 to remedy the discriminatory racial gerrymandering of state legislative districts as ordered by the court. After the U.S. Supreme Court decision on June 5, 2017, plaintiffs asked the district court to order the redistricting of the unconstitutional legislative lines in time for a special election prior to the next regularly scheduled elections in November 2018. A special election based on new districts could have threatened the GOP's supermajority in the General Assembly, which was necessary both for the passage of a proposed voter ID constitutional amendment and for an override of a gubernatorial veto of implementing legislation.

In their brief of July 6, 2017 opposing the drawing of district lines in time for a special election, legislative defendants argued that they had not yet begun work on a remedial plan and needed significantly more time to craft new districts. Defendants claimed that The General Assembly had not "start[ed] the laborious process of redistricting earlier" than July 2017;[22] that it had not been "necessary to begin the process" of drawing new districts "until at, the earliest, the end of the current Supreme Court term" on June 30, 2017;[23] and that "The General Assembly could

[18] *Covington v. North Carolina,* 316 F.R.D. 117, 124 (M.D.N.C.), aff'd 137 S. Ct. 221 (2017)

[19] *Id.*

[20] *Covington v. North Carolina*, 270 F. Supp. 3d 881, 884 (M.D.N.C. 2017).

[21] *Covington v. North Carolina*, 283 F.Supp.3d 410, 417-18 (M.D.N.C. 2018); *North Carolina v. Covington*, 138 S. Ct. 2548 (2018).

[22] *Covington v. North Carolina*, Legislative. Defendants.' Position. Statement, 6 July 2017, Document No. 161, at 28, https://www.brennancenter.org/sites/default/files/legal-work/Covington_LegislativeDefendantsPositionStatement.pdf.

[23] *Id*., at 29.

begin the process of compiling a record in July 2017 with a goal of enacting new plans by the end of the year."[24]

After the Court granted a delay in response to these representations, Republican leaders of the General Assembly during the subsequent process continued to insist that no redistricting plans of any kind had been drawn prior to meeting with plan-drawer Dr. Thomas Hofeller after July 31, 2017, when they claimed only to have discussed "redistricting concepts" which are preliminary to the drawing of an actual plan.

Representative Lewis made the following assertions at a July 26, 2017 hearing of the Joint Redistricting Committees:

REP MICHAUX: Are there any other maps that have not yet been released? For instance, anything that has been drawn by Dr. Hofeller or anybody else that you know of that have not yet been released?

REP. LEWIS: Not that I know of, sir.[25]

Representative Lewis made the following statements at an August 4, 2016 hearing of the Joint Redistricting Committees:

REP. MICHAUX: Can you assure this body right now that no redistricting maps have yet been drawn?

REP. LEWIS: I can assure this body that none has been drawn at my direction and that I have direct knowledge of. The only map I'm aware of was submitted by an independent group and presented to this committee last week. . . .

REP. MICHAUX: Just to be clear, I'm talking about anything that any chairman or members of the Republican Party or anybody. No map has yet been drawn that should be handed out here? I'm -- people are concerned about the fact -- they think you've already drawn the maps. I want to make sure, coming from you, that you have not yet drawn maps.

REP. LEWIS: Thank you for the question. I have not yet drawn maps nor have I directed that maps be drawn, nor am I aware of any other entity operating in conjunction with the leadership that has drawn maps.[26]

In a September 22, 2017 submission to the Covington court seeking approval of the 2017 Plans, Legislative Defendants further stated: "Shortly following this Court's order of July 31, 2017, the legislative leaders, Senator Ralph Hise and Representative David Lewis, met with the

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[24] *Id*., at 28-29.

[25] Quoted in *Common Cause, et al., v. David Lewis*, North Carolina, Country of Wake, Superior Court Division, 18CVS 014001, Common Cause Filing, Exhibit C, 5 June 2019, at. 9, https://www.commoncause.org/wp-content/uploads/2019/06/PLDG-Plaintiffs-Motion-for-Direction-6-6-19-1.pdf.

[26] *Id.*

map drawing consultant, Dr. Hofeller. Redistricting concepts were discussed with Dr. Hofeller as leaders made plans to comply with the Court's Order."[27]

New evidence that subsequently emerged from the files of the late Republican North Carolina plan-drawer Thomas Hofeller demonstrated that these claims, designed to avoid a special election that could threaten the Republicans super-majority in the state house and senate were demonstrably false and misleading. In fact, by June 2017 Hofeller had already *largely completed* the drawing of state house and senate plans that were nearly identical to the plans that the General Assembly adopted many months later. According to the Common Cause filings, "Specifically, the files show that Dr. Hofeller had already completed over 97% of the new Senate plan and over 90% of the new House plan by June 2017."[28]

In a September 3, 2019 decision a three-judge state court struck down North Carolina's 2017 state legislative plan as a partisan gerrymander in violation of the state constitution. The state court found that the General Assembly had intentionally packed Democrats into districts to diminish their voting strength elsewhere and "cracked" concentrations of Democrats to submerge them in Republican-favored districts. Ultimately the court concluded, "This case is not close. The extreme, intentional, and systematic gerrymandering of the 2017 Plans runs far afoul of the legal standards set forth above, or any other conceivable legal standard that could govern Plaintiffs' constitutional claims."[29] The 2017 plan, the court found sought to preserve the partisan gerrymander that the Republican majority in the General Assembly had avowedly adopted in 2011: "Legislative Defendants have stated in court filings that the 2011 Plans were 'designed to ensure Republican majorities in the House and Senate' ... Legislative Defendants asserted that they were 'perfectly free' to engage in constitutional partisan gerrymandering, and that they did so in constructing the 2011 Plans."[30]

This partisan gerrymander also diminished the opportunity for African Americans to elect candidates of their choice, given that in North Carolina African Americans overwhelmingly vote Democratic and whites predominantly vote Republican (see below).

In this decision, the state court validated the Common Cause contention that the Dr. Hofeller had largely completed what later became the General Assembly's redrafted district plan by June 2017 and had deceived the federal court about its capacity to complete the redrawing in time for a special election in 2017. The Court also found that this largely completed district plan that essentially became the final plan was, like the 2011 plan, largely drawn to achieve Republican

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[27] *Covington v. North Carolina*, Legislative Defendants' Response To Plaintiffs' Objections, 22 September 2017, Document No. 192, at 6, https://www.brennancenter.org/sites/default/files/legal-work/Covington_Defendants-Response-to-Plaintiffs-Objections.pdf

[28] *Common Cause, et al., v. David Lewis*, North Carolina, Country of Wake, Superior Court Division, 18CVS 014001, Common Cause Filing, Exhibit C, 5 June 2019, at. 10, https://www.commoncause.org/wp-content/uploads/2019/06/PLDG-Plaintiffs-Motion-for-Direction-6-6-19-1.pdf..

[29] *Common Cause, et al., v. David Lewis*, North Carolina, Country of Wake, Superior Court Division, 18CVS 014001, Judgement (September 3, 2019), at 341

[30] *Id.* at 12.

partisan advantage, without regard to neutral redistricting principles. Specifically, the Court reached the following conclusions:

"No party has disputed that the maps presented in Plaintiffs' 290 Exhibits 124-129, 131-133, and 140-147 accurately reflect the district boundaries in Dr. Hofeller's June 2017 draft plans and the final enacted plans."[31]

"Dr. Hofeller, and consequently the Legislative Defendants who retained him, by having largely completed the drafting of House and Senate maps by June 2017, did so with little regard for the Adopted Criteria, or the neutral, non-partisan criteria contained therein, which were not adopted by the Senate Redistricting Committee and House Select Committee on Redistricting until August 10, 2017, and provided to Dr. Hofeller on August 11, 2017."[32]

"Since Dr. Hofeller's files came to light, Legislative Defendants have asserted that they did not know at the time that Dr. Hofeller was developing draft maps prior to August 2017 or that Plaintiffs cannot "connect" Dr. Hofeller's draft maps to the General Assembly. See, e.g., Leg. Defs' Pre-trial Brief, p. 36. The Court finds this argument unpersuasive. Dr. Hofeller was retained by the General Assembly on June 27, 2017, for the purposes of drawing the 2017 House and Senate maps. PX641. The Court finds it highly improbable that in the days leading up to his engagement, or in the nearly six weeks following, Dr. Hofeller never mentioned his draft maps to anyone connected with Legislative Defendants until after he received the Adopted Criteria on August 11, 2017— especially since, merely eight or nine days later, Legislative Defendants were able to reveal final drafts of his House and Senate maps."[33]

"The Court is troubled by representations made by Legislative Defendants, or attorneys working on their behalf, in briefs and arguments to the Covington Court and to General Assembly colleagues at committee meetings that affirmatively stated that no draft maps had been prepared even as late as August 4, 2017. See, e.g., Covington, ECF No. 161 at 2, 4, 13, and 28-29; PX601 at 11-12; PX602 at 72-73; and PX629 at 3, 4, 6 and 10 (Covington, ECF No. 184). For the purposes of determining liability for the claims asserted in this litigation, the Court finds it unnecessary to delve further into these concerns, other than to note that the Court, as previously stated, is persuaded, and specifically finds, that Dr. Hofeller's intent and actions, as evidenced throughout his map-drawing process from at least early June 2017, are attributable in full to Legislative Defendants."[34]

The legislative defendants in *Covington* further misled the court and the public when they stated that "[D]ata regarding the race of voters was not used in the drawing of the districts, and, in fact, was not even loaded into the computer used by the map drawer to construct the districts." Republican Senator Ralph Hise said that "race was not part of the database. It could not be calculated on the system[.]" Representative Lewis added, "there was no racial data reviewed in the preparation of this map." Common Cause, however, affirmed that "the Hofeller files reveal that

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[31] *Id*., at 289-290.

[32] *Id*., at 290.

[33] *Id*., at 290.

[34] *Id*., at 290-291.

none of the above statements were true. Dr. Hofeller did have 'data on the race of voters' 'loaded into the computer' he used to 'construct the districts.' Dr. Hofeller's computer in fact appears to have had data regarding the racial composition of the proposed districts for each and every iteration of his draft maps."[35]

Moreover, "every Maptitude file with draft House or Senate districts from 2017—including draft maps from August 2017 after Legislative Defendants signed an engagement letter formally retaining Dr. Hofeller to create new maps—appears to have had racial data for the districts. Images from some of the Maptitude files even reveal that Dr. Hofeller apparently was displaying the black voting age population or "BVAP" of the new districts in some of the drafts. Dr. Hofeller also had racial data on the draft districts in Excel spreadsheets."[36] Representative Lewis responded implausibly that "I had no input on or control of any play maps Dr. Hofeller may have drawn on his personal computer on his own time,"[37] a demurrer that the state court panel rejected as indicated above.

The same Republican majority in the General Assembly, elected in 2016, that engaged in these deceptive practices was the one that along party lines enacted the proposed voter ID constitutional amendment and the implementing legislation, and voted to override the governor's veto. Significantly, recent media reports indicate that Hofeller, the same consultant on whom the GOP majority relied to draw partisan-gerrymandered districts using racial data, during this same period also analyzed the types of voter IDs possessed by College students in North Carolina.[38]

The racial and partisan gerrymander, and the deception that precluded a special election, likely made it possible for the General Assembly to propose the constitutional amendment on voter photo ID by a three-fifths vote and to override the governor's veto of the implementing law by the same three-fifths vote. By delaying the election of a new General Assembly under a remedial plan, Republicans likely retained this super-majority, which they lost in the first election after a plan to remedy the racial gerrymander was put in place in 2018. That left the unconstitutionally elected super-majority still in power during the 2018 lame duck session when the General Assembly passed the implementing law and overrode the veto.

ii. Other actions by the legislature to reduce the political and voting power of minority voters

During the same time period that the General Assembly enacted a racially discriminatory Voter ID law and engaged in unconstitutional and racially biased legislative gerrymandering, the

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[35] *Common Cause, et al., v. David Lewis*, North Carolina, Country of Wake, Superior Court Division, 18CVS 014001, Common Cause Filing, Exhibit C, 5 June 2019, at. 12, https://www.commoncause.org/wp-content/uploads/2019/06/PLDG-Plaintiffs-Motion-for-Direction-6-6-19-1.pdf

[36] *Id.* at 13.

[37] Michael Wines, "Deceased Strategist's Files Detail Republican Gerrymandering in North Carolina, Advocates Say," *New York Times*, 6 June 2019, https://www.nytimes.com/2019/06/06/us/north-carolina-gerrymander-republican.html.

[38] David Daley "The Secret Files of the Master of Modern Gerrymandering, *The New Yorker*, September 6, 2019 https://www.newyorker.com/news/news-desk/the-secret-files-of-the-master-of-modern-republican-gerrymandering,

General Assembly took other actions also aimed at reducing the voting power of African American voters. These actions included:

- In 2018, the Republican majority in the in North Carolina General Assembly overrode the veto of the Democratic governor to enact a new law that reduced the availability of places for early voting by nearly 20 percent (Senate Bill 325). The General Assembly adopted this law even as they were on warning from the Fourth Circuit's opinion in *NAACP v. McCrory* not to interfere with early voting, which is used disproportionately by African Americans in North Carolina. In its July 2016 opinion, the Fourth Circuit noted that "[e]arly voting thus increases opportunities to vote for those who have difficulty getting to their polling place on Election Day. The racial data provided to the legislators revealed that African Americans disproportionately used early voting in both 2008 and 2012. Id. at *136-38; see also id. at *48 n.74 (trial evidence showing that 60.36% and 64.01% of African Americans voted early in 2008 and 2012, respectively, compared to 44.47% 16 and 49.39% of whites)." Although there will be more hours for early voting as explained by Robert Stein, a professor of political science at Rice University, that does not offset the effects of reduced polling places for early voting: "There is a lot of good research to suggest that when it comes to having a positive effect on early voting turnout, the important things are not the hours of operation but the location of the polling place and the distance and travel time it takes a voter to get there."[39]

In a post-election assessment of the effects of Senate Bill 325 on the 2018 contests, Democracy North Carolina, found that even with the law had the following effects:[40]

> "After S325, 43 of North Carolina's 100 counties eliminated at least one Early Voting site, almost half reduced the number of weekend days, and about two-thirds reduced the number of weekend hours, compared to 2014.
>
> While 2018 was a high turnout election statewide compared to 2014, site changes chipped away at county-level performance, especially in rural counties where the distance between voters and Early Voting sites increased the most."

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[39] Moritz-Rabson, Daniel, "Almost Half of North Carolina Counties Shut Down Polling Places Used For Early Voting," *Newsweek,* 25 September 2018, https://www.newsweek.com/almost-half-north-carolina-counties-shut-down-polling-places-1136813, *NAACP v. McCrory* at 15-16; Blake Paterson, "Bipartisan Furor as North Carolina Election Law Shrinks Early Voting Locations by Almost 20 Percent," *ProPublica*, 24 September 2018, https://www.propublica.org/article/bipartisan-furor-as-north-carolina-election-law-shrinks-early-voting-locations-by-almost-20-percent; North Carolina General Assembly, Senate Bill 325/SL 2018-112, https://www.ncleg.gov/BillLookup/2017/S325.

[40] Frothingham, Sunny, "Greater Costs, Fewer Options: The Impact Of The Early Voting Uniform Hours Requirement In The 2018 Election," Democracy North Carolina, May 2019, https://democracync.org/research/greater-costs-fewer-options-the-impact-of-the-early-voting-uniform-hours-requirement-in-the-2018-election/.

> The Bill also eliminated voting on the last Saturday before the election, ending voting on Friday. In response to an outcry that his provision unfairly discriminated against minorities who disproportionately utilized weekend voting, the General Assembly restored Saturday voting for 2018. However, the enduring law eliminating Saturday voting remains on the books through this writing.[41]

Going forward, the Democracy North Carolina report warned of the implications of eliminating last Saturday voting:

"The last Saturday was the only weekend option in 56 of North Carolina's 100 counties in 2018 — meaning that without it, there may be no weekend voting in more than half of North Carolina counties in future elections.

The loss of the final Saturday will limit ballot access for voters across the state – more than two times the number of voters cast ballots, per hour, on the last Saturday compared to weekdays in 2018. The last Saturday garnered more than four times the 18- to 25-year old voters per hour than the weekday average.

The elimination of the last Saturday will disproportionately harm young voters, Black voters, Latinx voters, and voters in certain rural counties."[42]

All of these instances, considered cumulatively, demonstrate that the same unconstitutionally gerrymandered North Carolina legislature in 2018 acted not only to readopt voter photo ID, but also acted other times as well to reduce the voting influence of African Americans. This clear record of multiple, consistent actions all aimed at reducing the political power of African Americans is indicative of intent. The legislature undertook these actions with full knowledge that these laws would reduce the voting power of African Americans.

iii. Additional actions by the General Assembly indicative of discriminatory intent:

In addition to these initiatives that directly affected political opportunities for African Americans the general assembly also took two other relevant actions:

- In 2013, the same year that it enacted H. 589, the General Assembly considered but failed to place on the ballot a referendum repealing the state's literacy test constitutional provision. Although the 1970 amendments to the Voting Rights Act outlawed the use of literacy tests as a qualification for voting, North Carolina's Jim Crow era literacy test remains in the state constitution. In 2013, when the legislature

[41] Fain, Travis and Leslie, Laura, "Last Saturday of Early Voting Restored," WRAL, 29 June 2018, https://www.wral.com/last-saturday-of-early-voting-restored/17663081/.

[42] *Ibid*., Democracy North Carolina.

contemplated repeal, a repeal bill passed the State House without dissent but died in the Senate. The literacy test provision remains in the State constitution.[43]

- In 2016 the North Carolina General Assembly enacted H.B. 2, which among other provisions, barred alleged victims of workplace racial discrimination from pursuing their claims in state court. In 2017, the General Assembly repealed the provision of H.B. 2 that precluded state court action for employment discrimination claims but reduced the statute of limitations from three years to one year. The new law also blocks local governments in North Carolina from passing new anti-discrimination ordinances until December 2020.[44]

F. The General Assembly's Stated Rationales for a Photo ID Law are Inconsistent with the Facts and Therefore Pretextual

Individual lawmakers provided numerous rationales for enacting a voter ID law; none are consistent with the facts. For example, House Speaker Moore stated in 2018 that he could support a voter ID law that included non-photo forms of ID. Yet, he opposed an amendment that would allow use of non-photo IDs, and the law as enacted does not allow for non-photo IDs. Numerous legislators asserted that the law was needed to address in-person voter fraud, but no evidence of in-person voter fraud was presented during consideration of the Constitutional Amendment or of S. 824. Bill proponents alleged that a photo voter ID law was needed to restore voter confidence in the state elections system, but again provided no evidence either that confidence was lacking or that a photo voter ID law would increase public confidence. A more complete discussion of the shifting, inconsistent and pretextual justifications for the photo voter ID law is provided below in Section X.

V. DISCRIMINATORY EFFECT OF 2018 VOTER PHOTO ID LAW

A. As Compared to Whites, African Americans Disproportionately Lack Possession of Authorized Photo IDs Under S. 824

It was established in the prior litigation and recognized by the Fourth Circuit Court of Appeals that as compared to whites, African Americans disproportionately lacked unexpired Department of Motor Vehicles (DMV) IDs and US passports. Updated evidence shows that as compared to whites, African Americans are less likely to possess unexpired forms of DMV photo IDs, the most common form of photographic identification, but also unexpired US passports, and student photo IDs, and state government employee IDs, and tribal, and military and veteran's IDs that are included in the current voter photo ID law.[45]

In 2013 and 2014 the North Carolina State Board of elections matched individuals on the registration rolls with DMV records. This exercise produced a list of registered voters lacked a

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[43] H.B. 311, 2013-2014 Gen. Assemb., Reg. Sess. (N.C. 2013), https://www.ncleg.gov/BillLookup/2013/H311.

[44] Anderson, Zebulon D. and Korando, Kimberly J., "H.B. 2 is Repealed, But…What Does This Mean?<" "Smith Anderson, 06 April 2017, https://www.smithlaw.com/resources-publications-949.

[45] S.B. 8241/S.L. 2018-144, 2017-2018 Gen. Assemb., Reg. Sess. (N.C. 2018), https://www.ncleg.net/Sessions/2017/Bills/Senate/HTML/S824v7.html.

match with DMV photo IDs, the most common form of photographic identification. As demonstrated below, the two matching exercises, which were available to the General Assembly when it adopted the constitutional amendment and implementing legislation for voter photo ID in 2018 demonstrated that black registered voters as compared to whites were substantially overrepresented among those unmatched to DMV IDs.

Since that time the Board has conducted a new matching analysis based on current registration and DMV information. This analysis was provided by counsel from information sent by Paul M. Cox, Special Deputy Attorney General, on September 6, 2019. The information sent by Mr. Cox linked to a spreadsheet of unmatched registered voters, but unlike prior analyses by the state did not include a memo explaining the methodology in detail or provide a breakdown of unmatched registrants by race. The racial breakdown was independently obtained by reference to the voter registration files.

This new state analysis differed from prior matching because it included those matched to expired DMV IDs. This is an important change, because the current law authorizes for voting only DMV IDs that are expired for a year or less. This new matching greatly expanded the number of unmatched registered voters to 617,029, nearly double the largest number of unmatched in any prior analysis (318,643). However, the new analysis still matches to learner's permits, which as explained below are not authorized for voting in S. 824. It also matches to those who possessed only temporary DMV IDs. Thus, many of those matched to DMV IDs do not actually possess IDs that they can use for voting in North Carolina. As a result, the racial disparities may also be yet greater than indicated in the 2019 data provided by the state.

The report of Professor Michael Herron for this litigation provides a detailed analysis of this new matching analysis by the state. The Herron report demonstrates 1) that African Americans and other minorities were substantially more likely than whites to be included among registered voters unmatched to DMV IDs and 2) that these racial disparities are consistent across the counties of North Carolina.[46]

A respected independent study that is standard in political analysis, the Survey of the Performance of American Elections (SPAE), provides a broader analysis of racial disparities in photo ID possession. It asks specific questions about the possession of photo identification. This data enables us to track closely racial disparities in the IDs authorized for voting under S.L. 2018-144. The only difference is that it does not ask whether student and state and local government IDs are expired. It does query about the expiration of driver's licenses and passports. Thus, the analysis encompasses unexpired driver's licenses and passports, tribal IDs, military and veteran's IDs, tribal IDs, in-state college and university IDs, and in-state local or state government IDs. By combining surveys from 2012, 2014, and 2016 the sample size for North Carolina is sufficiently large for reliable racial comparison.

As indicated in Table 2 and Chart 1, the SPAE results demonstrate substantial disparities between whites and blacks (non-Hispanic) in the possession of photo IDs. Only 4.1 percent lacked all of the included photo IDs, compared to 15.1 percent of African Americans for a disparity of

[46] *See* Preliminary Expert Report of Michael C. Herron for Purposes of Preliminary Injunction, *North Carolina State Conference of NAACP v. Cooper,* No. 1:18-cv-01034 (M.D.N.C.)

11.0 percentage points. These disparities are statistically significant at standard levels in social science.

As demonstrated in Table 3 and Chart 2, adding public assistance IDs makes a major difference for the possession of IDs by African Americans and for the percentage point difference between African Americans and whites. The percentage of whites lacking photo IDs drops by just 0.9 percentage points from 4.1 percent to 3.2 percent. However, the percentage of African Americans lacking photo IDs drops much more substantially, from 15.1% to 8.4%. The percentage point difference between whites and African Americans drops by more than half from 11.0 percent to 5.2 percent.

Analysis of those who said they definitely voted in the election year of the SPAE survey – those most directly impacted by the photo voter ID legislation -- further discloses racial disparities in photo ID possession. According to the data reported in Table 4 and Chart 3, Only 3.0 percent lacked all of the included photo IDs, compared to 11.3 percent of African Americans, for a disparity of 18.3 percentage points. These disparities are statistically significant at standard levels in social science. Once again, the racial disparities diminish substantially when picture public assistance IDs are included. As indicated in Table 5 and Chart 4, the percentage of voting whites lacking photo IDs drops only slightly from 3.0% to 2.3%, whereas the percentage of voting blacks lacking photo IDs drops much more substantially from 11.3% to 6.2%. The black/white disparity declines by more than half, from 8.3 percentage points to 3.9 percentage points.

TABLE 2
PERCENT OF WHITES & BLACKS NORTH CAROLINA WITH PHOTO IDS: UNEXPIRED DRIVER'S LICENSE, UNEXPIRED PASSPORTS, MILITARY AND TRIBAL IDS, IN-STATE STUDENT IDS AND IN-STATE STATE OR LOCAL GOVERNMENT IDS

SURVEY OF THE PERFORMANCE OF AMERICAN ELECTIONS, 2012, 2014, 2016

GROUP	PERCENTAGE WITH ID	PERCENTAGE WITH NO ID	PERCENTAGE POINT DIFFERENCE WHITE-BLACK NO ID
WHITE	95.9%	4.1%	NA
BLACK	84.9%	15.1%	**11.0 percentage points**

Sources: Survey of the Performance of American Elections (SPAE), 2012, 2014, 2016, https://dataverse.harvard.edu/dataverse/SPAE.

CHART 1: PERCENT OF WHITES AND BLACKS NORTH CAROLINA WITH AND WITHOUT DRIVER'S LICENSES, PASSPORTS, MILITARY AND TRIBAL IDS, IN-STATE STUDENT IDS AND IN-STATE STATE OR LOCAL GOVERNMENT-ISSUED IDS

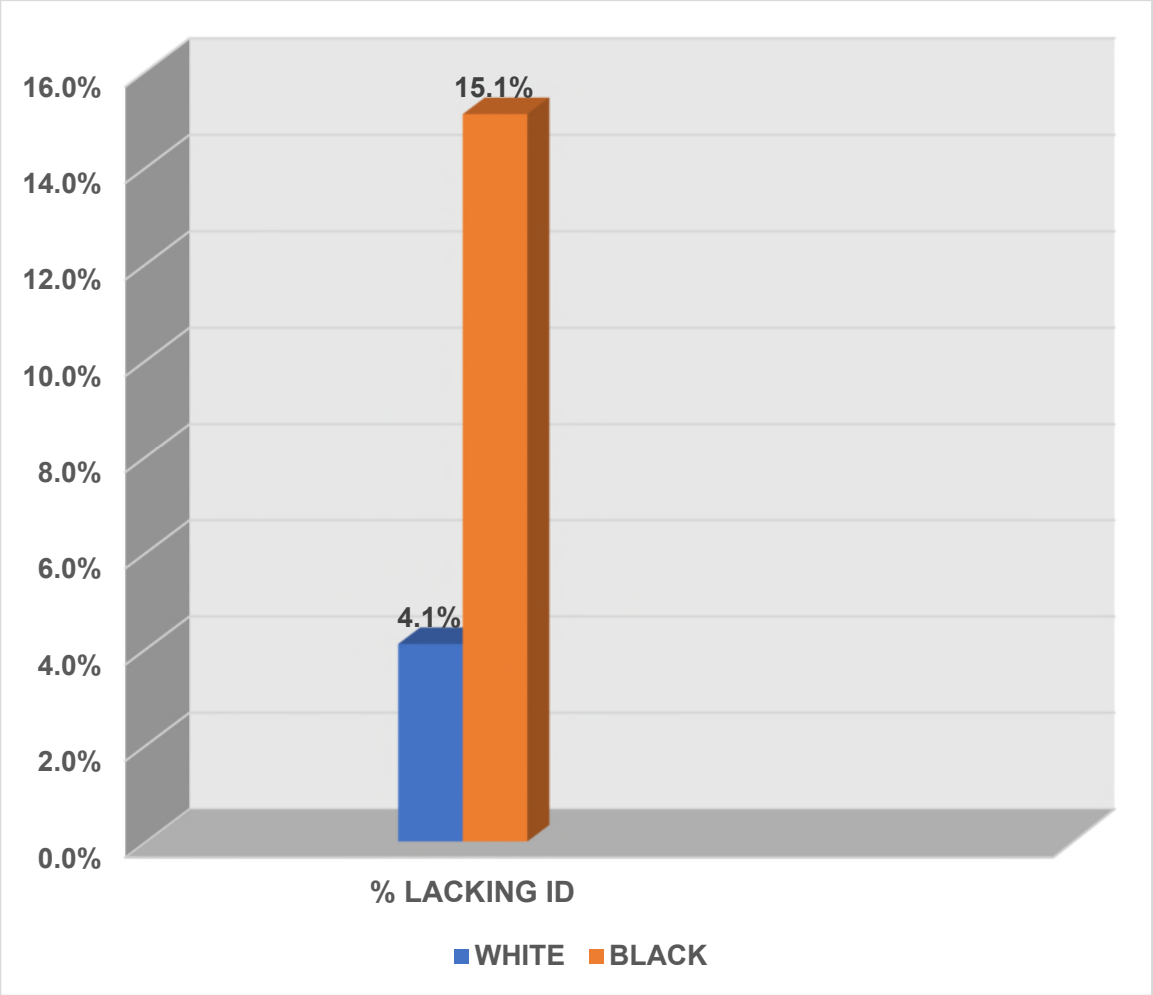


TABLE 3 PERCENT OF WHITES & BLACKS NORTH CAROLINA WITH PHOTO IDS: UNEXPIRED DRIVER'S LICENSE, UNEXPIRED PASSPORTS, MILITARY AND TRIBAL IDS, IN-STATE STUDENT IDS AND IN-STATE OR LOCAL GOVERNMENT IDS + PUBLIC ASSISTANCE IDS			
GROUP	PERCENTAGE WITH ID	PERCENTAGE WITH NO ID	PERCENTAGE POINT DIFFERENCE WHITE-BLACK NO ID
WHITE	96.8%	3.2%	NA
BLACK	91.6%	8.4%	5.2 percentage points

CHART 2: PERCENT OF WHITES AND BLACKS NORTH CAROLINA LACKING DRIVER'S LICENSES, PASSPORTS, MILITARY AND TRIBAL IDS IN-STATE STUDENT IDS AND IN-STATE LOCAL OR STATE GOVERNMENT-ISSUED IDS + PUBLIC ASSISTANCE IDS, 2012-2016

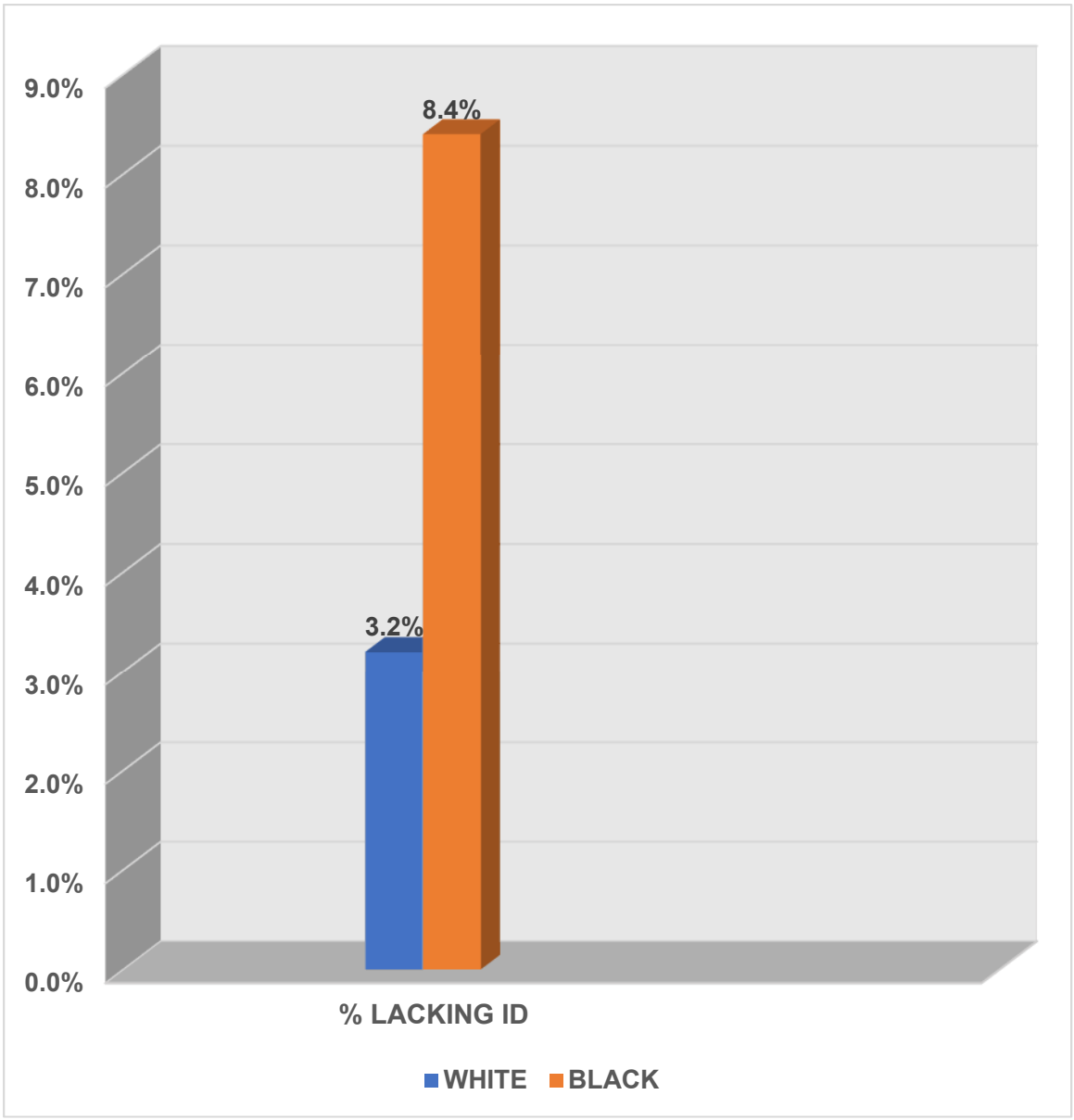


TABLE 4
PERCENT OF WHITES & BLACKS NORTH CAROLINA WHO VOTED IN YEARS OF SPAE SURVEY, WITH PHOTO IDS: UNEXPIRED DRIVER'S LICENSE, UNEXPIRED PASSPORTS, MILITARY AND TRIBAL IDS, IN-STATE STUDENT IDS AND IN-STATE STATE OR LOCAL GOVERNMENT IDS

SURVEY OF THE PERFORMANCE OF AMERICAN ELECTIONS, 2012, 2014, 2016

GROUP	PERCENTAGE WITH ID	PERCENTAGE WITH NO ID	PERCENTAGE POINT DIFFERENCE WHITE-BLACK NO ID
WHITE	97.0%	3.0%	NA
BLACK	88.7%	11.3%	**8.3 percentage points**

Sources: Survey of the Performance of American Elections (SPAE), 2012, 2014, 2016, https://dataverse.harvard.edu/dataverse/SPAE.

CHART 3: PERCENT OF WHITES AND BLACKS NORTH CAROLINA WHO SAID THEY VOTED IN YEAR OF SPAE SURVEY, WITH AND WITHOUT DRIVER'S LICENSES, MILITARY AND TRIBAL IDS, PASSPORTS, IN-STATE STUDENT IDS AND IN-STATE LOCAL OR STATE GOVERNMENT-ISSUED IDS

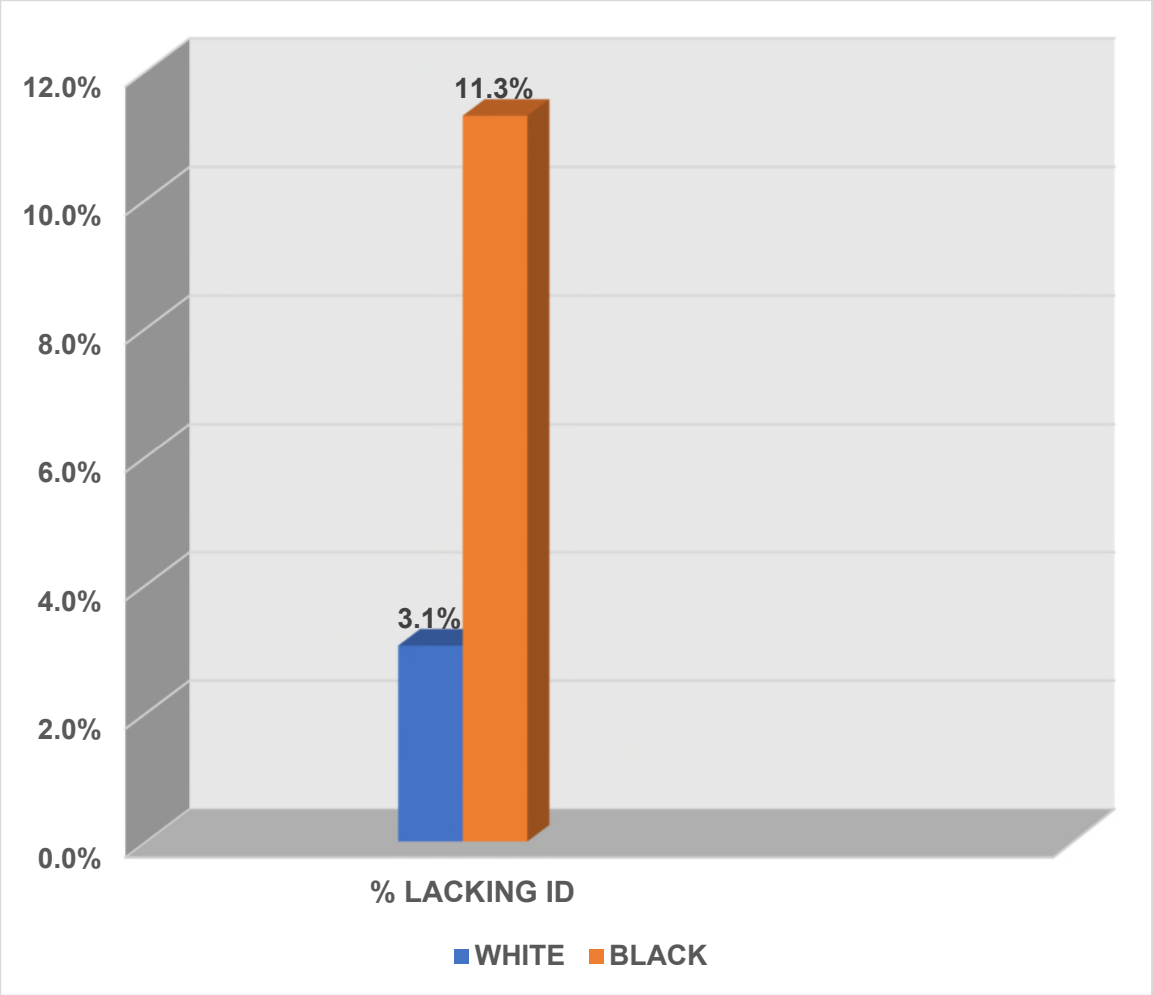


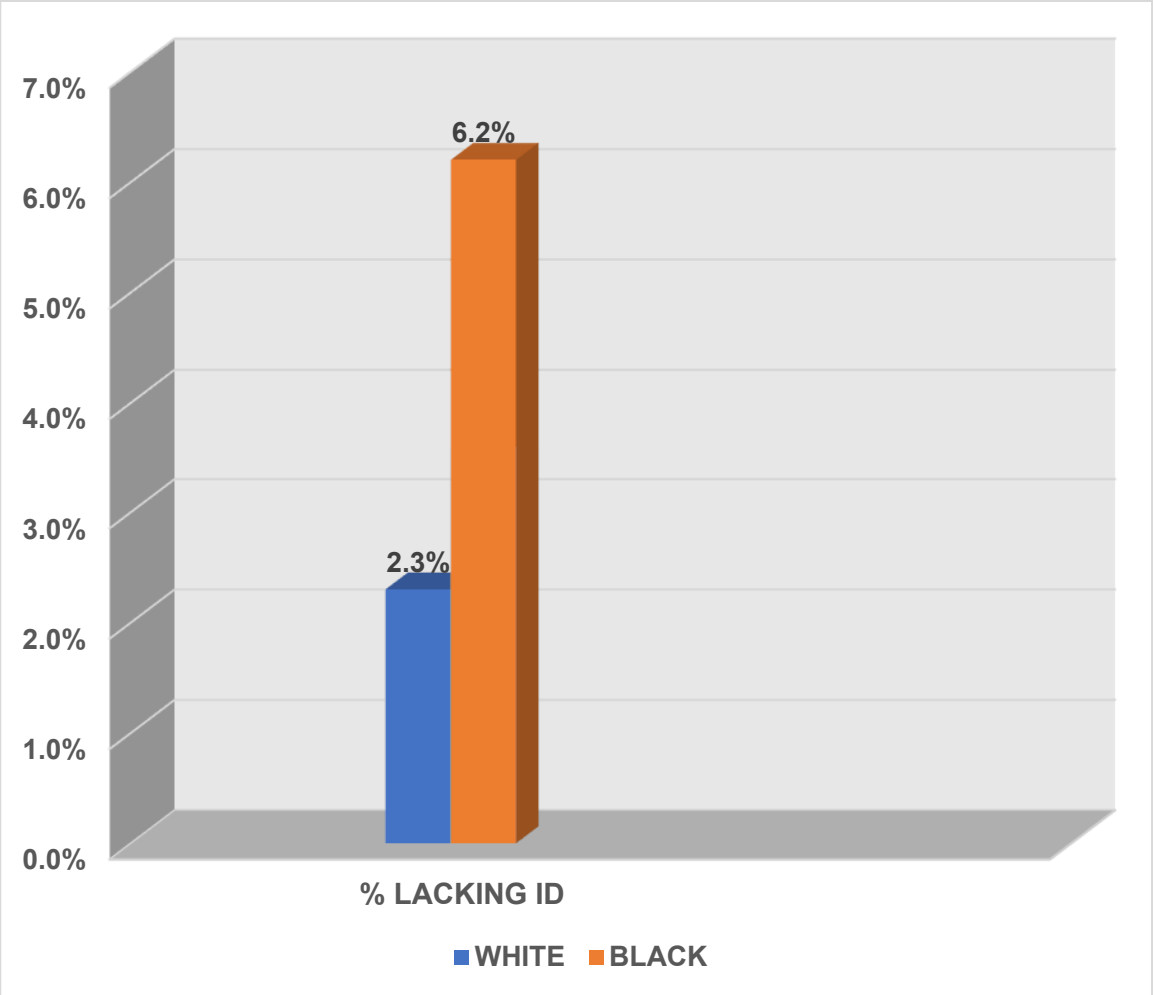
TABLE 5
PERCENT OF WHITES & BLACKS NORTH CAROLINA WHO VOTED IN YEARS OF SPAE SURVEY, WITH PHOTO IDS: UNEXPIRED DRIVER'S LICENSE, UNEXPIRED PASSPORTS, MILITARY AND TRIBAL IDS, IN-STATE STUDENT IDS AND IN-STATE STATE OR LOCAL GOVERNMENT IDS + PHOTO PUBLIC ASSISTANCE IDS

SURVEY OF THE PERFORMANCE OF AMERICAN ELECTIONS, 2012, 2014, 2016

GROUP	PERCENTAGE WITH ID	PERCENTAGE WITH NO ID	PERCENTAGE POINT DIFFERENCE WHITE-BLACK NO ID
WHITE	97.7%	2.3%	NA
BLACK	93.8%	6.2%	**3.9 percentage points**

Sources: Survey of the Performance of American Elections (SPAE), 2012, 2014, 2016, https://dataverse.harvard.edu/dataverse/SPAE.

CHART 4: PERCENT OF WHITES AND BLACKS NORTH CAROLINA WHO SAID THEY VOTED IN YEAR OF SPAE SURVEY, WITH AND WITHOUT DRIVER'S LICENSES, MILITARY AND TRIBAL IDS, PASSPORTS, IN-STATE STUDENT IDS AND IN-STATE LOCAL OR STATE GOVERNMENT-ISSUED IDS + PUBLIC ASSISTANCE IDS



B. Evidence of Vote Denial Through a Voter ID Requirement

There are three primary ways in which a photo voter ID law disenfranchises otherwise eligible voters, especially the minorities that disproportionately lack such identification: through non-counted provisional ballots filed by people without authorized IDs, through those without authorized IDs who simply leave the polling place rather than file a provisional ballot, and through those who are deterred from voting either because they lack authorized IDs or believe that they may lack authorized IDs.

The first form of disenfranchisement can be measured directly from the files for individual voters. This evidence documents named individuals that are denied the right to vote because of a lack of a photo ID in North Carolina. It is not inferential, based on aggregate turnout. Under both the prior and current photo voter ID laws a person who comes to the polls without an authorized

ID can still vote a provisional ballot. The provisional ballot will be counted, however, only if the voter signs an accepted affidavit of reasonable impediment or returns to CBOE office within a few days with an appropriate photo ID.

A photo voter ID law has been in effect in North Carolina only for the March 2016 Republican and Democratic primaries, which occurred prior to the Fourth Circuit's ruling that struck down the law. The experience in this election provides direct evidence of the effect of the provisional ballot option. Examination of the files for individual voters confirms that despite this option the voter photo ID requirement had the effect of denying substantial numbers of otherwise qualified registered voters their right to vote. The data presented in Table 6 indicates that 2,327 voters cast provisional ballots in the primaries for lack of an authorized photo ID. Of these ballots, 58.1 percent were not counted in the elections. This amounts to 1,353 registered votes in North Carolina who lost the right to vote, even though they showed up at the polls. By way of contrast, the State Board of Elections found but one illegal vote cast in 2016 that could have been prevented by a photo voter ID law, for a ratio of 1,353 to 1. This means that the potentially preventative fraudulent vote in 2016 amounts to 0.07 percent of the votes denied in the 2016 primary alone.

The evidence further shows that this vote denial most heavily impacted African Americans and other minority voters. It should also be noted that primary election turnout is much lower than general election turnout and that primary voters are the most experienced of voters.[47]

Table 7 provides a more detailed analysis that examines the impact of no-ID provisional balloting by race. It includes the 86 percent of registrants casting no-ID provisional ballots, whose race was designated. The information reported in Table 7 discloses that the burden of voter denial for lack of a photo ID falls by a wide margin disproportionately on African American and other minority voters.

The data reported in Table 7 indicates that African Americans and other minorities were substantially overrepresented among voters casting a provisional ballot for the lack of an authorized photo ID in the 2016 primaries. The data demonstrated that white voters comprised 55.9 percent of racially identified voters casting a no-ID provisional ballot, compared to 77.2 percent of all primary voters. Thus, white percentage among no-ID provisional voters was *21.3 percentage points lower* than white participation in the primary and *27.6 percent lower*. Black voters comprised 34.1 percent of racially identified voters casting a no-ID provisional ballot, compared to 19.0 percent of all primary voters. Thus, the black percentage among no-ID provisional voters was *15.1 percentage points highe*r than black participation in the primary and *79.5 percent higher*. Other minority voters comprised 10 percent of racially identified voters casting a no-ID provisional ballot, compared to 3.8 percent of all primary voters. Thus, the black percentage among no-ID provisional voters was *6.2 percentage points highe*r than other minority participation in the primary and *125 percent higher*.

[47] In 2016 in North Carolina primary turnout was 2,323,590, compared to 4,769,640 in the 2016 general election for president. North Carolina State Board of Elections, "Election Results," https://www.ncsbe.gov/Election-Results.

TABLE 6 PROVISIONALS BALLOTS CAST IN 2016 PRIMARIES, NORTH CAROLINA, FOR LACK OF AUTHORIZED PHOTO ID		
VOTERS CASTING NO-ID PROVISIONAL BALLOTS	**NUMBER OF NOT COUNTED PROVISIONALS**	**% OF PROVISIONALS NOT COUNTED**
2,327	**1,353**	**58.1%**
Source: file provisional_20160315.txt downloaded from https://dl.ncsbe.gov/index.html?prefix=ENRS/2016_03_15/.		

TABLE 7 NO-ID PROVISIONAL BALLOTS CAST AND NOT COUNTED, BY RACE, 2016 PRESIDENTIAL PRIMARY, NORTH CAROLINA, RACE DESIGNATED				
CATEGORY	**WHITE VOTERS**	**BLACK VOTERS**	**OTHER MINORITY VOTERS**	**TOTAL**
Voters Casting No ID Provisionals	1,125	685	201	**2,011**
Percent of Provisional Ballots Cast	55.9%	34.1%	10.0%	100%
Percent of all Primary Voters	77.2%	19.0%	3.8%	100%
Percentage Point Difference With Percent of All Primary Voters	**-21.3 Percentage Points**	**+15.1 Percentage Points**	**+6.2 Percentage Points**	**NA**
Percent Difference With Percent of All Primary Voters	**-27.6 Percent**	**+79.5 Percent**	**+163 Percent**	
Provisional Ballots Not Counted	627	423	125	1,175
Percent of Provisional Ballots Not Counted	55.7%	61.8%	62.2%	
Percent of Not Counted Ballots	53.4%	36.0%	10.6%	
All Primary Voters	77.2%	19.0%	3.8%	
Percentage Point Difference Between All Voters and Voters Not Counted	**-23.8 Percentage Points**	**+17.0 Percentage Points**	**+6.8 Percentage Points**	
Percent Difference Between All Voters and Voters Not Counted	**-30.8 Percent**	**-89.5 Percent**	**+179 Percent**	
Source: file provisional_20160315.txt downloaded from https://dl.ncsbe.gov/index.html?prefix=ENRS/2016_03_15/.				

Not only were black and minority voters overrepresented among no-ID provisional voters in the 2016 primaries, but they were less likely than white voters to have their provisional votes counted. As indicated in Table 7, 55.7 percent of white no-ID provisional ballots were not counted, compared to 61.8 percent of black and 62.2 percent of other minority no-ID provisional ballots. The combination of casting a disproportionate share of no-ID provisional ballots and having a larger percentage of these ballots not counted, means that blacks and other minorities are very substantially overrepresented among voters casting not-counted, no-ID provisional ballots in the 2016 primaries.

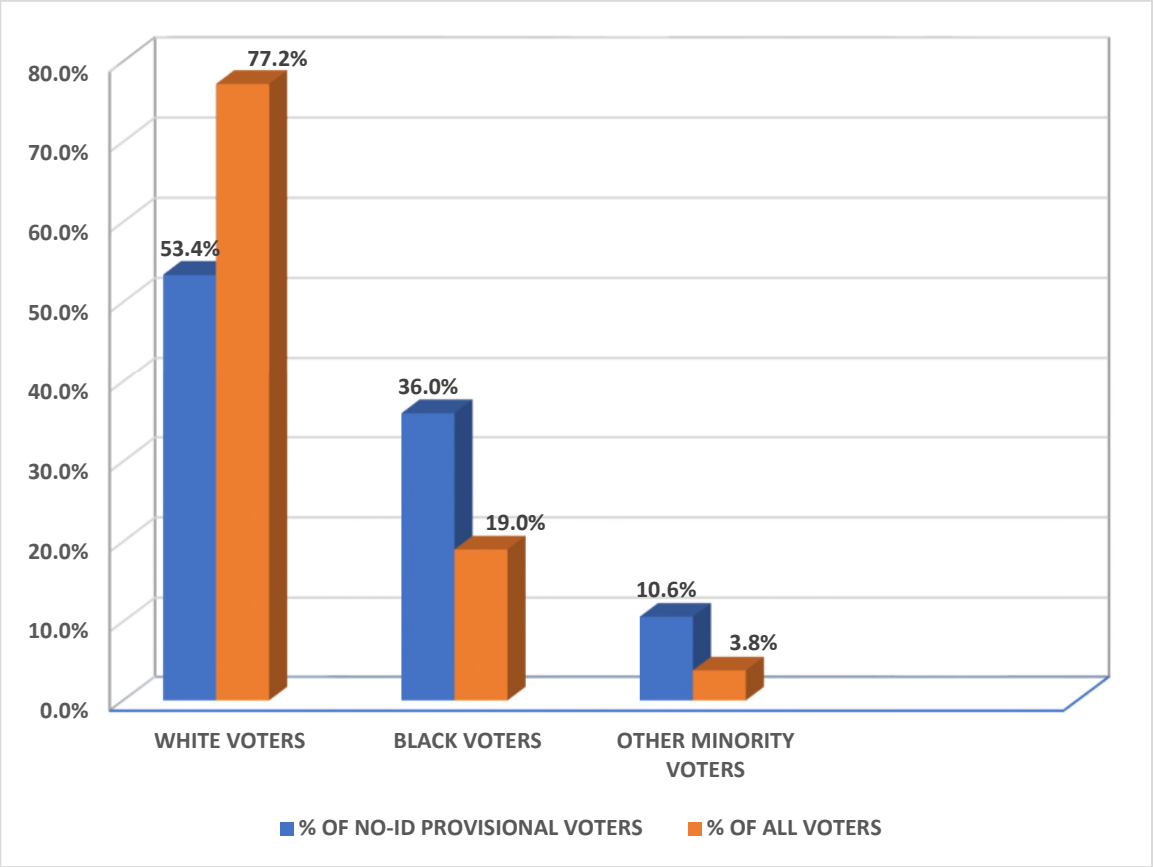
The data reported in Table 7 and Chart 5, indicates that white voters comprised 53.4 percent of racially identified voters casting a not-counted, no-ID provisional ballot, compared to 77.2 percent of all primary voters. Thus, white percentage among not-counted, no-ID provisional voters was *23.8 percentage points lower* than white participation in the primary and *30.8 percent lower*. Black voters comprised 34.1 percent of racially identified voters casting a no-ID provisional ballot, compared to 19.0 percent of all primary voters. Thus, the black percentage among no-ID provisional voters was *17.0 percentage points highe*r than black participation in the primary and *89.5 percent higher*. Other minority voters comprised 10.6 percent of racially identified voters casting a no-ID provisional ballot, compared to 3.8 percent of all primary voters. Thus, the black percentage among no-ID provisional voters was *6.8 percentage points highe*r than other minority participation in the primary and *179 percent higher*.

It is important to note that this racially disproportionate outcome occurred even though the reasonable impediment option was in effect for the 2016 primary. A study by Democracy North Carolina found that the option to file a provisional ballot by signing a "reasonable impediment" declaration was applied improperly and inconsistently in the March 2016 primary. Their findings include the following:[48]

> **"*First*, numerous voters who did not have an acceptable ID for voting were not offered a reasonable impediment provisional ballot, and instead were offered a regular provisional ballot. The difference is critical because voters without acceptable photo ID who are given regular provisional ballots must, despite not having acceptable photo ID, go to the county board of elections before noon the day before the canvass and present valid photo ID for their votes to count. When poll workers did not offer those voters the reasonable impediment provisional ballot, but instead the regular provisional ballot, numerous voters were disenfranchised because they did not have an acceptable photo ID in their possession to take to the county board of elections."**

[48] *Ibid*., Democracy North Carolina, pp. 10-27.

CHART 5: PERCENTAGE SHARES BY RACE VOTERS CASTING NO-ID PROVISIONAL BALLOTS, COMPARED TO ALL VOTERS, 2016 PRIMARIES, NORTH CAROLINA



"*Second*, even when a voter cast a reasonable impediment provisional ballot, the decision about whether to accept or reject the ballot varied wildly from county to county, and ballots were counted in an inconsistent and arbitrary manner. For example, while the reasonable impediment provisional ballot lists several pre-printed impediments—" lost or stolen photo ID," "lack of transportation," etc.—it also includes the category "other" with a blank line for further description. Some counties rejected voters who wrote in for "other" that their ID had expired, that they had forgotten to bring it, that they did not have an ID because they did not drive, that they had an out-of-state ID, or that their acceptable ID was in another state. But other counties counted ballots of voters with the same wording."

"Democracy NC twice confirmed with the State Board of Elections before the primary that checking "other" and writing in that "my passport is in another state" would be a reasonable impediment. Relying on that assurance, Democracy NC included that information in its pocket card about voting rules, which it distributed to at least 150,000 people before the primary, including on many campuses. Yet the ballots of many registered voters who indicated that their passport was in another state, including college students, were not counted in some counties but were counted in others."

"*Third*, some county boards of election violated state law and systematically rejected ballots that should have counted. For example, the State Board of Elections issued a memo to county boards of elections before the primary stating that checking "other" and writing in something related to a "school schedule" would be a reasonable impediment because that was similar to the pre-printed impediment of "work schedule." … Despite this clear guidance, the Chair of the Mecklenburg County Board of Elections effectively overruled the law, publicly declared that attending college was not a reasonable impediment, led her fellow board members to reject the ballots of students providing that explanation, and in one day disenfranchised more voters than have been accused of impersonating another voter in the past decade."

"*Fourth*, Democracy NC's PMP and post-election analysis revealed that the simplest mistake or omission on the reasonable impediment declaration form would cause a person's ballot to be rejected. The most elementary guidance from a poll worker would have corrected the problem, but assistance and knowledge of the reasonable impediment process by poll workers was extremely poor. For example, many reasonable impediment ballots were rejected because the voter forgot to check one of the boxes, answer a question, or sign the form; a poll worker reviewing the form could have encouraged the voter to fix the problem."

"These problems were compounded by the fact that the State Board of Elections allowed at least four different variations of the form to be used, each of which had different formatting and ordering of information. One form, for example, required a person to sign twice on the same page, and some voters

were disenfranchised because they signed only once." Democracy North Carolina included named examples of individuals improperly disenfranchised in the 2016 primary.

All of these problems at the polls in March 2016 took place even though the General Assembly had enacted its initial voter photo ID law in July 2013 and its reasonable impediment requirement in June 2015, providing time for the education of voters and poll workers.

The ***second*** form of disenfranchisement applies to voters who walked away from the polls rather than signing a "reasonable impediment" declaration or voting a provisional ballot with the requirement that they return within a specified time period with an authorized photo ID. Such disenfranchisement is not quantifiable, but Democracy North Carolina does cite specific examples:

"For example, at the VFW Building polling place in New Hanover County, voters were waiting to have their photo IDs verified for over two hours. A minimum of twenty-two voters left the polling place without voting because of the lengthy wait to show photo ID to vote. Adrienne Williams, an African-American student registered to vote in Wake County, left a polling place in Wake County at 8 PM (polls are supposed to close at 7:30 PM) on Election Day without voting after waiting in two lines for at least three hours. Jazlin Laboy, a Hispanic student registered to vote in Orange County, waited in lines for 50 minutes before having to leave without voting. Ms. Laboy had to wait that long after she was told to go to a second line because she did not have acceptable photo ID to vote. She was not offered a reasonable impediment ballot."[49]

The ***third*** form of disenfranchisement refers to persons who did not go to the polls because they lacked acceptable IDs or believed that they lacked acceptable IDs. A Wisconsin study of non-voters in the presidential election of 2016 shows that such disenfranchisement can be substantial, especially for minority voters. Researchers from the University of Wisconsin-Madison surveyed non-voters in Dane County and Milwaukee County, which "have the largest low-income and minority populations in the state." They estimated that that "11.2% of nonvoting registrants in Dane and Milwaukee counties were 'deterred' in some way from voting by the voter ID law, either because they lacked ID, believed they lacked ID, or were told at the polls that their ID did not qualify as valid. The 95% interval is between 7.8% and 15.5%." Thus, two of the three categories refer to persons who did not show up to vote because of photo voter ID. They found that 8.3 percent of non-voting whites, compared to 27.5 percent of non-voting African Americans, were deterred from voting by the photo voter ID law, with the difference between them statistically significant at a standard level in social science.[50]

A recent study specific to North Carolina by Stanford University researchers, published online in July 2019, documents that this deterrent effect is substantial and falls most heavily on

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[49] *Ibid.*, at p. 28.

[50] Mayer, Kenneth R. and DeCrescenzo, Michael G., "Supporting Information: Estimating the Effect of Voter ID on Nonvoters in Wisconsin in the 2016 Presidential Election,"pp. 1-9, 25 September 2017, https://elections.wiscweb.wisc.edu/wp-content/uploads/sites/483/2018/02/Voter-ID-Study-Supporting-Info.pdf.

minority voters. The authors note that whereas the state sent mailers to voters explaining that voter photo ID was required for participation in the upcoming 2016 primaries, after the Fourth Circuit struck down the requirement in July 2016, they did not send out a subsequent mailer indicated that a photo ID was no longer required. Thus, voters had reason to believe that the requirement remained in effect. They found that:

> **"Using our most stringent exact matching specification to estimate the deterrent effect, we find that those without identification were 2.6 percentage points less likely to participate in the [2016] general election. This effect is unlikely to be due to non-ID holders having differential turnout trends, as we deploy a variety of stringent specifications and robustness checks. We show the effect of the voter ID law is to change the composition of the electorate, even though the magnitude of the compositional change is small. We show that the law has the biggest effect for occasional voters and because minority voters and Democrats are less likely to hold valid identification, the law causes them to be underrepresented in the electorate."**[51]

VI. SUBSTANTIVE CHANGES TO SL 2018-144 FROM EARLIER VERSIONS DEMONSTRATE DISCRIMINATORY INTENT AND EFFECT

In this section, I focus on substantive differences between the current voter photo ID law (S.L. 2018-144) and both the pre-*Shelby* and post-*Shelby* versions of voter photo ID from the 2013 legislative process, as amended in 2015. As indicated in Table 8, S.L. 2018-144 is much more restrictive than the pre-*Shelby* version of H. 589 as passed by the North Carolina State House in April 2013. Unlike the pre-Shelby H. 589, the current law does not authorize for voting federal government employee IDs, public assistance IDs, or IDs for firemen, EMS and hospital workers and law enforcement personnel, (unless they possess an authorized state or government employee ID).[52]

In some ways the current law is actually more restrictive than the unconstitutional earlier legislation. It also incorporates some of the critical exclusions that were also significant in the earlier law.

A. New and Continued Restrictions in the 2018 Voter Photo ID Law

As indicated in Table 8, the 2013 VIVA law as amended in 2015 provided a four-year window in which a voter can use an authorized but expired ID. However, the new law narrows that window by three-quarters, limiting the use of expired identifications to a single year. This change is extremely important for two reasons. First, it diminishes the use of all forms of authorized identification with the exception of military and veteran's IDs that can be used regardless of expiration. Second, analyses conducted during the earlier litigation and included in my report demonstrated that for the most common form of identification -- photo DMV IDs –

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[51] Grimmer, Justin and Yoder, Jesse, "The Durable Deterrent Effects of Strict Photo Identification Laws," p.4, 1 July 2019, https://cpb-us-w2.wpmucdn.com/web.sas.upenn.edu/dist/7/538/files/2019/07/voter_id_deter.pdf,

[52] EMS workers would include Emergency Medical Technicians (EMT), paramedics, and other who provided emergency care.

240,218 registered voters were matched to DMV identifications that are expired. This analysis did not consider as unmatched registered voters who possessed expired IDs and it did not count as unmatched registered voters who possessed learner's permits rather than driver's licenses). Third, those analyses demonstrated that both African American registrants and voters are substantially more likely than whites to be matched to expired IDs.

TABLE 8 COMPARISON OF VOTER PHOTO IDENTIFICATION BILLS, NORTH CAROLINA GENERAL ASSEMBLY, S.L. 2018-144 & 2013 H. 589 BILLS (NEW RESTRICTIONS IN S.L. 2018-144 HIGHLIGHTED)			
ID TYPE	**HOUSE PASSED PRE-*SHELBY***	**ENACTED, UNCONSTITUTIONAL POST-*SHELBY* + *2015 AMENDMENTS***	**ENACTED S.L. 2018-144**
Driver's License, or Learner's Permit	Yes, includes Learner's permits and provisional licenses.	**Limited**, must be unexpired **four years or less** unless voter is 70+ years old and was unexpired on 70th birthday. Includes learner's permits and provisional licenses	**Limited**, must be unexpired **one year or less** unless voter is 65+ years old and was unexpired on 65th birthday. Does not include Learner's permits or provisional licenses. Replaces seized licenses
Non-Operator's DMV-issued ID	Yes	Free to registered voters who certify need; same expiration requirements as for drivers licenses, above	Free to persons over 17; same expiration requirements as for drivers licenses, above
US Passport	Yes	**Limited**, same expiration rules as for DMV IDs	**Limited,** same expiration rules as for DMV IDs
Tribal ID	Yes	**Limited,** same expiration rules as for DMV IDs	**Limited,** same expiration rules as for DMV IDs
Military or Veteran ID	Yes	Yes, no expiration requirement	Yes, no expiration requirement
CBOE Issued Free Voter ID Card	No	No	Yes, same expiration rules as for DMV IDs
Out-Of-State Driver's License	Yes	**Limited**, only if registered within 90 days of election, and meets expiration rules for in-state DMV IDs	**Limited**, only if registered within 90 days of election, and meets expiration rules for in-state DMV IDs
Higher Ed ID	**Limited**, UNC constituents, community colleges.	**No**	**Limited**, if meets state requirements, and expiration rules for DMV IDs. Includes private institutions. Rollout period to 2020
State of Local Govt Employee ID	Yes	**No**	**Limited**, if meets state requirements, and expiration rules for DMV IDs
Federal Govt Employee ID	Yes	**No**	**No**

TABLE 8 COMPARISON OF VOTER PHOTO IDENTIFICATION BILLS, NORTH CAROLINA GENERAL ASSEMBLY, S.L. 2018-144 & 2013 H. 589 BILLS (NEW RESTRICTIONS IN S.L. 2018-144 HIGHLIGHTED)			
Public Assistance ID	Yes	**No**	**No**
US Naturalization Certificate	**No**	**No**	**No**
Fireman, EMS, hospital, law enforcement ID	Yes	**No**	**No**

In another reduction of acceptable forms of photo ID, the earlier law explicitly included learner's permits, whereas the current law does not. The burden of this new exclusion on permits falls disproportionately on young African Americans as compared to young whites. A 2012 national study found that young African Americans aged 18 -20 are much less likely than young whites to possess a either driver's license or a permit but are more likely to possess only a permit rather than a license. Results of this survey were previously cited in my 2015 report. The exclusion of permits affects a large percentage of young African Americans as demonstrated in Table 9 and Chart 6. Among young whites, 79 percent possessed driver's licenses 24 percentage points and 44 percent higher than the 55 percent of African Americans who possessed licenses. Only 10 percent of white possessed learner's permits, 13 percentage points and 57 percent lower than the 23 percent of African Americans who possessed permits. Only 11 percent of whites possessed neither licenses nor permits, 11 percentage points and 50 percent lower than the 22 percent of African Americans who possessed neither of these forms of photo identification.

The new law also reduces the exemption for expired IDs from 70 to 65, that is a person who is aged more than 65 can use any expired ID, provided that it was not expired on his or her 65th birthday. While this change does expand the universe of acceptable IDs, it widens the gap between African Americans and whites because of the age structure of the North Carolina population. As indicated in Table 10 and Chart 7, 24.2 percent of the white voting age population in North Carolina is of age 65 or greater, compared to 16.1 percent of the black population. This amounts to an elder age gap of 8.1 percentage points and 50 percent. This gap is substantially greater the percentage point gap for the 70+ population uncovered in my February 2015 report (5.1 percentage points).

The 2018 law also continues exclusions from the earlier voter photo ID law. In striking down the post-*Shelby* version of voter photo ID, the Fourth Circuit highlighted the exclusion of public assistance IDs as a particularly powerful indicator of discriminatory intent, given the well-known fact that African Americans as compared to whites are much more likely to be recipients of public assistance.[53]

[53] *McCrory*, 831 F. 3d at 43.

TABLE 9 NATIONAL SURVEY OF POSSESSION OF DRIVER'S LICENSES AND LEARNER'S PERMIT NON-HISPANIC WHITES & BLACKS, AGES 18-20						
GROUP	**PERCENT WITH LICENSE**	**PERCENTAGE POINT & PERCENT DIFFERENCE WHITE-BLACK**	**PERCENT WITH PERMIT ONLY**	**PERCENTAGE POINT & PERCENT DIFFERENCE WHITE-BLACK**	**PERCENT WITH NEITHER**	**PERCENTAGE POINT & PERCENT DIFFERENCE WHITE-BLACK**
WHITE	79%	NA	10%	NA	11%	NA
BLACK	55%	White 24 Percentage Points & 44% **Higher**	23%	White 13 Percentage Points & 57% **Lower**	22%	White 11 Percentage Points & 50% **Lower**
Source: American Automobile Association, Foundation for Traffic Safety, National Survey, *Timing of Driver's License Acquisition and Reasons for Delay among Young People in the United States, 2012*, June-July 2012 Survey (July 2013), https://newsroom.aaa.com/wp-content/uploads/2013/07/Teens-Delay-Licensing-FTS-Report.pdf, N=1,039 respondents						

CHART 6 NATIONAL SURVEY OF POSSESSION OF DRIVER'S LICENSES AND LEARNER'S PERMIT NON-HISPANIC WHITES & BLACKS, AGES 18-20

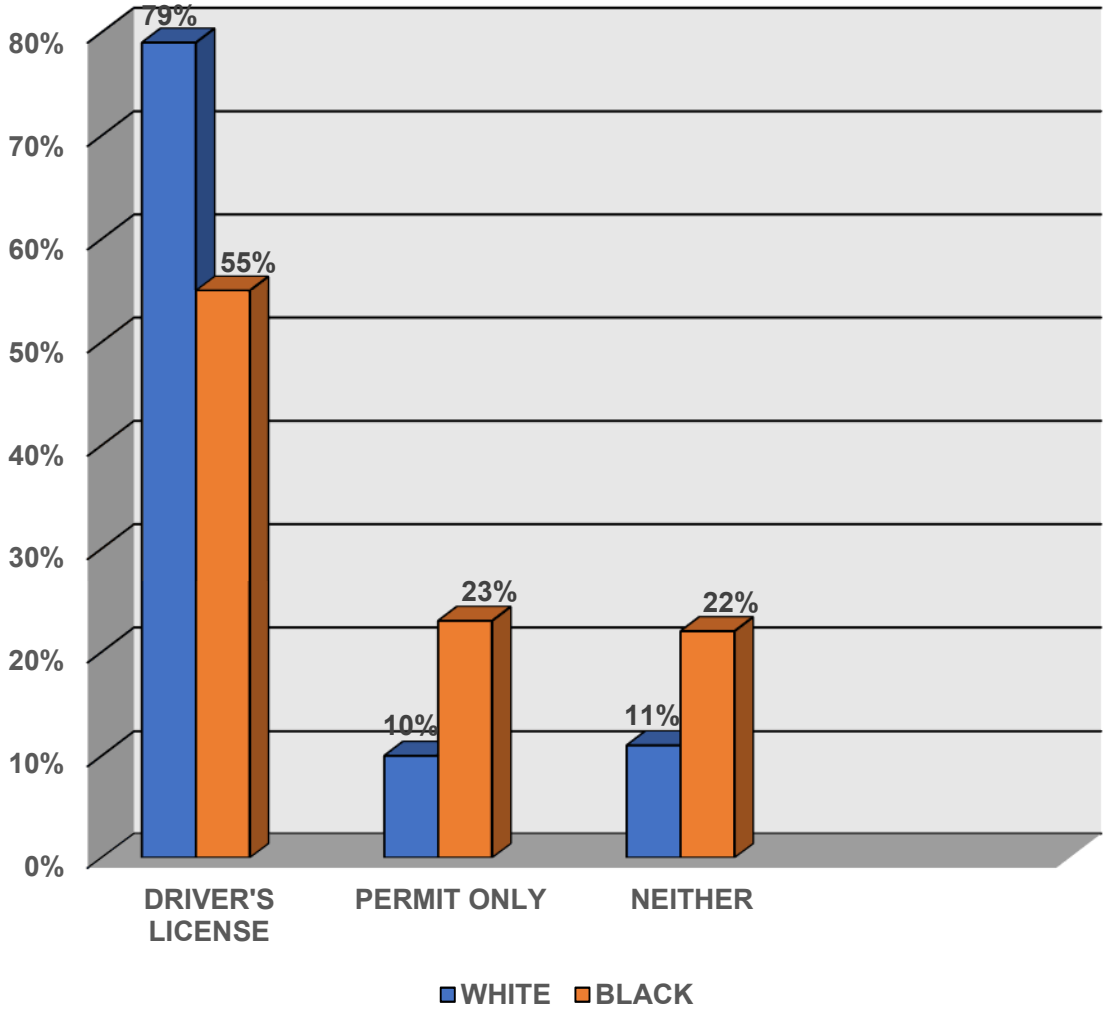
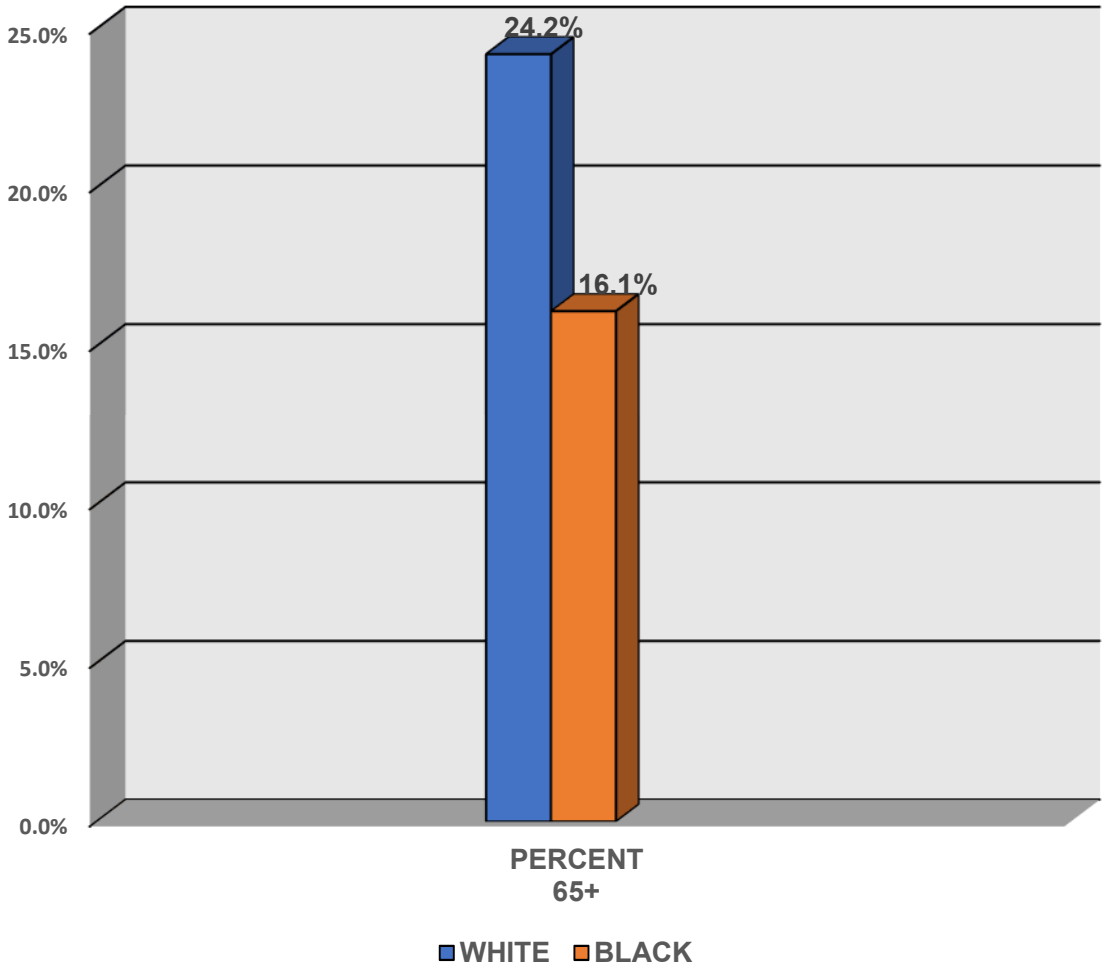


TABLE 10 PERCENTAGE OF VOTING AGE POPULATION 65-YEARS+ BLACK COMPARED TO WHITE, NORTH CAROLINA		
RACIAL GROUP	**PERCENT VAP AGED 65 OR GREATER**	**DIFFERENCE WHITE TO BLACK**
BLACK	16.1%	NA
WHITE	24.2%	**+8.1 Percentage Points, +50 Percent**
Source: US Census, American Community Survey, 2017 One-Year Estimates.		

CHART 7: PERCENT VOTING AGE POPULATION, 65 YEARS+ OF AGE, NORTH CAROLINA, BY RACE



The 2016 Survey of the Performance of American Elections found that 29 percent of non-Hispanic African American respondents had a public assistance ID with a picture, compared to just 7 percent of non-Hispanic whites. This difference, which closely matches the Census results, is statistically significant at the very stringent .001 level used in social science, meaning that there is less than a one in a thousand probability of obtaining this difference under a chance hypothesis.[54]

The new law also continues the exclusion of federal government issued employee IDs, U.S. naturalization certificates, and Fireman, EMS, hospital, law enforcement officer IDs, unless they were issued employee IDs by state or local governments in North Carolina. It was established in the earlier litigation that African Americans were more likely than whites to possess government employee IDs, although the data does not permit a partition of federal as compared to state and local issued identification.[55] The failure to recognize U.S. naturalization certificates clearly poses a disparate burden on Hispanics, and the racial composition of the other excluded IDs is unknown.

The new law did authorize three forms of identification that were not present in the 2013 law as amended. These include North Carolina state and local government employee IDs and college and university IDs. However, the IDs from institutions of higher education are hemmed in with various restrictions. Among other requirements, authorized student IDs must be confirmed through Social Security numbers, and proof of citizenship status and date of birth. The original version required student ID photographs to be taken by the school or a contractor. In its haste to enact the 2018 bill during the lame duck session, the language on student IDs was so confusing that the next General Assembly in 2019, had to enact clarifying legislation, with revised rules. The new rules, for example, would allow students to submit their own photos under an approved process. As of the initial March 15, 2019 deadline for submitting forms of ID for approval, of 850 university, colleges and state and local employers, only 81 institutions requested that SBOE approve their forms of ID. Of these, only 72, or less than 8.5% of the total number of institutions, were approved. There is no reason to believe that more than a small percentage of the eligible employers will be able to satisfy the onerous conditions required in SB 824 for these IDs.[56]

The new law also requires the DMV to replace confiscated licenses with another photo ID, and authorizes CBOEs to provide a free voter ID card, if a voter provides a full legal name, date of birth, last four digits of the Social Security number, current residence and/or mailing address and contact information. However, the requirement to travel in person to a state office to obtain such a free ID still constitutes an additional barrier to voting that falls disproportionately on African Americans with their much lower incomes and access to vehicles than whites. The report

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[54] 2016 Survey of the Performance of American Elections, https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/Y38VIQ.

[55] Expert Report of Allan J. Lichtman, "Intentional discrimination Against African Americans in the Adoption of North Carolina's Voter Information and Verification Act, S.L. 2013-381", Table 13, Page 52, February 12, 2015, *North Carolina State Conference of the NAAACP v. McCrory,* Case No. 11:13-cv-00658, (M.D.N.C.).

[56] S.L. 2018-144, https://www.ncleg.net/Sessions/2017/Bills/Senate/HTML/S824v7.html; H.B. 646/S.L. 2019-22, 2019-2020 Gen. Assemb., Reg. Sess. (N.C. 2019), https://www.ncleg.gov/BillLookup/2019/H646;North Carolina State Board of Elections, Approval of Student and Employee Identification Cards Under Session Law 2018-144, (Mar. 15, 2019), https://s3.amazonaws.com/dl.ncsbe.gov/Voter%20ID/Correspondence%20to%20Co-Chairs%202019-03-15.pdf; Marin Wolf, "More Student IDs Can Be Used For Voting Following Clarifications To Voter ID Law," *Daily Tarheel*, 6 June 2019, https://www.dailytarheel.com/article/2019/06/student-id-law.

of Professor Barry Burden submitted for this litigation explains how any such barrier inhibits the right to vote, especially for minorities.[57]

The new rules on information needed to obtain a free voter ID card also expose a contradiction that cuts to the heart of North Carolina's new voter ID law. The information outlined above is sufficient to obtain an ID card that enables the holder to vote in multiple elections. Why then wouldn't the presentation of the same information be sufficient to enable a voter to vote at the polls if he or show lacks an authorized photo ID? With a sufficient computer connection, the information could be instantly checked, and the persons could immediately vote a regular ballot. If not, the voter could vote a provisional ballot and the information subsequently checked. In either case there would be no need for the voter to have to sign a "reasonable impediment" affidavit or return to present an authorized ID.

During the lame duck session, the Republican majority in the General Assembly either voted down or killed by tabling a number of amendments proposed by Democrats to make the voter photo ID law more inclusive and less burdensome on minority voters. These include amendments:

* That would have enabled high school students to use their student ID for voting. (House Amendment 3)

* That would have enabled the recipients of federal and state public assistance to use their public assistance IDs for voting purposes. (House Amendment 13)

* That would have authorized for voting any state or federally issued photo ID (Senate Amendment 9)

Representative Harrison notes in her affidavit in the state litigation that in addition, "an ameliorative amendment that would have allowed for a voter to cure their provisional ballot at the polling place by receiving the signature of two witnesses who could attest to the voter's identity (introduced by Rep. Jackson) was initially passed in committee, but was subsequently removed in a later version of the bill due to an amendment introduced by Representative Lewis." (Amendment 7)[58]

VII. SEQUENCE OF EVENTS LEADING TO CONSTITUTIONAL AMENDMENT AND VOTER PHOTO ID LAW

A. The Fall of White Voting Strength in North Carolina, 2004-2018

Critical to understanding the sequence of events leading to adoption of the referendum for the Constitutional Amendment and the voter photo ID law is a sharp decline in white voting strength relative to African American voting strength and generally non-white voting strength

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[57] *See* Preliminary Expert Report of Barry C. Burden for Purposes of Preliminary Injunction, *North Carolina State Conference of the NAACP v. Cooper,* No. 1:18-cv-01034 (M.D.N.C.) at pages 3 - 8.

[58] *Holmes v. Moore*, State of North Carolina, County of Wake, General Court of Justice, Superior Court Division, 18 CVS 15292, "Aff. of Rep. Pricey Harrison," p. 4.

since 2004. Also critical is a political realignment in North Carolina such that it is now Republicans, not Democrats, who benefit politically from limitations on the African American vote. These dual realignments of North Carolina's demographic voting base, and its political allegiances, help explain why the Republican dominated state legislature enacted once again measures that place a disparate burden on African American voters relative to white voters in North Carolina.

According to data reported in Table 11 and Chart 8, the percentage of registered white voters in North Carolina plunged from 77.9 percent in January 2004 to 69.1 percent in June 2018, when the legislature adopted its resolution for a constitutional amendment. This represented an 8.8 percentage point drop and a 11.3 percent drop in white voter strength. In contrast, the percentage of registered African American voters in North Carolina rose from 19.4 percent in January 2004 to 22.1 percent in June 2018, an increase of 2.7 percentage points and 13.9 percent in black voter strength. The most striking increase was for other minority registrants, including mixed race, Hispanics, and Asians, and American Indians. The percentage of registered other minorities soared from 2.8 percent in January 2004 to 8.8 percent in June 2018, an increase of 6.0 percentage points and 214 percent in voter strength for this non-white group.

Table 12 and Chart 9 additionally demonstrate the decline of white voter strength in North Carolina. It discloses that the ratio of the white to the African American registration percentage declined from 4 to 1 in 2004 to 3.1 to 1 in 2018. Table 12 and Chart 9 further demonstrate that the ratio of the white to the total non-white registration percentage declined from 3.5 to 1 in 2004 to 2.2 to 1 in 2018.

B. Racial Polarization in Recent North Carolina Elections

This shifting pattern of voter strength is especially consequential in light of the substantial racial polarization that exists in general elections in North Carolina. My previous report for *NAACP v. McCrory* established substantial racially polarized voting in North Carolina through the elections of 2014. This report updates and validates those findings for the elections of 2016. There were no statewide elections in North Carolina in 2018 or any exit poll data.

TABLE 11 CHANGES IN VOTER REGISTRATION, 2004 TO 2018, NORTH CAROLINA, WHITES, BLACKS AND OTHER MINORITY						
RACIAL GROUP	**JAN. 2004 REGIS. TOTAL**	**JAN. 2004. % OF REGIS**	**JUNE 2018 REGIS. TOTAL**	**JUNE 2018 % OF REGIS**	**PERCENTAGE POINT CHANGE 2004 TO 2018**	**PERCENT CHANGE 2004 TO 2018**
WHITE	3,914,286	77.9%	4,795,283	69.1%	-8.8%	-11.3%
BLACK	972,830	19.4%	1,533,852	22.1%	+2.7%	+13.9%
OTHER MIN.	139,500	2.8%	611,561	8.8%	+6.0%	+214%
Source: Online database, North Carolina State Board of Elections, https://vt.ncsbe.gov/RegStat/.						

CHART 8: CHANGES IN VOTER REGISTRATION, 2004 TO 2018, NORTH CAROLINA, WHITES, BLACKS AND OTHER MINORITY

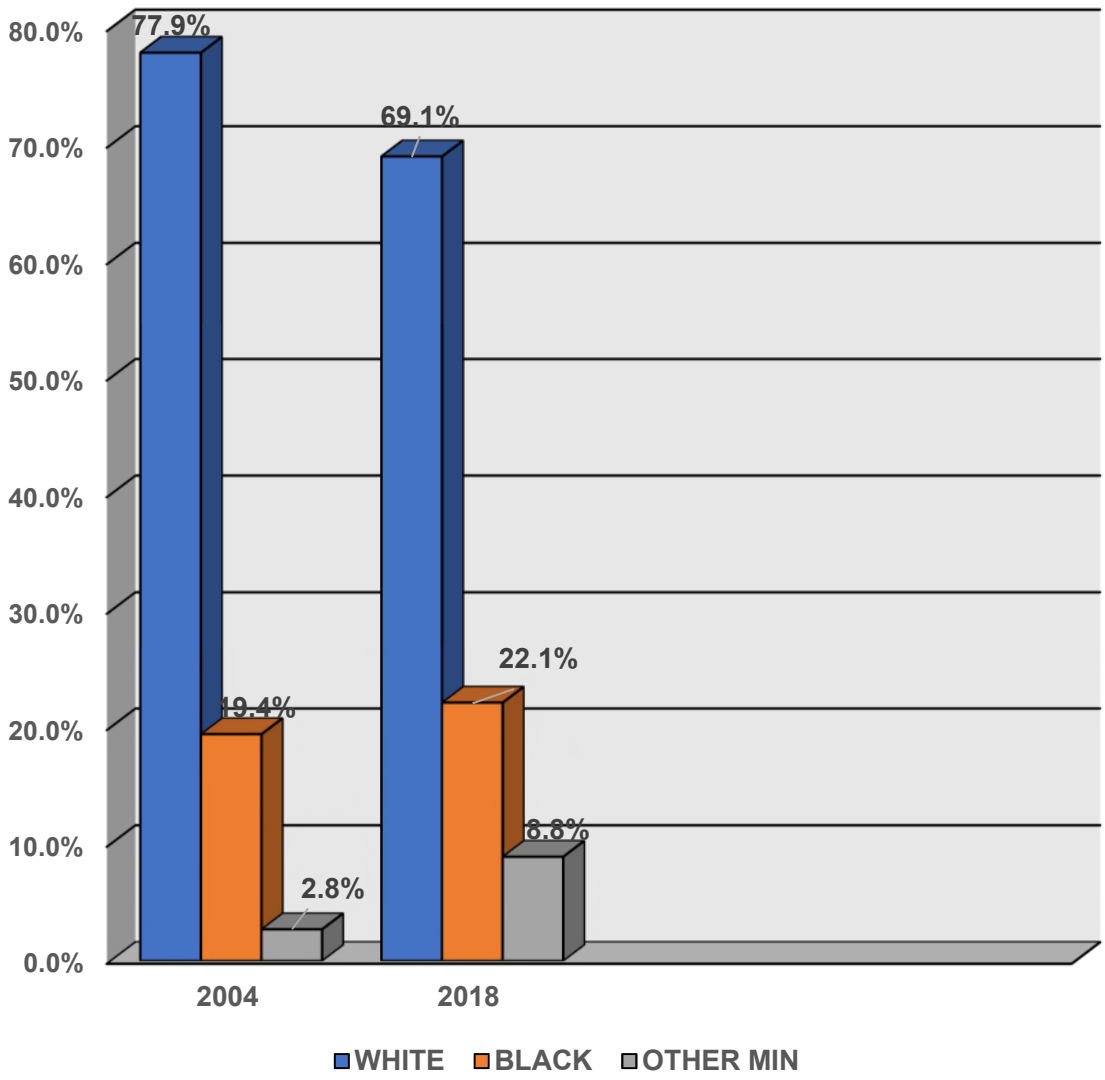
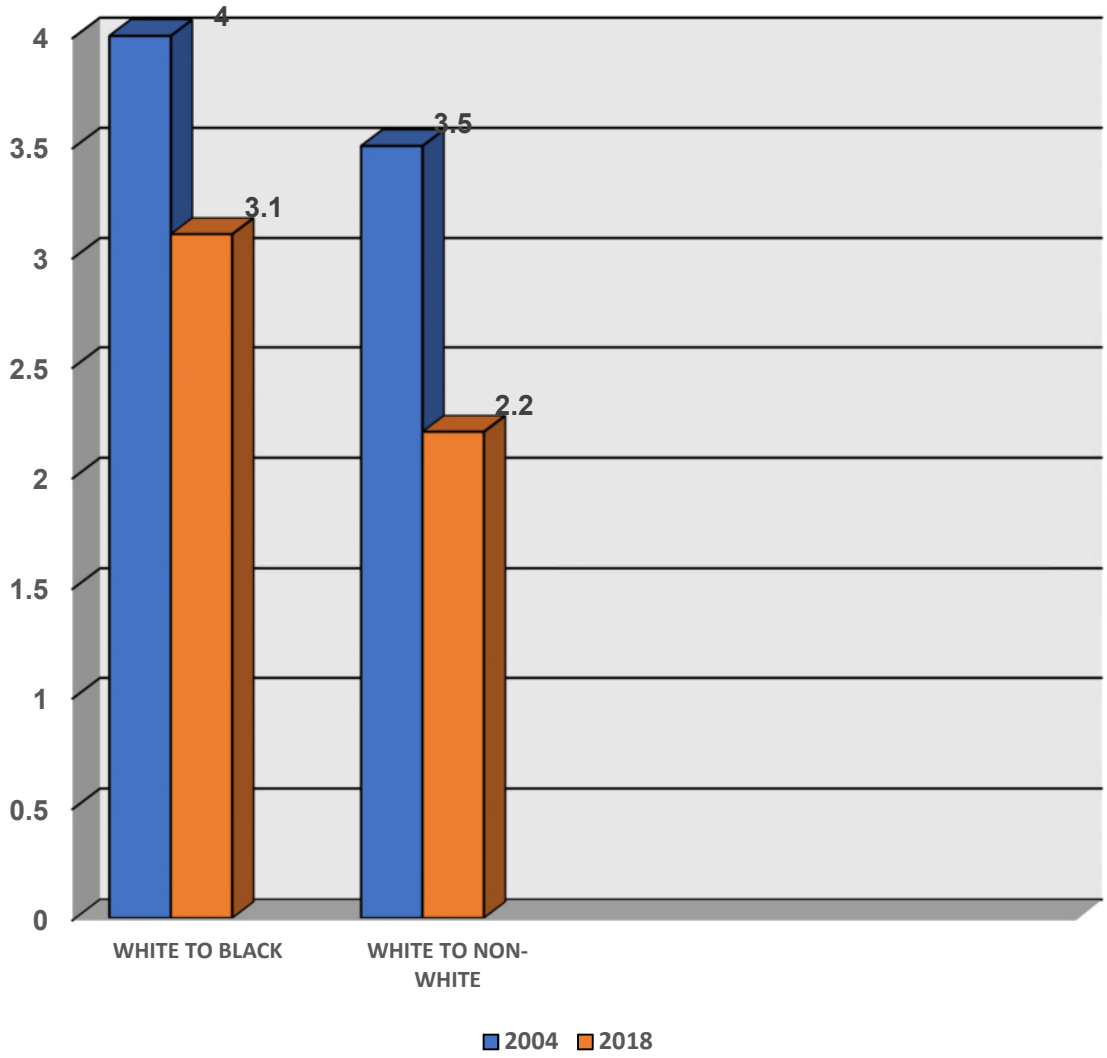


TABLE 12 REGISTRATION BY RACE NORTH CAROLINA, 2004-2018, RATIOS: WHITE TO BLACK AND WHITE TO NON-WHITE		
	Ratio White to Black	**Ratio White to Non-White**
Jan. 2014 Registration	4 to 1 White	3.5 to 1 White
June 2018 Registration	3.1 to 1 White	2.2 to 1 White
Source: Online database, North Carolina State Board of Elections, https://vt.ncsbe.gov/RegStat/.		

CHART 9: RATIO OF WHITE TO BLACK AND WHITE TO ALL NON-WHITE, REGISTERED VOTERS 2004 AND 2018, NORTH CAROLINA



The exit poll data reported in Table 13 and Chart 10 demonstrate that on average in 2016 African American voters supported Republican candidates at a level of 10 percent, whereas white voters supported Republican candidates at a level of 63 percent. Hispanic voters supported Republican candidates at a level of 41 percent, and other voters supported Republican candidates at a level of 40 percent. Indeed, the CNN data likely understates the racial polarization among Hispanic voters. Latino Decisions reports that Latino voters in North Carolina favored Clinton over Trump by a margin of 82-15% in the 2016 elections.[59] There is no separate exit poll data for Asians, who comprised just 1 percent of the electorate.

The data reported in Table 14 and Chart 11 demonstrate that all non-white voters supported Republican candidates at a level of 19 percent, compared to white voters who supported Republican candidates at a level of 63 percent. These wide racial disparities emerged in 2016 even though all candidates, Republican and Democratic were white.

Racial disparities in voting in North Carolina far exceed disparities for other politically salient characteristics of voters, such as sex, age, education and income. This relationship holds true both for *black versus white* and broadly for *all non-whites versus whites*. As demonstrated in Table 15 and Chart 12 for *black versus white* and Table 16 and Chart 13 for *white versus non-white*, race is by far the greatest indicator of the preferences of the voters of North Carolina in 2016. These tables and charts show the Democratic advantage among blacks v. white and non-white v. white as compared to the Democratic advantage among other groups: women v. men, young people v. older people, less educated v. better educated, and less affluent v. more affluent. The only difference between Table 15 and Chart 12 and Table 16 and Chart 13 is that the former isolate results for blacks v. whites, whereas the latter portray results for non-whites v. whites.

Thus, demographic shifts in the North Carolina voter registration base combined with polarized voting indicate that Republicans had much to gain in 2018 by attempting to reduce black registration and voting relative to white registration and voting. No other demographic shift in registration and voting would have nearly the same impact on prospective political gains.

[59] Latino Vote 2016: Actual Vote, LD Polling and Exit Poll Errors (Presentation Deck); available at: https://latinodecisions.com/polls-and-research/post-election-analysis/

TABLE 13 NORTH CAROLINA EXIT POLL RESULTS BY RACE, 2016					
CANDIDATE	WHITE	BLACK	HISPANIC	OTHER	ASIAN
2016 Pres. Clinton (WD)	32%	89%	57%	55%	NA
2016 Pres. Trump (WR)	63%	8%	40%	40%	NA
2016 Senate Ross (WD)	32%	90%	48%	58%	NA
2016 Senate Burr (WR)	64%	9%	49%	37%	NA
2016 Gov. Cooper (WD)	37%	88%	63%	58%	NA
2016 Gov. McCrory (WR)	62%	12%	35%	42%	NA
Mean all Dem	34%	89%	56%	57%	NA
Mean all Rep	63%	10%	41%	40%	NA
Source: CNN exit poll, 4,230 Senate, 4,266 Governor, 4,297 respondents President.					

CHART 10: RACIAL DISPARITIES IN PARTY VOTING, 2016, NORTH CAROLINA, WHITE, BLACK, HISPANIC, OTHER

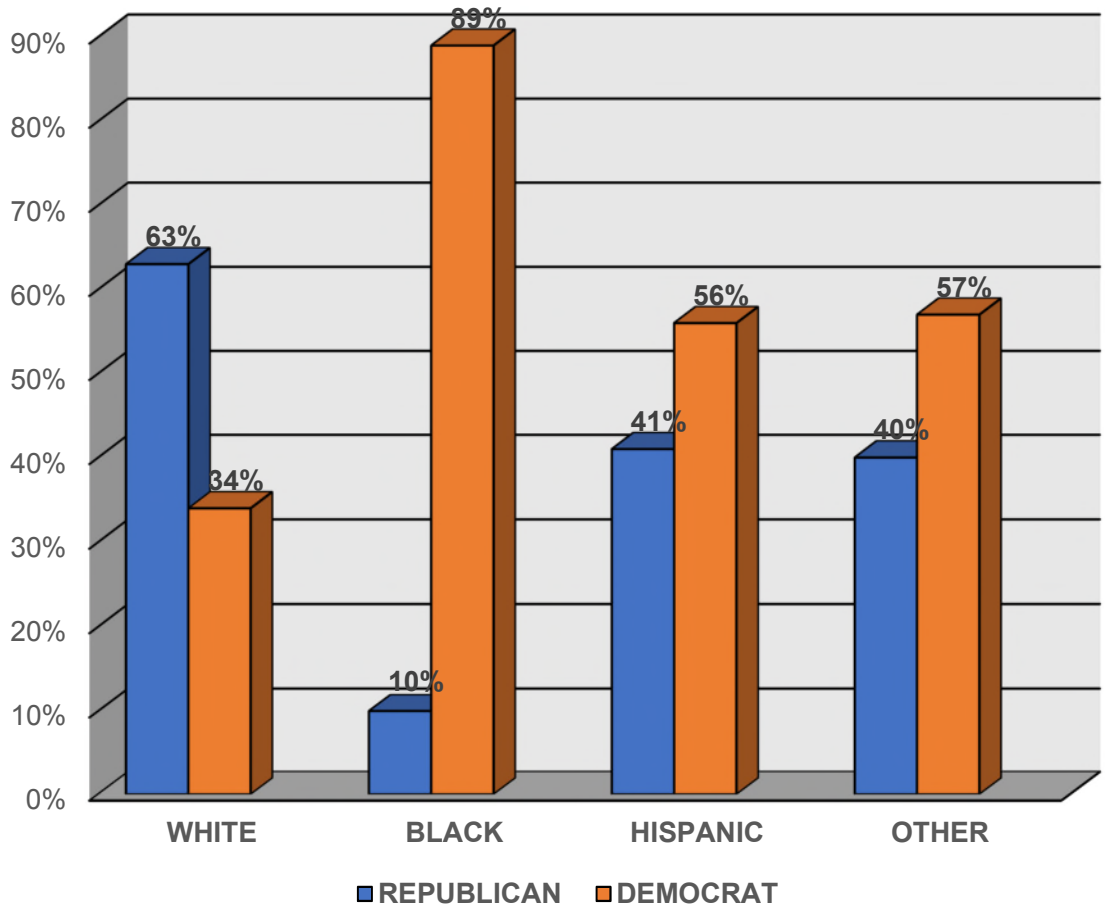


TABLE 14 NORTH CAROLINA EXIT POLL RESULTS BY RACE, WHITE VERSUS NON-WHITE ONLY2016			
CANDIDATE	WHITE	NON-WHITE	DIFFERENCE WHITE - NON-WHITE
2016 Pres. Clinton (WD)	32%	79%	-47%
2016 Pres. Trump (WR)	63%	18%	+45%
2016 Senate Ross (WD)	32%	77%	-45%
2016 Senate Burr (WR)	64%	20%	+44%
2016 Gov. Cooper (WD)	37%	79%	-42%
2016 Gov. McCrory (WR)	62%	20%	+42%
Mean all Dem	34%	78%	
Mean all Rep	63%	19%	
Source: CNN exit poll.			

CHART 11: RACIAL DISPARITIES IN PARTY VOTING, 2016, NORTH CAROLINA, WHITE, NON-WHITE

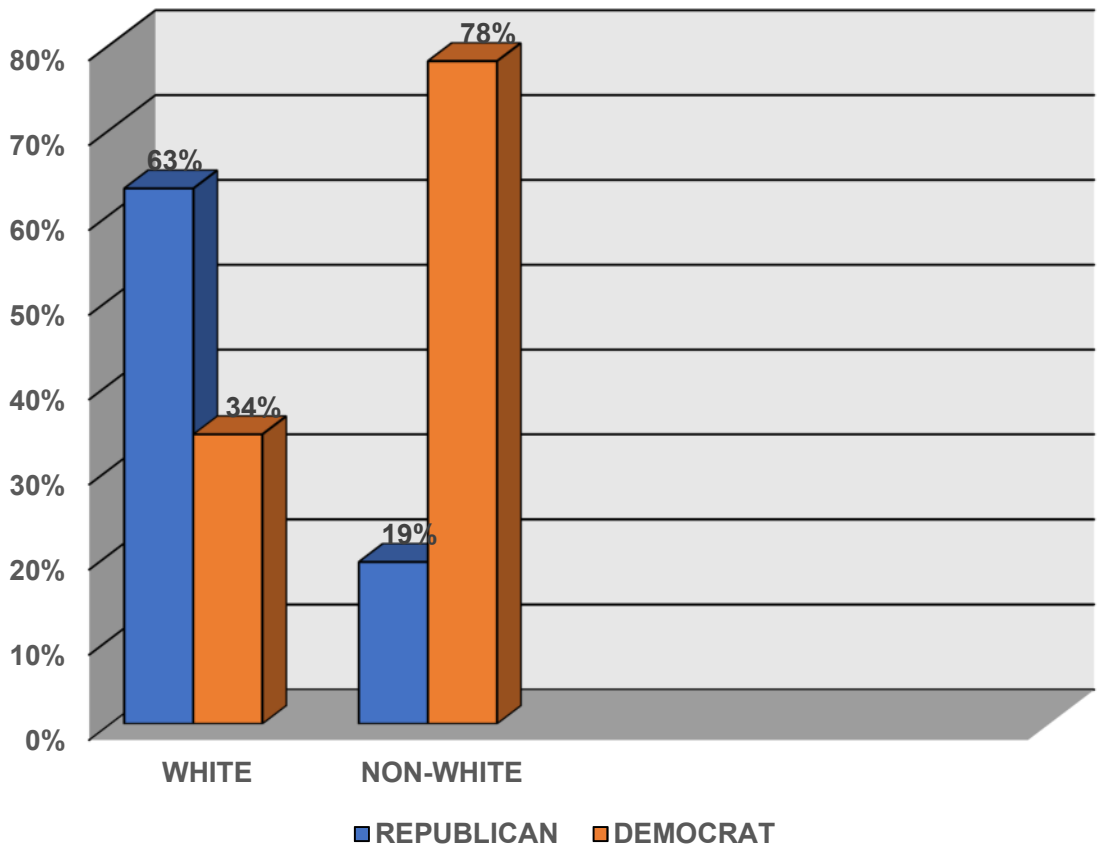


TABLE 15 EXIT POLLS, COMPARISON OF DEMOCRATIC VOTING, BLACK V. WHITE, AND OTHER SOCIAL & ECONOMIC CHARACTERISTICS, NORTH CAROLINA, 2016										
Candidate	**BLACK**	**WHITE**	**WOMEN**	**MEN**	**18-29**	**65+**	**HIGH SCH. ONLY**	**COLL GRAD**	**INC. 50K-**	**INC. 100K+**
2016 President Clinton (WD)	89%	32%	52%	38%	57%	37%	44%	49%	56%	38%
2016 President Trump (WR)	8%	63%	45%	56%	35%	60%	54%	48%	38%	60%
2016 Senate Ross (WD)	90%	32%	51%	38%	56%	37%	43%	47%	56%	35%
2016 Senate Burr (WR)	9%	64%	46%	58%	40%	60%	55%	50%	40%	63%
2016 Gov. Cooper (WD)	88%	37%	55%	45%	63%	39%	45%	52%	60%	42%
2016 Gov. McCrory (WR)	12%	63%	43%	55%	36%	59%	54%	47%	39%	58%
Mean All Dem Cands.	89%	34%	53%	40%	59%	38%	44%	49%	57%	38%
Mean All Rep Cands.	10%	63%	45%	56%	37%	60%	54%	48%	39%	60%
Difference	**+79% DEM**	**+29% REP**	**+8% DEM**	**+16% REP**	**+22% DEM**	**+22% REP**	**+10% REP**	**+1% DEM**	**+18% DEM**	**+22% REP**
CNN exit poll, 2016.										

CHART 12: EXIT POLLS, COMPARISON OF DEMOCRATIC VOTING, BLACK V. WHITE, AND OTHER SOCIAL & ECONOMIC CHARACTERISTICS, DIFFERENCES IN REPUBLICAN SUPPORT, NORTH CAROLINA, 2016

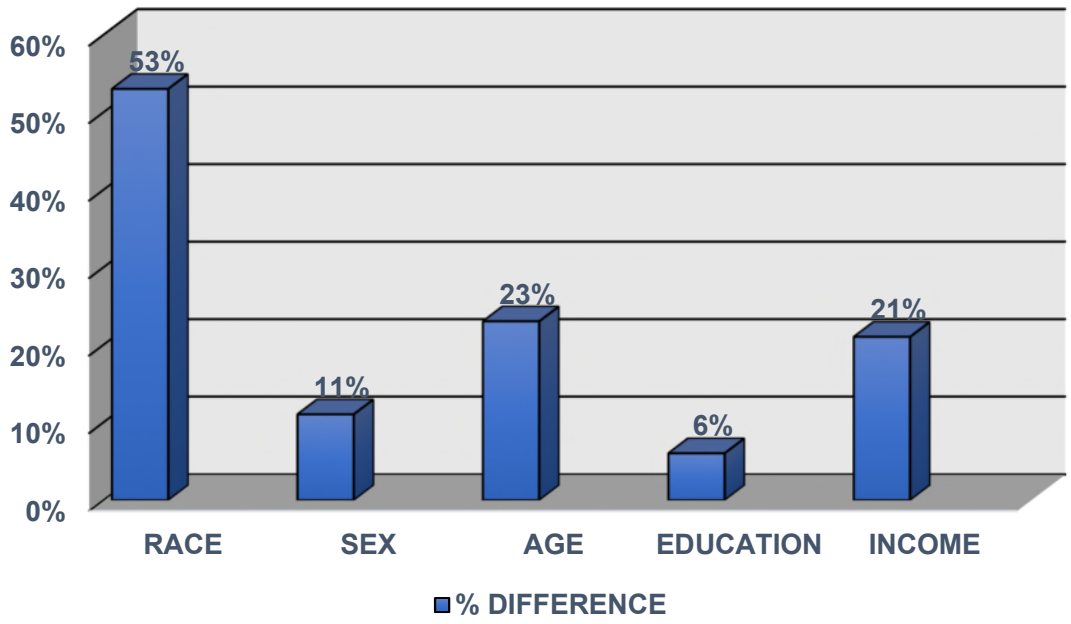
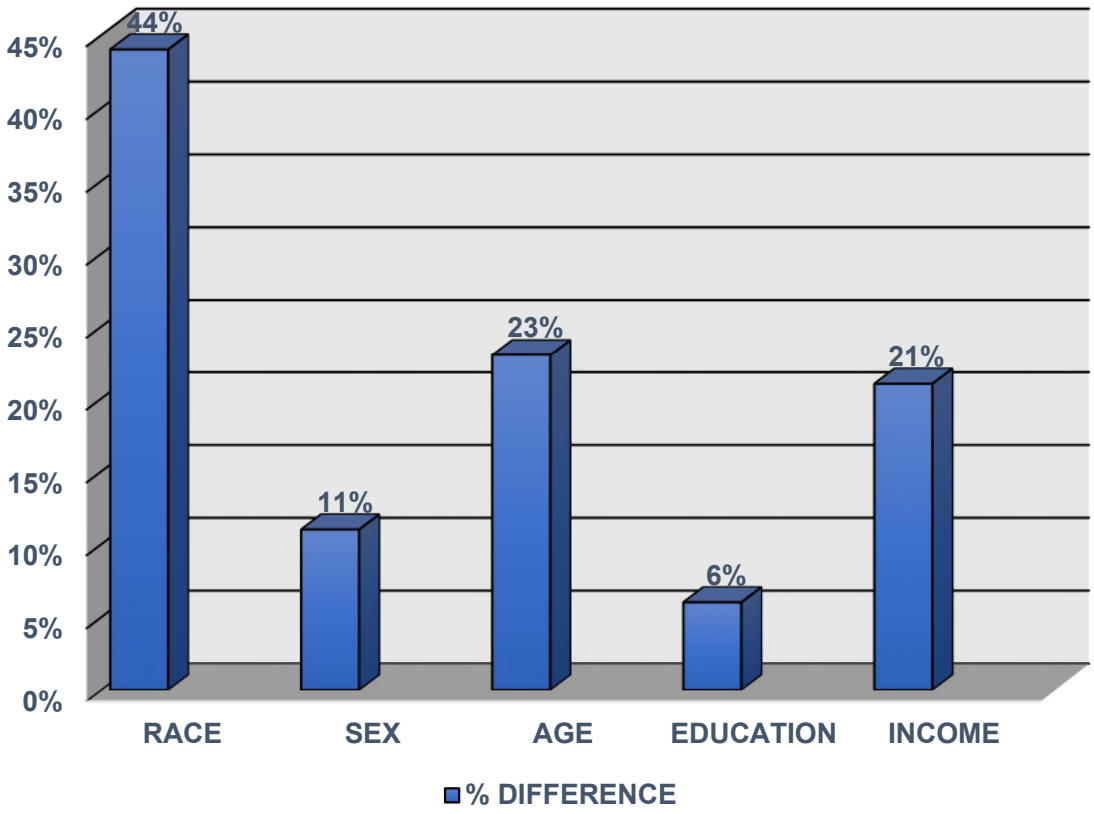


TABLE 16 EXIT POLLS, COMPARISON OF DEMOCRATIC VOTING, NON-WHITE V. WHITE, AND OTHER SOCIAL & ECONOMIC CHARACTERISTICS, NORTH CAROLINA, 2016										
Election and Candidate	**NON-WHITE**	**WHITE**	**WOMEN**	**MEN**	**18-29**	**65+**	**HIGH SCH. ONLY**	**COLL GRAD**	**INC. 50K-**	**INC. 100K+**
2016 President Clinton (WD)	79%	32%	52%	38%	57%	37%	44%	49%	56%	38%
2016 President Trump (WR)	18%	63%	45%	56%	35%	60%	54%	48%	38%	60%
2016 Senate Ross (WD)	77%	32%	51%	38%	56%	37%	43%	47%	56%	35%
2016 Senate Burr (WR)	20%	64%	46%	58%	40%	60%	55%	50%	40%	63%
2016 Gov. Cooper (WD)	79%	37%	55%	45%	63%	39%	45%	52%	60%	42%
2016 Gov. McCrory (WR)	20%	63%	43%	55%	36%	59%	54%	47%	39%	58%
Mean All Dem Cands.	78%	34%	53%	40%	59%	38%	44%	49%	57%	38%
Mean All Rep Cands.	19%	63%	45%	56%	37%	60%	54%	48%	39%	60%
Difference	**+59% DEM**	**+29% REP**	**+8% DEM**	**+16% REP**	**+22% DEM**	**+22% REP**	**+10% REP**	**+1% DEM**	**+18% DEM**	**+22% REP**
CNN exit poll, 2016.										

CHART 13: EXIT POLLS, COMPARISON OF DEMOCRATIC VOTING, NON-WHITE V. WHITE, AND OTHER SOCIAL & ECONOMIC CHARACTERISTICS, DIFFERENCES IN REPUBLICAN SUPPORT, NORTH CAROLINA, 2016



Finally, additional evidence of polarized voting emerges from polling data on the referendum vote for the voter photo ID constitutional amendment in November 2018. According to Representative Lewis, "An overwhelming majority of North Carolinians, regardless of party affiliation, race or gender believe voter ID is common sense to ensure election integrity." In fact, the polling data shows support for the referendum was polarized along racial and party lines.[60]

As demonstrated in Table 17 and Charts 14 and 15, the poll of 659 likely voters, taken in from October 26 to October 29, 2018, found that 66 percent of whites supported the amendment, compared to 28 percent of African Americans, 58 percent of Hispanics, and 35 percent of Asians. However, the numbers of Hispanics (9 percent of likely voters) and Asians (5 percent) was too small for reliable measurement. For all non-whites in the poll, 35 percent backed the voter photo ID amendment. The poll also shows that majority support for the amendment was limited to

[60] Audio Transcript of Legislative Day 151, (House Floor Consideration of H. 1092) at 1:30:20 - 1:30:32 (June 25, 2018), available at https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018

Republicans, who backed the amendment at the level of 90 percent. Only 28 percent of Democrats backed the amendment and Independents were divided with 49 percent backing.

TABLE 17
SURVEYUSA POLL ON SUPPORT FOR CONSTITUTIONAL AMENDMENT ON VOTER PHOTO ID, BY RACE & PARTY

SUPPORT	WHITE	BLACK	HISPANIC	ASIAN	NON-WHITE*	REP	DEM	IND
For	66%	28%	58%	35%	35%	90%	28%	49%
Against	29%	61%	42%	56%	59%	7%	66%	48%
Undecided	4%	11%	0%	9%	6%	4%	6%	4%

Source: SurveyUSA, "Results of SurveyUSA Election Poll #24509," 26-29 October 2018, 659 likely voters, http://www.surveyusa.com/client/PollReport.aspx?g=d095bb31-8110-4a7d-8fea-571bf017360f&c=294. * Non-white is average of black, Hispanic, and Asian, weighted by percentage of respondents.

CHART 14: SURVEYUSA POLL ON SUPPORT FOR CONSTITUTIONAL AMENDMENT ON VOTER PHOTO ID, BY RACE

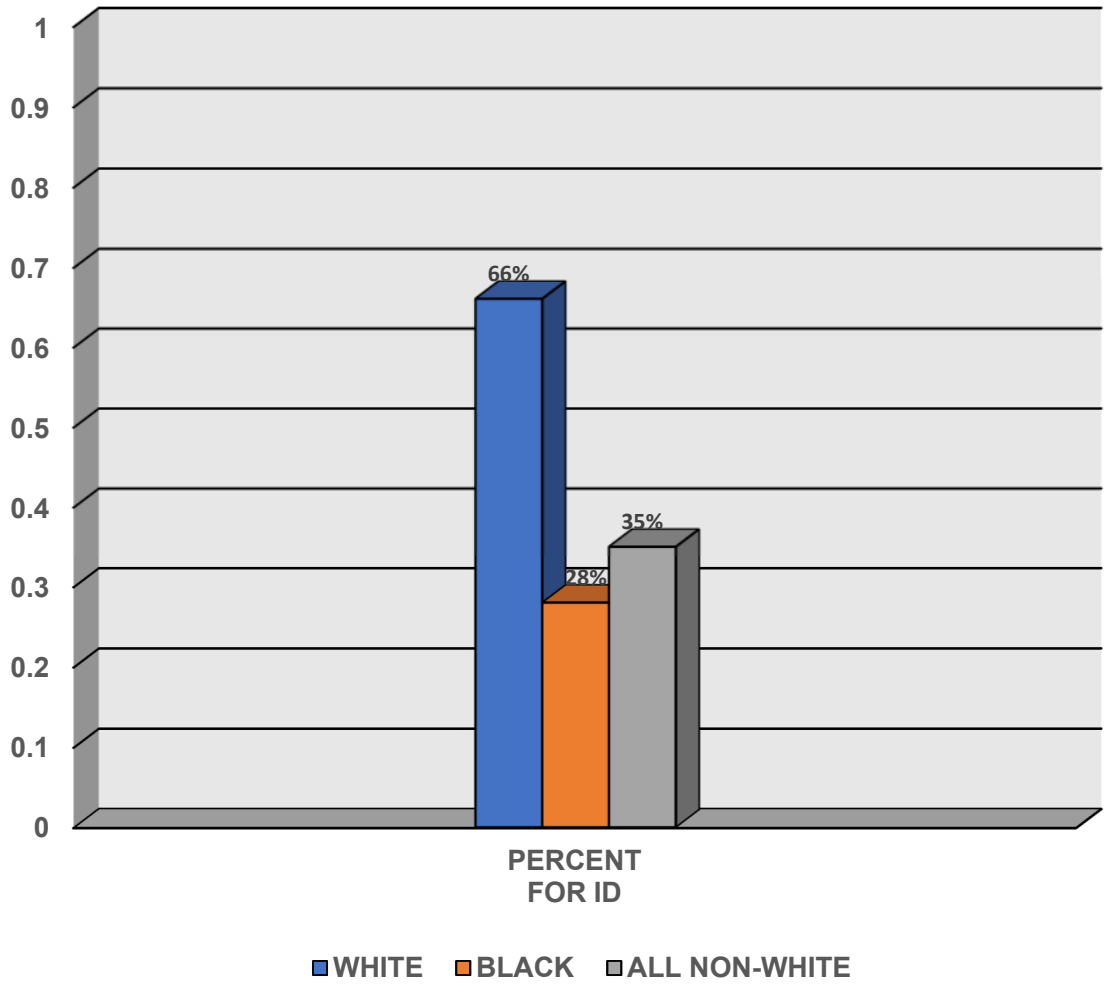
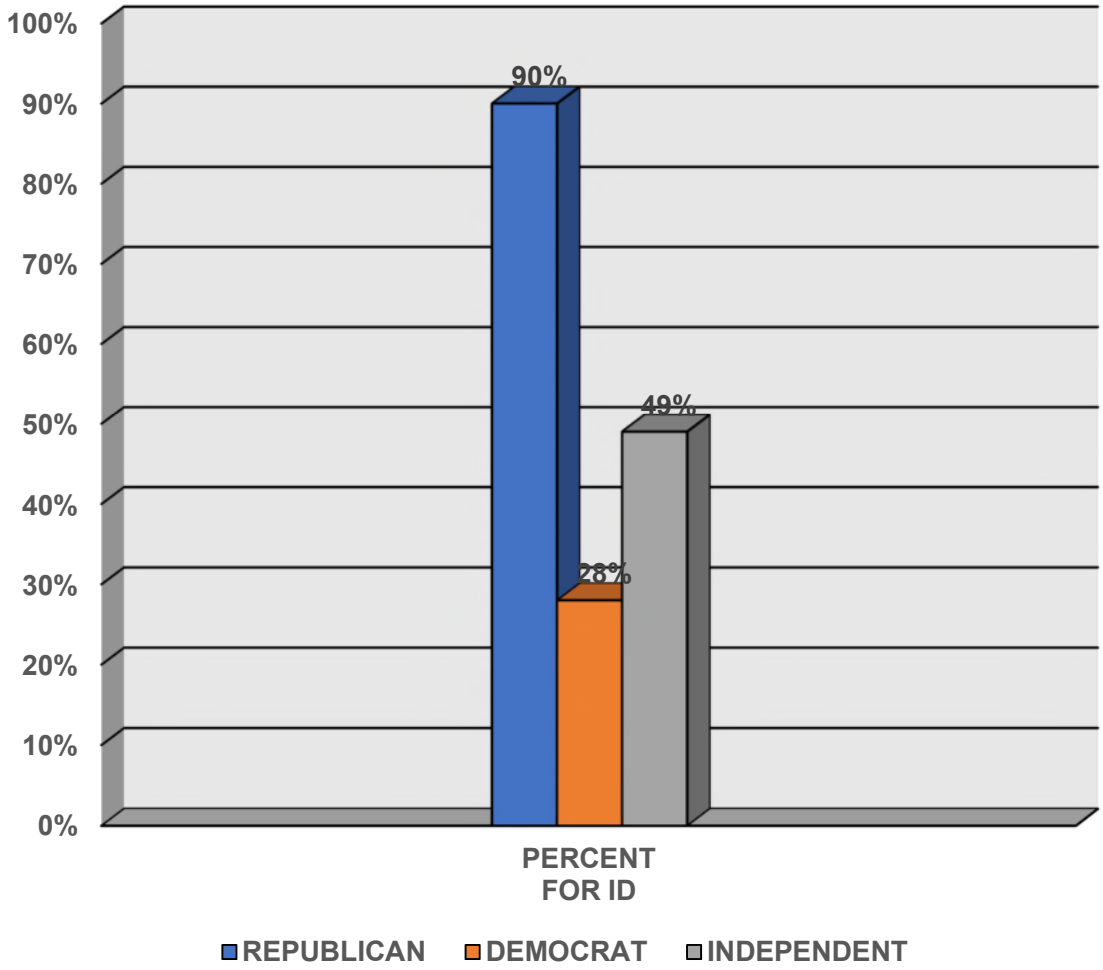


CHART 15: SURVEYUSA POLL ON SUPPORT FOR CONSTITUTIONAL AMENDMENT ON VOTER PHOTO ID, BY PARTY



C. Prior Photo Voter ID Legislation

In 2013, after Republicans gained control of both the legislative and executive branches of government with the election of Republican Governor Pat McCrory in 2012, they renewed their push for a photo voter ID law. Republicans introduced a bill for such a law -- H 589 -- at the beginning of the 2013 Assembly session. The original H. 589 included only voter photo

identification requirements. It passed the House of Representatives on a straight party-line vote in April 2013.[61]

The sponsors of H. 589 bill subjected the proposed photo voter ID law legislation to what they lauded as a transparent process and extensive vetting that included public hearings, the testimony of interest groups and authorities in the field, several committee hearings, and two days of debate in the House of Representatives. The sponsors took great pride in this lengthy, open, and in-depth process, which they considered as evidence of the integrity of their approach to legislation with implications for the fundamental right to vote for the citizens of North Carolina. They also claimed that their bill included sufficiently broad provisions for photo identification that they believed balanced concerns about voter fraud and ballot integrity with ensuring access to voting.

The then Speaker of the House (now U.S. Senator) Thom Tillis said, "The vote was the result of a 10-month process that included multiple public hearings, hours of testimony by experts and members of the public, and in-depth analysis of voter ID systems in numerous other states." Representative David Lewis, then Chairman of the House Elections Committee said, "This has been a fair and open and transparent process, as we committed it would be."[62]

Sponsors of the House-passed version of H. 589 also took efforts to craft the bill in the hopes that it would not be found to discriminate against minorities and could withstand any legal challenge, even though the pre-clearance provision of Section 5 of the Voting Rights Act was still in force. Upon the filing of H. 589, Chairman Lewis said, "We are confident that this open process will produce a bill that stands up in a court of law, addresses legitimate concerns, and protects the integrity of the ballot box." After House passage, Speaker Tillis said that, compared to the 2011 bill, "I think it's technically a better bill and a bill that will withstand any challenge that comes to us in the way of the courts."[63]

After passage by the House in April, the initial bill sat in the Senate with no committee or floor action. Then, after the U.S. Supreme Court struck down Section 5 preclearance in *Shelby v. Holder,* 133 S. Ct. 2612 (2013) on June 25, 2013, the Republicans fundamentally changed their approach to the voter photo ID law.

On the day of the *Shelby* ruling, North Carolina State Senator Tom Apodaca, the Chairman of the Senate Rules Committee said, "I guess we're safe in saying this decision was what we were expecting." He added, "So, now we can go with the full bill." The *Shelby* decision, Apodaca said,

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[61] N.C. Gen. Assemb., General Assembly of North Carolina, "House Roll Call Vote, H. 589," 24 April 2013, https://www.ncleg.gov/Legislation/Votes/RollCallVoteTranscript/2013/H/350.

[62] "Voter ID Passes House," 24 April 2013, *News-Herald.com*, https://www.roanoke-chowannewsherald.com/2013/04/24/voter-id-passes-house/; Brian Warner, "N.C. House Passes Voter ID Bill," *Jones Street Chronicles*, 25 April 2013, http://thevoterupdate.com/jones/?p=903#.VLc6uCvF9SI.

[63] "Republicans to Press Ahead With Voter ID Law," ABC News 7, 5 March 2013, http://abc7news.com/archive/9016023/; Jennifer Jones, "NC House Passes Voter ID Bill," *NC Public Radio*, 5 April 2013, https://www.wfae.org/post/nc-house-passes-voter-id-bill#stream/0.

eliminated "legal headaches" in adopting the many revised and new provisions of the "full bill." The *Shelby* ruling," Apodaca said, "should speed things along greatly."[64]

The term "full bill" suggests that the leaders already had a larger bill in the works to be used if preclearance was eliminated. The huge expansion included in the "full bill" was revealed within weeks. The General Assembly added provisions to H. 589 which included additional restrictions on voter identification, the elimination of same day registration, the elimination of the partial counting of out-of-precinct provisional ballots, the elimination of pre-registration, and many other new provisions. However, on photo voter ID, the post-*Shelby* bill actually *reduced* the photo IDs authorized for voting in the pre-*Shelby* version. Specifically, the legislature eliminated forms of photo identification that were relatively more accessible to African Americans and retained forms of identification that were relatively less accessible to African Americans (see Fourth Circuit finding below).

Despite sweeping new changes in H. 589, the bill's supporters in the General Assembly did not subject the post-*Shelby* version of H. 589 to extensive public input or substantive scrutiny. Rather, sponsors pushed the bill through both chambers of the legislature in two days without public hearings, testimony by authorities or interest groups, research into its implications for the voting rights of minorities and other citizens, or extensive and open legislative debate. The lack of process given to the full bill, an extensive and far reaching legislation dealing with the fundamental right to vote of the citizens of North Carolina, contrasted starkly with the comparatively robust process given to the pre-*Shelby* version of the bill. The Senate and the House passed the post-*Shelby* version of H. 589 on July 25, 2013, on straight-line party votes, two days after it emerged from the Senate Rules Committee and just one day before the end of the legislative session, foreclosing any further opportunity for debate or analysis. The House debate was a pro-forma exercise. The bill's backers did not engage in substantive discussion with critics, but primarily allowed Democrats to vent their opposition, knowing that they had more than enough votes to enact the bill.[65]

On June 18, 2015, less than a month before a scheduled district court trial on voting rights and constitutional challenges to the 2013 VIVA legislation, the General Assembly modified the voter photo ID requirement legislation to include a "reasonable impediment" requirement (House Bill 836). Voters lacking an authorized ID at the polls could sign a declaration affirming any of the "reasonable impediments" to possessing such ID. The amendment provided:

Separate boxes that a voter may check to identify the reasonable impediment, including at least the following:

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[64] "Norths Carolina Voter Id Bill Moving Ahead With Supreme Court Ruling," *WRAL.com*, 25 June 2013, http://www.wral.com/nc-senator-voter-id-bill-moving-ahead-with-ruling/12591669/; "Voting Rights of Act Ruling May Affect NC Districts, Voter ID," *North Carolina Public Pres*s, 26 June 2013, https://carolinapublicpress.org/15789/voting-rights-act-ruling-may-affect-nc-districts-voter-id/

[65] N.C. Gen. Assemb., "When is the General Assembly in Session," http://www.ncga.state.nc.us/gascripts/Help/KnowledgeBase/viewItem.pl?nID=35 and Session 2013-14, House Bill 589, http://www.ncleg.gov/BillLookup/2013/h589; *Transcript of Proceedings Before the House of Representatives*, 25 July 2013.

(a) Lack of transportation.

(b) Disability or illness.

(c) Lack of birth certificate or other documents needed to obtain photo identification.

(d) Work schedule.

(e) Family responsibilities.

(f) Lost or stolen photo identification.

(g) Photo identification applied for but not received by the voter voting in person.

(h) Other reasonable impediment.

If the voter checks the "other reasonable impediment" box, a further brief written identification of the reasonable impediment shall be required, including the option to indicate that State or federal law prohibits listing the impediment.[66]

House Bill 836 also extended the period for which expired IDs would be accepted for voting from one year under the original VIVA to four years. It stated an ID "shall be acceptable if it has a printed expiration date that is not more than four years before it is presented for voting.[67]

D. Circuit Court Opinion

After the District Court upheld VIVA, a panel of the Fourth Circuit Court of Appeals reversed and struck down all challenged provisions of the law, including the photo ID requirement for voting at the polls in North Carolina. Among rulings relevant to the present analysis, the Court found:

* "The law required in-person voters to show certain photo IDs, beginning in 2016, which African Americans disproportionately lacked…"

* "The pre-Shelby County version of SL 2013-381 provided that all government-issued IDs, even many that had been expired, would satisfy the requirement as an alternative to DMV-issued photo IDs. J.A. 2114-15. After Shelby County, with race data in hand, the legislature amended the bill to exclude many of the alternative photo IDs used by African Americans. Id. at *142; J.A. 2291-92. As amended, the bill retained only the kinds of IDs that white North Carolinians were more likely to possess."

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[66] H.B. 836, 2015 Gen. Assemb., Reg. Sess. (N.C. 2015), https://www.ncleg.gov/Sessions/2015/Bills/House/PDF/H836v5.pdf.

[67] *Ibid*.

* "The record shows that, immediately after *Shelby County*, the General Assembly vastly expanded an earlier photo ID bill and rushed through the legislative process the most restrictive voting legislation seen in North Carolina since enactment of the Voting Rights Act of 1965."

* "Although the new provisions target African Americans with almost surgical precision, they constitute inapt remedies for the problems assertedly justifying them and, in fact, impose cures for problems that did not exist. Thus, the asserted justifications cannot and do not conceal the State's true motivation."

* "The district court specifically found that 'the removal of public assistance IDs' in particular was 'suspect,' because 'a reasonable legislator [would be] aware of the socioeconomic disparities endured by African Americans [and] could have surmised that African Americans would be more likely to possess this form of ID.'"

* "For example, the photo ID requirement inevitably increases the steps required to vote, and so slows the process."

* "Moreover, after the General Assembly finally revealed the expanded SL 2013-381 to the public, the legislature rushed it through the legislative process ... But, of course, a legislature need not break its own rules to engage in unusual procedures. Even just compared to the process afforded the pre-Shelby County bill, the process for the "full bill" was, to say the very least, abrupt."

* "The photo ID requirement, which applies only to in-person voting and not to absentee voting, is too narrow to combat fraud. On the one hand, the State has failed to identify even a single individual who has ever been charged with committing in-person voter fraud in North Carolina. See J.A. 6802. On the other, the General Assembly did have evidence of alleged cases of mail in absentee voter fraud. Notably, the legislature also had evidence that absentee voting was not disproportionately used by African Americans; indeed, whites disproportionately used absentee voting. ... The bipartisan State Board of Elections specifically requested that the General Assembly remedy the potential for mail-in absentee voter fraud and expressed no concern about in-person voter fraud, J.A. 1678."

* "Notably, the legislature also had evidence that absentee voting was not disproportionately used by African Americans; indeed, whites disproportionately used absentee voting. J.A. 1796-97. The General Assembly then exempted absentee voting from the photo ID requirement. 2013 N.C. Sess. Laws 381, pt. 4. This was so even though members of the General Assembly had proposed amendments to require photo ID for absentee voting, N.C. Gen. Assemb. Proposed Amend. No. A2, H589-AST-50 [v.2] (April 24, 2013).

* "The record thus makes obvious that the "problem" the majority in the General Assembly sought to remedy was emerging support for the minority party. Identifying and restricting the ways African Americans vote was an easy and effective way to do so. We therefore must conclude that race constituted a but-for cause of SL 2013-381, in violation of the Constitutional and statutory prohibitions on intentional discrimination."

E. Republican Solidarity on Voter Photo ID Legislation

Despite these findings from the Fourth Circuit, in resurrecting photo ID in North Carolina, the motivation to suppress African American and other minority voters may have been yet stronger in 2018 than in 2013. In 2016, Democrat Roy Cooper won the governorship by 10,277 votes out of some 4.7 million votes cast (0.2 percent). Republican President Donald Trump would be facing a difficult reelection campaign in 2020, with North Carolina a battle-ground state.

Not only did Republican votes enact photo voter ID in both 2013 and 2018, but as indicated above in Table 1, a clear majority of Republicans, ranging from 53 percent to 64 percent who voted for the 2018 constitutional amendment, the implementing legislation, and the veto override had also been in the legislature in 2013 and voted for the post-Shelby voter ID legislation at that time. Not a single Republican who had served in the 2013 legislative session and remained in office for the 2018 votes dissented from the party consensus on any of the three 2018 votes.

VIII. PROCEDURAL DEVIATIONS

A. Misleading the Court to Retain Republican Super-Majorities in the General Assembly

As one of the *Arlington Heights* factors, procedural deviations, even if not illegal or in violation of General Assembly rules, can be indicia of discriminatory intent, even if not openly discriminatory in themselves. As explained in section IV, after the Fourth Circuit invalidated VIVA, the Republican majority in the General Assembly faced another setback when a federal court struck down the legislative redistricting plan as an unconstitutional racial gerrymander and ordered a redrawn plan and a special election. Republican legislators avoided the special election by misleading the court about their capacity to redraw districts in a timely fashion, thus retaining their veto-proof majority in both chambers of the General Assembly at least through regularly scheduled elections in 2018, as well as the three-fifths vote in both chambers of the General Assembly required to place a constitutional amendment on the ballot. The retention of this super-majority was critical for Republicans' effort to resurrect the photo ID requirement because voters had elected a Democratic governor in 2016. A three-fifths vote is required in North Carolina both for proposing a constitutional amendment and overriding a gubernatorial veto.[68]

B. Lack of a Full Review Process

As noted above, in first adopting in the State House the pre-Shelby version of H. 589, the voter photo ID bill in 2013, Republican leaders of the General Assembly stressed the importance

[68] State Judge Collins invalidated the two constitutional amendments that passed in the November 2018 election, ruling that "the unconstitutional racial gerrymander tainted the three-fifths majorities required by the state Constitution before an amendment proposal can be submitted to the people for a vote, breaking the requisite chain of popular sovereignty between North Carolina citizens and their representatives…" That decision was temporarily stayed pending appeal. In response to another lawsuit, a state court of appeals panel denied a motion for a preliminary injunction against the implementing law. "North Carolina Voter ID Amendment (2018), Ballotpedia, https://ballotpedia.org/North_Carolina_Voter_ID_Amendment_(2018); Elizabeth Thompson, "Judges won't block voter ID law for 2020, but lawsuit will continue," Raleigh News-Observer, 19 July 2019, https://www.newsobserver.com/news/politics-government/article232078502.html.

of the prolonged and extensive 10-month review of the bill. It subjected the far more extensive post-Shelby version to no such review. As also noted above, the Fourth Circuit stressed the lack of a full review process as significant, even if the legislature was not technically violating any rules or laws; "The record shows that, immediately after Shelby County, the General Assembly vastly expanded an earlier photo ID bill and rushed through the legislative process the most restrictive voting legislation seen in North Carolina since enactment of the Voting Rights Act of 1965." In disregard of this ruling, the General Assembly did not replicate a through and careful review of either its proposed constitutional amendment, or its enabling legislation in 2018.

C. Rushed and Unusual Process for Enacting the Proposed Constitutional Amendment on Voter Photo ID

The General Assembly quickly pushed through the constitutional amendment of voter ID on close to a straight party-line vote along with five other amendments. Republican leaders filed the amendment on June 7, 2018 and enacted it three weeks later on June 29, 2018, without a full review of its implications or how it related to the Fourth Circuit's ruling in 2016. Gerry Cohen, the former Special Counsel to the General Assembly noted that it is highly unusual for the legislature to propose constitutional amendments through a rushed process. Unlike the process in 2018, for "most constitutional amendments," Cohen said," the process of constitutional amendments has taken months in the legislature."." There has been "lots of opportunities for debates and discussion." The 1970 constitutional revision, for example, adopted in 1969, had a study commission that met for two years." In this case, however, six constitutional amendments "were passed within five days of each other," without such process. Cohen concluded, "If you view the Constitution as an important document, then this was a bizarre process."[69]

The voter ID amendment did not specify which IDs would be authorized to vote but left that entirely to the General Assembly, which in 2013 had enacted a photo voter ID that -- according to the Fourth Circuit Court of Appeals -- had the effect and intent of discriminating against minorities. It was also adopted by a legislature that was elected under an unconstitutional racial gerrymander and, as the state court ruled in 2019, also under an unconstitutional partisan gerrymander, dating back to 2011. As noted above, moreover, the legislature with the Republican supermajority needed to put a constitutional amendment on the ballot (60 percent) was seated only because the leaders of the General Assembly dissembled about their readiness to draw new state legislative districts in 2017 in time for a special election to remedy the racial gerrymander as ordered by the federal court.

According to the NC Constitutional Amendments Publication Commission chaired by the Secretary of State, the amendment provided no guidance on the IDs that would be authorized for voting and gave the General Assembly wide latitude in adopting the implementing legislation: "The Legislature would be authorized to establish exceptions to the requirement to present photographic identification before voting. However, it is not required to make any exceptions." In addition, "There are no further details at this time on how voters could acquire valid

[69] Clayton Henkel, Interview, "Gerry Cohen, Former Special Council to the North Carolina General Assembly," Radio Interviews, *NC Policy Watch*, 19 August 2018, http://www.ncpolicywatch.com/2018/08/19/gerry-cohen-former-special-counsel-to-the-nc-general-assembly/.

photographic identification for the purposes of voting. There is no official estimate of how much this proposal would cost if it is approved."[70]

Gerry Cohen, former Special Counsel to the General Assembly, further explained just how far out of the norm was the process for drafting and passing the proposed constitutional amendment on photo voter ID.

*** It is highly unusual for the General Assembly to propose 6 amendments at one time**. "This is the third largest number ever," Cohen said, of constitutional amendments on the ballot at the same time. The only time that there were more than six amendments on the same ballot was back in 1970 and 1914. In 1914, Cohen said, "all were defeated." In this instance, moreover, several of the amendments implicated the fundamental right to voter and the structure of the board governing elections and the state judiciary.[71]

*** It is highly unusual to propose an amendment without implementing legislation.** Cohen notes that for the Voter ID and other amendments there was "no implementing legislation passed prior to tell us what this means." This violates "the norm for decades." In fact, "for 13 of the last 14 constitutional amendments the legislature passed implementing legislation prior to the amendment." He notes that without implementing legislation, the General Assembly, no matter what polls might indicate, is dealing with an "abstract concept, not the details of legislation." For voter photo IDs the devil can be in the details of which IDs are authorized or not.[72]

Through a more extended and careful process of review, deliberation and debate the General Assembly could have examined the differing laws of other states and provided voters more information on the kind of implementing legislation that the General Assembly was considering. Through this process the General Assembly could also have examined and reviewed the considerable differences between the pre- and post-Shelby version of the 2013 photo voter legislation. It could have reviewed during the debate on the constitutional amendment Speaker Moore's suggestion to adopt the HAVA model of providing non-photo ID options for voting.[73]

Opponents at the time raised the objection that the proposed constitutional amendment was enacted through a deficient process, was a ploy to get around the Fourth Circuit's ruling and did not give voters the information they needed to cast an informed vote. Helen Probst Mills, the Democratic candidate for State Senate District 25, said that the proposed amendment did not

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[70] NC Constitutional Amendments Publication Commission, "Official Explanation of the Proposed Constitutional Amendment to Require Photographic Identification to Vote." 23 August 2018, https://www.sosnc.gov/static_forms/NC_Constitutional_Documents/2018/H1092_Official_Explanation.pdf.

[71] Clayton Henkel, Interview, "Gerry Cohen, Former Special Council to the North Carolina General Assembly," Radio Interviews, *NC Policy Watch*, 19 August 2018, http://www.ncpolicywatch.com/2018/08/19/gerry-cohen-former-special-counsel-to-the-nc-general-assembly/. See also, North Carolina 1914 Ballot Measures," *Ballotpedia*, https://ballotpedia.org/North_Carolina_1914_ballot_measures

[72] *Ibid*.

[73] "Interview: Rep. Tim Moore on Proposed Voter ID Legislation," *Spectrum News*, 7 June 2018, https://spectrumlocalnews.com/nc/triangle-sandhills/news/2018/06/07/tim-moore-interview.

inform voters about the specifics of a photo voter ID law and that "we are asking voters to approve a substantial change without providing them with enough information to make an informed decision" The proposal, she added, was "nothing more than an end run around" the prior court decision. A WRAL editorial stated that, the various amendments proposed by the General Assembly in 2018 "were concocted in secret. There's been too little time for public examination, distribution of information and debate of changes that carry such permanence… These amendments have worked their way through the legislative process in a flash--less than 14 days. None of these involve ANY emergency. There is no indication from anyone that there would be ANY immediate harm if these amendments just disappeared."[74]

D. Rushed and Restricted Process for Enacting Implementing Legislation on Voter Photo ID

The General Assembly enacted implementing legislation in the lame duck session in the fall of 2018 after voters had elected a new assembly under district maps adopted to remedy the unconstitutional racial gerrymander. The process was even more rushed than the implementation of the 2013 VIVA legislation. The General Assembly enacted the legislation on December 6, 2018, just 10 days after the lame duck session convened on November 27, 2018 and just 17 days after it first released draft legislation on November 20. The House Committee on Elections reported the bill favorably on November 27, the day it was released, rushed Senate Bill 824 through the General Assembly, and the Senate Rules Committee reported it favorably on the following day, November 28. The Senate adopted a series of amendments on November 28 and passed it on third reading on the following day, November 29. The House adopted amendments on December 5 and passed it that day on third reading. The final vote on the amended bill occurred in both chambers on December 6. There was very limited time and notice for public comments and no calling of expert witnesses as in the pre-*Shelby* process in 2013. The Republican super-majority in the General Assembly ignored Democratic calls to delay the process at least until a thorough review of alleged absentee ballot fraud in Congressional District 9 could be completed.[75]

Representative Harrison noted in her affidavit procedural deviation of significance: "I also re-introduced during technical corrections the amendment to allow for a student's school schedule, in addition to work schedule, to be listed as a reasonable impediment to obtaining a voter ID. Though this amendment passed with bipartisan support in the House, it was removed from the Conference Report that was ultimately adopted by both chambers." She further relates that "House leadership was aware that Democratic House members intended to propose additional ameliorative amendments during third reading, and members attempted to object to third reading to do so, but

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[74] David Sinclair, "Lawmakers, Opponents Weight in on Voter ID," *The Pilot*, 26 June 2018, https://www.thepilot.com/news/lawmakers-opponents-weigh-in-on-voter-id/article_2a889e3a-7970-11e8-ba8b-9f81b015d13b.html; Editorial, "Voters Need to Reject Rushed, Fatally Flawed Constitutional Amendments," WRAL, 28 June 2018, https://www.wral.com/editorial-voters-need-to-reject-rushed-fatally-flawed-constitutional-amendments/17660738/.

[75] N.C. Gen. Assemb., H D Bill Draft 2017-Bk-23 [V.1] (This Is A Draft And Is Not Ready For Introduction) 11/20/2018 03:44:55 PM, https://www.ncleg.gov/documentsites/committees/JLElectionsOC/2017-2018/11-26-2018/Voter%20ID%20Draft.pdf; S.B. 824/2018-144, 2017-2018 Gen. Assemb., (N.C. 2018) https://www.ncleg.gov/BillLookup/2017/S824 "North Carolina Voter Id Bill Passes, Heads to Gov. Cooper," *ABC11*, 6 December 2018, https://abc11.com/politics/north-carolina-voter-id-bill-passes-heads-to-gov-cooper/4845626/.

were told that their objection came too late despite the fact that it was lodged within seconds. This highly unusual departure from typical procedure prevented the introduction of additional amendments to S. 824 before it was ordered engrossed."[76]

Representative Harrison also notes in her affidavit in the state litigation that the Republican majority in the General Assembly deliberately limited public commentary on the implementing legislation:

> **"Further, public comment was limited to allow only 30 individuals to speak on the proposed bill. Such a limitation deviates from typical procedure for a bill of this magnitude that relates to fundamental constitutional rights. In my experience, with regard to bills of this magnitude that affect issues such as voting rights or redistricting, the legislature has provided much more opportunity for lengthy and balanced public comment. In this instance, only a few individuals had the opportunity to speak in opposition to the proposed bill. Again, this is a deviation from standard procedure."[77]**

The declaration in this litigation of Reverend T. Anthony Spearman, president of the North Carolina State Conference of the NAACP recounts procedural irregularities that included efforts to deny critics of voter photo ID from the public an opportunity to comment in a meaningful and full way on the bill:

> **"In less than two days, S.B. 824 had been filed, passed through two committees, and approved by the Senate. Very little time was permitted for public questions or comments, and what time was given was provided with insufficient or no notice to the public that there would be an opportunity for public comment . . ."**
>
> **"On December 3, 2018, around 5:00 p.m., S.B. 824 was taken up by the House Committee on Elections and Ethics Law. The Committee refused to allow for any public comment during its discussion of S.B. 824, despite multiple requests made by committee members on behalf of the public—including representatives of the NC NAACP—who were in attendance to comment. As the Committee recessed around 6:30 p.m., it scheduled a meeting the next morning at 11:00 a.m. to continue its discussion of S.B. 824."**
>
> **"The next morning at 11:00 a.m., members of the public, including representatives of the NC NAACP, arrived at the Committee meeting room only to find that the meeting had been abruptly rescheduled to 1:00 p.m. without notice to the public. When the Committee reconvened later that day, the Chair announced, without any prior notice, that the Committee would hear comment from members of the public for one minute each. Five people spoke, but by that time, some individuals who had sought to comment,**

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[76] *Holmes v. Moore*, State of North Carolina, County of Wake, General Court of Justice, Superior Court Division, 18 CVS 15292, "Aff. of Rep. Pricey Harrison," p. 5.

[77] *Id.,* at 3.

including representatives of the NC NAACP, were no longer available. S.B. 824 received a favorable report from the Committee, was taken up by the House Rules Committee around 5:30 p.m. that night, and also received a favorable report.

"The very next day, December 5, 2018, the House took up S.B. 824 at around 2:15 p.m. Some amendments were adopted, and the bill passed second read in the House by 67-40. House Democrats attempted to protest a third read that same night, but were steamrolled by Republican leadership who declared the objection out of time and put the vote up for third read. The bill passed third read in the House that night by an identical vote."[78]

There was no reason for Republicans in General Assembly to rush through either the constitutional amendment or the implementing legislation. First, Republican legislative leaders had planned to adopt another photo voter ID law since the U.S. Supreme Court declined to hear an appeal of the Fourth Circuit opinion in May 2017, more than a year before the General Assembly adopted the proposed constitutional amendment. "In light of Chief Justice Roberts' statement that the ruling was not based on the merits of voter ID, all North Carolinians can rest assured that Republican legislators will continue fighting to protect the integrity of our elections by implementing the commonsense requirement to show a photo ID when we vote," said North Carolina Senate leader Phil Berger and House of Representatives Speaker Tim Moore, Republicans who backed the law, said in a joint statement, reported in the press in May 15, 2017.[79]

Second, 2019 was an off-year, with no regularly scheduled federal or state election. In fact, the initial law was so poorly drafted and left so much uncertain that it had to be revised in 2019, which include a delayed implementation until 2020 (House Bill 646, 2019 session). Simply put, the Republican majority in the General Assembly had ample time for study, commentary, and review. A rushed process was not necessary, especially for a law which impacted the fundamental right to vote and for which an earlier version had been found to have the effect and intent of discriminating against minorities.[80]

One serious consequence of the lack of review is that the General Assembly failed to conduct an analysis of the impact of proposed photo voter ID requirements on minority voters in the state. Although not a legal requirement it would certainly represent due diligence in light of the Fourth Circuit's finding that the 2013 voter photo ID law had a discriminatory effect on African American voters. The General Assembly had information before it in 2018 showing the racial disparity between African Americans and whites on the most common form of identification,

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[78] Decl. of Rev. T. Anthony Spearman, pages 10-11, *North Carolina State Conference of the NAACP v. Cooper*, No. 1:18-cv-01034 (M.D.N.C.) (Sept. 17, 2019).

[79] Hurley, Lawrence, "U.S. Top Court Lets North Carolina Voter Law Die, Pleasing Rights Groups," Reuters, 15 May 2017, https://www.reuters.com/article/us-usa-court-election/u-s-top-court-lets-north-carolina-voter-law-die-pleasing-rights-groups-idUSKCN18B1QB.

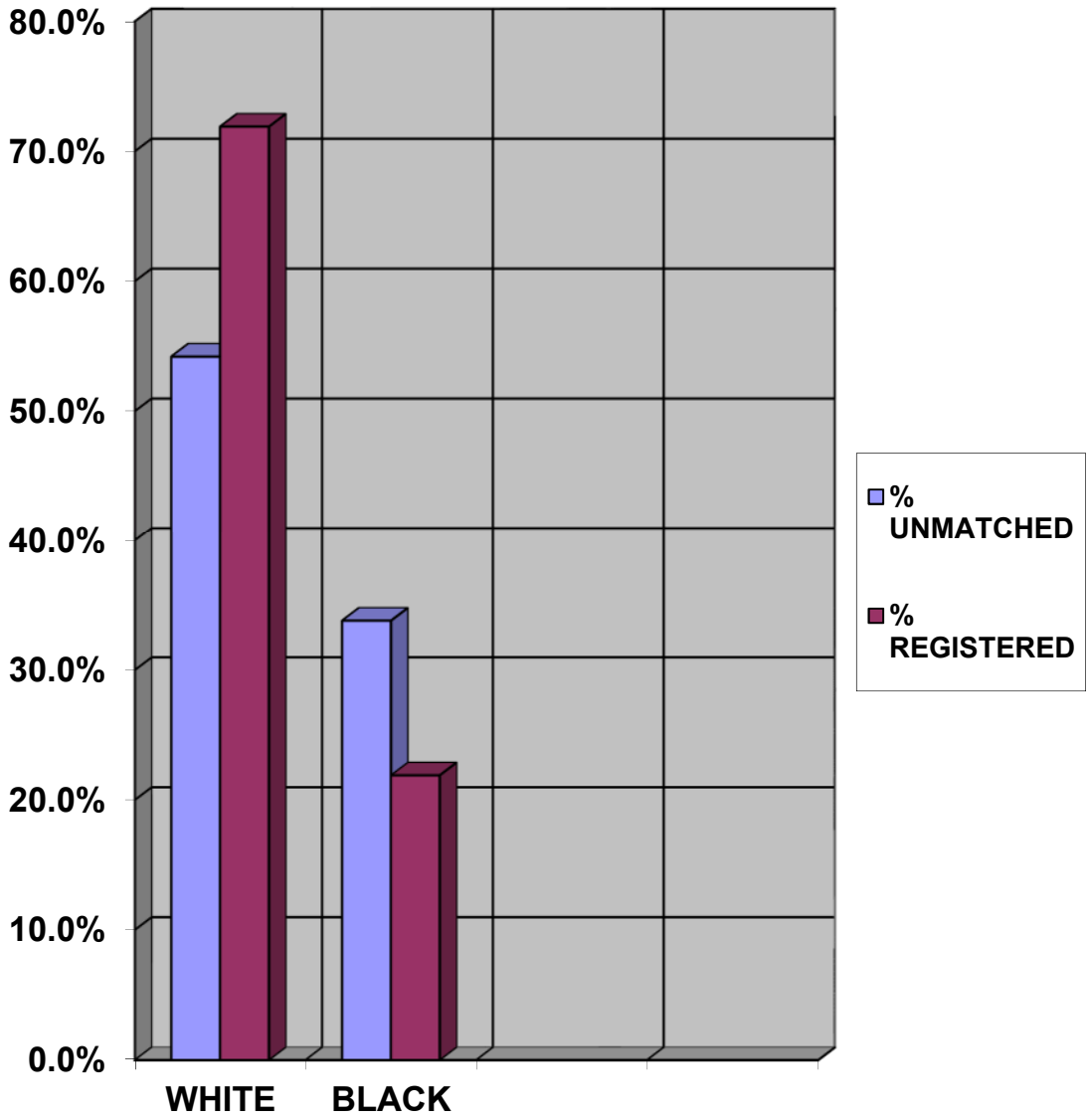
[80] Ross, Kirk, "Voter ID Delayed, College Student IDs Remain In Question" *Carolina Public Press*, 15 March 2019, https://carolinapublicpress.org/28647/voter-id-delayed-student-ids-in-question/; H.B. 646/SL 2019-22, 2019-2020 Gen. Assemb., Reg. Sess. (N.C. 2019), "ID Approval/Flex Muni One-Stop," https://www.ncleg.gov/BillLookUp/2019/H646.

DMV photo IDs. This includes information updated since the 2013 State Board of Elections matching of registered voters with DMV IDs.

In the interim between the adoption of VIVA in July 2013 and adoption of the constitutional amendment and photo voter ID bill, the State Board of Elections under Kim Strach had conducted an update of the 2013 analysis that matched voter files with Department of Motor Vehicle (DMV) records. The results of that April 2013 matching are reported in Table 18 and Chart 16. The results show that 318,643 registered voters were unmatched to DMV records and that by a wide margin African Americans as compared to whites were unmatched to such IDs. This matching analysis, moreover, includes matching to expired DMV IDs, which for the most part could not be used under the 2018 voter ID law.

TABLE 18 REGISTERED VOTERS UNMATCHED IN NORTH CAROLINA DMV DATABASE BY RACE, REVISED APRIL 2013 STATE STUDY				
GROUP	**PERCENT AMONG UNMATCHED REGISTERED VOTERS**	**PERCENT AMONG MATCHED REGISTERED VOTERS**	**PERCENTAGE POINT DIFFERENCE**	**PERCENT DIFFERENCE**
WHITE	54.2%	71.9%	-17.7%	25% LOWER
AFRICAN AMERICAN	33.8%	21.9%	+11.9%	54% HIGHER
Source: North Carolina State Board of Elections, Online Database, *April 2013 SBOE-DMV ID Analysis,* North Carolina State Board of Elections, Online Registered Voters Statistics, March 2013. Total unmatched: 318,643.				

CHART 16: REGISTERED VOTERS UNMATCHED IN DMV DATABASE APRIL 2013, BY RACE



The updated December 2014 analysis, for records as of November 2014, which was available to the General Assembly long before 2018, continued to show substantial racial disparities in the percentages of registered voters matched to DMV IDs. The December 2014 matching analysis expanded the earlier matching criteria to include historical records – "namely, previous names and residential addresses associated with a particular DMV customer." The use of historical records for this updated match, reduced the number of unmatched registered voters from 301,391 to 254,391. Although this newly derived number of unmatched registrants is lower than the 2013 number, the Board's own analysis of the 254,391 unmatched registrants discloses greater racial disparities than in 2013, as is evident from Tables 19 and Chart 17 and summarized in Table 20.

The Board indicated that the no-match list may be overinclusive because it likely includes some registrants who are no longer eligible to vote in North Carolina. However, the no-match list is far more likely to be underinclusive with respect to the 2018 law because it includes registrants matched to any photo DMV ID, not to the specific forms of ID that the General Assembly decided to authorize for voting in its 2018 implementing legislation. As explained above, the legislation excludes IDs expired for more than a year, with an exemption for persons aged 65-years or more. Analyses conducted during the earlier litigation and included in my 2015 report, demonstrated that for the March 2013 data, 240,218 registered voters are matched to DMV identifications that are expired. This did not count expired IDs possessed by exempt voters aged 70-years or more. As also explained above, the 2018 legislation also excludes learner's permits and provisional IDs, which were included in the 2013 law. Although the number of such matches is not known, it is likely to be significant based on national data presented above.

TABLE 19 NOVEMBER 2014 NORTH CAROLINA STATE BOARD OF ELECTIONS, MATCHING TO DMV RECORDS BY RACE, COMPARISON WITH REGISTERED VOTERS				
GROUP	% OF UNMATCHED REGISTRANTS	% OF ALL REGISTRANTS	PERCENTAGE POINT DIFFERENCE	PERCENT DIFFERENCE
ALL REGISTRANTS NOT REMOVED OR DENIED *				
BLACK	36.2%	22.5%	+13.7%	**+60.9%**
WHITE	48.5%	70.5%	-22.01%	**-31.2%**
REGISTRANTS WHO VOTED AT LEAST ONCE, NOT REMOVED OR DENIED				
BLACK	35.0%	22.5%	+12.5%	**+55.6%**
WHITE	53.8%	70.5%	-16.7%	**-23.7%**
* The percentages are nearly identical, within less than one3 percent, considering all registrants without removing denied or remove.				
Sources: North Carolina State Board of Elections, November 2014: State Board of Elections Analysis of Division of Motor Vehicles Data, & Voter Registration Statistics, Reporting Period, 11/04/2014, https://vt.ncsbe.gov/RegStat/Results/?date=11%2F04%2F2014.				

CHART 17: NOVEMBER 2014 NORTH CAROLINA STATE BOARD OF ELECTIONS, MATCHING TO DMV RECORDS BY RACE, COMPARISON WITH REGISTERED VOTERS

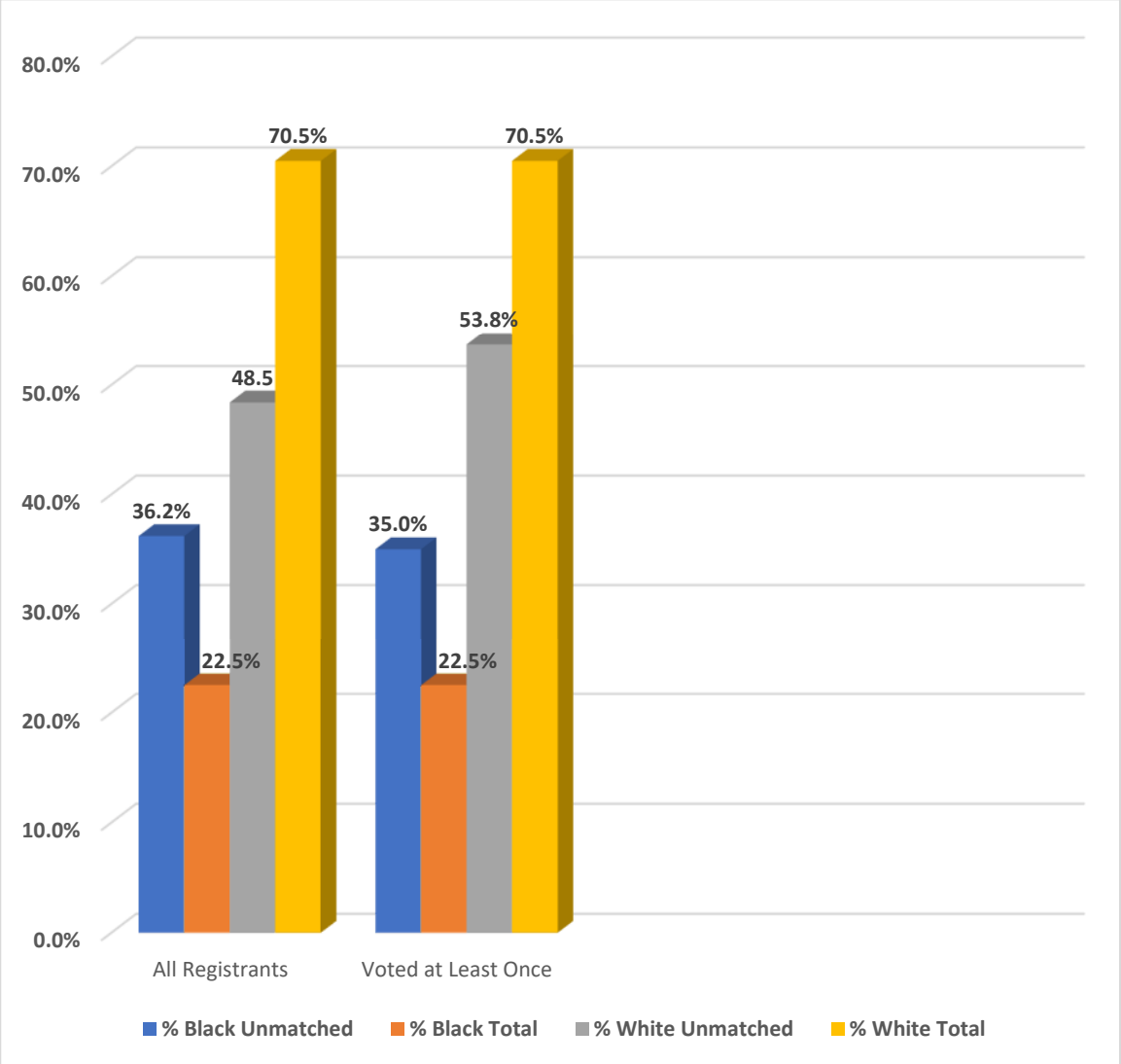


TABLE 20 DIFFERENCE BETWEEN PERCENTAGE UNMATCHED AND PERCENTAGE REGISTERED VOTERS 2014 and 2013 MATCHING					
NOVEMBER 2014 MATCHING			**APRIL 2013 MATCHING**		
	PERCENTAGE POINTS	PERCENT	PERCENTAGE POINTS	PERCENT	
BLACK DIFFERENCE	+13.7%	+60.9%	+11.9%	+54.3%	
WHITE DIFFERENCE	-22.0%	-31.2%	-17.7%	-24.6%	
Sources: November 2014: State Board of Elections Analysis of Division of Motor Vehicles Data & Voter Registration Statistics, Reporting Period, 11/04/2014, https://vt.ncsbe.gov/RegStat/Results/?date=11%2F04%2F2014; North Carolina State Board of Elections, Online Database, *April 2013* SBOE- DMV ID Analysis, https://canons.sog.unc.edu/wp-content/uploads/2013/12/St-Bd-voter-ID-report.pdf.					

E. Use Of The Unconstitutionally and Deceptively Elected Lame Duck Legislature For Enabling Legislation On Voter Photo ID

A lame duck session in North Carolina has the same legislative authority as any other session. However, several factors make the use of the 2018 lame duck session to pass a voter photo ID bill highly unusual. First, the Republican three-fifths super-majority in the lame duck session – necessary for overriding a gubernatorial veto -- was the result of an unconstitutional racial gerrymander by Republicans in the post-2010 redistricting, as the court ruled in *Covington*. Second, it was also the result of a partisan gerrymander that a state court found violated the North Carolina constitution. Third, the Republicans likely still held a three-fifths majority in the lame duck session only because the General Assembly had deceived the court into believing that it could not hold a special election in 2017 under a fairly drawn state legislative plan. Fourth, the Republicans sought to retain their super-majority in the General Assembly by enacting a redrawn map for 2018 that was substantially similar to the previous unconstitutionally racially-gerrymandered map. The court rejected the General Assembly's proposed remedial maps and ordered a special master to redraw the maps. The special master's remedial maps were upheld by the Supreme Court, with the exception of a few redrawn districts in two counties and were used in the 2018 elections. Fifth, under the new maps, to correct only the racial gerrymander, Republicans lost their super-majority in the General Assembly in 2018, and thus lacked the votes to override an expected veto of new implementing legislation for voter photo ID. During the debates over the constitutional amendment in June 2018, the House Committee on Rules rejected an amendment that would have required any enabling legislation to be enacted by the new legislature that was voted in at the same time in the November 2018 election in which voters decided on the constitutional amendment.[81]

The Governor vetoed the bill on December 14, 2018, calling it a "solution in search of a problem," and explaining that "the fundamental flaw in the bill is its sinister and cynical origins: It was designed to suppress the rights of minority, poor and elderly voters. The cost of disenfranchising those voters or any citizens is too high, and the risk of taking away the fundamental right to vote is too great, for this law to take effect."[82] On December 18 and 19, 2018, the Republican leadership put its unconstitutionally elected lame duck supermajority to use one last time in its final act of overriding the Governor's veto of S.B. 824.

IX. EVIDENCE OF DISCRIMINATORY PURPOSE: HISTORIC AND ONGOING DISCRIMINATION AGAINST AFRICAN AMERICANS IN NORTH CAROLINA

The state of North Carolina has a long and well-acknowledged history of discrimination against African Americans, much of which has substantially impacted the opportunity for African Americans to participate fully in the political process and elect candidates of their choice. This history is well documented in the Expert Report of Dr. James L. Leloudis submitted in this litigation. That history is also recognized in the Fourth Circuit Opinion striking down the 2013

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[81] House Committee on Rules, Calendar and Operations of the House, June 21, 2018, p. 19

[82] Bonner, Lynn, "NC Gov. Roy Cooper Vetoes Voter ID Bill," Raleigh News & Observer, 14 December 2018, https://www.newsobserver.com/news/politics-government/article223103100.html

VIVA legislation and recognizing that North Carolina intentionally discriminated against minority voters.[83]

A. Ongoing Disparities in Socioeconomic Status Between Whites and African Americans in North Carolina

The ongoing history of racial discrimination in North Carolina has a direct effect on the opportunities for African-Americans to participate fully in the political process. The lingering effects of the history of discrimination are further apparent today in the substantial socio-economic disparities between non-Hispanic African Americans and non-Hispanic whites in North Carolina. School and residential segregation contributes to the perpetuation of these disparities.

A comprehensive study of the socio-economic consequences of racial segregation found that "the quantitative evidence thus suggests that any process that concentrates poverty within racially isolated neighborhoods will simultaneously increase the odds of socioeconomic failure within the segregated group. People who grow up and live in environments of concentrated poverty and social isolation are more likely to become teenage parents, drop out of school, achieve low educations, earn lower adult incomes, and become involved with crime—either as perpetrator or victim … As the structural factor controlling poverty concentration, segregation is directly responsible for the perpetuation of socioeconomic disadvantage among Blacks."[84]

Another study published in *Public Health Reports* found that the evidence reviewed by the authors "suggests that segregation is a primary cause of racial differences in socioeconomic status (SES) by determining access to education and employment opportunities. SES in turn remains a fundamental cause of racial differences in health. Segregation also creates conditions inimical to health in the social and physical environment." The authors concluded that "effective efforts to eliminate racial disparities in health must seriously confront segregation and its pervasive consequences."[85]

The racial disparities in the socio-economic standing of African Americans and whites and disparities are documented in reports of the U.S. Census as well as other standard sources. All of this information is readily available to decision-makers in North Carolina and much of it was presented in the trial regarding the 2013 VIVA legislation, with little change in the more recent updates.

Table 21 and Charts 18 and 19 demonstrate a wide gap between African Americans and whites in North Carolina on measures of income, poverty, and unemployment. Table 21 and Chart

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[83] Preliminary Expert Report of James LeLoudis for Purposes of Preliminary Injunction, September 16, 2016, *North Carolina State Conference of the NAACP v. Cooper,* No. 18:cv-01034 (M.D.N.C.); *McCrory,* 831 F.3d at 223

[84] Massey, Douglas S., "Residential Segregation and Neighborhood Conditions in U.S. Metropolitan Areas" in Neil S. Smelser, et al., eds. *America Becoming: Racial Trends and Their Consequences,* vol. 1 (National Academy Press., 2001).

[85] Williams, David R. and Collins, Chiquita, "Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health," *Public Health Reports* 116, p. 404 (2001), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1497358/pdf/12042604.pdf.

20 demonstrate major disparities between African Americans and whites on Food Stamp/SNAPP recipients and net worth of just zero assets.

TABLE 21 ECONOMIC INDICATORS FOR NON-HISPANIC BLACK AND WHITES, NORTH CAROLINA, 2017 US CENSUS, AMERICAN COMMUNITY SURVEY		
MEASURE	NH BLACK	NH WHITE
MEDIAN HOUSEHOLD INCOME	$38,451	$60,263
PER CAPITA INCOME	$20,382	$35,114
POVERTY RATE FOR INDIVIDUALS	21.9%	10.2%
UNEMPLOYMENT RATE	7.7%	4.1%
FOOD STAMPS/SNAP PROGRAM RECIPIENTS	25.4%	7.8%
HOUSEHOLDS WITH ZERO OR NEGATIVE NET WORTH	21.4%	11.8%
Net worth data from Prosperity Now Scorecard, Survey of Income and Program Participation, 2014, https://scorecard.prosperitynow.org/reports#report-racial-disparity.		

CHART 18: POVERTY & UNEMPLOYMENT BY RACE, NORTH CAROLINA

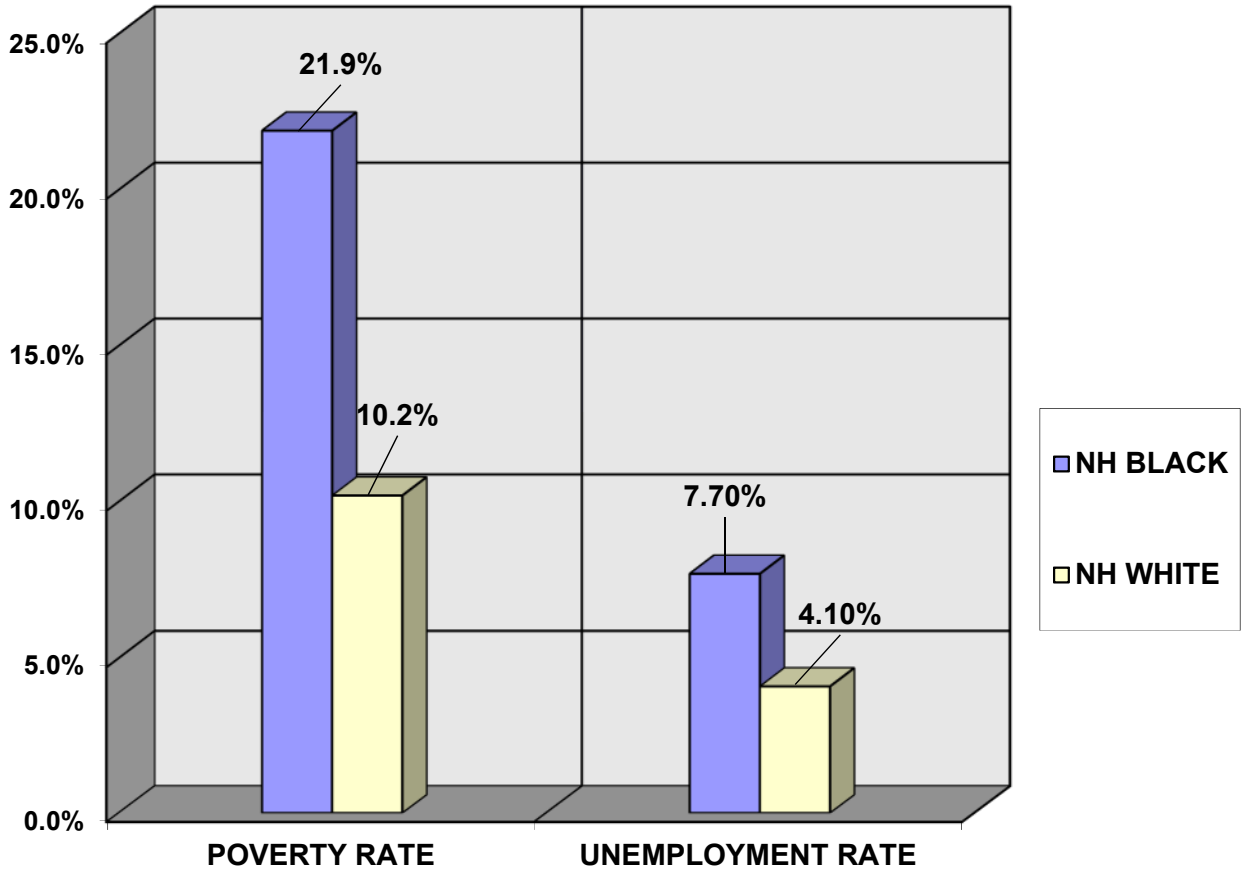

CHART 19: PER CAPITA INCOME BY RACE, NORTH CAROLINA

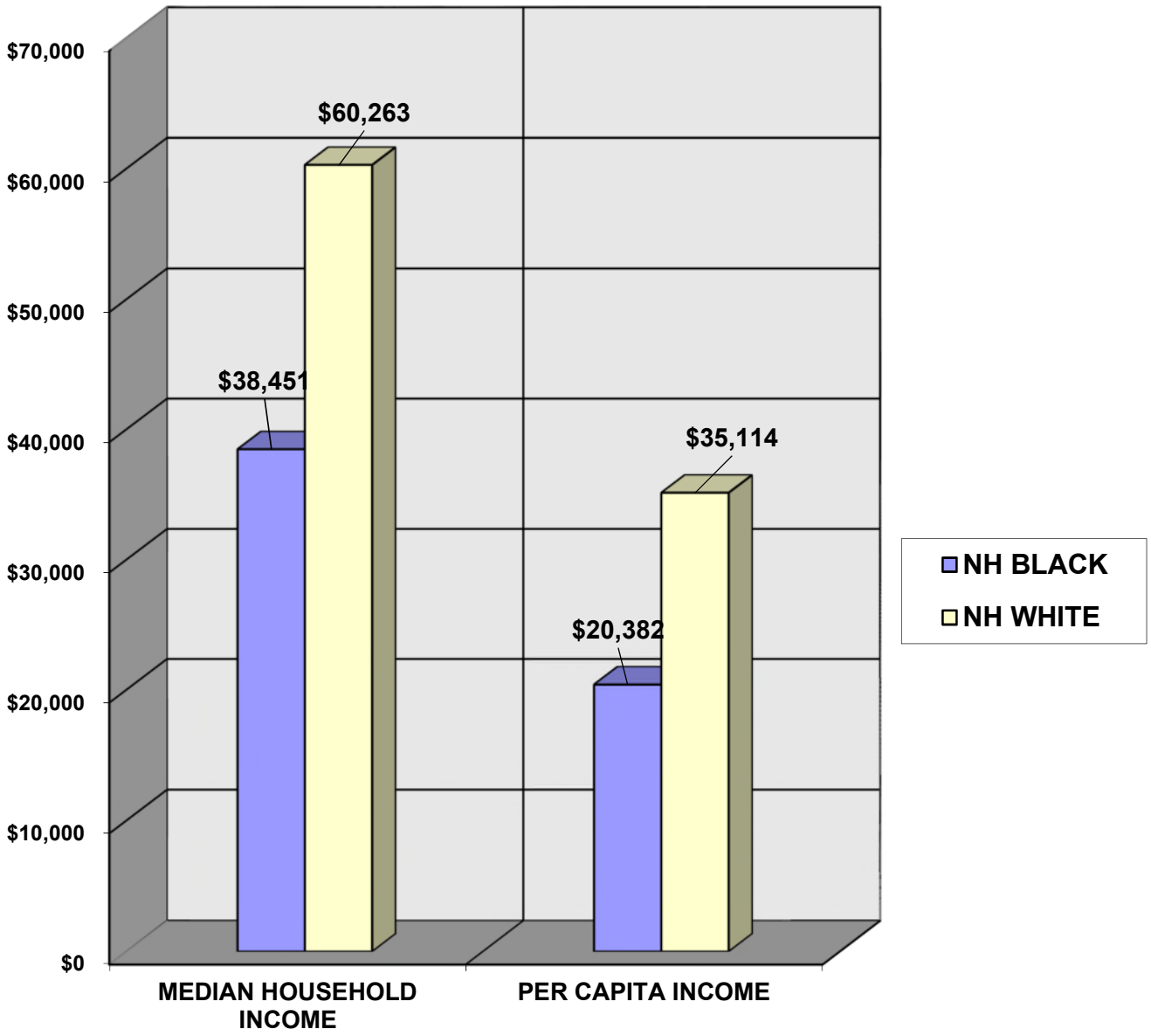

CHART 20: FOOD STAMPS/SNAP RECIPIENTS, ZERO OR NEGATIVE NET WORTH BY RACE, NORTH CAROLINA

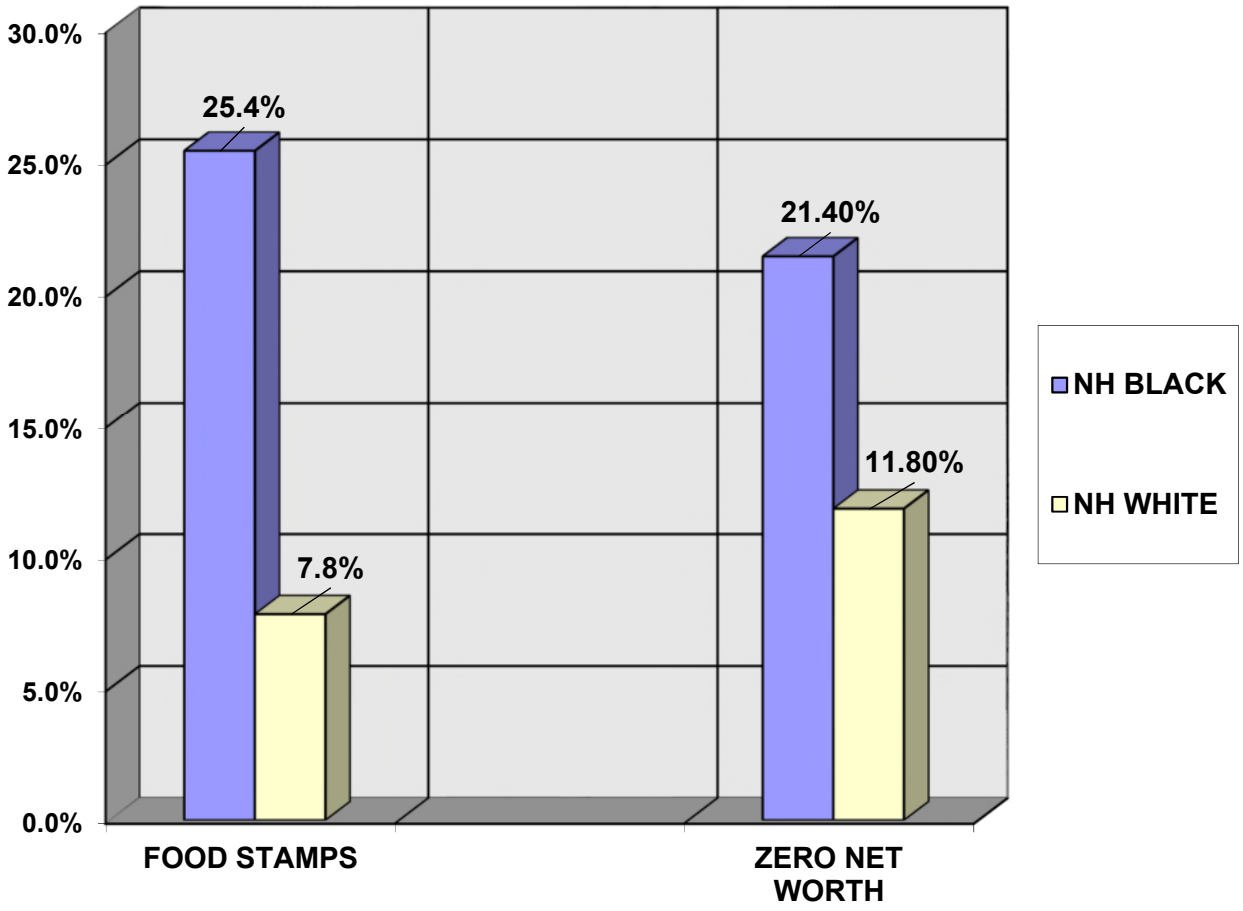

Table 22 and Charts 21 and 22 demonstrate relatively small racial differences on high school graduation rates, but large differences on college graduation rates between African Americans and whites in North Carolina. The Table and charts also show substantial disparities in educational proficiency between African Americans and whites.

Table 23 and Charts 23 through 25 demonstrate considerable differences between African Americans and whites in North Carolina on home ownership, home values, and vehicles available in households. Table 24 and Charts 26 and 27 reveal substantial disparities between African Americans and whites on standard health measures.

Socio-economic standing significantly impacts the ability of African Americans to participate fully in the political process and to obtain acceptable voter photo identification. The Fourth Circuit Court 2016 opinion explained these linkages: "These socioeconomic disparities establish that no mere "preference" led African Americans to disproportionately use early voting, same-day registration, out-of-precinct voting, and preregistration. Nor does preference lead African Americans to disproportionately lack acceptable photo ID."[86]

*A study by researchers from Duke University and the University of North Carolina Chapel Hill, found that segregation (white v. non-white) for elementary and secondary school students had increased from 1998 to 2016 "by more than a third" in the urban areas where most black students were located.[87]

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[86] *McCrory*, 831 F. 3d at 233. See also, Rosenstone, Steven J. and Hansen, John Mark, *Mobilization, Participation and Democracy in America*, (Macmillan, 1993); Sidney Verba, Kay Lehman Schlozman, and Henry E. Brady, *Voice and Equality: Civic Volunteerism in American Politics* (Harvard, 1995); D. Sunshine Hillygus, *The Missing Link: Exploring the Relationship Between Higher Education and Political Engagement*, 27 Political Behavior 25-47 (2005); Michael Parkin and Frances Zlotnick, *English Proficiency and Latino Participation in U.S. Elections*, 39 Politics and Policy 515-37 (2011),; Pew Research Center, *The Party of Non-Voters*, October 31, 2014, http://www.people-press.org/2014/10/31/the-party-of-nonvoters-2/; Jan E. Leighley and Jonathan Nagler, *Who Votes Now? Demographics, Issues, Inequality and Turnout in the United States*, (Princeton University Press, 2014); Randall Akee, et al., "Family Income and the Intergenerational Transmission of Voting Behavior: Evidence from an Income Intervention" National Bureau of Economic Research, Working Paper, No. 24770, June 2018, https://www.nber.org/papers/w24770; Joseph M. Colomer, "Benefits and Costs of Voting," *Electoral Studies* 10 (1991), 313-325; Lee Sigelman and William D, Berry, "Costs and the Calculus of Voting," *Political Behavior* 4 (1982), 419-428; Martin Gilens and Benjamin I. Page, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," *Perspectives on Politics*, 12 (2004), pp. 564-581.

[87] Clotfelter, Charles C., et al., "School Segregation in The Era of Immigration and School Choice: North Carolina, 1998-2016," Calder Working Paper Np. 198-0618-2. National Center For Analysis of Longitudinal Data In Education Research, revised January 2019, https://caldercenter.org/publications/school-segregation-era-immigration-school-choice-and-color-blind-jurisprudence-%E2%80%93-case

TABLE 22 EDUCATIONAL ATTAINMENT & PROFICIENCY OF NON-HISPANIC BLACKS AND WHITES, NORTH CAROLINA		
MEASURE	**NH BLACK**	**NH WHITE**
HIGH SCHOOL GRADUATES AGE 25+	85.6%	91.5%
BACHELOR'S DEGREE OR MORE AGE 25+	21.4%	35.1%
PERCENT AT OR ABOVE BASIC PROFICIENCY, 8TH GRADE READING	60%	82%
PERCENT AT OR ABOVE BASIC PROFICIENCY, 8TH GRADE MATHEMATICS	45%	81%
Educational attainment data from: US Census, American Community Survey, 2017. Educational proficiency data from: National Center for Educational Statistics, Reading, 2017, https://nces.ed.gov/nationsreportcard/subject/publications/stt2015/pdf/2016008AZ8.pdf; National Center for Educational Statistics, Mathematics, 2017, https://nces.ed.gov/nationsreportcard/subject/publications/stt2017/pdf/2018038NC8.pdf		

CHART 21: EDUCATIONAL ATTAINMENT BY RACE, NORTH CAROLINA

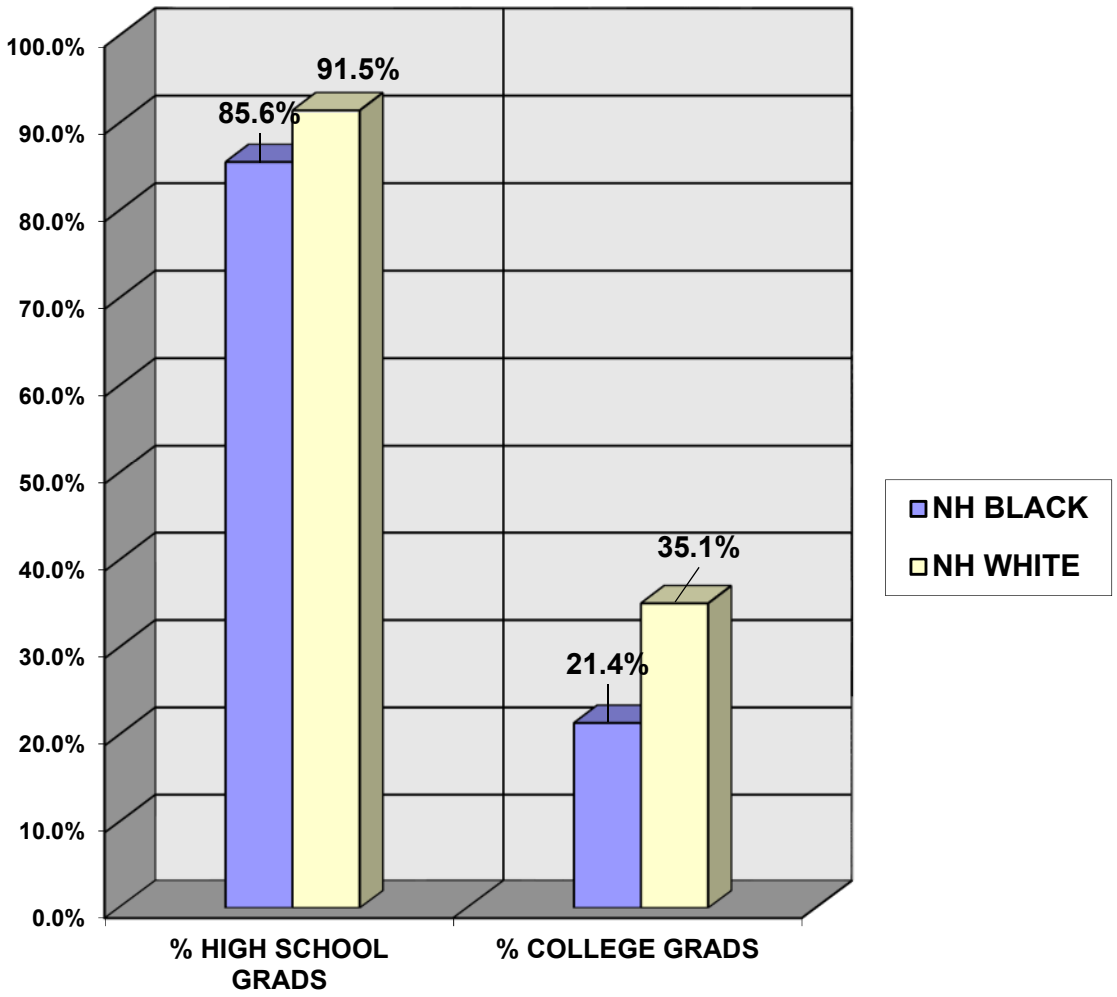


CHART 22: EDUCATIONAL PROFICIENCY BY RACE, NORTH CAROLINA

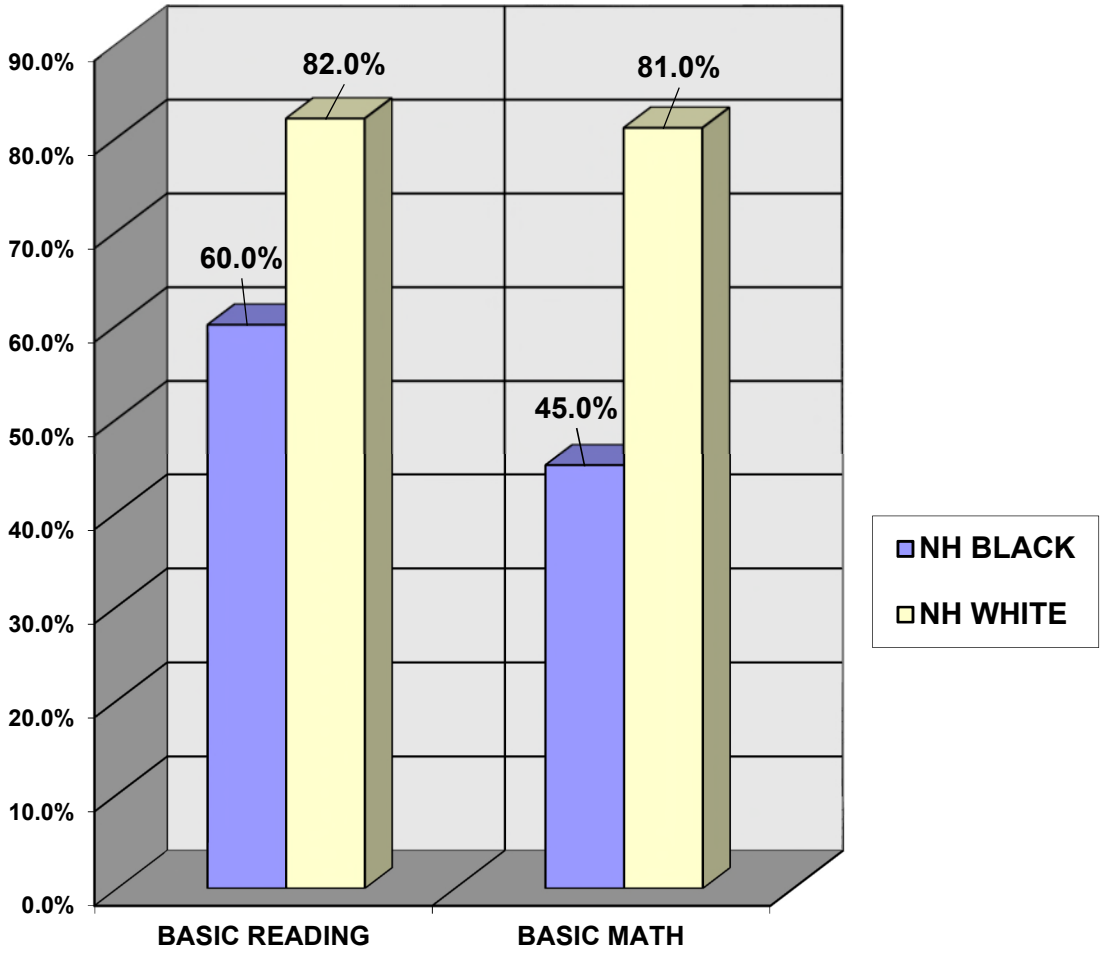


TABLE 23 HOUSING CHARACTERISTICS OF NON-HISPANIC BLACKS AND WHITES IN NORTH CAROLINA, 2017 US CENSUS, AMERICAN COMMUNITY SURVEY		
MEASURE	NH BLACK	NH WHITE
PERCENT OWNER OCCUPIED	46.1%	73.4%
MEDIAN HOME VALUE	$124,500	$187,100
PERCENT WITH NO VEHICLE AVAILABLE	12.2%	3.7%

CHART 23: HOME OWNERSHIP BY RACE, NORTH CAROLINA

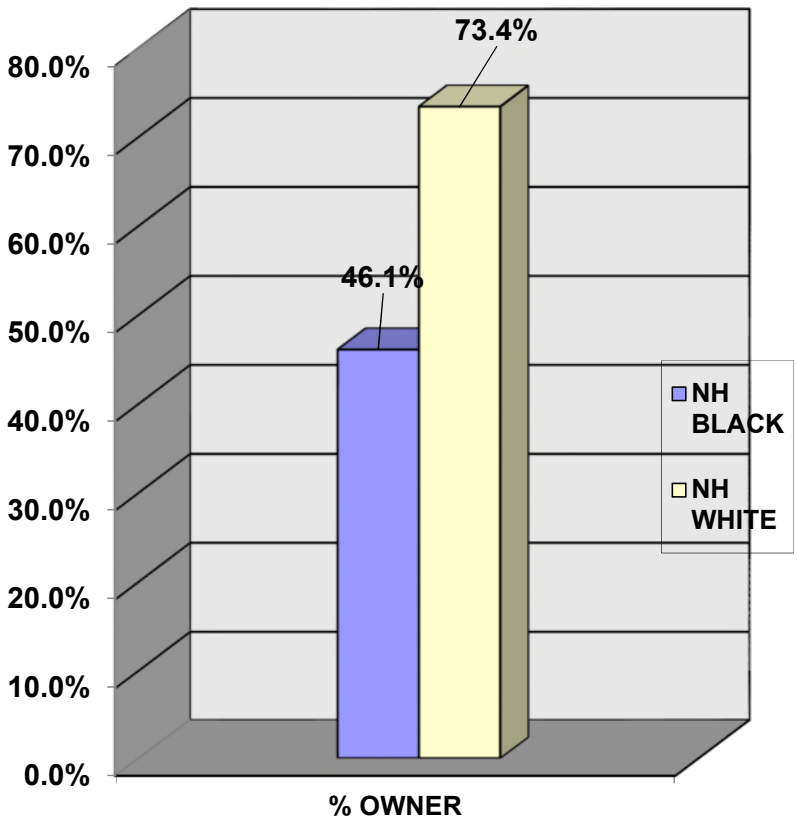


CHART 24: MEDIAN HOME VALUE BY RACE NORTH CAROLINA

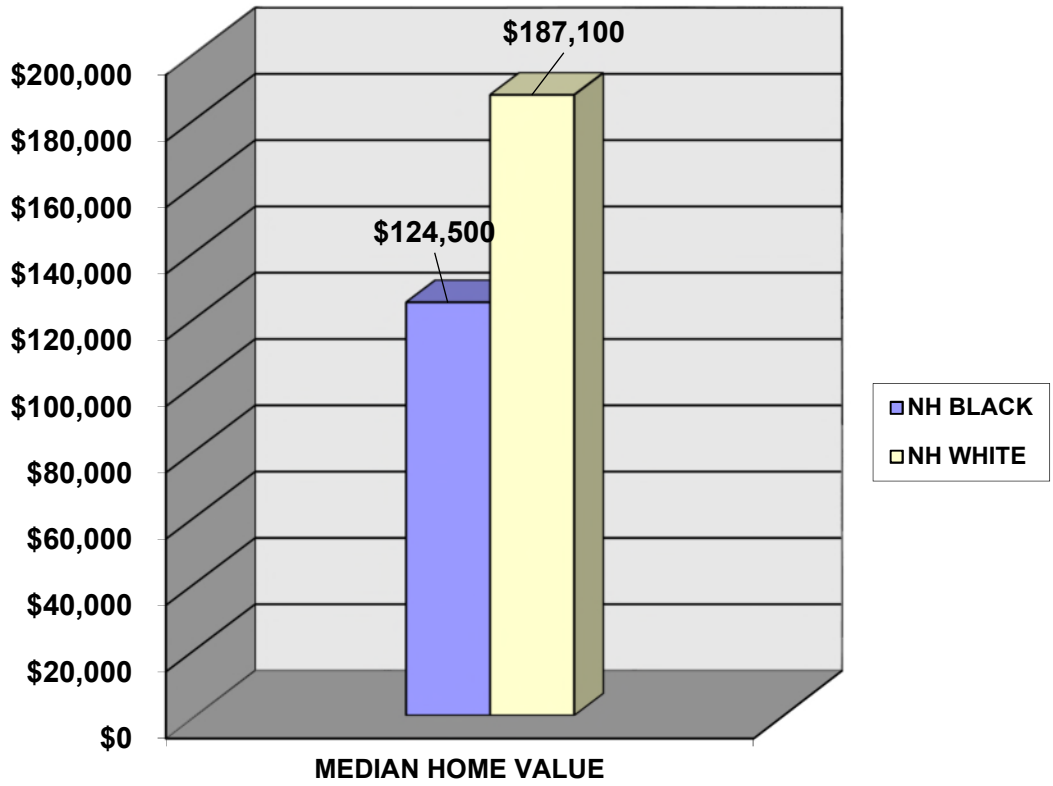


CHART 25: VEHICLE AVAILABILITY BY RACE, NORTH CAROLINA

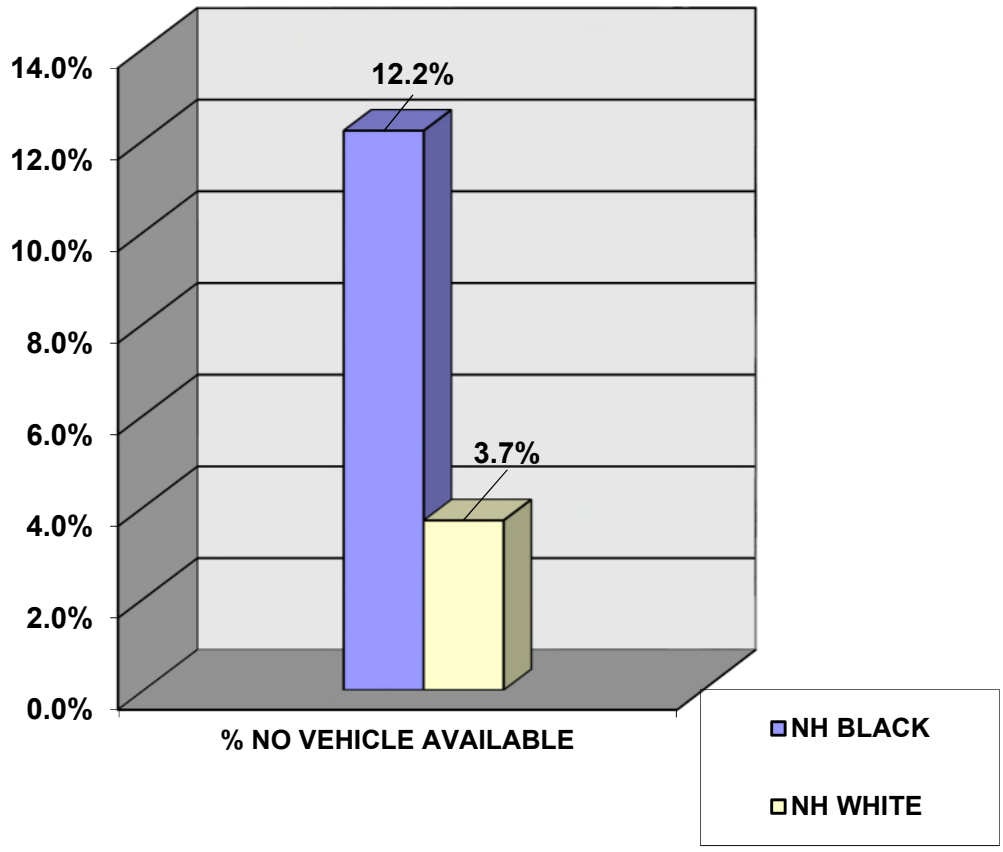


TABLE 24 HEALTH INDICATORS OF NON-HISPANIC BLACKS AND WHITES IN NORTH CAROLINA		
MEASURE	**BLACK**	**WHITE**
PERCENT WITH NO HEALTH INSURANCE*	10.7%	7.8%
MORTALITY RATE	777.7	891.7
% LOW WEIGHT BIRTHS	14.4%	7.6%
INFANT MORTALITY	12.7%	5.3%
Source: US Census, American Community Survey, 2017 for insurance. Other data from: North Carolina Department of Public Health, "North Carolina Resident Population Health Data by Race and Ethnicity, 2013-2017, https://schs.dph.ncdhhs.gov/schs/pdf/NCPopHealthDatabyRaceEthNov2018v2.pdf.		

CHART 26: MORTALITY RATE BY RACE NORTH CAROLINA

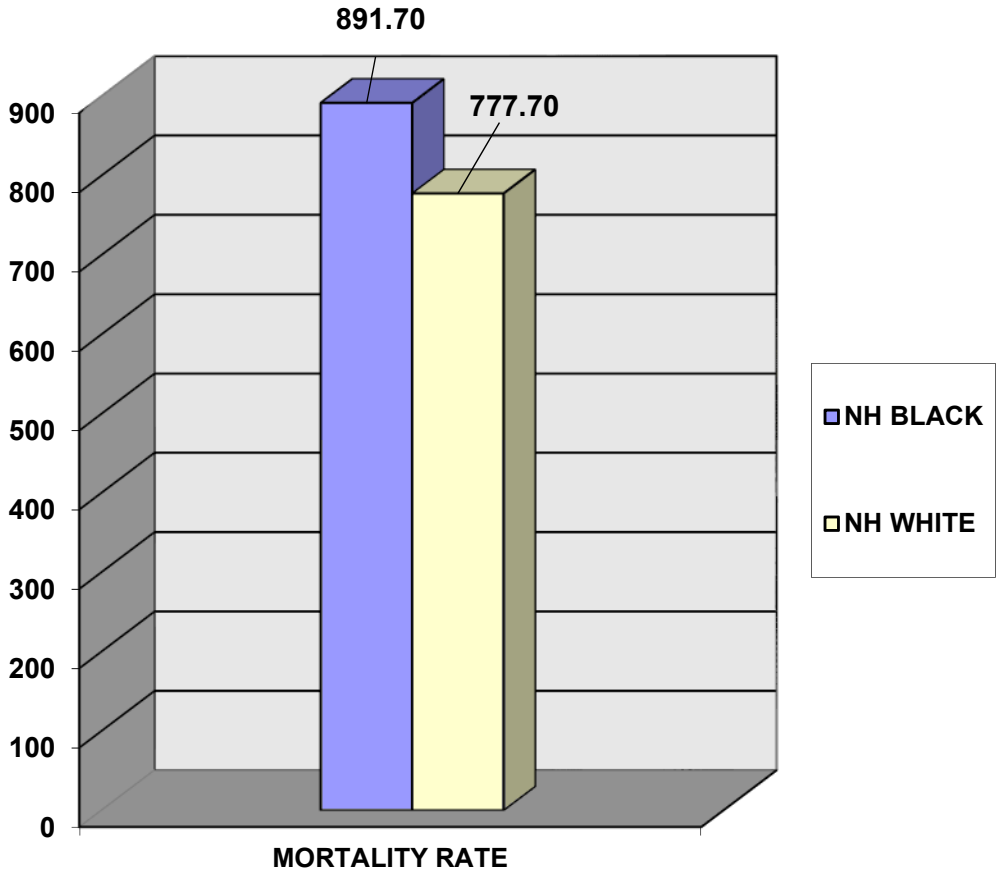
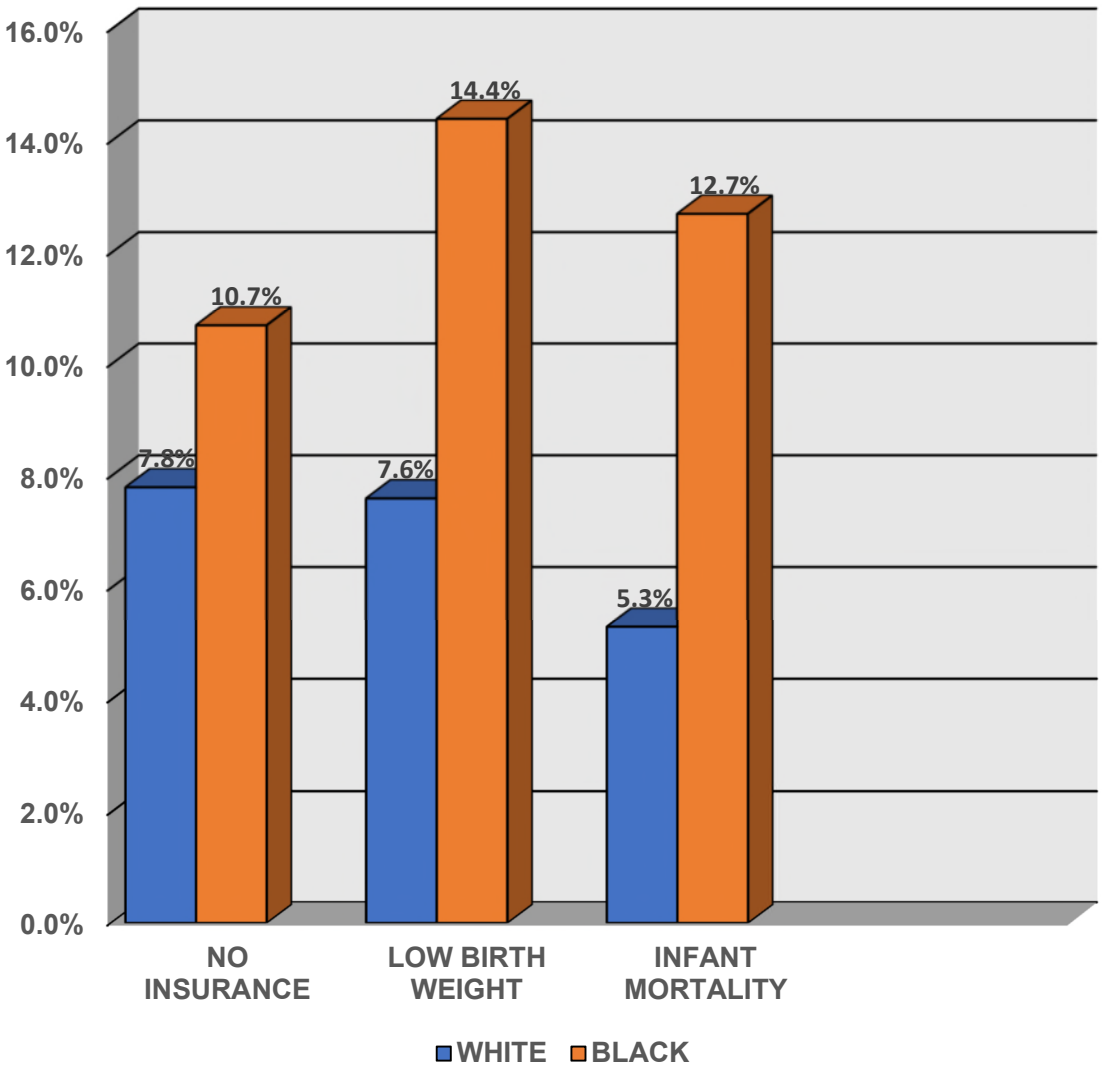


CHART 27: HEALTH INDICATORS, BLACK, WHITE, NORTH CAROLINA



A study by Governing Magazine reported in Table 25 that focuses on black/white segregation in metropolitan areas shows considerable school segregation in the six areas with the largest numbers of black K-12 students in North Carolina. The study reports the black/white dissimilarity index that indicates the percentage of black students that would have to relocate to become fully integrated with white residents. As indicated in Table 24, in these 6 areas, a minimum of some 39 percent to 60 percent of black students would have to relocate the eliminate school segregation.

TABLE 25 DISSIMILARITY INDEX SCHOOLS, METRO AREAS WITH LARGEST NUMBERS OF AFRICAN AMERICAN K-12 STUDENTS, NORTH CAROLINA		
METROPOLITAN AREA	**NUMBER OF BLACK PUPILS**	**DISSIMILARITY INDEX**
WINSTON-SALEM	20,020	60%
GREENSBORO-HIGH POINT	35,747	57%
DURHAM-CHAPEL HILL	27,570	54%
FAYETTEVILLE	31,860	40%
RALEIGH-CARY	47,600	39%
Source: *Governing*, **"**School Segregation Data for U.S. Metro Areas," 2015-2016 Common Core of Data, https://www.governing.com/gov-data/education-data/school-segregation-dissimilarity-index-for-metro-areas.html.		

X. STATED RATIONALES FOR RE-ENACTING PHOTO VOTER ID ESTABLISH PRETEXT

In this report I have analyzed the stated reasons for enacting constitutional amendment on voter photo identification and S. 824. None of the stated reasons are supported by factual evidence. Accordingly, the justifications for S. 824 appear to be pretext for other, unstated purposes, which is a strong indication of discriminatory intent.

A. Speaker Moore Stated that Photo IDs are Unnecessary to Meet Policy Goals

On June 7, 2018, just three weeks before the General Assembly approved a constitutional amendment for voter photo ID only, House Speaker Tim Moore sat for an interview on voter ID with Spectrum News.[88] In this interview the Speaker recognized that a photo-only ID law for voting was not necessary to meet his stated goal of deterring fraud and promoting election integrity. Instead he recognized that non-photo forms of identification would suffice for voters who do not have authorized forms of photo ID in North Carolina. Moore was not equivocal. He said, "We **ought** to mirror what the federal law called the Help American Vote Act, or the HAVA does. which says that **in those cases where there is not a photo ID there are certain forms of non-photo ID that can be accepted and used for those purposes. I believe that remedies that,**" referring to a question by the interviewer about the Fourth Circuit Court of Appeals finding that photo voter ID, in her words "made it more difficult for some people to vote."[89] (emphasis added) Under HAVA, which requires IDs for certain first-time voters, in lieu of a valid photo ID, a voter can submit "a current utility bill, bank statement, government check, paycheck, or other government document showing their name and address." The same options for non-photo ID apply to voting by mail.[90]

Rather than following through on what Moore said the state ought to do, the ultimate action of the General Assembly was to vote along straight party lines, without a single Republican no vote or a single Democratic yes vote, to propose a constitutional amendment mandating only photo IDs for voting, giving the legislature a self-perceived blank check to craft any implementing legislation that the Republican super-majority would choose to adopt. The party-line vote is important because the Fourth Circuit Court of Appeals had found in 2016 that through the 2013 photo-only voter ID legislation, the legislation had sought partisan advantage through a law that had the intention and the effect of discriminating against the overwhelmingly Democratic African American voters in North Carolina. During the debates over the constitutional amendment in June

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[88] "Interview: Rep. Tim Moore on Proposed Voter ID Legislation," *Spectrum News*, 7 June 2018, https://spectrumlocalnews.com/nc/triangle-sandhills/news/2018/06/07/tim-moore-interview.

[89] *Ibid*.

[90] HAVA Section 303(b)(2)(A)(i)(II). Daniel P. Tokaji, "The Help America Vote Act: An Overview," Moritz College of Law, The Ohio State University, https://moritzlaw.osu.edu/electionlaw/ebook/part5/hava.html#_ednref13; Voter Identification Requirements, National Conference of State Legislatures, http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx.

2018 no backer of the amendment explained why it was necessary to reject what Moore had called for and exclude non-photo forms of identification.[91]

Speaker Moore not only sponsored the proposed constitutional amendment (House Bill 1092) but was its key backer as the leader of the House and a prominent public spokesperson.[92] Although the follow-up implementing legislation originated in the State Senate (Senate Bill 824), Moore backed that legislation. He voted for it in the House and voted for the override of the governor's veto.

B. State House Rejected Amendment to Allow Non-Photo IDs

Despite Speaker Moore's public admission that the non-photo ID option would be suitable to meet the state's publicly asserted interest, during the debates over the 2018 constitutional amendment, the House explicitly rejected an amendment that would have allowed for Speaker Moore's exception by removing from the proposal, the word "photo" and just mandating "identification" for voting. Every Democrat voted yes on eliminating the word "photo" and every Republican voted no, including Speaker Moore, even though Republicans in the legislature were aware of the 2016 Court of Appeals decision upon which their leaders had commented.[93]

C. General Assembly Rejected Amendment to Allow Public Assistance IDs.

The General Assembly in 2018 also rejected an amendment that would have added public assistance IDs to the implementing legislation (House Amendment 13). Public Assistance IDs are far more available to African Americans than whites (see Table 3 above, a fact widely known by the General Assembly in 2018.[94] As Speaker Moore and other Republican leaders in the General Assembly knew full well, the exclusion of public assistance IDs was a point of controversy for adoption of the 2013 photo voter ID laws and it emerged again in 2018.[95] In its opinion striking down the VIVA legislation, the Fourth Circuit noted that even the district court, which had upheld the law, had singled out the exclusion of public assistance IDs as "suspect."

> **"Post-Shelby County, the change in accepted photo IDs is of particular note: the new ID provision retained only those types of photo ID disproportionately held by whites and excluded those disproportionately held by African Americans. N.C. State Conf., 2016 WL 1650774, at *37, *142. The district**

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[91] H.B. 1092/SL 2018-128, 2017-2018 Gen. Assemb., Reg. Sess. (N.C. 2018), "Const. Amendment – Require Photo ID to Vote." https://www.ncleg.gov/BillLookUp/2017/h1092; *NAACP v. McCrory*, 831 F. 3d 204, 215 (2016).

[92] *Ibid*., House Bill 1092; S.B. 824/SL 2018-144, 2017-2018 Gen. Assemb., Reg. Sess. (N.C. 2018), "Implementation of Voter ID Const. Amendment," https://www.ncleg.gov/BillLookup/2017/S824.

[93] *Ibid*., House Bill 1092, House Roll Call Vote Transcript For Roll Call #125, Amendment 5, https://www.ncleg.gov/Legislation/Votes/RollCallVoteTranscript/2017/H/1257.

[94] S.B. 824, 2017 Gen. Assemb. Reg. Sess. (N.C. 2017), "Ratified Bill," https://www.ncleg.gov/Sessions/2017/Bills/Senate/PDF/S824v6.pdf.

[95] Audio Transcript of Legislative Day 161, (House Floor Consideration of S. 824) at 2:15:41 - 2:15:57 (December 5, 2018), available at https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018

court specifically found that 'the removal of public assistance IDs' in particular was 'suspect,' because 'a reasonable legislator [would be] aware of the socioeconomic disparities endured by African Americans [and] could have surmised that African Americans would be more likely to possess this form of ID.'"[96]

During the debates over S. 824, Democratic State Representative Pricey Harrison noted that many people on public assistance would have difficulty traveling to state offices to obtain a free voter photo ID. She proposed an amendment "for the people who get public assistance that the I.D. that is issued by a branch, a department agency or entity of the United States or of this state for a government program of public assistance be added as one of the I.D.'s that could be presented." The House defeated the amendment 38 to 68, with all voting Republicans and three Democrats voting no.[97]

D. Backers of Voter Photo ID Took an Inconsistent Position on Military IDs and Public Assistance IDs

The pretextual justification offered by Representative Lewis for rejecting Representative Harrison's amendment that would authorize public assistance IDs for voting bolsters the direct evidence for discriminatory intent. Representative Lewis draws a false distinction between public assistance IDs on the one hand and military and veterans' IDs on the other. In rejecting the amendment, Lewis said, "through the supremacy clause we have no way to impose our standards on the federal government," referring to federally issued public assistance IDs. Recognizing that S. 824 included federally issued military and veteran's IDs, Lewis tried to draw a distinction with public assistance IDs: "Now some may say but wait you're taking military I.D.'s and veteran I.D.'s and that's because those are uniformly published and established what they look like and how they work." In fact, there is no uniform military ID and there are old and new veteran's ID for medical benefits (see examples below).[98] Lewis also failed to mention that the state has no control over tribal IDs that it authorized for voting under S. 824.

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[96] *McCrory*, 831 F. 3d at 227. .

[97] Audio Transcript of Legislative Day 161, (House Floor Consideration of S. 824) at 2:15:41 - 2:15:57 (December 5, 2018), available at https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018; General Assembly Of North Carolina, Senate Bill 824, House Roll Call Vote Transcript For Roll Call #1321, Amendment 13, https://www.ncleg.gov/Legislation/Votes/RollCallVoteTranscript/2017/H/1321

[98] Audio Transcript of Legislative Day 161, (House Floor Consideration of S. 824) at 2:17:22 - 2:17:35 (December 5, 2018), available at https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018; Sources for examples: DOD ID Card Reference Center, https://www.cac.mil/; National Science Foundation, Alternative IDs for NSF Access, https://www.nsf.gov/about/visit/alt-ids.jsp; The Military Wallet, https://themilitarywallet.com/veterans-id-card/; Military Benefits, https://militarybenefits.info/how-to-get-a-veterans-id-card/; Uniformed Services ID Card, https://www.cac.mil/uniformed-services-id-card/; New Veterans Id Card Now Available, NCGWG, https://ncgwg.org/new-veterans-id-card-now-available/.

ARMED FORCES OF THE UNITED STATES
U.S. NAVY
RESERVE
SAMPLE
INDEF
DOE, JANE C
GENEVA CONVENTIONS IDENTIFICATION CARD

ARMED FORCES OF THE UNITED STATES
U.S. MARINE CORPS
RESERVE
SAMPLE
2013JAN07
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DOE, JOHN B
GENEVA CONVENTIONS IDENTIFICATION CARD
AFFILIATION
PAY GRADE/RANK
EXPIRATION DATE
DoD IDENTIFICATION NUMBER

FEB2013
SAMPLE
Uniformed Services
Marine Corps
2013FEB01
DOE,
JOHN Q.
E6
SSGT
Geneva Conventions Identification Card
EXPIRATION DATE
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COLOR INDICATOR
PAY GRADE
RANK
INTEGRATED CIRCUIT CHIP (ICC)

Lewis did say he was willing to consider authorized state-issued public assistance IDs for voting: "I think we can certainly consider that …if the state I.D.'s were to conform the same way the other state I.D.'s in the bill need to." However, neither Lewis nor any other Republican

followed through on this consideration and neither federal nor state public assistance IDs were included in the final version of S. 824.[99]

Both federal military and veterans' ID were included as acceptable forms of photo ID in the 2018 legislation. Unlike public assistance recipients, however, veterans and active military in North Carolina are disproportionately white. According to the 2011-2015 U.S. Census, American Community Survey, 11.4 percent of the voting age white population were veterans or active military, compared to 9.8 percent of the black population, including those identified as multiracial.

Unlike other forms of ID, military and veteran's IDs were acceptable in S. 824 regardless of their expiration date. Given that the purpose of the photo ID is to verify the person's identity, and if an expired military card is sufficient for that purpose, other expired forms of identification ought to suffice as well. For purposes of identify confirmation, it should make no difference that the person is no longer licensed to drive, authorized to travel abroad, or still working for the government or attending college or university. If the issue is whether the person still resembles the picture on an expired ID, then military IDs are likely to be particularly problematic since many of the pictures are likely to have been taken when the person was young, with a military haircut and bearing.

E. Backers of Voter Photo ID Provided Misleading and Pretextual Justifications on Preventing Voter Fraud

As in 2013, allegations of voter fraud through impersonation at the polls, was the lynchpin of the new push by Republican in 2018 for new photo voter ID legislation in 2018 in North Carolina. The need to protect elections from voter fraud as the rationale for the new photo voter ID law was reiterated by Republican leaders. "Confidence in the American democracy is essential to its longevity," said Republican Representative John Sauls, a primary sponsor of the constitutional amendment for voter photo ID. "Our state must not tolerate anyone's vote being threatened because lawmakers failed to prevent fraud." House Speaker Tim Moore warned that "Right now when you go to a poll site in North Carolina to vote you don't have to supply any form of identification whatsoever."

Contrary to these claims, the State Board of Elections conducted two audits, in 2013 and 2017. It presented the results of both audits to the General Assembly. The prior audit from March 2013 had found only 2 cases of voter impersonation from 2000 to 2012 in North Carolina, out of tens of millions of ballots cast. The 2017 audit found but a single case of voter impersonation at the polls out of nearly 4.8 million ballots cast. That case, moreover, did not involve an intentional voter fraud effort. Rather, the vote was cast for Donald Trump in the name of her late mother by a woman who wanted to validate her mother's fervent support for candidate Trump. She explained that "my mother was a tremendous Donald Trump fan. She donated to his campaign, watched all his debates and news involving his campaign on Fox news. She was so excited about voting for him and at every opportunity told everyone else to vote for him to save our country." She was not prosecuted for fraud. The administrator for the 25th Prosecutorial District wrote that, "she voted

[99] *Ibid*., Audio Transcript of Legislative Day 161, (House Floor Consideration of S. 824) at 2:18:43 - 2:18:55 (December 5, 2018), available at https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018.

for her mother believing that her power of attorney and honoring her mother's dying wish was not a fraudulent act. Her mother was alive during the absentee period and if she had received the ballot in time, she would have been able to legitimately cast her vote."[100]

The State Board of Election issued press releases with links to this audit. It was widely covered in the press and members of the General Assembly presented the finding of the audit during the debates on voter photo ID in 2018. Nonetheless, backers of photo voter ID in 2018 continued their claim that voter fraud justified this measure, even to the extent of enshrining it in the state constitution. They relied, however, on implausible, unverified and unverifiable anecdotes and also on allegations of voter fraud that had nothing to do with voter impersonation at the polls and would not be stopped or deterred by a voter photo ID law.

Representative Michael Speciale said, for example, "Folks who worked as judges or poll workers who indicated that there were problems. There was cheating, there was fraud going on. Like the gentleman that came in and voted 3 times under three different names and they know it was the same gentleman because he had on a fluorescent yellow shirt and he had a scar across his face so there was no doubt it was the same person but under the current law there was nothing that he could do about it."[101] The Representative provided no date, place, names, or witnesses for this anecdote, and his assumption that nothing could be done about it without photo ID is incorrect. Multiple voting has long been a felony under state and federal law. If an election official had credible reason to believe that someone voted more than once it would have been their duty to report the individual to law enforcement. The audit of some 4.8 million ballots by the State Board of Elections disclosed only 24 cases of suspected double-voting but indicated that they could arise from errors and further review was needed. Nor was there any indication that these double-voters were impersonating someone else. The audit found only one case of voter impersonation at the polls and one case of voter impersonation through absentee balloting.[102]

Republican Representative David Rogers said, "I am right now representing a client that is charged with fraudulent registration. And when he got his license, well he tried to get a license that wasn't his allegedly but tried to get a license that wasn't his and he also registered to vote at the same time." Republican Senator Joyce Krawiec added that "in 2008, the Board of Elections Director, Gary Bartlett, admitted to finding 150 fraudulent voter registrations in Wake and Durham County." Yet a requirement to present photo identification at the polls is irrelevant to registration

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[100] North Carolina State Board of Elections," Post-Election Audit Report: 2016 General Election," 21 April 2017, p. 2, Appendix 4.2, https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf. The report of Dr. Laura Minnite in this litigation additionally establishes the lack of voter fraud that a photo ID requirement could prevent or deter both generally and in North Carolina.

[101] Audio Transcript of the House Committee on Elections & Ethics at 1:37:58 - 1:39:15 (December 4, 2018) (audio provided to author by counsel); Post-Election Audit Report, p. 2.

[102] North Carolina State Board of Elections," Post-Election Audit Report: 2016 General Election," 21 April 2017, p. 2, Appendix 4.2, https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf. The report of Dr. Laura Minnite in this litigation additionally establishes the lack of voter fraud that a photo ID requirement could prevent or deter both generally and in North Carolina.

fraud. Registration occurs prior to voting. And the state audits found only 28 cases of filing false registration forms from 2000 to 2016.[103]

Representative Warren claimed that "the State Board of Elections was directed to join with a consortium of 27 other states that shared board of registration election results. It was called the Voter Registration Interstate Cross Check Program. They were directed to join that and report back to this oversight bill the joint oversight committee on elections. They did that in April of 2014. In that report Director Kim Strach reported among other things that 765 people whose first and last names, date of birth and the last four digits of their social security matched that voted in the 2012 election in North Carolina and in another state."[104] Again, photo ID would not prevent anyone from registering or voting in two or more states. Director Strach did not claim that this data proved double-voting. The Cross Check Program is highly inaccurate across states. A study by professors at Harvard, the University of Pennsylvania, and Stanford found that purging registration rolls using the crosscheck system "would eliminate about 300 registrations used to cast legitimate votes for every one registration used to cast a double vote."[105]

In arguably the most apparently germane claim for photo voter ID, Senator Krawiec said that, "so in 2016, 498 people voted provisionally when they showed up to vote and were told that they had already voted. That's 498 people where somebody else had voted in their name." In fact, the state's audit established that only one person voted in somebody else's name, not 498. If in fact, Senator Krawiec's claim were true it would have been easily verified in the audit, which found only one case of voter impersonation that had nothing to do with someone voting in the name of another living registrant.[106]

In the absence of any solid evidence of voter impersonation in North Carolina bill proponents asserted that voter impersonation must have occurred, but without detection. In response to the Fourth Circuit's finding that the state had "failed to identify even a single individual who has ever been charged with committing in-person voter fraud in North Carolina," Speaker Moore asserted that there have been no prosecutions in North Carolina "of people stealing identification" only because "nobody is looking for it," which of course is false given two audits by the Board of Elections.[107] Echoing Speaker Moore's assertion, Republican Senator Ralph Hise claimed that voter impersonation is going undetected in North Carolina, because "it is nearly

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[103] Audio Transcript of Legislative Day 161, (House Floor Consideration of S. 824) at 2:51:05 - 2:51:22 (December 5, 2018), available at https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018; Senate Floor - House Bill 1092 Constitution Amendment Requiring Voter Photo ID, audio provided to author by counsel.

[104] Audio Transcript of the House Committee on Elections & Ethics at 1:58:22 - 2:02:13 (December 4, 2018) (Audio provided to author by counsel)..

[105] Sharad Goel, et al., "One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections," 17 January 2019, https://scholar.harvard.edu/files/morse/files/1p1v.pdf, p. 3.

[106] Senate Floor - House Bill 1092 Constitution Amendment Requiring Voter Photo ID, audio provided by counsel.

[107] Speaker Tim Moore, "Voter ID Constitutional Amendment Sponsored by N.C. Speaker Moore," 7 June 2018, http://speakermoore.com/voter-id-constitutional-amendment-sponsored-n-c-speaker-tim-moore/; Spectrum News, Moore Interview.

undetectable and by the numbers shows that it is not detected by our Board of Elections and investigations system."[108]

These conjectures by backers of S. 824 do not show that undetected impersonation is actually occurring. In fact, there is good reason to believe that so few instances of voter impersonation are detected because this is the most risky and least efficient, and the most detectible, form of voter fraud. The U.S. Election Assistance Commission on Election Crimes concluded that many authorities "interviewed asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election." The Commission found that their interviews also "in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed."[109]

In 2015, the nation's most zealous fraud hunter Secretary of State Kris Kobach of Kansas (later vice chair of and day-to-day director of President Donald Trump's now defunct voter fraud commission (The Presidential Advisory Commission on Election Integrity, which came up empty on voter fraud) claimed that enforcement was so lax that the legislature made him the only Secretary of State in the nation authorized to investigate and prosecute voter fraud. In Kansas, three and a half years later, after Kobach had resigned his post to run unsuccessfully for governor, *The Wichita Eagle* reported that Kobach "prosecuted between 10 and 15 cases of voting fraud" in all prior elections out of many millions of ballots cast. According to Katie Koupal, a spokeswoman for the secretary of state's office. "Two defendants were legal immigrants who were entitled to be here but not to vote," despite Kobach's claim that in his state, "the total number [of noncitizens] could be in excess of 18,000 on our voter rolls." Koupal indicated that "the others were citizens who double-voted in the same election, usually because they owned property in multiple states." She did not indicate that *any of the prosecutions involved voter impersonation at the polls.*[110]

Not just North Carolina, but other states involved in challenges to photo voter ID laws, with a powerful incentive to find substantial cases of voter impersonation, likewise came up empty. In Pennsylvania, for example, a state court judge found "no evidence of the existence of in-person voter fraud in the state or that in-person voter fraud was likely to occur in the upcoming election." In Wisconsin, a federal district court judge concluded "that impersonation fraud — the type of fraud that voter ID is designed to prevent — is extremely rare" and "a truly isolated phenomenon that has not posed a significant threat to the integrity of Wisconsin's elections." In Texas, the Fifth Circuit Court of Appeals found that there had been "only two convictions for in-person voter

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[108] Senate Floor - House Bill 1092 Constitution Amendment Requiring Voter Photo ID, audio provided by counsel.

[109] U.S. Election Assistance Commission, Election Crimes: An Initial Review and Recommendations for Future Study, December 2006, p. 9, https://www.eac.gov/assets/1/6/Initial_Review_and_Recommendations_for_Further_Study.pdf.

[110] Dion Lefler, "Bills Target Kobach's Voter Fraud Legacy; 3 1/2 Years, No Illegal Immigrants Caught," *The Wichita Eagle*, 20 January 2019, https://www.kansas.com/news/politics-government/article224722135.html; Jonathan Shorman, "Kobach Cites Non-Citizen Voters In Kansas As Trump Election Panel Begins," *The Wichita Eagle*, 19 July 2017, https://www.kansas.com/news/politics-government/article162505228.html.

impersonation fraud out of 20 million votes cast in the decade" before Texas passed its photo voter ID law.[111]

Nationwide, comprehensive post-election investigations resulting from candidate charges of voter fraud failed similarly to uncover cases of voter impersonation at the polls.

In 2008 in Minnesota, government officials and representatives of both political parties conducted extensive post-election investigations of a contested U.S. Senate election. Minnesota has no documentary voter identification requirements of any kind; it also permitted voters to register *on Election Day* at the same time that they go to cast their ballots. The investigations failed to come up with cases of voter impersonation fraud among some 2.9 million ballots cast. A subsequent 18-month investigation by Minnesota Majority, a conservative watchdog group looking for examples of fraud, also failed to allege voter impersonation, although it made charges (disputed) that several hundred persons with a felony conviction had voted in the election. No criminal charges were filled as a result of the election. A survey of voter fraud in Minnesota by the Republican National Lawyer's Association, another group looking for voter fraud, likewise failed to uncover a single instance of voter impersonation.[112]

In Wisconsin after John Kerry defeated George W. Bush in the state, Republicans charged that the election in Wisconsin had been fraught with voter fraud. Immediately after the election, Republican Assembly Speaker John Gard charged that Milwaukee Mayor Tom Barrett "has got to be embarrassed about what happened in Milwaukee. You've got thousands of addresses they know don't exist." The Speaker said that "Democrats and Republicans alike should be concerned about the incredible problems we had across this state." Ultimately in 2005, only 14 out of 2.9 million voters in the 2004 general election were charged with voter fraud. *None involved voter impersonation at the polls*. Most of the 14 cases involved illegal voting by persons with a felony conviction and the remaining involved double voting. None of the double-voting cases resulted in a conviction.[113]

I was personally involved in one such investigation in the state of Maryland, which like Minnesota, has no documentary voter identification requirement. In 1994, Republican gubernatorial candidate Ellen Sauerbrey alleged that fraudulent votes cast in the name of dead persons and others accounted for the 5,993 vote victory of Democrat Parris Glendening. As the state of Maryland's consultant on voting rights I was asked by Attorney General Joseph Curran to

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[111] *Veasey v. Abbott*, U.S. Fifth Circuit Court of Appeals, No. 14-41127 (July 20, 2016); *Applewhite v. Com.*, 330 M.D. 2012, 2014 WL 184988 (Pa. Commw. Jan. 17, 2014); *One Wisconsin Institute, Inc. v. Thomsen*, 15-cv-324-jdp (W. D. Wis. (July 29, 2016.)

[112] Eric Schroek, "Conservative Media Hype 'Not Accurate' Report To Suggest Franken's Election Was "An Illegal Victory" 13 July 2010, *Media Matters*, http://mediamatters.org/fox-friends/conservative-media-hype-not-accurate-report-suggest-frankens-election-was-illegal.

[113] Huefner, Steven F., Tokaji, Daniel P., Foley, Edward B., and Cemenska, Nathan A., *From Registration to Recounts The Election Ecosystems of Five Midwestern States* (The Ohio State University Moritz College of Law: 2007), p. 121; Republican National Lawyer's Association, Voter Fraud Study: Minnesota, https://moritzlaw.osu.edu/electionlaw/projects/registration-to-recounts/book.pdf

determine whether there was any truth to Sauerbrey's claims. My own work uncovered some unintentional errors by election officials, *but not a single fraudulent vote among the 1.4 million ballots cast in the election*. Likewise, several weeks of judicial discovery and a trial in State District Court failed to uncover any illegal voters or votes. The trial judge Raymond G. Thieme, who said in open court that he voted for Sauerbrey, dismissed her lawsuit. Similarly, many months-long investigations by state prosecutors, the U.S. Attorney, and the FBI found only a "few irregularities" that were "the result of faulty voting machines that didn't record votes, election judges' failure to check off voters and people voting in the wrong precinct because they failed to change their addresses."[114]

Scholarly studies additionally refute the unsubstantiated allegation that much voter impersonation goes undetected. *See* Expert Report of Lorraine Minnite. A decisive study deployed a methodology was designed "to detect the possibility of election fraud even in the absence of allegations or reports of such activity." The study focused on the 2006 general election in Georgia – *before* the implementation of voter photo ID in that state. They examined a common charge regarding voter fraud: that fraudsters were voting in the name of dead persons. Through the examination of public records, they found that 66 deceased persons apparently voted in the election. However, 62 of the 66 votes were cast by absentee ballot, primarily cast primarily by people who died after voting and only 4 were cast in person. They found that all of these 4 in-person votes "were cleared as being mistakes." In 3 cases officials recorded the wrong person as having voted and in one case, there was an error in the Vital Records. Thus of 2.1 million votes cast in Georgia's 2006 with no ID requirement in place, not a single vote was cast in-person in the name of a deceased person.[115]

A study of voter impersonation, using a methodology that does not depend on investigations of allegations of voter fraud (thus answering the claim of those who say that such fraud is hard to detect or verify) reaches several critical conclusions. The authors found, "no evidence of voter impersonation in the 2012 election." The authors also found "no difference between states with and without strict voter ID requirements (where it should be hardest)." The authors conclude that, "based on this evidence, strict voter ID requirements address a problem that was certainly not common in the 2012 U.S. election. Efforts to improve American election infrastructure and security would be better directed toward other initiatives."[116]

In yet another study, the authors develop "a more inclusive method of measuring voter fraud, specifically the type of election fraud that voter ID laws are intended to prevent." The authors found that "Our results support the conclusion that electoral fraud, if it occurs, is an isolated and rare occurrence in modern U.S. elections." The authors stress the broad applicability of their

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[114] Bowling, Jane, "Federal, State Investigations Close Governor's Race Probe" *The Daily Record*, 24 August 1995, p. 9; Michael James, "Sauerbrey Abandons Election Appeal," *Baltimore Sun*, 16 January 1995, https://www.baltimoresun.com/news/bs-xpm-1995-01-16-1995016076-story.html .Allan J. Lichtman, "When the Dead Speak," *Gazette.net*, 16 Oct. 1998.

[115] M. V. Hood III and William Gillespie "They Just Don't Vote Like They Used To: A Methodology to Empirically Assess Election Fraud." *Social Science Quarterly 93(1)*, pp. 76-94 (2012).

[116] John S. Ahlquist, Kenneth R. Mayer, and Simon Jackman, "Alien Abduction and Voter Impersonation in the 2012 Presidential Election: Evidence From a Survey List Experiment, *Election Law Journal* 13, pp. 473 461 and 460 (2014).

methodology: "It can identify anomalies created by even small amounts of electoral fraud. It picks up many types of election fraud regardless of whether they were done by mail-in ballot, early voting, or election-day voting. It also measures these forms of fraud, whether done by only a few individual voters, a campaign operative, a vote broker, or even a corrupt election official." The bottom line result from the study: "The easiest measure that governments can take to ensure ballot integrity is not voter ID laws or even cleaning up voter registration lists, but rather increasing the access and comprehensiveness of information contained in registration rolls and voting histories."[117]

F. Backers of Voter Photo ID Provided Misleading and Pretextual Justifications on Voter Confidence

Backers of photo voter ID in 2018 also suggested as a fallback position that it was needed to bolster voter confidence, in Speaker Moore's word to "secure the integrity of our elections system."[118] Representative Lewis said, we want to "at least go one step further in making sure that every North Carolinian has full faith in our system."[119]

However, neither Moore nor any other member of the General Assembly presented evidence during the debates to demonstrate either that there was a crisis of voter confidence in North Carolina or that photo voter ID laws bolster public confidence. Moreover, as explained below, the claim of upholding election integrity by requiring photo IDs at the polls is also contradicted by the failure to consider the much more prevalent absentee ballot fraud As is explained below, the General Assembly added a photo ID requirement for absentee ballots as a last minute amendment to S. 824 only after the absentee ballot fraud crisis in the 9th CD created a scandal that the GOP could not ignore.

The Survey of the Performance of American Elections includes data for North Carolina that enables a probative test of the assumption that a photo voter ID law increases voter confidence in elections specific to that state. In July 2013, the state adopted a voter photo ID law amid great publicity and controversy. The law was still in effect during the 2014 midterm elections, although it was scheduled for implementation only for the 2016 primaries. Thus, it is possible to compare the pre-ID condition in North Carolina for 2012 with the post-ID condition in 2014 to see first whether the people of North Carolina believed there was widespread voter fraud in their state and if so whether the passage of the photo ID law in 2013 expanded voter confidence in 2014.

The results reported in Table 25 and Chart 26 demonstrate two crucial points that refute the contention that photo voter ID is needed in North Carolina to bolster voter confidence in the integrity of elections. First, the results show that there was no belief among the people of North Carolina in widespread voter fraud in 2012, the year prior to North Carolina adoption of the photo

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[117] Ray Christensen & Thomas J. Schultz, Identifying Election Fraud Using Orphan and Low Propensity *Voters, American Politics Research*, 42, p. 330-333 (2014).

[118] Sam Levine, "North Carolina Voters Amend State Constitution To Require Photo ID At Polls," *Huffpost*, 6 November 2018, https://www.huffpost.com/entry/north-carolina-voter-id_n_5bdb7f22e4b01ffb1d009477.

[119] Audio Transcript of Legislative Day 161, (House Floor Consideration of H. 1092) at 2:28:22 - 2:28:30 (December 5, 2018), available at https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018.

voter ID law. As indicated in Table 26 and Chart 28, 93.9 percent of respondents in 2012 were very or somewhat confident that their personal vote was counted as intended and 85.6 percent were very or somewhat confident that votes statewide were counted as voters intended. Second, the adoption of the photo ID did not have the predicted effect of increasing voter confidence. To the contrary, the law produced de minimis changes in voter confidence and not on balance in the direction asserted by proponents of the law. Confidence in one's personal vote inched up by 1.6 percentage points. However, on the measure of confidence in the integrity of the vote statewide, which a photo ID law is supposed to ensure, voter confidence declined by 3.4 percentage points. Neither change is statistically significant.

TABLE 26
A COMPARISON OF VOTER CONFIDENCE BEFORE AND AFTER ENACTMENT OF PHOTO VOTER ID IN NORTH CAROLINA

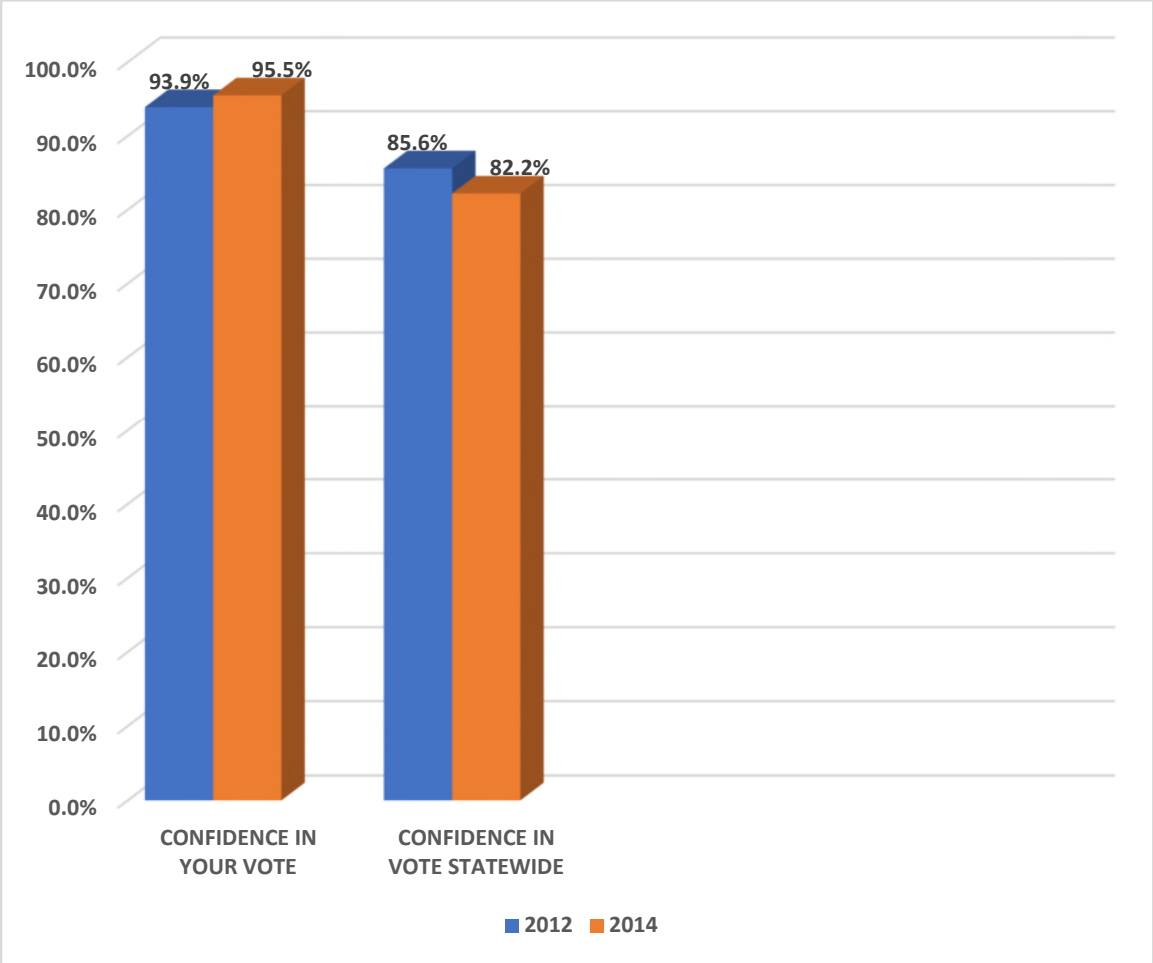
QUESTION RESPONSE	% 2012 PRE-ID	% 2014 POST-ID	DIFFERENCE
Very or somewhat confident that your vote was counted as you intended.	93.9%	95.5%	+1.6 Percentage Points*
Very or somewhat confident that votes statewide were counted as voters intended.	85.6%	82.2%	-3.4 Percentage Points**

* N= 181 for 2012 & 157 for 2014, difference not statistically significant.

** N= 188 for 2012 & 185 for 2014, difference not statistically significant.

Sources: Survey of the Performance of American Elections, 2012 and 2014, https://dataverse.harvard.edu/dataverse/SPAE

CHART 28: A COMPARISON OF VOTER CONFIDENCE BEFORE AND AFTER ENACTMENT OF PHOTO VOTER ID IN NORTH CAROLINA



G. Backers of Voter Photo ID Provided Misleading and Pretextual Justifications on Conforming to ID Laws in Other States

In 2013, decision-makers insisted many times that the voter photo identification provisions of the VIVA legislation (SL 2013-381) was simply bringing North Carolina in line with most other states of the union. Republican Representative Tom Murry, a primary sponsor of the legislation, said, "'I'm proud that North Carolina has joined the 34 other states to enact a common sense voter I.D. law." In explaining his decision to sign the enacted bill, Governor McCrory said, he was "keep[ing] North Carolina in the mainstream of election law, not the fringes." These statements were found by the Fourth Circuit to be misleading and pretextual.[120]

A half-decade later, sponsors of the constitutional amendment and the enabling legislation recycled the same arguments, nearly word-for-word. During the 2018 debates on voter photo ID, Chairman Lewis, who also sponsored the VIVA legislation said, "The purpose of voter I.D. is to make sure that someone is who they say they are. That is the purpose of it in all 34 states which currently have it." Republican Representative McElraft said, "If we can't take responsibility, there are 34 states according to the National Conference for state legislatures that have some form of voter ID." And Senator Krawiec said, I want to make you aware that 34 states in this nation have some form of voter ID, all in the Southeast, North Carolina is the last to join the Southeast.[121]

As I noted in my prior report, many of these states do not have *photo* identification requirements for voting. Rather, forms of non-photo identification are also acceptable in these states. Many of these non-photo IDs are free and readily available, including, for example, a utility bill, bank statement, or paycheck. In 2018, half of the 34 states cited by backers of voter photo ID authorize some forms of non-photo ID for voting. According to the National Conference of State Legislators (NCSL), nearly a third of the 17 states with photo ID requirements also enable persons without authorized IDs to cast regular ballots without having to return and present such an ID.[122]

The contemporaneous justification about bringing North Carolina into the mainstream of states also fails to consider the highly unusual measure of placing a voter photo ID requirement in the state constitution. Only Mississippi and Missouri have constitutional amendments on voter ID. However, the Missouri constitution requires only "a form of identification, which may include requiring valid government-issued photo identification." MO Constitution Article VIII, Section 11, leaving Mississippi as the only state with a constitutional provision requiring *photo* voter ID, as indicated in Chart 27. Unlike in North Carolina, the Missouri legislature passed implementing

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[120] "Is North Carolina's Voter ID Law 'Common Sense' Policy or Discriminiation?" *PBS*, 13 August 2013, https://www.pbs.org/newshour/show/is-north-carolina-s-voter-id-law-common-sense-policy#transcript; July 24, 2013, *Senate Debate on H. 589*, 33:21-22; "N.C. Governor: Protect Election Integrity," Office of the Governor, August 28, 2013, http://www.governor.state.nc.us/newsroom/pressreleases/20130829/icymi-ncgovernor-protect-election-integrity#sthash.OKeknv1h.dpuf.

[121] Audio Transcript of Legislative Day 161, (House Floor Consideration of S. 824) at 2:34:09 - 2:34:16 (December 5, 2018), available at https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018; Audio Transcript of Legislative Day 151, (House Floor Consideration of H. 1092) at 3:18:55 - 3:19:28 (June 25, 2018), available at https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018;.

[122] National Conference of State Legislatures, Voter Identification Requirements, http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx;

legislation prior to the November 2016 vote on the constitutional amendment so that voters knew what they would be voting for or against (Chart 29).[123]

North Carolina additionally departed even from the mainstream of states with some form of photo voter ID requirement by requiring that most IDs have an expiration date and cannot be expired for more than one year (with an elderly exception). Nearly every other state with a photo ID requirement either accepts expired IDs or has a longer grace period than one year.[124]

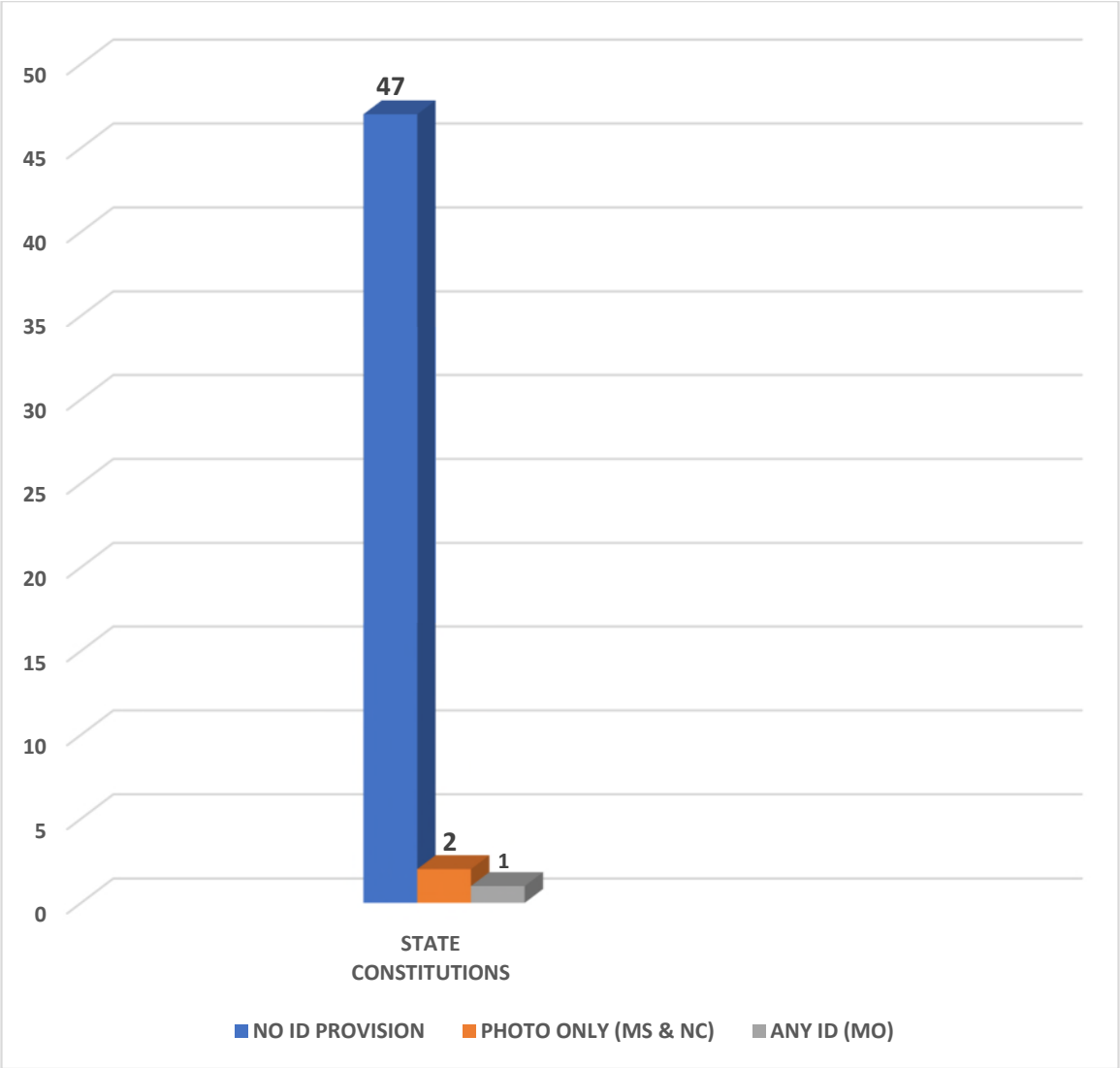
North Carolina also stepped out the mainstream of other voter photo ID states by eliminating three forms of commonly accepted photo identification: U.S. government employee IDs, U.S. government certificate of naturalization, and public assistance IDs from the list of acceptable forms of identification. It stands nearly alone among these states in rejecting all of these forms of IDs. For example, Missouri, cited prominently by the sponsors of S. 824, had implementing legislation that allows all photo IDs issued by the United States and by the State of Missouri.[125]

[123] *Ibid*.,; "Missouri Voter ID Requirement, Constitutional Amendment 6 (2016), Ballotpedia, https://ballotpedia.org/Missouri_Voter_ID_Requirement,_Constitutional_Amendment_6_(2016) .

[124] *Ibid*., National Conference of State Legislatures, *Voter Identification Requirements.*

[125] *Ibid*.

CHART 29: STATE CONSTITUTIONAL PROVISIONS ON VOTER ID



H. The Positions Taken by Decision Makers on Absentee Ballots Contradicts Their Claims About the Constitutional Amendment and S. 824

Despite clear evidence that absentee voter fraud in North Carolina was a far more serious problem than voter impersonation at the polls, the General Assembly in 2013 and again in its initial presentation of implementing legislation in 2018 limited the voter photo ID requirement only to voting at the polls. As noted in my 2015 report and confirmed by updated data, unlike voting at the polls, whites compared to African Americans in North Carolina are much more likely to use absentee ballot voting. The General Assembly only acted on absentee ballot fraud under relentless pressure after revelation of widespread fraud by Republican operatives in the election for Congress in the 9th congressional district. Then they used the same discriminatory criteria that they used for in-person voting of authorizing copies only of photo ID for absentee balloting.

During the 2013 debates over voter photo identification members of the North Carolina General Assembly repeatedly warned their colleagues that the bill, which only covered in-person voting, targeted the wrong target in attempting to combat voter fraud and promote election integrity. The real threat, they noted, came not from virtually non-existent voter impersonation, but from the far more prevalent and dangerous fraud through absentee ballots. The critics pointed to a March 2013 State Board of Elections study which found in response to inquiries by the House Elections Committee, that from 2000 to 2012 there were only 2 cases of voter impersonation that the SBOE "believed merited a referral to the district attorney's office." In contrast, during this period there were 47 cases of voter fraud through absentee ballots, a ratio of 23.5 to 1.[126]

During the 2013 legislative debates, Representative Warren, a key H. 589 backer, countered such objections with a most revealing argument. He said, "If these impediments are legitimate, and I'm sure there are cases where they are, then it seems reasonable that a person [who lacks proper photo ID] would vote by absentee ballot. And thank heaven that we did not pass Representative Jackson's amendment; otherwise, they would need a photo ID to do that.".[127]

SL 2013-381 did include a provision that mandated the signatures of two witnesses or a notarized signature and a voter identifying number for mail-in absentee ballots. As I explained, however, in my 2015 report, while these requirements made it more difficult for poor people and people with minimal education to use mail-in ballots, they would not deter those seeking to commit absentee-ballot fraud. Moreover, under SL 2013, absentee ballots did not need to be mailed to the voter's address but could be requested by any "close relative" and sent to the requestor's address. For anyone determined to subvert the integrity of the election process the safest, most efficient, and least costly means is through mail-in absentee ballots from untraceable locations. Unlike persons showing up at the polls, moreover, persons committing faceless mail-in absentee ballot

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[126] North Carolina State Board of Elections, "Documented Cases of Voter Fraud in North Carolina," Attach. F., 11 March 2013, https://www.ncleg.gov/documentsites/committees/JointAppropriationsGeneralGovernment/2013%20Session/03-07-13%20Meeting/sbe_GA_response_with_attachments.pdf; , *Transcript of Senate Debate on H. 589,* Day 1,p. 4.

[127] Apr. 24, 2013, Transcript *of House Debate on H. 589,* pp. 116-117. Audio files available at: https://www.ncleg.gov/Documents/9#2013-2014%20Session\Audio%20Archives\2013

fraud need not even approximately resemble the person in whose name they are voting. Representative Brandon said during the 2013 debates that the differential treatment of in-person and absentee voting "make every single argument that you make on the other side, absolutely null and void, absolutely null and void. There is not an argument after that. After you let free voting go on with absolutely no ID, no check, no nothing, open it up to every kind of fraud that you can have, and you make it more accessible?"[128]

The U.S. Election Assistance Commission, *Election Crimes* found that "absentee balloting is subject to the greatest proportion of fraudulent acts." Similarly, data collected by News21, a national reporting project made up of 11 universities found that nationwide absentee voting fraud was the most common type of fraud, outnumbering voter impersonation by a ratio of 49 to 1.[129]

Although the updated 2017 State Board of Elections audit of fraud found essentially no voter impersonation, it noted "Irregularities affecting absentee by-mail voting in Bladen County" and reported that "the State Board voted unanimously late last year to refer an investigation into suspected criminal activity to federal prosecutors." This information was presented by the State Board prior to adoption of the recommended constitutional amendment and subsequent legislation of voter photo ID.

In the 2018 legislative debates over photo voter ID, Republicans in the General Assembly again failed to heed warnings that they were targeting the wrong kind of voter fraud for the wrong reasons. In the words of Representative Jackson:

> "First the photo I.D. requirement which applied only to in person voting and not to absentee voting was too narrow to combat fraud. And that's the source of an amendment that I ran both in 2013 and attempted to run on a committee the other day to say, well if you're going to require a photo I.D. for in person voting why not require for absentee voting? Of course, the Court found the reason for that is because all the things that were being limited were a higher proportion used by African Americans, but absentee voting was the one thing that was used by mostly white voters and therefore a photo I.D. was not required for. And it notes that specifically the bipartisan State Board of Elections requested the General Assembly remedy the potential for mail-in absentee voter fraud and expressed no concern about in person voter fraud."[130]

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[128] July 25, 2013, Transcript of House Debate on H. 589; audio files available at https://www.ncleg.gov/Documents/9#2013-2014%20Session\Audio%20Archives\2013

[129] U.S. Election Assistance Commission, Election Crimes p. 9;, Natasha Khan and Corbin Carson, "Comprehensive Database Of U.S. Voter Fraud Uncovers No Evidence That Photo ID Is Needed," News21, 12 August 2012, http://votingrights.news21.com/article/election-fraud/. Wayne Slater, "Few Texas voter-fraud cases would have been prevented by photo ID law, review shows," Dallasnews.com, 8 September 2013, https://www.dallasnews.com/news/politics/2013/09/09/few-texas-voter-fraud-cases-would-have-been-prevented-by-photo-id-law-review-shows/.

[130] Audio Transcript of Legislative Day 151, (House Floor Consideration of H. 1092) at 3:34:36 - 3:35:31 (June 25, 2018), available at https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018

Data presented in my 2015 report in *NAACP v. McCrory* confirmed that absentee ballots were much more likely to be utilized by whites than African Americans. Updated data from 2016 confirms this finding. According to the voter files, 4.6 percent of white voters cast absentee votes by mail, compared to 1.8 percent of African American voters. That would be the data available to the General Assembly during the process of adopting the constitutional amendment and the implementing legislation.

During the debates over the constitutional amendment the State House rejected any effort to include the prevention of absentee voter fraud in the amendment, leaving it to focus only on in-person voting. Representative Lewis said that absentee voting "does not belong in this amendment, which is asking the people to weigh in on should we have a voter ID or not." In fact, Representative Lewis doubly misrepresented his proposed amendment. It did not ask the voters to decide on whether to have a voter ID in general, but only whether to have a *photo* voter ID, and it pertained only to in-person voting, not voting in general. This omission for absentee voting could have been rectified readily by simply striking the word "in-person" from the amendment so it would refer to voting generally.[131]

Despite pledging during the debates over the constitutional amendment to address absentee voting by statute, the Republican majority introduced at the beginning of the lame duck session on November 27, 2018 legislation that covered only in-person voting. It was not until after news emerged of egregious absentee ballot fraud committed by operatives on behalf of Republican candidate Mark Harris in the 9th Congressional District that Republicans in the General Assembly introduced a revised bill that applied identification requirements to absentee ballots. On November 30, 2018 the State Board of Elections declined to certify the results of the 9th Congressional District election amid concerns about absentee voter fraud centered on Bladen County, which, according to the State Board of Elections 2017 audit was already under investigation for absentee voter fraud.[132]

On November 30, 2018, the *Washington Post* reported that "officials voted Friday to continue investigating fraud in the 9th Congressional District election, potentially delaying certification of the results for weeks and leaving open the possibility that a new election could be called." The State Board of Elections, comprised of four Democrats, four Republicans and one independent, voted 7 to 2 to hold a hearing "to assure that the election is determined without taint of fraud or corruption and without irregularities that may have changed the result." The Board cited "claims of numerous irregularities and concerted fraudulent activities related to absentee mail ballots."[133]

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[131] Audio Transcript of Legislative Day 151, (House Floor Consideration of H. 1092) at 1:38:39 - 1:38:45 (June 25, 2018), available at https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018

[132] General Assembly of North Carolina Session 2017 S D Senate Bill DRS15330-BKf-25, Filed Nov. 27 2018, S.B. 824, https://webservices.ncleg.net/ViewBillDocument/2017/7533/0/DRS15330-BKf-25.

[133] Gardner, Amy and Ross, Kirk, "N.C. Election Officials Plan Hearing Over Fraud Concerns In U.S. House Race, Raising Possibility Of New Election," *Washington Post*, 30 November 2018, https://www.washingtonpost.com/politics/nc-election-officials-plan-hearing-over-fraud-concerns-in-us-house-race-raising-possibility-of-new-election/2018/11/30/d1fc0450-f4b7-11e8-aeea-b85fd44449f5_story.html?utm_term=.0af723aea609.

The reporters noted that "Republicans spent the week in Raleigh drafting legislation to implement a new voter-approved requirement to present identification at the polls - an effort that the GOP has said is necessary to combat voter fraud. But they were mostly mum as evidence mounted that a different kind of election fraud may have taken place 100 miles south, other than to demand that the state board quickly certify Harris's narrow lead." Gerry Cohen, the former counsel to the North Carolina state legislature said that "It's a big juxtaposition to focus on a non-problem and ignore a huge problem." Then, on December 4, 2018 as compelling evidence mounted of substantial absentee ballot fraud in the 9th Congressional District, the House introduced a substitute bill that for the first time addressed absentee ballots at all.[134]

In addressing absentee ballots, however, Republicans in the General Assembly continued their practice of discriminating against African Americans. To certify absentee ballots the new law required copies only of the restricted set of photo IDs authorized for in-person voting. It did not include an option for non-photo forms of identification, which would have been more accessible to African Americans and other minorities. Although African-Americans vote by absentee ballot at lower rates than whites, adding a photo ID requirement to absentee voting is likely to disadvantage African-American absentee voters disproportionately, because of the legacy of historic racial discrimination reflected in current socio-economic disadvantages.

I. Backers of Voter Photo ID Relied on a Misleading Common Sense Analogy

Proponents of photo voter identification in 2018, as they did in 2013 proponents point to it as "common sense" legislation, that brings identification for voting in line with ID requirements for other common activities. During the debates about overriding Governor Cooper's veto of the enabling legislation on voter ID in 2018, Republican Representative Jimmy Dixon chided Governor Cooper, saying that "in today's world … my grandchildren need a photo ID to get into the library and where *tens of thousands of minorities and poor and elderly need a photo ID to access entitlement benefits*, to get medicine, to cash a check or to do many other things. (emphasis added)[135]

The irony of Representative Dixon's comment is that he and other supporters of the 2018 legislation explicitly excluded IDs used "to access entitlement benefits." A photo public assistance ID or any federal ID is not sufficient to vote in North Carolina, but is sufficient to acquire a library card, or to cash a check, which is available in any case at payday check cashing services without an ID through their verification process. Speedy Cash advertises on its website that even without an ID they will "absolutely" cash your check: "we will work with you to verify your identity. We may ask you to fill out some basic personal information to help us verify your identity." In "today's world" an individual can also self-cash checks through an online Venmo account that typically

[134] S.B. 824 Second Edition Engrossed 11/29/18 House Committee Substitute Favorable 12/4/18 Proposed House Committee Substitute S824-Pcs15340-Bkf-54, https://webservices.ncleg.net/ViewBillDocument/2017/7621/0/S824-PCS15340-BKf-54.

[135] Audio Transcript of Legislative Day 171, (House Floor Consideration of H. 1092) at 22:09 - 22:38 (December 19, 2018), available at https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018

does not require a picture ID to open. With the exception of certain controlled substances, North Carolina law does not require the presentation of photo ID for prescription medicines.[136]

Republican Representative John Bell, the House Majority Leader tweeted during the 2018 early voting period on the constitutional amendment that "it's common sense" to require voter ID, because "you already need an ID to" board an airplane, see an R-rated movie, cash a check or use a credit card. The fact checkers at PolitiFact debunks these claims:

> **"It's possible for people to do all of those actions Bell cited without a photo ID — with varying degrees of ease — and none of those things are constitutional rights, like the right to vote is. Furthermore, any rules that might exist governing IDs for banks and movie theaters are matters of corporate policy, not government-enforced laws like a voter ID requirement would be."[137]**

Boarding an airplane: "And even the Transportation Security Administration will let people through security at airports without a photo ID, as long as they go through "an alternative identity verification process, which includes ... asking personal questions to help confirm your identity," according to the TSA's website."

See an R-Rated Movie: "Movie theaters rarely, if ever, check the IDs of adult customers trying to see an R-rated movie. And their enforcement of an ID policy on youngsters is typically quite lax."

Using a credit card: "Retailers are generally allowed to ask for someone to show ID when they use a credit card. But Visa specifically prohibits businesses from requiring Visa cardholders to show ID to complete a purchase in most circumstances, while Mastercard and American Express require photo IDs to be shown only in certain circumstances."

Cashing a check: "As for cashing checks, major banks do typically have policies requiring a government-issued photo ID. But other businesses like payday lenders do not."[138]

XI. CONCLUSIONS

The enactment of voter photo ID by the North Carolina General Assembly in 2018 was not an isolated incident in the recent politics of North Carolina. It culminated nearly a decade of intentional efforts by North Carolina Republicans to offset their declining white voter base through measures that restricted the ability of the overwhelmingly Democratic African American voters in the state to participate fully in the political process and elect candidates of their choice. These

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[136] Speedy Cash, Check Cashing, https://www.speedycash.com/faqs/check-cashing/what-do-i-need-to-cash-a-check/; Venmo, Customer Identification Requirements, https://help.venmo.com/hc/en-us/articles/360021199834-Customer-Identification-Document-Requirements; "Photo ID Now Required for Certain Controlled Substances," North Carolina Medical Society, 24 February 2012, http://www.ncmedsoc.org/photo-id-now-required-for-certain-controlled-substances/.

[137] Doran, Will, "North Carolina Voter ID Amendment Debate Features Misleading Claims," *PolitiFact*, 1 November 2018, https://www.politifact.com/north-carolina/article/2018/nov/01/north-carolina-voter-id-amendment-debate-features-/.

[138] All quotes from *Ibid*.

efforts included the racial gerrymandering of congressional and state legislative districts, the partisan gerrymandering of legislative districts, and the enactment of VIVA (H. 589) in 2013, after the U.S. Supreme Court struck down preclearance under the Voting Rights Act.

VIVA was arguably the most restrictive voting legislation in the recent history of the nation, and the Fourth Circuit Court of Appeals found that its provisions, including its voter photo ID requirement, had the effect and intent of discriminating against African American voters. Yet, Republican leaders of the General Assembly disparaged and disregarded this decision, defended their unconstitutional voter ID law from 2013, and vowed to resurrect photo voter ID in North Carolina. They did so under the guise of a constitutional amendment to protect a new law from court review. They then used the lame duck session of 2018 to adopt implementing legislation and override the governor's veto along party lines.

Republicans were likely able to retain the 60 percent supermajority in the state legislature needed to propose a constitutional amendment and override a veto only because of the racial gerrymandering of legislative districts that violated the U.S. constitution and the partisan gerrymandering that violated the state constitution. They also retained this super-majority by deceiving a federal court about their capacity to draw new lines in time for a special election prior to the regularly scheduled elections of 2018. Many of the same legislative leaders and members who led the efforts to enact H. 589 led or participated in the development of S. 824.

Multiple sources of information demonstrated that like the 2013 law, the 2018 voter photo ID legislation disproportionately burdened African Americans as compared to whites. This information was a matter of public record and available to members of the General Assembly in 2018. Although the new law includes college student IDs (with restrictions) and state and local government employment IDs that were not in the 2013 law, in other ways S. 824 is actually more restrictive than the unconstitutional earlier legislation. It reduced the expiration period for acceptable IDs from four years to one year and does not include learner's permits that were explicitly included in 2013. It also incorporates some of the critical exclusions that were also significant in the earlier law, such as federal government employee IDs, or IDs for firemen, EMTs and hospital workers and law enforcement personnel. It also excludes public assistance IDs issued by any government entity, even though the Fourth Circuit identified this exclusion as a telling example of intentional discrimination in the 2013 law.

The effects of historical and ongoing discrimination against African Americans emerges in the substantial socio-economic disparities between these two racial groups in North Carolina. As the Fourth Circuit affirmed, socio-economic standing significantly impacts the ability of African Americans to participate fully in the political process and to obtain acceptable voter photo identification.

The misleading and pretextual justifications offered for the re-adoption of voter photo ID in North Carolina differ little from the debunked justifications of VIVA in 2013 and continue to provide another indicium of discriminatory intent. Although Republican House Speaker Tim Moore affirmed that the goals of an ID law could be met with an option for non-photo ID, Moore and other leaders pushed through the General Assembly a photo-only constitutional amendment and implementing legislation. They rejected an amendment that would have removed the word "photo" from the wording of the constitutional amendment.

Republican leaders rejected a proposal to include public assistance IDs on the pretextual grounds that they lacked a uniform format unlike military and veteran's IDs. Yet there is no uniformity among the multiplicity of veteran's IDs and the leadership never followed through on its willingness to consider state-issued public assistance IDs. Backers of voter photo ID in 2018 rolled out similar unverifiable, unprovable anecdotes on voter fraud that were used in 2013, while ignoring state audits from 2013 and 2017 showing that the type of voter fraud that could allegedly be prevented by voter photo ID was virtually non-existent in North Carolina. They insisted again that fraud was going undetected, and ignored the many refutations of this unsubstantial claim. Equally unsubstantiated and refuted by the evidence was their claim about the need for voter photo ID to bolster voter confidence in elections.

Despite clear evidence that absentee voter fraud in North Carolina was a far more serious problem than voter impersonation at the polls, the General Assembly in 2013 and again in its initial presentation of implementing legislation in 2018 limited the voter photo ID requirement only to voting at the polls. Unlike voting at the polls, whites as compared to African Americans in North Carolina disproportionately use absentee ballot voting. The General Assembly only acted on absentee ballot fraud under relentless pressure after revelation of widespread absentee ballot fraud by Republican operatives in the election for Congress in the 9th congressional district. Then they used the same discriminatory criteria that they used for in-person voting of authorizing copies only of photo ID for absentee balloting.

The passage of VIVA and its rejection as unconstitutional by the Fourth Circuit, other recent actions in the General Assembly, its pretextual justifications, and the continued waning of white voter strength in North Carolina, demonstrate that the case for intentional discrimination in the adoption of voter photo ID in 2018 is at least as strong as the case against VIVA in 2013. This recent history of Republicans in the General Assembly, as well as continued and new discriminatory features of S. 824 demonstrate that they did not purge themselves of discriminatory intent in 2018 but were animated by the same discriminatory motives that were evident five years earlier.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

Executed on: 09/16/2019

Allan J. Lichtman

Curriculum Vitae

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EDUCATION

BA, Brandeis University, Phi Beta Kappa, Magna Cum Laude, 1967

PhD, Harvard University, Graduate Prize Fellow, 1973

PROFESSIONAL EXPERIENCE

Teaching Fellow, American History, Harvard University, 1969-73

Instructor, Brandeis University, 1970, quantitative history.

Assistant Professor of History, American University, 1973-1977

Associate Professor of History, American University, 1977-1978

Professor of History, American University, 1979 –

Distinguished Professor, 2011 -

Expert witness in more than 90 redistricting, voting rights and civil rights cases

Associate Dean for Faculty and Curricular Development, College of Arts & Sciences, The American University 1985-1987

Chair, Department of History, American University, 1997- 2001

Regular political analyst for CNN Headline News, 2003-2006

HONORS AND AWARDS

Outstanding Teacher, College of Arts and Sciences, 1975-76

Outstanding Scholar, College of Arts and Sciences, 1978-79

Outstanding Scholar, The American University, 1982-83

Outstanding Scholar/Teacher, The American University, 1992-93 (Highest University faculty award)

Sherman Fairchild Distinguished Visiting Scholar, California Institute of Technology, 1980-81

American University summer research grant, 1978 & 1982

Chamber of Commerce, Outstanding Young Men of America 1979-80

Graduate Student Council, American University, Faculty Award, 1982

Top Speaker Award, National Convention of the International Platform Association, 1983, 1984, 1987

National Age Group Champion (30-34) 3000-meter steeplechase 1979

Eastern Region Age Group Champion (30-34) 1500 meter run 1979

Defeated twenty opponents on nationally syndicated quiz show, TIC TAC DOUGH, 1981

Listing in Marquis, WHO'S WHO IN THE AMERICA AND WHO'S WHO IN THE WORLD

McDonnell Foundation, Prediction of Complex Systems ($50,000, three years), 2003-2005

Organization of American Historians, Distinguished Lecturer, 2004 -

Selected by the Teaching Company as one of America's Super Star Teachers."

Associate Editor, International Journal of Operations Research and Information Systems, 2008 -

Keynote Speaker, International Forecasting Summit, 2007 and 2008

Cited authoritatively by United States Supreme Court in statewide Texas Congressional redistricting case *LULAC v. Perry* (2006)

Interviews nominated by the Associated Press for the Edward R. Murrow Award for broadcasting excellence.

WHITE PROTESTANT NATION: THE RISE OF THE AMERICAN CONSERVATIVE MOVEMENT: Finalist for the 2008 National Book Critics Circle Award in general nonfiction.

Elected Member, PEN American Center, 2009

Appointed Distinguished Professor, 2011

FDR AND THE JEWS: Designated for Belknap Imprint of the Harvard University Press, reserved for works of special distinction and lasting value; *New York Times* editors' choice book for 2013, submitted for Pulitzer Prize 2013, winner of Tikkun Olam Award for Holocaust Studies, winner of National Jewish Book Award in American Jewish Studies, finalist for Los Angeles Times Book Award in History.

THE CASE FOR IMPEACHMENT: Independent bookstore bestseller, Amazon.com bestseller in several academic categories, *Newsweek*, best new book releases, April 18, 2017.

Winner of the Alfred Nelson Marquis Life Time Achievement Award for top 5% of persons included in Marquis WHO'S WHO, 2018.

Listed by rise.global as # 85 among 100 most influential geopolitical experts in the world.

SCHOLARSHIP

A. Books

PREJUDICE AND THE OLD POLITICS: THE PRESIDENTIAL ELECTION OF 1928 (Chapel Hill: University of North Carolina Press, 1979)

PREJUDICE AND THE OLD POLITICS: THE PRESIDENTIAL ELECTION OF 1928 (Lanham, MD: Lexington Books, 2000), reprint of 1979 edition with new introduction.

HISTORIANS AND THE LIVING PAST: THE THEORY AND PRACTICE OF HISTORICAL STUDY (Arlington Heights, Ill.: Harlan Davidson, Inc., 1978, with Valerie French)

ECOLOGICAL INFERENCE (Sage Series in Quantitative Applications in the Social Sciences, 1978, with Laura Irwin Langbein)

YOUR FAMILY HISTORY: HOW TO USE ORAL HISTORY, PERSONAL FAMILY ARCHIVES, AND PUBLIC DOCUMENTS TO DISCOVER YOUR HERITAGE (New York: Random House, 1978)

KIN AND COMMUNITIES: FAMILIES IN AMERICA (edited, Washington, D. C.: Smithsonian Press, 1979, with Joan Challinor)

THE THIRTEEN KEYS TO THE PRESIDENCY (Lanham: Madison Books, 1990, with Ken DeCell)

THE KEYS TO THE WHITE HOUSE, 1996 EDITION (Lanham: Madison Books, 1996)

THE KEYS TO THE WHITE HOUSE, (Lanham: Lexington Books Edition, 2000)

THE KEYS TO THE WHITE HOUSE, POST-2004 EDITION (Lanham: Lexington Books Edition, 2005)

THE KEYS TO THE WHITE HOUSE, 2008 EDITION (Lanham: Rowman & Littlefield, 2008)

WHITE PROTESTANT NATION: THE RISE OF THE AMERICAN CONSERVATIVE MOVEMENT (New York: Grove/Atlantic Press, 2008)

THE KEYS TO THE WHITE HOUSE, 2012 EDITION (2012, Lanham: Rowman & Littlefield)

FDR AND THE JEWS, (Cambridge: Harvard University Press, Belknap Imprint, 2013, with Richard Breitman).

THE KEYS TO THE WHITE HOUSE, 2016 EDITION (Lanham: Rowman & Littlefield)

THE CASE FOR IMPEACHMENT (HarperCollins, April 2017, updated paperback January 2018)

THE EMBATTLED VOTE IN AMERICA: FROM THE FOUNDING TO THE PRESENT (Harvard University Press, 2018)

REPEAL THE SECOND AMENDMENT: THE CASE FOR A SAFER AMERICA (forthcoming, January 2020, St. Martin's Press)

Monographs:

"Report on the Implications for Minority Voter Opportunities if Corrected census Data Had Been Used for the Post-1990 Redistricting: States With The Largest Numerical Undercount," UNITED STATES CENSUS MONITORING BOARD, January 2001

"Report on the Racial Impact of the Rejection of Ballots Cast in the 2000 Presidential Election in the State of Florida," and "Supplemental Report," in VOTING IRREGULARITIES IN FLORIDA DURING THE 2000 PRESIDENTIAL ELECTION, United States Commission on Civil Rights, June 2001

B. Scholarly Articles

"The Federal Assault Against Voting Discrimination in the Deep South, 1957-1967," JOURNAL OF NEGRO HISTORY (Oct. 1969) REF

"Executive Enforcement of Voting Rights, 1957-60," in Terrence Goggin and John Seidel, eds., POLITICS AMERICAN STYLE (1971)

"Correlation, Regression, and the Ecological Fallacy: A Critique," JOURNAL OF INTERDISCIPLINARY HISTORY (Winter 1974) REF

"Critical Election Theory and the Reality of American Presidential Politics, 1916-1940," AMERICAN HISTORICAL REVIEW (April 1976) REF

"Across the Great Divide: Inferring Individual Behavior From Aggregate Data," POLITICAL METHODOLOGY (with Laura Irwin, Fall 1976) REF

"Regression vs. Homogeneous Units: A Specification Analysis," SOCIAL SCIENCE HISTORY (Winter 1978) REF

"Language Games, Social Science, and Public Policy: The Case of the Family," in Harold Wallach, ed., APPROACHES TO CHILD AND FAMILY POLICY (Washington, D. C.: American Association for the Advancement of Science, 1981)

"Pattern Recognition Applied to Presidential Elections in the United States, 1860-1980: The Role of Integral Social, Economic, and Political Traits," PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCE (with V. I. Keilis-Borok, November 1981) REF

"The End of Realignment Theory? Toward a New Research Program for American Political History," HISTORICAL METHODS (Fall 1982)

"Kinship and Family in American History," in National Council for Social Studies Bulletin, UNITED STATES HISTORY IN THE 1980s (1982)

"Modeling the Past: The Specification of Functional Form," JOURNAL OF INTERDISCIPLINARY HISTORY (with Ivy Broder, Winter 1983) REF

"Political Realignment and `Ethnocultural` Voting in Late Nineteenth Century America," JOURNAL OF SOCIAL HISTORY (March 1983) REF

"The `New Political History:`Some Statistical Questions Answered," SOCIAL SCIENCE HISTORY (with J. Morgan Kousser, August 1983) REF

"Personal Family History: A Bridge to the Past," PROLOGUE (Spring 1984)

"Geography as Destiny," REVIEWS IN AMERICAN HISTORY (September 1985)

"Civil Rights Law: High Court Decision on Voting Act Helps to Remove Minority Barriers," NATIONAL LAW JOURNAL (with Gerald Hebert, November 10, 1986).

"Tommy The Cork: The Secret World of Washington`s First Modern Lobbyist," WASHINGTON MONTHLY (February 1987).

"Discriminatory Election Systems and the Political Cohesion Doctrine," NATIONAL LAW JOURNAL (with Gerald Hebert, Oct. 5, 1987)

"Aggregate-Level Analysis of American Midterm Senatorial Election Results, 1974-1986," PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES (Dec. 1989, with Volodia Keilis-Borok) REF

"Black/White Voter Registration Disparities in Mississippi: Legal and Methodological Issues in Challenging Bureau of Census Data," JOURNAL OF LAW AND POLITICS (Spring, 1991, with Samuel Issacharoff) REF

"Adjusting Census Data for Reapportionment: The Independent Role of the States," NATIONAL BLACK LAW JOURNAL (1991)

"Passing the Test: Ecological Regression in the Los Angeles County Case and Beyond," EVALUATION REVIEW (December 1991) REF

Understanding and Prediction of Large Unstable Systems in the Absence of Basic Equations," PROCEEDINGS OF THE INTERNATIONAL SYMPOSIUM ON CONCEPTUAL TOOLS FOR UNDERSTANDING NATURE (with V. I. Keilis-Borok, Trieste, Italy, 1991).

"The Self-Organization of American Society in Presidential and Senatorial Elections," in Yu. Krautsov, ed., THE LIMITS OF PREDICTABILITY (with V.I. Keilis-Borok, Nauka, Moscow, 1992).

"'They Endured:' The Democratic Party in the 1920s," in Ira Foreman, ed., DEMOCRATS AND THE AMERICAN IDEA: A BICENTENNIAL APPRAISAL (1992).

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"The Keys to the White House: Who Will be the Next American President?," SOCIAL EDUCATION 60 (1996)

"The Rise of Big Government: Not As Simple As It Seems," REVIEWS IN AMERICAN HISTORY 26 (1998)

“The Keys to Election 2000,” SOCIAL EDUCATION (Nov/Dec. 1999)

“The Keys to the White House 2000,” NATIONAL FORUM (Winter 2000)

“What Really Happened in Florida’s 2000 Presidential Election,” JOURNAL OF LEGAL STUDIES (January 2003) REF

“The Keys to Election 2004,” SOCIAL EDUCATION (January 2004)

“History: Social Science Applications,” ENCYCLOPEDIA OF SOCIAL MEASUREMENT (Elseveir, 2006)

"The Keys to the White House: Forecast for 2008," SPECIAL FEATURE, *FORESIGHT: THE INTERNATIONAL JOURNAL OF APPLIED FORECASTING* 3 (February 2006), 5-9 with response: J. Scott Armstrong and Alfred G. Cuzan, "Index Methods for Forecasting: An Application to the American Presidential Elections."

"The Keys to the White House: Updated Forecast for 2008," *FORESIGHT; THE INTERNATIONAL JOURNAL OF APPLIED FORECASTING* 7 (Fall 2007)

"The Keys to the White House: Prediction for 2008," SOCIAL EDUCATION (January 2008)

"The Keys to the White House: An Index Forecast for 2008," INTERNATIONAL JOURNAL OF FORECASTING 4 (April-June 2008) REF

"The Updated Version of the Keys," SOCIAL EDUCATION (October 2008)

"Extreme Events in Socio-Economic and Political Complex Systems, Predictability of," ENCYCLOPEDIA OF COMPLEXITY AND SYSTEMS SCIENCE (Springer, 2009, with Vladimir Keilis-Borok & Alexandre Soloviev)

"The Keys to the White House: A Preliminary Forecast for 2012" INTERNATIONAL JOURNAL OF INFORMATION SYSTEMS & SOCIAL CHANGE (Jan.-March 2010) REF

"The Keys to the White House: Forecast for 2012," FORESIGHT: THE INTERNATIONAL JOURNAL OF APPLIED FORECASTING (Summer 2010)

"The Keys to the White House: Prediction for 2012," SOCIAL EDUCATION (March 2012)

"The Keys to the White House: Prediction for 2016," SOCIAL EDUCATION (February 2016)

"The Keys to the White House," SOCIAL EDUCATION (October 2016)

"The Keys to the White House: Forecast for 2016," WORLD FINANCIAL REVIEW (January-February 2016)

"Barack Obama" in James M. Banner, Jr., ed., PRESIDENTIAL MISCONDUCT: FROM GEORGE WASHINGTON TO TODAY (New Press, 2019)

"The Alternative-Justification Affirmative: A New Case Form," JOURNAL OF THE AMERICAN FORENSIC ASSOCIATION (with Charles Garvin and Jerome Corsi, Fall 1973) REF

"The Alternative-Justification Case Revisited: A Critique of Goodnight, Balthrop and Parsons, `The Substance of Inherency,`" JOURNAL OF THE AMERICAN FORENSIC ASSOCIATION (with Jerome Corsi, Spring 1975) REF

"A General Theory of the Counterplan," JOURNAL OF THE AMERICAN FORENSIC ASSOCIATION (with Daniel Rohrer, Fall 1975) REF

"The Logic of Policy Dispute," JOURNAL OF THE AMERICAN FORENSIC ASSOCIATION (with Daniel Rohrer, Spring 1980) REF

"Policy Dispute and Paradigm Evaluation," JOURNAL OF THE AMERICAN FORENSIC ASSOCIATION (with Daniel Rohrer, Fall 1982) REF

"New Paradigms For Academic Debate," JOURNAL OF THE AMERICAN FORENSIC ASSOCIATION (Fall 1985) REF

"Competing Models of the Debate Process," JOURNAL OF THE AMERICAN FORENSIC ASSOCIATION (Winter 1986) REF

"The Role of the Criteria Case in the Conceptual Framework of Academic Debate," in Donald Terry, ed., MODERN DEBATE CASE TECHNIQUES (with Daniel Rohrer, 1970)

"Decision Rules for Policy Debate," and "Debate as a Comparison of Policy Systems," in Robert 2, ed., THE NEW DEBATE: READINGS IN CONTEMPORARY DEBATE THEORY (with Daniel Rohrer, 1975)

"A Systems Approach to Presumption and Burden of Proof;" "The Role of Empirical Evidence in Debate;" and "A General Theory of the Counterplan," in David Thomas, ed., ADVANCED DEBATE: READINGS IN THEORY, PRACTICE, AND TEACHING (with Daniel Rohrer, 1975)

"Decision Rules in Policy Debate;" "The Debate Resolution;" "Affirmative Case Approaches;" "A General Theory of the Counterplan;" "The Role of Empirical Evidence in Debate;" and "Policy Systems Analysis in Debate," in David Thomas, ed., ADVANCED DEBATE (revised edition, with Daniel Rohrer and Jerome Corsi, 1979)

C. Selected Popular Articles

"Presidency By The Book," POLITICS TODAY (November 1979) Reprinted:
LOS ANGELES TIMES

"The Grand Old Ploys," NEW YORK TIMES
Op Ed (July 18, 1980)

"The New Prohibitionism," THE CHRISTIAN CENTURY (October 29, 1980)

"Which Party Really Wants to `Get Government Off Our Backs`?" CHRISTIAN SCIENCE MONITOR Opinion Page (December 2, 1980)

"Do Americans Really Want `Coolidge Prosperity` Again?" CHRISTIAN SCIENCE MONITOR Opinion Page (August 19, 1981)

"Chipping Away at Civil Rights," CHRISTIAN SCIENCE MONITOR Opinion Page (February 17, 1982)

"How to Bet in 1984. A Presidential Election Guide," WASHINGTONIAN MAGAZINE (April 1982) Reprinted: THE CHICAGO TRIBUNE

"The Mirage of Efficiency," CHRISTIAN SCIENCE MONITOR Opinion Page (October 6, 1982)

"For RIFs, It Should Be RIP," LOS ANGELES TIMES Opinion Page (January 25, 1983)

"The Patronage Monster, Con`t." WASHINGTON POST Free For All Page (March 16, 1983)

"A Strong Rights Unit," NEW YORK TIMES Op Ed Page (June 19, 1983)

"Abusing the Public Till," LOS ANGELES TIMES Opinion Page (July 26, 1983)

The First Gender Gap," CHRISTIAN SCIENCE MONITOR Opinion Page (August 16, 1983)

"Is Reagan A Sure Thing?" FT. LAUDERDALE NEWS Outlook Section (February 5, 1984)

"The Keys to the American Presidency: Predicting the Next Election," TALENT (Summer 1984)

"GOP: Winning the Political Battle for `88," CHRISTIAN SCIENCE MONITOR, Opinion Page, (December 27, 1984)

"The Return of `Benign Neglect`," WASHINGTON POST, Free For All,
(May 25, 1985)

"Selma Revisited: A Quiet Revolution," CHRISTIAN SCIENCE MONITOR, Opinion Page, (April 1, 1986)

"Democrats Take Over the Senate" THE WASHINGTONIAN (November 1986; article by Ken DeCell on Lichtman`s advance predictions that the Democrats would recapture the Senate in 1986)

"Welcome War?" THE BALTIMORE EVENING SUN, Opinion Page, (July 15, 1987)

"How to Bet in 1988," WASHINGTONIAN (May 1988; advance prediction of George Bush's 1988 victory)

"President Bill?," WASHINGTONIAN (October 1992; advance prediction of Bill Clinton's 1992 victory)

"Don't be Talked Out of Boldness," CHRISTIAN SCIENCE MONITOR, Opinion Page (with Jesse Jackson, November 9, 1992)

"Defending the Second Reconstruction," CHRISTIAN SCIENCE MONITOR, Opinion Page (April 8, 1994)

"Quotas Aren't The Issue," NEW YORK TIMES, Op Ed Page (December 7, 1994)

"History According to Newt," WASHINGTON MONTHLY (May, 1995)

“A Ballot on Democracy,” WASHINGTON POST Op Ed (November 1, 1998)

“The Theory of Counting Heads vs. One, Two, Three,” CHRISTIAN SCIENCE MONITOR Op Ed (June 22, 1999)

“Race Was Big Factor in Ballot Rejection, BALTIMORE SUN Op Ed (March 5, 2002)

“Why is George Bush President?” NATIONAL CATHOLIC REPORTER (Dec. 19, 2003)

“In Plain Sight: With the Public Distracted, George W. Bush is Building a Big Government of the Right,” NEWSDAY, (August 7, 2005)

“Why Obama is Colorblind and McCain is Ageless,” JEWISH DAILY FORWARD (June 26, 2008)

“Splintered Conservatives McCain,” POLITICO (June 24, 2008)

“Will Obama be a Smith or a Kennedy,” NATIONAL CATHOLIC REPORTER (October 17, 2008)

“What Obama Should Do Now,” POLITICO (Jan. 22, 2010)

“Why Democrats Need Hillary Clinton in 2016,” THE HILL, June 11, 2014

“How Corporations Buy Our Government,” THE HILL, July 1, 2014

“Who Rules America,” THE HILL, August 12, 2014

“The End of Civil Discourse?” THE HILL, September 10, 2014

“Pass the Ache Act and Stop Destroying Appalachia?” THE HILL, October 28, 2014

"Democrats Have No One to Blame But Themselves,' THE HILL, November 7, 2014

"Donald Trump's Best Friend: Bernie Sanders," THE HILL March 10, 2016

"Trump Had One Thing Right About Abortion," THE HILL, April 1, 2016

"What is so Progressive About Sanders' Old-Fashioned Protectionism," April 7, 2016

"Sanders is Only Helping Trump by Staying in Race," THE HILL, June 30, 2016

"7 Pieces of Advice for Hillary Clinton," THE HILL, July 25, 2016

"Donald Trump's Call For Russia To Hack Hillary Clinton's Email Is A New Low For American Politics — And Maybe A Crime, NEW YORK DAILY NEWS, July 27, 2016

"Here's the Big Speech Clinton Needs to Make," THE HILL, September 9, 2016

"The Real Story Behind Trump's Tax Returns," THE HILL, October 3, 2016

"Trump is Establishment No Matter What He Says," THE HILL, October 12, 2016

"Trump Brings the Big Lie About Voter Fraud," THE HILL, October 19, 2016

"How a New Clinton Presidency Will Change American Politics Forever," THE HILL, October 22, 2016

"The Media is Rigging the Election by Reporting WikiLeaks Emails," THE HILL, October 26, 2016

"Why James Comey Must Resign Now," THE HILL, November 3, 2016

"Why Trump is Vulnerable to Impeachment," USA TODAY, April 18, 2017

"Donald Trump Meet the Real Andrew Jackson," THE HILL, May 5, 2017

"Why Does Trump's Voter Fraud Commission Really Wants Your Personal Voter Information," THE HILL, August 3, 2017

"Trump is a Lot Closer to Being Impeached, TIME.COM, November 2, 2017

"American Democracy Could be at Risk in the 2018 Elections," VICE December 20, 2017

"We are One Tantrum Away From Accidental War With North Korea," THE HILL, January 25, 2018

"Democrats Can't Survive on Anti-Trumpism Alone," TIME.COM, January 28, 2018

"Don't Expect the Mueller Investigation to End Anytime Soon," VICE March 21, 2018

"President Trump Faces Political Disaster if he Tries to Fire Mueller," THE HILL April 5, 2018

"Framers Fail: Voting is a Basic Right But They Didn't Guarantee it in the Constitution," USA TODAY, September 26, 2018

Suppressing Voting Rights is as Old as the Republic, But the Tactics Change," ZOCALO, October 8, 2018

"Voter Fraud Isn't a Problem in America. Low Turnout Is," WASHINGTON POST, Made for History, October 22, 2018

"Here are five ways a Democratic US House might try to impeach Donald Trump," LONDON SCHOOL OF ECONOMICS, US CENTRE, October 26, 2018.

"The Midterm Results Will Reveal What Drives Voters: A Love or Hate of Trump," THE GUARDIAN, November 5, 2018

XII. "UNLESS DEMOCRATS FIND A 2020 CANDIDATE LIKE BETO O'ROURKE, TRUMP MAY WELL BE SET TO WIN" THE DAILY CALLER, NOVEMBER 7, 2018

"Why Nancy Pelosi Should be the Next Speaker, FORTUNE, November 27, 2018

"Its Well Past Time to Restructure the U.S. Senate," DAILY CALLER, December 4, 2018

XIII. "THE SEVEN CRUCIAL TAKEAWAYS FROM WILLIAM BARR'S CONFIRMATION HEARINGS," SPECTATOR USA, JANUARY 16, 2019

"Did Democrats Forfeit, 2020" THE HILL March 14, 2019

"Barr's 'Summary' Of The Mueller Report Hardly Vindicates Trump," DAILY CALLER, March 25, 2019

"Collusion and Obstruction by Trump remain Open Questions after Attorney General's "Summary" of the Mueller Report," ARTSFORUM, March 26, 2019

"21 Questions for Robert Mueller," THE HILL, April 24, 2019

With U.S. Representative Al Green, "Congress Has a Duty to go Through With the Impeachment and Trial of Donald Trump," THE HILL May 17, 2019

"If Democrats Want to Beat Trump, They Need to Take off the Gloves in the Primary," GQ June 26, 2019
"Nancy Pelosi Runs 'Do-Nothing' Plan That Could Cost the Democrats in 2020," THE HILL, July 12, 2019

"Repeal the Second Amendment to Save Americans From Gun Violence," THE HILL, August 6, 2019

"On his book *The Embattled Vote in America: From the Founding to the Present,"* Cover Feature, ROROTOKU, August 21, 2019.

"Why Impeachment of William Sulzer is Solid Precedent for Donald Trump," THE HILL, September 9, 2019

Bi-weekly column, THE MONTGOMERY JOURNAL, GAZETTE 1990 - 2013

Election-year column, REUTERS NEWS SERVICE 1996 & 2000

Contributor: THE HILL, 2014-present

D. Video Publication

"Great American Presidents," The Teaching Company, 2000.

TEACHING

Ongoing Courses

The History of the U. S. I & II, The Emergence of Modern America, The U. S. in the Twentieth Century, United States Economic History, Historiography, Major Seminar in History, Graduate Research Seminar, Colloquium in U. S. History Since 1865, The American Dream, The Urban-Technological Era, Senior Seminar in American Studies, Seminar in Human Communication.

New Courses: Taught for the first time at The American University

Quantification in History, Women in Twentieth Century American Politics, Women in Twentieth Century America, Historians and the Living Past (a course designed to introduce students to the excitement and relevance of historical study), **Historians and the Living Past for Honors**

Students, How to Think: Critical Analysis in the Social Sciences, Pivotal Years of American Politics, **Government and the Citizen (Honors Program),** Introduction to Historical Quantification, Public Policy in U. S. History, **Honors Seminar in U.S. Presidential Elections**, America's Presidential Elections, What Is America?, **Honors Seminar on FDR, Jews, and the Holocaust**.

TELEVISION APPEARANCES

More than 1,000 instances of political commentary on NBC, CBS, ABC, CNN, C-SPAN, FOX, MSNBC, BBC, CBC, CTV, NPR, VOA, and numerous other broadcasting outlets internationally, including Japanese, Russian, Chinese, German, French, Irish, Austrian, Australian, Russian, Swedish, Danish, Dutch, and Middle Eastern television.

Regular political commentary for NBC News Nightside.

Regular political commentary for Voice of America and USIA.

Regular political commentary for America's Talking Cable Network.

Regular political commentary for the Canadian Broadcasting System.

Regular political commentary for CNN, Headline News

Consultant and on-air commentator for NBC special productions video project on the history of the American presidency.

CBS New Consultant, 1998 and 1999

Featured appearances on several History Channel specials including *The Nuclear Football* and *The President's Book of Secrets*.

RADIO SHOWS

I have participated in many thousands of radio interview and talk shows broadcast nationwide, in foreign nations, and in cities such as Washington, D. C., New York, Atlanta, Chicago, Los Angeles and Detroit. My appearances include the Voice of America, National Public Radio, and well as all major commercial radio networks.

PRESS CITATIONS

I have been cited many hundreds of times on public affairs in the leading newspapers and magazines worldwide. These include, among many others,

New York Times, Washington Post, USA Today, Los Angeles Times, Wall Street Journal, Miami Herald, Washington Times, St. Louis Post Dispatch, Christian Science Monitor, Philadelphia

Inquirer, Time, Newsweek, Business Week, Le Monde, Globe and Mail, Yomuiri Shimbun, Die Welt, El Mundo, and South China Post, among others.

SELECTED CONFERENCES, PRESENTATIONS, & LECTURES: UNITED STATES

Invited participant and speaker, Bostick Conference on Fogel and Engerman`s TIME ON THE CROSS, University of South Carolina, November 1-2, 1974

"Critical Election Theory and the Presidential Election of 1928," Annual Meeting of the American Historical Association, December 1974

"A Psychological Model of American Nativism," Bloomsberg State Historical Conference, April 1975

"Methodology for Aggregating Data in Education Research," National Institute of Education, Symposium on Methodology, July 1975, with Laura Irwin

Featured Speaker, The Joint Washington State Bicentennial Conference on Family History, October 1975

Featured Speaker, The Santa Barbara Conference on Family History, May 1976

Chair, The Smithsonian Institution and the American University Conference on Techniques for Studying Historical and Contemporary Families, June 1976

Panel Chair, Sixth International Smithsonian Symposium on Kin and Communities in America, June 1977

"The uses of History for Policy Analysis," invited lecture, Federal Interagency Panel on Early Childhood Research, October 1977

Invited participant, Conference on "Child Development within the Family - Evolving New Research Approaches," Interagency Panel of the Federal Government for Research and Development on Adolescence, June 1978

Commentator on papers in argumentation, Annual Meeting of the Speech Communication Association, November 1978

Commentator on papers on family policy, Annual Meeting of the American Association for the Advancement of Science, Jan. 1979

"Phenomenology, History, and Social Science," Graduate Colloquium of the Department of Philosophy," The American University, March 1979

"Comparing Tests for Aggregation Bias: Party Realignments of the 1930`s," Annual Meeting of the Midwest Political Science Association March 1979, with Laura Irwin Langbein

"Party Loyalty and Progressive Politics: Quantitative Analysis of the Vote for President in 1912," Annual Meeting of the Organization of American Historians, April 1979, with Jack Lord II

"Policy Systems Debate: A Reaffirmation," Annual Meeting of the Speech Communication Association, November 1979

"Personal Family History: Toward a Unified Approach," Invited Paper, World Conference on Records, Salt Lake City, August 1980

"Crisis at the Archives: The Acquisition, Preservation, and Dissemination of Public Documents," Annual Meeting of the Speech Communication Association, November 1980

"Recruitment, Conversion, and Political Realignment in America: 1888- 1940," Social Science Seminar, California Institute of Technology, April 1980

"Toward a Situational Logic of American Presidential Elections," Annual Meeting of the Speech Communication Association, November 1981

"Political Realignment in American History," Annual Meeting of the Social Science History Association, October 1981

"Critical Elections in Historical Perspective: the 1890s and the 1930s," Annual Meeting of the Social Science History Association, November 1982

Commentator for Papers on the use of Census data for historical research, Annual Meeting of the Organization of American Historians, April 1983

"Thirteen Keys to the Presidency: How to Predict the Next Election," Featured Presentation, Annual Conference of the International Platform Association, August 1983, Received a Top Speaker Award

"Paradigms for Academic Debate," Annual Meeting of the Speech Communication Association, November 1983

Local Arrangements Chair, Annual Convention of the Social Science History Association, October 1983

"Forecasting the Next Election," Featured Speaker, Annual Convention of the American Feed Manufacturers Association, May 1984

Featured Speaker, "The Ferraro Nomination," Annual Convention of The International Platform Association, August 1984, Top Speaker Award

"Forecasting the 1984 Election," Annual Convention of the Social Science History Association Oct. 1984,

Featured Speaker, "The Keys to the Presidency," Meeting of Women in Government Relations October 1984

Featured Speaker, "The Presidential Election of 1988," Convention of the American Association of Political Consultants, December 1986

Featured Speaker, "The Presidential Election of 1988," Convention of the Senior Executive Service of the United States, July 1987

Commentary on Papers on Voting Rights, Annual Meeting of the American Political Science Association, September 1987.

Commentary on Papers on Ecological Inference, Annual Meeting of the Social Science History Association, November 1987.

Featured Speaker: "Expert Witnesses in Federal Voting Rights Cases," National Conference on Voting Rights, November 1987.

Featured Speaker: "The Quantitative Analysis of Electoral Data," NAACP National Conference on Voting Rights and School Desegregation, July 1988.

Panel Chair, "Quantitative Analysis of the New Deal Realignment," Annual Meeting of the Social Science History Association, Nov. 1989.

Keynote Speaker, Convocation of Lake Forest College, Nov. 1989.

Featured Speaker, The American University-Smithsonian Institution Conference on the Voting Rights Act, April 1990

Panel Speaker, Voting Rights Conference of the Lawyer's Committee for Civil Rights Under Law, April 1990

Panel Speaker, Voting Rights Conference of the NAACP, July 1990

Panel Speaker, Voting Rights Conference of Stetson University, April 1991

Panel Chair, Annual Meeting of the Organization of American Historians, April, 1992

Panel Speaker, Symposium on "Lessons from 200 Years of Democratic Party History, Center for National Policy, May 1992

Olin Memorial Lecture, U.S. Naval Academy, October 1992

Commentator, Annual Meeting of the Organization of American Historians, April, 1993

Panel presentation, Conference on Indian Law, National Bar Association, April 1993

Feature Presentation, Black Political Science Association, Norfolk State University, June 1993

Feature Presentation, Southern Regional Council Conference, Atlanta Georgia, November, 1994

Master of Ceremonies and Speaker, State of the County Brunch, Montgomery County, February, 1996

Feature Presentation, Predicting The Next Presidential Election, Freedom's Foundation Seminar on the American Presidency, August 1996

Feature Presentation, Predicting The Next Presidential Election, Salisbury State College, October 1996

Feature Presentation on the Keys to the White House, Dirksen Center, Peoria, Illinois, August, 2000

Feature Presentation on American Political History, Regional Conference of the Organization of American Historians, August 2000

Testimony Presented Before the United States Commission on Civil Rights Regarding Voting Systems and Voting Rights, January 2001

Testimony Presented Before the United States House of Representatives, Judiciary Committee, Subcommittee on the Constitution, February 2001

Testimony Presented Before the United States Senate, Government Operations Committee, Regarding Racial Differentials in Ballot Rejection Rates in the Florida Presidential Election, June 2001

Testimony Presented Before the Texas State Senate Redistricting Committee, Congressional Redistricting, July 2003

Testimony Presented Before the Texas State House Redistricting Committee, Congressional Redistricting, July 2003

American University Honors Program Tea Talk on the Election, September 2004

Feature Presentation, The Keys to the White House, International Symposium on Forecasting, June 2006.

Feature Presentation, The Keys to the White House, International Symposium on Forecasting, New York, June 2007.

Keynote Speaker, Hubert Humphrey Fellows, Arlington, Virginia, 2007-2013

Feature Presentation, Forecasting 2008, Annual Meeting of the American Political Science Association, Chicago, August 2007

Keynote Speaker, International Forecasting Summit, Orlando, Florida, February 2008.

Feature Presentation on the Keys to the White House, Senior Executive's Service, Washington, DC, June 2008

Feature Presentation, American Political History, Rockford Illinois School District, July 2008

American University Honors Program Tea Talk on the Election, September 2008

Featured Lecture, Keys to the White House, American Association for the Advancement of Science, Washington, DC, September 2008

Keynote Speaker, International Forecasting Summit, Boston, September 2008

Keynote Lecture, Hubert Humphrey Fellows, Arlington, Virginia October 2008

Featured Lectures, Keys to the White, Oklahoma Central and East Central Universities, October 2008

1. *Bishop C. C. McCabe Lecture, "Seven Days until Tomorrow" American University, October 28, 2008*

Featured Lecture, WHITE PROTESTANT NATION, Eisenhower Institute, December 2008

American University Faculty on the Road Lecture, **"Election 2008: What Happened and Why?" Boston, February 2009**

Critic Meets Author Session on WHITE PROTESTANT NATION, Social Science History Association, November 2009

American University Faculty on the Road Lecture, **"The Keys for 2012" Chicago, April 2010**

Keynote Speaker, Hubert Humphrey Fellows, Arlington, Virginia October, 2010, 2011

Panel Participant, Search for Common Ground, Washington, DC, April 2011

Presentation, The Keys to the White House, International Symposium on Forecasting, June 2012

SELECTED CONFERENCES, PRESENTATIONS, & LECTURES: INTERNATIONAL

Featured Speaker, World Conference on Disarmament, Moscow, Russia, November 1986

Delegation Head, Delegation of Washington Area Scholars to Taiwan, Presented Paper on the promotion of democracy based on the American experience, July 1993

Lecture Series, American History, Doshisha University, Kyoto, Japan, December 2000

Lectures and Political Consultation, Nairobi, Kenya, for RFK Memorial Institute, October 2002

Featured Lectures, US Department of State, Scotland and England, including Oxford University, University of Edinburg, and Chatham House, June 2004

Keynote Speech, American University in Cairo, October 2004

Feature Presentation on the Keys to the White House, University of Munich, June 2008

Featured Lectures, US Department of State, Russia, Ukraine, Slovenia, Austria, and Romania, 2008-2010

Paper Presentation, Fourth International Conference on Interdisciplinary Social Science, Athens, Greece, July 2009

Featured Lectures, US Department of State, India, Korea, and Belgium 2012

Panel Speaker, Economic Forun, Krynica, Poland, 2013

DEPARTMENTAL AND UNIVERSITY SERVICE

Department of History Council 1973 -

Undergraduate Committee, Department of History 1973-1977

Chair Undergraduate Committee, Department of History 1984-1985

Graduate Committee, Department of History, 1978-1984

Freshman Advisor, 1973-1979

First Year Module in Human Communications, 1977-1979

University Committee on Fellowships and Awards 1976-1978

University Senate 1978-1979, 1984-1985

University Senate Parliamentarian and Executive Board 1978-1979

Founding Director, American University Honors Program, 1977-1979

Chair, College of Arts and Sciences Budget Committee 1977-1978, 1982-1984

University Grievance Committee, 1984-1985

Member, University Honors Committee 1981-1982

College of Arts and Sciences Curriculum Committee 1981-1982

Jewish Studies Advisory Board, 1982-1984

Mellon Grant Executive Board, College of Arts & Sciences, 1982-1983

Chair, College of Arts and Sciences Faculty Colloquium, 1983

Chair, College of Arts and Sciences Task Force on the Department of Performing Arts, 1984-1985

Local Arrangements Chair, National Convention of the Social Science History Association, 1983

Chair, Rank & Tenure Committee of the Department of History, 1981-1982, 1984-1985

Board Member, Center for Congressional and Presidential Studies, The American University, 1988-1989

Chair, Graduate Committee, Department of History, 1989 - 1991

Chair, Distinguished Professor Search Committee 1991

Member, College of Arts & Sciences Associate Dean Search Committee, 1991

Board Member, The American University Press, 1991-1995

Chair, Subcommittee on Demographic Change, The American University Committee on Middle States Accreditation Review 1992-1994

Member, Dean's Committee on Curriculum Change, College of Arts and Sciences 1992-1993

Member, Dean's Committee on Teaching, College of Arts and Sciences 1992

Co-Chair, Department of History Graduate Committee, 1994-1995

Vice-Chair, College of Arts & Sciences Educational Policy Committee, 1994-1995

Elected Member, University Provost Search Committee, 1995-1996

Chair, Search Committee for British and European Historian, Department of History, 1996

Department Chair, 1999-2001

CAS Research Committee, 2006-2007

University Budget and Benefits Committee, 2008

Chair, Personnel Committee, Department of History, 2010-11, 2012-13

Chair, Term Faculty Search Committee, Department of History, 2011

OTHER POSITIONS

Director of Forensics, Brandeis University, 1968-71

Director of Forensics, Harvard University, 1971-72

Chair, New York-New England Debate Committee, 1970-71

Historical consultant to the Kin and Communities Program of the Smithsonian Institution 1974-1979

Along with general advisory duties, this position has involved the following activities:

1. directing a national conference on techniques for studying historical and contemporary families held at the Smithsonian in June 1976.
2. chairing a public session at the Smithsonian on how to do the history of one's own family.
3. helping to direct the Sixth International Smithsonian Symposium on Kin and Communities in America (June 1977).
4. editing the volume of essays from the symposium.

Consultant to John Anderson campaign for president, 1980.

I researched and wrote a study on "Restrictive Ballot Laws and Third-Force Presidential Candidates." This document was a major component of Anderson's legal arguments against restrictive ballot laws that ultimately prevailed in the Supreme Court (Anderson v. Celebreeze 1983). According to Anderson's attorney: "the basis for the majority's decision echoes the themes you incorporated in your original historical piece we filed in the District Court."

Statistical Consultant to the George Washington University Program of Policy Studies in Science and Technology, 1983

I advised researchers at the Policy Studies Program on the application of pattern recognition techniques to their work on the recovery of communities from the effects of such natural disasters as earthquakes and floods.

Consultant to the New York City Charter Revision Commission, 2000-2006

I analyzed the implications of non-partisan elections for voting rights issues for the Charter Revision Commissions appointed by mayors Rudy Giuliani and Michael Bloomberg.