

Current Conditions of Voting Rights Discrimination

North Carolina

A Report Prepared by

FORWARD JUSTICE

for submission by The Leadership Conference on Civil and Human Rights

House Committee on the Judiciary

OVERSIGHT OF THE VOTING RIGHTS ACT: POTENTIAL LEGISLATIVE
REFORMS

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**THE STRUGGLE FOR VOTING RIGHTS
IN NORTH CAROLINA:
2006 - 2021**

A Report to Congress in Support of
Modernizing the Voting Rights Act
Submitted by Forward Justice

*Dedicated to the Memory and Legacy of
Mothers Rosanell Eaton and Grace Bell Hardison*



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Table of Contents

I. Introduction and Executive Summary 5
North Carolina Demonstrates the Effectiveness of the Voting Rights Act and the Urgent Need for Its Reinvoigoration.....6

Summary and Overview of Report Findings 9
Pre-Shelby County North Carolina Appeared on the Precipice of Change, But Progress Was Quickly Thwarted9
NC NAACP v. McCrory and the Monster Voter Suppression Law.....10
Covington v. North Carolina and Cooper v. Harris11
The Myriad Barriers to Accessing the Vote – 2006-2021.....11
Intimidation and Harassment Incidents Impact Voters and Fair Elections.....12
North Carolina’s 2018 Revival of Photo Voter ID Requirement, Still Unresolved13
Significant Racial Disparity in State’s Historic Participation Rate of 2020 & 2021 Legislative Actions Further Support Congressional Action14

II. North Carolina’s Long History of Racial Discrimination and the VRA..... 15
The Voting Rights Act of 196518

III. The Continued Voting Rights Struggle Prior to Shelby County: 1982-2013..... 20
Advancements in Black Voting Power and Ballot Access from 2000 – 2008.....22
Voting Rights Enforcement from the 2006 VRA Reauthorization to Shelby County in 201323
The Rising Significance of Latinx Voters25
The Historic 2008 and 2010 Elections25
2011 Redistricting Sets the Stage for Voter Discrimination Efforts Post Shelby County27
Voter Intimidation and the 2012 Election30

IV. Voter Discrimination Post Shelby County: 2013-2019 32
H.B.589 and Voter Suppression, 2013-201632
H.B. 589 Overturned, but Not Without Great Costs of VRA Litigation.....38
Early Voting Restrictions, Polling Site Reductions, and Voter Impact in the 2016 Election40
Voter Stories from 2016: Long Lines, Poll Worker Bias, and Intimidation41
Illegal Voter Registration Challenges in 2016 Election.....45
Statewide Violation of Federal National Voter Registration Act Requirements.....45
Post-Election Recount and Discriminatory Efforts to Undermine Electoral Outcome46
NCSBE’s Audit of the 2016 Election Leads to Prosecution of Black Voters and Non-Citizens for Simple Mistakes47
The Revival of Photo Voter ID: North Carolina’s Constitutional Amendment and S.B.824 During the 2017-2018 Legislative Session.....49
2017 Case Remedied At-Large County Commissioners’ Districts that Diluted African American Voting Strength.....52
Early Voting Reduction and Polling Location Reductions53

V. Protecting and Advancing Voting Rights During the Unprecedented 2020 Election.. 54
Pandemic Changes to Early Voting and Absentee Voting56
Voter Intimidation Intensifies in 202058
Racially Intimidating Symbols and Taunts at Early Voting Poll Entrance in Chatham County60
Aggressive Partisan Poll Observers and Souls to the Polls Monitoring in Guilford County61
Police Pepper Spray Peaceful March to the Polls in Alamance County.....62
Armed Man Arrested in Charlotte on Election Day65
The Need for Stronger Enforcement and More Clarity to Address Widespread Voter Intimidation.....66

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

Successful Challenge to North Carolina’s Felony Disenfranchisement: Restricting Black Community Voting Power.....68

VI. 2021 Legislative Session Voting Expansion to Contraction – Unsubstantiated Election Integrity Efforts Advance in the NCGA..... 70

VII. Conclusion..... 74

Appendices 77

North Carolina DOJ Section 5 Objections, 2006-2013.....**Appendix A**

Voting Rights Cases in Federal & NC State Courts, 2006-2021.....**Appendix B**

Demographic & Socioeconomic Data for North Carolina Population, 2019.....**Appendix C**

Preliminary Expert Report of Allan J. Lichtman, North Carolina NAACP v. Cooper, 1:18-cv-01034

(M.D.N.C. 2019)**Appendix D**

Preliminary Expert Report of James L. Leloudis II, North Carolina NAACP v. Cooper 1:18-cv-01034

(M.D.N.C. 2019).....**Appendix E**

In North Carolina, battles over the franchise have played out through cycles of emancipatory politics and conservative retrenchment. In a pattern repeated multiple times, Blacks and their allies have formed political movements to end racial exploitation and claim their rights as equal citizens. ... Invariably, these efforts have met resistance from conservative lawmakers, [s]ometimes ... through violent means [and sometimes through] the more euphemistic language of fraud and corruption.¹

I. Introduction and Executive Summary

This report examines voting rights in North Carolina from 2006 to the present. This period reflects the same pattern North Carolina has experienced since the Civil War—an expansion in participation and electoral success by voters of color, followed quickly by harsh obstructions to the right to vote. As the 117th Congress continues the urgent task of modernizing and renewing the Voting Rights Act (VRA), North Carolina provides an ominous preview of the scale and intransigence of retrogressive voter suppression threatening to unfold nationally without urgent action.²

The report proceeds in six sections. The current section (Section I) provides an introduction and executive summary of the report. Section II summarizes the long and enduring history of race-based discrimination in North Carolina, highlighting this state's unique role in the emergence of the national civil rights movement and the struggle to enact the Voting Rights Act of 1965. Section III summarizes evidence of the Voting Rights Act's success leading up to 2013, even while voting rights violations by North Carolina and its subdivisions persisted throughout the determinative twenty-five-year period contemplated in the proposed John Lewis Voting Rights Advancement Act of 2019.

In Section IV, the report details the systematic barrage of racially discriminatory violations undertaken by North Carolina after the Supreme Court's decision in *Shelby County v. Holder* released the state from preclearance review, as well as the herculean efforts by the people of the state to fight back. Section V provides an overview of the evidence of racial discrimination in voting documented in 2020, including a successful legal challenge to the disenfranchisement of people based on past felony convictions, an exclusionary rule that discriminates as a result of the interaction between a racially discriminatory criminal justice system and a law enacted post-Reconstruction to deny African Americans the right to vote. Additionally, Section VI gives an overview of threats in North Carolina's 2021 legislative session which is actively underway as Congress considers a new bill. Finally, Section VII, provides a conclusion.

¹ James L. Leloudis and Robert Rodgers Korstad, *Fragile Democracy the Struggle Over Race and Voting Rights in North Carolina* (Chapel Hill: The University of North Carolina Press, 2020).

² This report is submitted to the 117th Congress. The Voting Rights Act has not had an operational preclearance formula since June 2013, when the U.S. Supreme Court invalidated Section 4(b), mooting the administration of Section 5 and introducing the urgent need for an updated preclearance formula. In the 116th Congress the John Lewis Voting Rights Advancement Act was introduced and passed by the House but was not heard in the Senate.

North Carolina Demonstrates the Effectiveness of the Voting Rights Act and the Urgent Need for Its Reinvigoration

Prior to 2013, 40 out of North Carolina's 100 counties were covered by Section 5 of the VRA, primarily located in Eastern North Carolina.³ While the impact of Section 2 litigation since 1965 cannot be underestimated, Section 5 was the critical legal protection undergirding the fragile, but notable, gains by Black voters in the state. From just 1982 to 2006, following a period of significant noncompliance with preclearance requirements, more than 45 Section 5 objection letters were issued by the U.S. Department of Justice (DOJ) in response to North Carolina jurisdiction submissions.⁴ These determinations prevented and deterred implementation of voting changes that would make it harder for Black voters to participate and elect candidates of their choice—including statewide redistricting plans and attempts to change voting methods achieved through Section 2 litigation. In the roughly seven years from 2006 to 2013 (when the Supreme Court decided *Shelby County*), three additional NC objection letters were issued, and one submission was withdrawn without formal objection by the DOJ.⁵

After *Shelby County*, North Carolina became a national testing ground for modern manifestations of Jim Crow-era voter suppression strategies and an epicenter for a renewed voting rights movement to prevent discrimination at the ballot box. Without the full protections of the VRA, the floodgates opened to nearly a decade of well-documented discriminatory retrenchment. At the turn of the decade, following the 2010 decennial census, the Republican-controlled North Carolina General Assembly (NCGA) employed new mapping technology to design and adopt unprecedented discriminatory state and federal districts, implementing expansive racial gerrymanders. Once released from Section 5 review, the legislature relied on its new supermajority power gained through the illegal districts to pass an avalanche of election law changes to constrict Black voters' ability to participate equally in the political process.

As North Carolina's elections developed into a federal battleground, the state experienced an uptick in racial appeals in campaigning, and incidents of harassment and voter intimidation by both third-party groups and partisan actors. At the same time, state and county officials implemented a battery of discriminatory changes to voting procedures, schedules, and locations. The shameful result: a decade of elections that gave fewer opportunities for voters of color than white voters to cast a ballot, and more than six years of elections under unconstitutional districts.

³ North Carolina counties covered by Section 5 and their dates of coverage are detailed in Section II of this report. Under preclearance, the State or jurisdiction had to demonstrate that the proposed change had neither the purpose nor effect of "diminishing the ability of any citizens" to vote "on account of race or color." See 52 U.S.C. § 10304 (2012) (previously 42 U.S.C. § 1973c (2006)).

⁴ For analysis of the period from 1982 to 2006, see Anita Earls, Emily Wynes, and Leanne Quatrucci, "Voting Rights in North Carolina 1982-2006," *REVIEW OF LAW AND SOCIAL JUSTICE* 17:2 (March 2006), https://gould.usc.edu/students/journals/rlsj/issues/assets/docs/issue_17/05_North_Carolina_Macro.pdf.

On the period of non-compliance, see William R. Keech and Michael P. Siström, "North Carolina," in *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990*, ed. Chandler Davidson (New Jersey: University of Princeton Press, 1994), 155,162.

⁵ A list of Section 5 objections since 2006 is contained in Appendix A. One objection letter may relate to several proposed changes referenced in a single submission.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

The retrenchments began with widespread intentional racial gerrymandering of voting districts, then pivoted after the 2013 Shelby decision to a “monster” voter suppression law more restrictive than seen in any other state. Just as the actions of North Carolina’s state legislature produced the landmark *Thornburg v. Gingles* decision in 1986, in this decade, North Carolina holds the dishonorable position of producing the *NC NAACP v. McCrory* decision, holding that the state illegally targeted the voting rights of African Americans with “almost surgical precision” in adopting “the most restrictive voting law North Carolina has seen since the era of Jim Crow”⁶; and both the *Covington v. North Carolina* and *Cooper v. Harris* decisions, which held that, in drawing the state legislative districts, the state manufactured one of the “largest racial gerrymanders ever encountered by a federal court”⁷ and, in constructing both Congressional District 1 and 12, the General Assembly illegally used a “racial target that subordinated other districting criteria and produced boundaries amplifying divisions between blacks and whites.”⁸ These cases are the tip of the spear of a complex web of voting rights violations, many documented in state and federal court.⁹

Stepping into the breach created by congressional inaction, North Carolinians organized to protect the equal right to vote in our state. A remarkable coalition formed, led by voters of color, women, youth and students, LGBTQ, immigrant, justice-involved, and poor communities who were impacted most by the new wave of attacks on minority voting rights.¹⁰ Comprised of extraordinary individuals and organizations, this state-based social movement mounted a complex sequence of resource-intensive federal and state litigation efforts and launched a nonviolent protest campaign that took on national prominence under the banner of the “Forward Together Moral Monday Movement.”¹¹

One leader of the movement, Mother Rosanell Eaton, herself a granddaughter of slaves, was one of the first African American women to successfully register and exercise her right to vote in North Carolina after Reconstruction. At the height of the weekly Moral Monday rallies for voting rights at the General Assembly in Raleigh, she captured a widely shared sentiment when she spoke her truth: “I’m fed up and fired up,” she said. “We have been this way before. But now we are getting turned back, and ‘it’s’ a shame and a disgrace and absolutely disgusting.” Mother Eaton did not just galvanize the crowd with her spirit; her call to action and her example as she submitted herself to arrest in protest of the discriminatory law after living through racist disenfranchisement in our country gave voice to the unbroken line between the past and the present fight for the right to vote in the state.¹²

⁶ *McCrory*, 831 F.3d at 204, 229.

⁷ *Covington v. North Carolina*, 270 F. Supp. 3d 881, 884 (M.D.N.C. 2017). See 3-judge panel Memorandum Opinion, Sept. 19, 2017, at 2. Available at <https://electionlawblog.org/wp-content/uploads/covington-remand-1.pdf>.

⁸ *Cooper v. Harris*, 581 U.S. , 137 S.Ct. 1455, 1467, 197 L.Ed.2d 837 (2017).

⁹ See Appendix B for a list of federal court and state court voting rights litigation in NC since 2006.

¹⁰ The coalition, convened by the NC NAACP, included prominent leadership from the formerly covered counties. For example, testimonies and declarations cited to in this report include voices of leaders from Wayne, Wilson, Franklin, Beaufort, Guilford, and Pitt.

¹¹ William J. Barber and Jonathan Wilson-Hartgrove, *The Third Reconstruction: Moral Mondays, Fusion Politics, and the Rise of a New Justice Movement*, United States, Beacon Press, 2016.

¹² Patrick Zarcone, “President Obama Invites 100-Year-Old NC Woman to Meet after Voter Registration Challenged,” *CBS17.com*, November 3, 2016, <https://www.cbs17.com/news/president-obama-invites-100-year-old-nc-woman-to-meet-after-voter-registration-challenged/>.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

Like Mother Eaton, Mother Grace Bell Hardison of Belhaven, North Carolina, set an example for North Carolinians and the country when, at 100 years old, she fought back against an illegal challenge to her voter registration, filing a lawsuit with the NC NAACP that restored more than 4,000 eligible people who were illegally purged from the voter rolls in three counties on the eve of the 2016 election.¹³ In a letter to then President Obama, she explained, “It is a shame that I had to experience this ordeal at 100 years old, and over 50 years after the Voting Rights Act was signed into law. It is also disappointing that other African American voters are being targeted this same way in different parts of North Carolina. I believe that when you are old, people try to take things away from you, but I can assure you, Mr. President, that I will keep fighting on. . . . If I haven’t stopped fighting at . . . 100 years old, then neither can you.”¹⁴

Understanding just how fragile the state’s strides toward an equal American democracy remained, to vindicate their full citizenship rights and to protect fair elections, North Carolinians like Rosanell Eaton and Grace Bell Hardison enlisted any tools at their disposal: voter education and engagement efforts, journalism and the spotlight of mass media, public nonviolent civil disobedience, and remaining state and federal legal protections, including Section 2 of the Voting Rights Act, the Fourteenth and Fifteenth Amendments of the U.S. Constitution, and the National Voter Registration Act.

Without the preventative medicine of Section 5, the coalition sought after-the-fact remedies to ameliorate lasting injuries to American democracy. Voting rights litigation, voter outreach and education, and voter protection work that followed dominated the last decade in the state and produced a sprawling, detailed body of evidence only partially summarized here. The recent experience of Black,¹⁵ Latinx,¹⁶ and other voters of color in North Carolina attests to the continuation of the “variety and persistence” of voter suppression efforts described by the Supreme Court in 1966 in *South Carolina v. Katzenbach* and the current incentives to use a voter’s race to deny or abridge participation.¹⁷

Yet, North Carolina’s story also attests to Congress’s thousands of unsung partners in the fight for equality at the ballot box, uplifting this nation’s greatest hopes for a future of an inclusive, racially just democracy built on the principles and values that animated the passage of the Reconstruction Amendments, the Voting Rights Act, and the reauthorizations of the Act that followed. This report is dedicated to the legacy and instructions left to us by Mother Eaton and Mother Hardison, who, like John Lewis, never gave up on the sacred right to vote and the fight for the promise of our democracy.

¹³ Mark Joseph Stern, “Federal Judge Restores Voting Rights to Thousands of Voters Illegally Purged in North Carolina,” *Slate Magazine*, November 5, 2016, <https://slate.com/news-and-politics/2016/11/north-carolina-voting-purge-federal-judge-restores-rights.html>.

¹⁴ Letter on file with Forward Justice; Photograph of letter publicly available at: <https://www.washingtonpost.com/politics/2016/live-updates/general-election/real-time-updates-on-the-2016-election-voting-and-race-results/100-year-old-grace-bell-hardison-collects-her-i-voted-sticker/>

¹⁵ Authors use “Black” and “African American” interchangeably throughout this report. Authors also capitalize “Black” in order to indicate the discussion of a group of people and to be consistent with the capitalization of “African American.”

¹⁶ In this report, authors use “Hispanic” or “Latinx” as a gender-inclusive terms to refer to a person or community of Latin American descent.

¹⁷ *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

Summary and Overview of Report Findings

Pre-Shelby County North Carolina Appeared on the Precipice of Change, But Progress Was Quickly Thwarted

The period of regression from 2013 to the present contrasted starkly with the relative forward trajectory of African Americans' voting power achieved in the state immediately prior, under the full protections of the Voting Rights Act. North Carolina appeared to be at a precipice of change: emerging among other southern states as representative of a potential turn toward greater racial equality in voting. Reforms to voting access, fought for by Black and Latinx voters, civil rights leadership, and a coalition of non-partisan democracy supporters, appeared to be working.

As the Fourth Circuit found in *McCrary*, “[d]uring the period in which North Carolina jurisdictions were covered by Section 5, African American electoral participation dramatically improved. Between 2000 and 2012 ... African American voter registration swelled by 51.1 percent. African American turnout similarly surged, from 41.9 percent in 2000 to 71.5 percent in 2008 and 68.5 percent in 2012.” While recognizing the fragility of the gains, the Fourth Circuit summarized the record of the VRA in North Carolina as an emerging success story: “[a]fter years of preclearance and expansion of voting access, by 2013 African American registration and turnout rates had finally reached near-parity with white registration and turnout rates. African Americans were poised to act as a major electoral force.”¹⁸

But the forward momentum spurred draconian counter measures. As the record of voting discrimination post-*Shelby County* demonstrated, the incentives for jurisdictions to violate the rights of Black and Latinx voters continued in the state, where racially polarized voting persisted, and state and local races were regularly won or lost by small margins. Discriminatory changes to election laws, even if ultimately overturned by court order, have an outsized impact in North Carolina where elections turn on only a few thousand, or hundreds of votes.¹⁹ On election night in 2016 and 2020, statewide contests for Governor and Chief Justice of the Supreme Court came down to less than a 5,000- -vote spread between candidates, prompting recounts, election challenges, and lengthy delays in determining the election outcomes.²⁰ The final margin of victory for the Chief Justice race in 2020 was only 401 votes.²¹ In the 2018 election cycle, 16 county-wide elections had margins of less than 1,000 votes; 13 of those elections came down to fewer than 100 votes.²² In 2018, 10 elections for the North Carolina General Assembly were won by a margin of less than 1,000 votes.²³

¹⁸ *McCrary*, 831 F.3d at 204. See court opinion, Jul. 29, 2016, at 41.

¹⁹ The Commission's Office of Civil Rights Evaluation. “An Assessment of Minority Voting Rights Access in the United States” 2018 Statutory Report, U.S. Commission on Civil Rights, 2018, https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

²⁰ “North Carolina Governor Results: Roy Cooper Wins.” *The New York Times*, 1 Aug. 2017.

<https://www.nytimes.com/elections/2016/results/north-carolina-governor-mccrary-cooper>.

²¹ “Elections Board Certifies Newby's Win as NC Supreme Court Chief Justice.” *ABC11 Raleigh-Durham*, 18 Dec. 2020. <https://abc11.com/8874700/>.

²² Expert Report of Frank Baumgartner, *Cnty. Success Initiative v. Moore*, No. 19-cvs-15941 (N.C. Sup. Ct., Wake Cty., May 8, 2020).

²³ *Ibid.*

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

To understand political calculus in the state, one fact is essential: the race of a voter in North Carolina is a better predictor than even party affiliation of a voter's likelihood to support a candidate. In fact, according to recent analysis by Dr. Allan Lichtman of American University, "[r]acial 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."²⁴

NC NAACP v. McCrory and the Monster Voter Suppression Law

As detailed in Section V, when the Supreme Court released its decision in *Shelby County*, the NC General Assembly immediately engaged in a targeted counterattack to African Americans' growing electoral achievements and advancements by passing the now infamous H.B. 589, also known as the *Voter Information Verification Act of 2013*.²⁵ With the safeguard of prior Section 5 review removed, the NCGA enacted sweeping statewide changes. Among other new procedures and eliminations,²⁶ the omnibus bill:

- *Imposed strict photo voter identification requirements for in-person voting.*
- *Eliminated the first seven days of early voting including the first weekend.*
- *Eliminated the ability to "same-day" register during early voting.*
- *Prohibited pre-registration programs for North Carolinians ages 16 and 17.*
- *Eliminated the safeguard of out-of-precinct voting, an allowance for eligible voters who cast their ballot in the wrong precinct to have that vote count for races where voter qualification does not depend on the precinct a voter lives in.*

Three and a half years after H.B. 589's passage, in a groundbreaking decision, the U.S. Court of Appeals for the Fourth Circuit invalidated the omnibus legislation, popularly called the "monster voter suppression law," finding that the state of North Carolina illegally and intentionally targeted the right to vote of African Americans "with almost surgical precision" in violation of Section 2 of the VRA, and the Fourteenth and Fifteenth Amendments.²⁷ The court concluded "in sum, relying on ... racial data, the General Assembly enacted legislation restricting all – and only – practices disproportionately used by African Americans" and that "because of race, the legislature enacted one of the largest restrictions of the franchise in modern North Carolina."²⁸

²⁴ See Appendix D.

²⁵ H.B. 589, 2013 Gen. Assemb. (N.C. 2013), 2013 N.C. Sess. Law 381 (enacted as S.L. 2013-381).

²⁶ Other significant changes in H.B. 589, described in Section V, included the elimination of Straight-Ticket Voting availability in the state, loosened requirements for challenges to voter eligibility, and an increase to the number of partisan poll observers allowed to monitor elections.

²⁷ *McCrory* at 204. *Supra* note 6 at 11.

²⁸ *Ibid*, 48.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

Ultimately, the state of North Carolina spent nearly five million dollars of taxpayer funds defending the discriminatory law.²⁹

Covington v. North Carolina and Cooper v. Harris

The legal battles to ensure that Black voters' right to vote was not abridged or denied took place against the backdrop of simultaneous, equally hard-fought legal challenges to the state and federal voting districts governing North Carolina elections, challenging manipulated districts that undermined the voices of voters of color. Close to half a decade after the dilutive voting districts were drawn, a three-judge federal panel in the *Covington* case held that North Carolina had implemented one of the "largest racial gerrymanders ever encountered by a federal court," in a decision ultimately affirmed by the U.S. Supreme Court after six years of litigation in state and federal court.³⁰ This gerrymander was so thorough that, in effect, it undermined popular sovereignty in the state, transforming the state legislature from a body reflecting the will of the people to an unconstitutionally constituted body legislating with no fear of political repercussion. Under the 2011 district plans, redrawn following the 2010 census, North Carolina Black voters and their allies simply could not vote their way into a fairer, more representative, and responsive democracy. Likewise, in *Cooper v. Harris* the U.S. Supreme Court struck down both Congressional Districts 1 and 12 as unconstitutional racial gerrymanders, critically noting that in North Carolina, and nationwide, "the sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political) characteristics."³¹

The Myriad Barriers to Accessing the Vote – 2006-2021

Before, during, and after this and other litigation, African American and Latinx voters in North Carolina faced other barriers to voting. Even when one victory over voter suppression seemed to be secured, voters and organizations committed to voter protection, voter safety, education, engagement, and empowerment had to ward off and overcome a wave of other challenges. For example, as documented in this report, North Carolina voters faced:

- Coordinated third-party challenges to voter eligibility and proof of citizenship challenges, which disproportionately impacted voters of color at the county level, were upheld by County Boards of Elections.³²

²⁹ Tyler Dukes, "Legislature's Legal Bills Top \$9M in Defense of State Laws," *WRAL*, (North Carolina) August 7, 2016, <https://www.wral.com/legislature-s-legal-bills-top-9m-in-defense-of-state-laws/15905135/>.

³⁰ *North Carolina v. Covington*, 137 S. Ct. 1624 (2017); *North Carolina v. Covington*, 137 S. Ct. 2262 (2017). The U.S. Supreme Court summarily affirmed the finding in 2016. 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.

³¹ *Cooper v. Harris*, 581 U.S. __ (2017)

³² As detailed in Section IV, in addition to the challenges Ms. Grace Bell Hardison and others faced, who were targeted for third party-initiated, state-sanctioned voter purge campaigns, a series of statewide laws expanded the numbers, access rights, and other privileges of voter challengers and partisan observers, including in H.B. 589 and SB824.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

- Polling place closures due to county-level decisions to consolidate polling places, resulting in a significant reduction to polling locations available in formerly covered counties in the state in 2016 and 2018.³³
- In an effort coordinated by the chair of the Republican Party, County Boards of Elections limited voting hours on Sundays and weekends in 2016.³⁴
- Efforts to change methods of elections from single-member to at-large and other county redistricting changes aimed at diminishing the political power of African Americans.

Intimidation and Harassment Incidents Impact Voters and Fair Elections

In the short period from the reauthorization of the VRA in 2006 until today, incidents of racialized voter intimidation and discriminatory electoral appeals have continued to plague the state of North Carolina. Incidents of intimidation or racial appeals were documented in every general and midterm election since the reauthorization. In the last two years alone, voters of color in North Carolina were subjected to numerous egregious incidents of voter intimidation, including violations in Chatham County and Alamance County that produced fear and litigation in the 2020 election cycle.

For example, during the early voting period of the primary election in February 2020, a group gathered outside the County Agriculture and Conference Center polling location in Chatham County. They displayed flags and apparel supporting the Confederacy, and the League of the South (designated a violent hate group by Southern Poverty Law Center). Wielding confederate flags, demonstrators protesting a community event yelled slurs and chanted “Trump 2020” – in the same area voters had to traverse to access the designated polling place for early voting. Photographs from that day show that at least some of these demonstrators were located directly in front of the entrance to the polling location, but they were not ejected from the site.³⁵

Just months later, on October 31, 2020, the last day of early voting for the general election, a group of peaceful citizens engaged in an “I Am Change” march in Alamance County, led by African American faith leaders in honor of George Floyd, to call on voters to use their voice and cast their ballots. Those assembled, approximately 200 adults and children, had planned a route from the Wayman’s Chapel AME Church to the Town Square of Graham, North Carolina, for a “get out the vote” rally, followed by a march to the local polling site to vote. After holding a moment of silence to honor George Floyd, the group, who had police escorts, were told to clear the road by a large contingent of local law enforcement, who quickly began to use pepper spray

³³ The Leadership Conference on Civil and Human Rights, “Democracy Diverted: Polling Place Closures and the Right to Vote,” September 2019. <https://civilrights.org/democracy-diverted/>.

³⁴ Julia Harte, “Insight: Emails Show How Republicans Lobbied to Limit Voting Hours in North Carolina,” *Reuters*, November 4, 2016, sec. Full coverage of the 2016 U.S. Election. <https://www.reuters.com/article/us-usa-election-northcarolina-insight-idUSKBN12Y0ZY>.

³⁵ Heather Leah, “Protesters at a Polling Site during Early Voting Wave Confederate Flags, Shout Slurs” *WRAL.com*, February 15, 2020. <https://www.wral.com/protesters-at-a-polling-site-during-early-voting-wave-confederate-flags-shout-slurs/18954338/>.

on the crowd, including on elders, people with disabilities, and children.³⁶ As one mother, Melanie Mitchell, described, “My 11-year-old was terrified.”³⁷ Both of her daughters, ages 5 and 11, vomited after contact with the pepper spray. The images and stories of peaceful voters trying to breathe through the cloud of pepper spray, physically blocked by law enforcement from completing their march to the polling site in Alamance County, shocked the country and inspired immediate legal challenges.³⁸

North Carolina’s 2018 Revival of Photo Voter ID Requirement, Still Unresolved

After the *Covington, Harris*, and *NC NAACP* decisions, the General Assembly was defiant, not conciliatory. 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. Republican Chair of the House Elections Committee, Rep. David Lewis, publicly revealed that leadership would seek to enact a new photo voter ID requirement as a state constitutional amendment to “mute future court challenges,” which it did in the 2018 election.³⁹ The General Assembly that enacted the new photo voter ID legislation – “S.B. 824” – in the lame-duck session in the winter 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 – an election that broke the Republican super-majority. Within days of the enactment of the new photo voter ID law, and on the heels of a lawsuit challenging the new Constitutional Amendment requiring a form of photo voter ID in the state,⁴⁰ the North Carolina State Conference of the NAACP, as well as local NAACP chapters, filed a lawsuit challenging the validity of S.B. 824 in federal court (*NAACP v. Cooper*, No. 1:18-cv-01083, M.D.N.C.), while a group of African American and biracial plaintiffs brought a parallel suit in state court (*Holmes v. Moore*).⁴¹

The federal case alleged that the law violates Section 2 of the Voting Rights Act, as well as the Fourteenth and Fifteenth Amendments because the passage of this law was motivated by discriminatory intent as part of an effort to dilute the voting strength of the African American and Latinx populations in the state. On December 31, 2019, the U.S. District Court for the Middle District of North Carolina issued a 60-page opinion, announcing that it would block North Carolina’s illegal voter ID law.⁴² The court found that the passage of this law was likely motivated by racially discriminatory intent in violation of the Voting Rights Act and the Constitution. The

³⁶ Zachary Eanes and Carly Brosseau, “March to Alamance Polls Ends with Police Using Pepper Spray on Protestors, Children,” *News & Observer*, October 31, 2020, <https://www.newsobserver.com/news/local/article246861942.html>.

³⁷ *Ibid.*

³⁸ Emma Peaslee, “Lawsuits Filed After Police Use Pepper Spray at North Carolina March To the Polls,” *NPR.org*, November 3, 2020, <https://www.npr.org/2020/11/03/930912025/lawsuits-filed-after-police-use-pepper-spray-at-north-carolina-march-to-the-poll>.

³⁹ Jeff Tiberii, “NC Lawmakers Consider Another Voter ID Bill,” *WUNC*. July 13, 2017, <https://www.wunc.org/politics/2017-07-13/nc-lawmakers-consider-another-voter-id-bill>.

⁴⁰ On August 6, 2018, the NC State Conference of the NAACP filed a lawsuit against the leadership of the North Carolina General Assembly, challenging several constitutional amendments they were seeking to place on the ballot, including a photo I.D. requirement to vote, as described in Section IV. *North Carolina NAACP v. Moore*, No. 18-cvs-9806 (Wake Ct. Super. Ct.).

⁴¹ *Holmes v. Moore*, 18-cvs-15292, [2019 N.C. LEXIS 915] (Wake Cty. Sup. Ct. 2018)

⁴² *North Carolina NAACP v. Cooper*, 430 F. Supp. 3d 15 (M.D.N.C. 2019).

court's decision to grant the NC NAACP's motion for a preliminary injunction meant that voters were not subjected to a new, discriminatory photo ID requirement to vote in the March 2020 primary or the November 2020 election. The Fourth Circuit later overturned the preliminary injunction decision of the Middle District, but the law remains enjoined due to an injunction entered in the *Holmes* case.

Holmes challenges S.B. 824 under the North Carolina Constitution and its plaintiffs have litigated this case in the North Carolina Superior Court and the North Carolina Court of Appeals. In February of 2020, the NC Appellate Court found that plaintiffs are likely to succeed on discriminatory intent claims and, without injunctive relief, the court recognized, there would be irreparable harm to North Carolinians.⁴³ *Holmes* was tried on the merits in June 2021 and currently is under consideration by the Superior Court panel. Meanwhile, the federal challenge to S.B. 824 awaits full trial on the merits in federal court, scheduled for January 2022.

Significant Racial Disparity in State's Historic Participation Rate of 2020 & 2021 Legislative Actions Further Support Congressional Action

Ultimately, while the state reached historic levels of participation, despite a global pandemic in the 2020 election, North Carolina's white voters' participation was substantially greater than Black participation—79 percent white to 68 percent Black.⁴⁴ Latinx voters lagged significantly behind at roughly 59 percent participation.⁴⁵

Following increased use of mail-in absentee ballots by African Americans and other voters of color in the 2020 cycle,⁴⁶ the NCGA, which is still in session as this Report is submitted, wasted no time in introducing new restrictive voting laws that target voting by mail.⁴⁷ Although the General Assembly unanimously voted in 2009 to allow for a three-day receipt window for absentee ballots, it is now proposing to pass a bill that would require all ballots to be *received by 7:30pm* on Election Day in order to be counted (Election Day Integrity Act, S.B. 326).⁴⁸ If this law had been in effect in 2020, approximately 11,000 legal ballots would not have been counted.⁴⁹

⁴³ *Holmes v. Moore*, 270 N.C. App. 7, 840 S.E.2d 244 (2020).

⁴⁴ "2020 General Election Turnout," North Carolina State Board of Elections, Accessed July 8, 2021, <https://www.ncsbe.gov/results-data/voter-turnout/2020-general-election-turnout>.

⁴⁵ "N.C. Voter Turnout Statistics 2020 General Election," N.C. State Board of Elections, April 16, 2021, https://s3.amazonaws.com/dl.ncsbe.gov/Press/NC%20Voter%20Turnout%20Statistics/voter_turnout_stats_20201103.pdf.

⁴⁶ See, e.g., Bryan Anderson and Niccolas Riccardi, "Early Voting Shows Signs of Black Voters' Shift to Mail Ballots," *Pittsburgh Post-Gazette*, September 26, 2020, <https://www.post-gazette.com/news/nation/2020/09/26/Early-voting-Black-voters-mail-in-ballots-2020-election-Charlotte-North-Carolina-Joe-Biden-Donald-Trump/stories/202009260067>.

⁴⁷ "Voting Rights Litigation Tracker 2020," Brennan Center for Justice," Accessed July 8, 2021. <https://www.brennancenter.org/our-work/court-cases/voting-rights-litigation-tracker-2020>.

⁴⁸ At the time of publication, S.B. 326 has passed in the Senate and is being considered by the House. See <https://www.ncleg.gov/BillLookUp/2021/s326>

⁴⁹ Samantha Kummerer, "Bills that Would Adjust North Carolina Election System Drawing Criticism from Advocates," *ABC 11*, June 17, 2021, <https://abc11.com/sb326-elections-north-carolina-election-nc/10798039/>.

Bills have also been introduced to prohibit private funding for North Carolina elections (despite evidence that the state has not adequately funded elections in the past)⁵⁰; and to mandate funds for the distribution of photo IDs solely for voting (despite the fact that photo ID is not currently required and is a court finding that it is likely racially discriminatory).⁵¹ Voting rights advocates in the state are once again ringing the alarm to unite in a fight to prevent further restrictions.⁵²

II. North Carolina's Long History of Racial Discrimination and the VRA

*Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress... decide[d] to shift the advantage of time and inertia from the perpetrators of the evil to its victims.*⁵³

North Carolina's modern shameful history of racial discrimination and voting discrimination is best understood in the context of three historical periods of political realignment, when African Americans' access to the franchise in the state has been significantly redefined: the reconstruction period following the Civil War, the Civil Rights era, and the struggle for voting rights taking place today. In each of these periods, Black North Carolinians' hard-fought-for gains in equality and the right to vote have been met by extreme restrictive measures, violence, and other state or local actions to limit and deny those rights and gains.

The fierce struggle for equal voting rights in North Carolina harkens back more than 180 years to 1835, when the North Carolina General Assembly first enacted disenfranchisement legislation inserting the word "white" as a required qualification in the state's suffrage article, thereby preventing property-owning free African men from voting.⁵⁴ By 1860, more than 85 percent of lawmakers in the North Carolina General Assembly were slaveholders, a higher percentage than in any other southern state.⁵⁵

⁵⁰ Senate Bill 725 (2021-2022 Session): <https://www.ncleg.gov/BillLookUp/2021/S725>.

⁵¹ Senate Bill 724 (2021-2022 Session): <https://www.ncleg.gov/BillLookUp/2021/s724>.

⁵² Denise Lieberman, "North Carolina Moves Legislation to Make Voting by Mail Harder," Brennan Center for Justice, June 10, 2021, <https://www.brennancenter.org/our-work/analysis-opinion/north-carolina-moves-legislation-make-voting-mail-harder>.

⁵³ *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

⁵⁴ As Prof. Irving Joyner testified, in 1835 North Carolina had one of the largest free African populations in the United States and in some Eastern North Carolina counties, those free Africans constituted up to 15 to 20 percent of the county's inhabitants. For Prof. Joyner's full testimony see: *Testimony of Irving Joyner, Before the Subcommittee on Election of the U.S. House Committee on Administration*, 116th Cong. (2019) (Irving Joyner, Professor of Law at NCCU School of Law, NC NAACP Legal Counsel and Chair of Legal Redress Committee).

⁵⁵ See Appendix E.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

After the Civil War and the historic passage of the Thirteenth, Fourteenth, and Fifteenth Reconstruction Amendments in 1865, 1867, and 1870,⁵⁶ North Carolina experienced a short-lived but remarkable era of political rebirth. From roughly 1868 to 1898, newly enfranchised African Americans formed a political power bloc and, by exercising the now constitutionally protected right to the vote *en masse* while coalescing in a fusion multi-racial coalition, shaped the contours of the state's new Constitution and election laws.⁵⁷ As one leading historian explained, the "Populist-Republican Fusion movement that controlled the North Carolina legislature from 1894 until 1898 was the most successful biracial political movement in the post-Reconstruction South."⁵⁸

By the first seating of a post-Civil War General Assembly, 17 African Americans were elected to the House of Representatives and three were elected in the Senate. Soon after, four African Americans were elected as Congressional Representatives, and more were elected to county and municipal offices, serving as magistrates, sheriffs, school board members, town council, and county commissioners. Over the period from 1868 to 1898, 146 African Americans served in the North Carolina General Assembly; 121 were elected to the House of Representatives and 25 served in the North Carolina Senate.⁵⁹

In response to the remarkable success, the NC Democratic Party waged a vicious white supremacist disfranchisement and vigilante terror campaign, including public lynchings, dedicated to excluding African Americans from participation in the political process. The stated goal of the party and a supportive press apparatus in the state was the "redemption of North Carolina from 'Negro Domination,' "approving violence to keep African Americans from the polls "by any means necessary" in the 1898 campaigns, culminating in the only successful violent municipal coup d'état in the 'nations' history in the Wilmington massacre of 1898.⁶⁰

⁵⁶ U.S. Const. amend. XIII, sec. 1. "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." U.S. Const. amend. XIV, sec. 1. "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XV, sec. 1. "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

⁵⁷ Expert Report of Orville Vernon Burton, *Cnty. Success Initiative v. Moore*, No. 19-cvs-15941 (N.C. Sup. Ct., Wake Cty., May 8, 2020).

⁵⁸ When African Americans Were Republicans in North Carolina, The Target of Suppressive Laws Was Black Republicans. Now That They Are Democrats, the Target is Black Democrats. The Constant Is Race., Expert Report of J. Morgan Kousser, *North Carolina NAACP v. McCrory*, Nos 1:13cv658, 1:13cv660, 1:13cv861 (M.D.N.C., May 19, 2014) ECF 113-6.

⁵⁹ *Testimony of Irving Joyner, Before the Subcommittee on Election of the U.S. House Committee on Administration*, 116th Cong. (2019) (Irving Joyner, Professor of Law at NCCU School of Law, NC NAACP Legal Counsel and Chair of Legal Redress Committee).; Kousser, *supra* at note 58.

⁶⁰ *Ibid.*; Burton, *supra* at note 57.



Figure 1. The Vampire that Hovers Over North Carolina, *Raleigh News and Observer*, September 27, 1898

In 1899, the new white supremacist Democratic majority proposed and enacted a constitutional disfranchisement amendment to require every North Carolina voter to re-register. It instituted a literacy test, poll taxes, property requirements, and other devices that were designed to make it difficult or impossible for African Americans to continue their participation in political affairs. The state election laws were rewritten in a sweeping enactment entitled the 1899 Act to Regulate Elections.⁶¹ Other Jim Crow laws were enacted in the same session, which legalized segregation and stripped African Americans of the ability to participate in other social, business, education, and housing areas. In a separate enactment, the General Assembly gerrymandered the congressional boundaries of African American Representative George H. White's district, the "Black Second," to make it impossible for him to be re-elected. These legal restrictions on voting were supplemented by a reign of terror against African Americans who sought to register and vote. The disfranchisement campaign succeeded. George H. White was the last African American elected during Reconstruction from the South, and in a matter of years, African American's political participation was effectively eliminated for close to the next six decades.

From 1900 until 1968, no African American was elected to the North Carolina General Assembly. By 1948, only 15 percent of North Carolina's African Americans were registered to vote—less than the percentage in Georgia at the time—and by 1963, only 36 percent of African Americans had overcome the state's discriminatory obstacles to register. At the local level in the state, gains in voter registration and organizing were met by legal constraints. For example, after African Americans in Wilson County succeeded in electing George Butterfield town commissioner in 1953 and re-electing him in 1955, Wilson County commissioners introduced a resolution to change the municipal elections to an at-large form, approved by the General Assembly, which added a prohibition on "single-shot" or "bullet voting," ultimately denying Butterfield a third term. Between 1955 and 1961, the General Assembly mandated at-large voting in elections for county boards of commissioners and town councils in 2323 eastern counties. In each of those places, lawmakers also prohibited single-shot voting.⁶²

⁶¹ *Ibid.*; See Kousser, *supra* at note 58.

⁶² See Appendix E at 33.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

While activism at the local level for racial justice was strong throughout the 1940s and early 1950s, including in the vigorous fight to compel the end of racially segregated schooling, this period in North Carolina elections was marked by raw racial appeals and strife. A circular from the 1950 Willis Smith versus Frank Porter Graham contest for Senate revealed the stark terms of the statewide debate at the time:

DO YOU WANT Negroes working beside you, your wife and daughters in your mills and factories? Negroes eating beside you in all public eating places? Negroes riding beside you, your wife and your daughters in buses, cabs, and trains? Negroes sleeping in the same hotels and rooming houses? Negroes teaching and disciplining your children in school? . . . Negroes going to white schools and white children going to Negro schools? Negroes to occupy the same hospital rooms with you and your wife and daughters? Negroes as your foremen and overseers in the mills? Negroes using your toilet facilities?

If you did, the circular argued, “Vote for Frank Graham. But if you don’t, vote for and help elect WILLIS SMITH FOR SENATOR.”⁶³

It was the period immediately following that realized the full emergence of the nationwide Civil Rights Movement birthed in the South, known as a second period of Radical Reconstruction in America. The resulting historic advancement for African Americans, women, and other people of color included progress toward dismantling Jim Crow, the passage of the Civil Rights Act of 1964, and the Voting Rights Act of 1965 is detailed in Appendix C.

In the years between 1960 and 1965, Black-led protests forced issues of race and democracy to the center of national attention. On February 1, 1960, four students from the Agricultural and Technical College of North Carolina – Ezell Blair Jr., David Richmond, Franklin McCain, and Joseph McNeil – sat down at a ‘segregated Woolworth’s’ lunch counter in Greensboro, challenging the moral and legal basis for the “separate but equal” doctrine. Sit-ins quickly spread across the state and throughout the South. Two months later, college students gathered at Shaw University in Raleigh – North Carolina’s oldest black institution of higher learning – to organize the Student Nonviolent Coordinating Committee (SNCC). Inspired by North Carolina native and Shaw graduate Ella Baker, SNCC embraced a grassroots strategy for mobilizing ordinary citizens as leaders in the struggle for civil rights. As Prof. James Leloudis describes, it was the outrage dramatized through the courageous actions of many of these young people, civil rights leadership from Martin Luther King Jr.’s SCLC to CORE, and hundreds of thousands of ordinary people, whom these servant leaders fanned out across the country to organize alongside, that ultimately swayed public opinion and shamed majorities in Congress to pass the landmark Civil Rights Act of 1964 and the Voting Rights Act of 1965.⁶⁴

The Voting Rights Act of 1965

A century after the Civil War, the Voting Rights Act sought to fulfill an unrealized promise of the Fifteenth Amendment: the right to vote “shall not be denied or abridged by the United

⁶³ Julian M. Pleasants and Augustus M. Burns III, *Frank Porter Graham and the 1950 Senate Race in North Carolina* (Chapel Hill, N.C.: University of North Carolina Press, 1990), quote at 221

⁶⁴ See Appendix E at 37.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

States or by any State on account of race, color, or previous condition of servitude.” Upon enactment in 1965, the first element in the coverage formula outlined in Section 4 of the Act was whether, on November 1, 1964, a state or county within a state maintained a “test or device” that restricted the opportunity to register and vote. The second element of the coverage formula was if a state or county, identified by the U.S. Census, had less than 50 percent of persons of voting age registered to vote on November 1, 1964, or if less than 50 percent of persons of voting age voted in the presidential election of November 1964.⁶⁵ Ultimately, because of the state’s low voter registration and continued use of the literacy test, 40 out of North Carolina’s 100 counties were covered by Section 5 of the Voting Rights Act, primarily located in Eastern North Carolina.⁶⁶ Below is a list of the 40 counties that were covered by the Section 4 formula, and consequently required preclearance by the U.S. Department of Justice under Section 5.⁶⁷

Table 1. 40 Counties Previously Covered by Section 4

Anson County	Aug. 7, 1965	Hoke County	Aug. 7, 1965
Beaufort County	Mar. 29, 1966	Jackson County	Oct. 22, 1975
Bertie County	Aug. 7, 1965	Lee County	Mar. 29, 1965
Bladen County	Mar. 29, 1966	Lenoir County	Aug. 7, 1965
Camden County	Mar. 2, 1966	Martin County	Jan. 4, 1966
Caswell County	Aug. 7, 1965	Nash County	Aug. 7, 1965
Chowan County	Aug. 7, 1965	Northampton County	Aug. 7, 1965
Cleveland County	Mar. 29, 1965	Onslow County	Aug. 7, 1965
Craven County	Aug. 7, 1965	Pasquotank County	Aug. 7, 1965
Cumberland County	Aug. 7, 1965	Perquimans County	Mar. 2, 1966
Edgecombe County	Aug. 7, 1965	Person County	Aug. 7, 1965
Franklin County	Aug. 7, 1965	Pitt County	Aug. 7, 1965
Gaston County	Mar. 29, 1965	Robeson County	Aug. 7, 1965
Gates County	Aug. 7, 1965	Rockingham County	Mar. 29, 1966
Granville County	Aug. 7, 1965	Scotland County	Aug. 7, 1965
Greene County	Aug. 7, 1965	Union County	Mar. 29, 1966
Guilford County	Mar. 29, 1965	Vance County	Aug. 7, 1965
Halifax County	Aug. 7, 1965	Washington County	Jan. 4, 1966
Harnett County	Mar. 29, 1965	Wayne County	Aug. 7, 1965
Hertford County	Aug. 7, 1965	Wilson County	Aug. 7, 1965

Of the Voting Rights Act’s various provisions, Section 2 (applying a national prohibition on any attempts to abridge or deny the vote), Section 4 (establishing the formula for determining

⁶⁵ “Section 4 of the Voting Rights Act,” U.S. Department of Justice, accessed June 30, 2021, <https://www.justice.gov/crt/section-4-voting-rights-act#formula>.

⁶⁶ “Jurisdictions previously covered by Section 5,” U.S. Department of Justice, accessed June 30, 2021, <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>.

⁶⁷Ibid.

which jurisdictions are subject to federal oversight), and Section 5 (requiring federal “preclearance” for any voting changes made in covered jurisdictions) would prove the most impactful in Black North Carolinians’ efforts to fully access the franchise.⁶⁸

III. The Continued Voting Rights Struggle Prior to Shelby County: 1982-2013

Before the 1982 reauthorization of the VRA, the Act was amended three times. The 1970 amendments instituted a five-year ban nationwide on the use of tests and devices as prerequisites to voting, and the 1975 amendments made the prohibition on literacy tests permanent while expanding the Act to include language minority groups. In 1982, the congressional reauthorization added consideration of the Senate factors to Section 2 and extended the preclearance formula in Section 5 for another 25 years.⁶⁹

In North Carolina and nationwide, the strength of the VRA was further enhanced in 1985 after *Thornburg v. Gingles*. The seminal Supreme Court decision upheld the new Section 2 language of the VRA and found that “North Carolina had officially discriminated against its Black citizens with respect to their exercise of the voting franchise from approximately 1900 to 1970 by employing at different times a poll tax, a literacy test, a prohibition against bullet (single-shot) voting, and designated seat plans for multimember districts.”⁷⁰ Racial disparities in statewide registration rates remained stark. In 1982, the *Gingles* court noted that only 52.7 percent of age-qualified Blacks statewide were registered to vote, whereas 66.7 percent of whites were registered.⁷¹

As summarized by authors Anita Earls, Emily Wynes, and LeeAnne Quatrucci in their report on North Carolina written for the 2006 reauthorization, as Section 2 litigation waged on in the state, Section 5 review served an essential deterrent function, reinforcing litigation gains against immediate backsliding.⁷² From just 1982 to 2006, following a period of significant noncompliance with Section 5’s preclearance requirements, more than 4545 objection letters were issued in response to North Carolina state or local jurisdiction submissions by the U.S. Department of Justice (DOJ) or the District Court of the District of Columbia. These preclearance determinations prevented the implementation of voting changes that would make it harder for Black voters to participate and elect candidates of their choice—including attempts to make changes to voting methods put in place following Section 2 litigation and statewide redistricting plans.⁷³

“By 1989, the number of Blacks in the State Legislature increased to nineteen—at that time, the highest number of Black legislators in the state’s history.”⁷⁴ And in 1991, Representative Dan Blue was elected Speaker of the House, the highest legislative office held by a Black politician

⁶⁸ “History of Federal Voting Rights Laws,” U.S. Department of Justice, accessed August 12, 2021, <https://www.justice.gov/crt/history-federal-voting-rights-laws>.

⁶⁹ See Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, § 3, 96 Stat. 131, 134 (codified as amended at 42 U.S.C. § 1973(a) (2006)).

⁷⁰ *Thornburg v. Gingles*, 478 U.S. 30 (1986)

⁷¹ *Ibid*, 39.

⁷² Earls, Wynes, & Quatrucci, *supra* at note 4.

⁷³ *Ibid*.

⁷⁴ *Ibid*.

in the state's history. Following congressional reapportionment and redistricting, two new majority-minority districts allowed voters in 1992 to finally elect the first two African Americans to represent the state since Reconstruction – Eva M. Clayton, representing the 1st Congressional District, and Mel Watt, representing the 12th Congressional District.⁷⁵

Though these gains represented historic progress, the 1990s also marked a turning point in the solidification of a national Southern Strategy in North Carolina, and the continued use of race as a dividing appeal wielded by the changing Republican Party in the state, now represented by the high-profile Sen. Jesse Helms. Helms won the election over popular African American mayor Harvey Gantt in the senatorial campaigns of 1990 and 1996, relying on a notorious “white hands” racial appeal⁷⁶ and a discriminatory and misleading “ballot security program,”⁷⁷ which resulted in a consent decree against the NC Republican Party.⁷⁸ As former GOP state chairman Jack Hawke told a reporter in 1996, “As the Democratic Party shrinks in size and numbers, percentage-wise it becomes more Black-dominated . . . the Democratic Party is becoming the party of minorities and the Republican Party is becoming the party of the white folks.”⁷⁹ In 1996, voter participation in the state was low overall, revealing the continued disparity by race: 48.3 percent white to 36.9 percent African American.⁸⁰

Every decade following the passage of the Voting Rights Act realized improvement in registration numbers for North Carolina's Black voters, but at the turn of the 21st century, voting access and participation was still comparatively low in African American communities and among the citizen-age population overall.⁸¹ African Americans' access to the ballot still lagged substantially behind that of whites: by 2000, 81.1 percent of voting-age Black North Carolinians were registered to vote, compared to 90.2 percent of voting-age whites.⁸² Participation rates by race among the citizen-age population showed significant disparities in 2002 and 2004, but rising

⁷⁵ "Two Blacks Join N.C.'s U.S. House Delegation," *Raleigh News and Observer*, November 4, 1992.

⁷⁶ The Helms campaign aired an advertisement that showed two white hands crumpling a lay-off notice. A voice said: “You needed that job and you were the best qualified. But they had to give it to a minority because of a racial quota. Is that really fair? Harvey Gantt says it is. . . . ‘You’ll’ vote on this issue next Tuesday. For racial quotas, Harvey Gantt. Against racial quotas, Jesse Helms.” Jesse Helms “Hands” Ad, accessible at <https://www.youtube.com/watch?v=KIyewCdXMzk>

⁷⁷ The Republican Party mailed postcards to 125,000 voters in heavily Black precincts, falsely warning recipients that they would not be allowed to cast a ballot if they had moved within thirty days, and that if they attempted to vote, they would be subject to prosecution. “1992 Campaign: Helms Campaign Signs Decree on Racial Postcards,” *NYTimes.com*, (Feb. 28, 1992), <https://www.nytimes.com/1992/02/28/us/the-1992-campaign-helms-campaign-signs-decree-on-racial-postcards.html>.

⁷⁸ Shortly before Election Day the Helms campaign aired an advertisement that showed two white hands crumpling a lay-off notice. The voice-over said: “You needed that job and you were the best qualified. But they had to give it to a minority because of a racial quota. Is that really fair? Harvey Gantt says it is. . . . You’ll vote on this issue next Tuesday. For racial quotas, Harvey Gantt. Against racial quotas, Jesse Helms.” The Department of Justice ultimately obtained a consent judgment to ban the discriminatory practice: Consent Judgment, *United States v. N.C. Republican Party*, No. 5:92-00161 (E.D.N.C. Feb. 27, 1992).

⁷⁹ Rob Christensen and Jack D. Fleer, “North Carolina: Between Helms and Hunt No Majority Emerges,” in Alexander P. Lamis, *Southern Politics in the 1990s* (Baton Rouge, La.: Louisiana State University Press, 1999), 81-85.

⁸⁰ Kousser, *supra* at note 58, *17.

⁸¹ *Ibid.*

⁸² *McCrory* at 204. See parties' joint proposed findings of fact and conclusions of law, Aug. 17, 2015, ECF 357 at 29.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

participation rates: in 2002, 45.1 percent of white North Carolinians participated in the election, versus 34.4 percent of Black North Carolinians; and in the 2004 Presidential election, while the state experienced a rising overall participation rate, including among African American voters, the disparity persisted: 63.8 percent white participation versus 54.1 percent Black participation.⁸³

From 2000 to 2006, voters of color continued to face significant challenges to equal access to the political process in North Carolina.⁸⁴ Earls, Wynes, and Quatrucci point to voter purges from registration lists, intimidation of voters at the polls, confusing ballots, and lack of funding for local boards of elections that disproportionately affected voters of color in the 2000 election.⁸⁵ Two years later, the state rejected 3.3 percent of votes cast by North Carolinians due to several issues, including poll officials' refusal to provide voters with provisional ballots after their vote had been challenged, and a purge from registration rolls of voters who had not voted since four years prior.⁸⁶ These state and local actions disproportionately impacted African Americans.

Voter intimidation persisted in North Carolina – sometimes enacted by the very elected officials responsible for preventing and punishing acts of voter intimidation under the law. In an egregious example, in 2004, Sheriff Terry Johnson of Alamance County publicly declared that “illegal residents [were] registering [to vote] at the Division of Motor Vehicles when they obtain driver’s licenses or other forms of identification,” and broadcast that he would be dispatching deputies to every new registrant’s home who had a Hispanic surname to verify they were citizens. Advocates for the North Carolina Latinx community expressed serious concern about Sherriff Johnson’s inciting fear of harassment in Latinx voters and hindering the community’s participation in the political process.⁸⁷

Advancements in Black Voting Power and Ballot Access from 2000 – 2008

At the urging of Black legislators and a growing multi-racial civil rights coalition in the state, in the decade from roughly 2000 to 2010, the NCGA enacted a series of measures to begin to open access to the franchise. In 1999, the NCGA enacted the first no-excuse early voting options. In 2002, counties were authorized to provide over two weeks of early voting prior to Election Day.⁸⁸ In 2005, the legislature clarified that ballots mistakenly cast in the wrong precinct

⁸³ Kousser, *supra* at note 58.

⁸⁴ *Ibid.*

⁸⁵ For more detail on the barriers Black and Latinx voters faced during this period see Earls, Wynes, & Quatrucci, *supra* at note 4.

⁸⁶ *Ibid.*, 10.

⁸⁷ Associated Press, “Sheriff Targets Voting Fraud; He Says Illegal Residents Register at DMV Offices with False Documents,” *Charlotte Observer* (Charlotte, North Carolina), Oct. 8, 2004, sec. Local & State. Sherriff Johnson’s pattern of discrimination against Hispanic residents continued. In 2012, Alamance County Sherriff’s Department overseen by Terry Johnson was investigated by the Department of Justice for racial profiling and “Pattern or Practice of Discriminatory Policing Against Latinos.”; see Department of Justice, “Justice Department Releases Investigative Findings on the Alamance County, N.C., Sheriff’s Office,” Department of Justice Office of Public Affairs, September 18, 2012, <https://www.justice.gov/opa/pr/justice-department-releases-investigative-findings-alamance-county-nc-sheriff-s-office>.

⁸⁸ N.C.G.S.A. § 163-227.2 allowed voting not earlier than the third Thursday before an election.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

should be counted for contests, such as statewide races, in which the voter was eligible to participate despite the precinct error — out-of-precinct voting.⁸⁹ Same-day registration during early voting was adopted in 2007, and pre-registration of 16- and 17-year-olds was added in 2009 to expand access to the ballot.⁹⁰ In this period, the state climbed from 48th in the nation in 1988 to 11th by 2012 percentage of voting-age citizens actually voting.⁹¹

Voting Rights Enforcement from the 2006 VRA Reauthorization to Shelby County in 2013

After the 2006 reauthorization of the VRA, Section 5 review continued to have an important effect at the county level. As community members attested to Congress, Section 5 gave incentives for local jurisdictions to communicate and include input from community stakeholders when considering election changes prior to review.⁹² In the seven years from 2006 to 2013, three additional objections were issued in response to North Carolina submissions, one being later withdrawn by the DOJ.⁹³

In this period, several local redistricting plans were prevented from going into effect thanks to Section 5 review. In 2007, the DOJ interposed an objection to a proposal submitted by the Fayetteville City Council requesting the city's nine single-member districts be modified to six single-member districts, with three members elected at-large.⁹⁴ It rejected the council's proposal, finding that reducing the number of districts in order to add at-large seats would severely inhibit Black Fayetteville voters' ability to elect their candidates of choice, making the proposal a retrogressive change prohibited by the VRA.⁹⁵

In 2009, the city of Kinston in Lenoir County submitted a proposed election change to the DOJ, which would have effectuated a plurality vote requirement in its elections.⁹⁶ On August 17, 2009, the U.S. Attorney General's office denied the proposed voting changes, saying they could not "conclude that the city has sustained its burden of showing that the proposed changes do not have a retrogressive effect" under Section 5,⁹⁷ and, among other concerns, noting that the elimination of partisan affiliation (and therefore the option of straight-ticket voting) on the ballot

⁸⁹ N.C.G.S.A. § 163-166.11 allowed voters who went to the wrong precinct on election day to vote a provisional ballot (HB 842).

⁹⁰ N.C.G.S.A. § 163-82.6 allowed for same-day registration during early voting (HB 91); N.C.G.S.A. § 163-82.1 allowed 16- and 17-year-olds to pre-register to vote so their names would be placed on the voter rolls automatically when they turned 18 (HB 908).

⁹¹ Kousser, *supra* at note 58.

⁹² See Earls, Wynes, & Quatrucci, *supra* at note 4.

⁹³ See Appendix A.

⁹⁴ City of Fayetteville (Cumberland Cty.). U.S. Department of Justice. 25 June 2007. Available at https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/1_070625.pdf.

⁹⁵ See Appendix A.

⁹⁶ Lenoir County was covered on August 7, 1965. See "Jurisdictions Previously Covered by Section 5," U.S. Department of Justice, accessed June 30, 2021, <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>.

⁹⁷ "City of Kinston (Lenoir Cty.)," U.S. Department of Justice, Aug. 17, 2009, https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/1_090817.pdf.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

would likely reduce Black voters' chances of electing candidates of their choice.⁹⁸ The DOJ later withdrew its objection in 2012 based on new information submitted by Lenoir County.⁹⁹

In 2012, the DOJ also denied the legislature's efforts via local bill (Session Law 2011-174) to modify Pitt County School Board terms of office from six years to four, reduce the number of school board members, and change the method of election from districted to at-large (with six members to be elected from single-member districts and one elected at-large). While the DOJ did not object to the proposed shortening of terms, it found that the changes to the number of board members and the method of election would have a discriminatory effect on minority voters and constituted an improper modification of a consent decree achieved through a Section 2 challenge, writing that "Pitt County has a history of challenges to at-large positions under the Voting Rights Act. ... The addition of an at-large seat in the proposed plan, and the effect it would have on minority voters' ability to elect, is particularly noteworthy given this history."¹⁰⁰

The same year, the General Assembly passed S.L. 2011-407, which reduced the Guilford County Board of Commissioners from eleven to nine members and redrew the district lines in Guilford County. This law was successfully challenged on equal protection grounds in *Greensboro Branch of the NAACP v. Guilford County, NC, Board of Elections, et al.*, as it would have effectively deprived a large number of Guilford County residents of any representation for two years.¹⁰¹

The decade's progressive reforms in voting access, the inspiring candidacy of Barack Obama in 2008, continued effectiveness of Section 5, and growing organizing and advocacy by Black and Latinx voters resulted in African American turnout equaling that of whites for the first time in the state's history in the 2008 general election and again in the 2012 general election as detailed below.¹⁰² Latinx access, voter registration, and political participation also increased during this time, though at a lower rate than African Americans.¹⁰³

⁹⁸ See Appendix A.

⁹⁹ After the Attorney General objected to the proposed changes outlined in the submission, a lawsuit was filed by private citizens and an organization in the U.S. District Court for the District of Columbia, challenging the constitutionality of Section 5. Plaintiffs lost at the district court level, appealed, and on remand from the appeal, the district court upheld the law. Appellants then filed a second appeal. While the second appeal was pending, the Attorney General's office changed its position and withdrew the objection based on additional information later received from an unrelated preclearance proceeding and from Lenoir County. In light of the Attorney General's withdrawn objection, they argued the case was moot. The Court of Appeals for the District of Columbia dismissed the case shortly thereafter. *LaRoque v. Holder*, 400 U.S. App. D.C. 424, 679 F.3d 905 (2012).

¹⁰⁰ "Pitt County School District," U.S. Department of Justice, April 30, 2012, https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/1_120430.pdf. (4).

¹⁰¹ *Greensboro Branch of the NAACP v. Guilford County, NC, Board of Elections, et al.*, No. 1:12-cv-111 (M.D.N.C. 2012). Available at https://www.govinfo.gov/content/pkg/USCOURTS-ncmd-1_12-cv-00111/pdf/USCOURTS-ncmd-1_12-cv-00111-0.pdf.

¹⁰² *McCroy* at 204. *Supra* note 18 at 21.

¹⁰³ For more on the growing political visibility of Latinxs in North Carolina over this time period, see Hannah Gill, "Latinos in North Carolina," Immigration Policy Center, March 2012, https://www.american-immigrationcouncil.org/sites/default/files/research/gill_-_latinos_in_north_carolina_032112.pdf; Latinx voters first had the ability to self-identify their ethnicity on voter registration forms beginning in 2002. See Isela Gutiérrez & Bob Hall, "A Snapshot of Latino Voters in North Carolina," Democracy NC, July 2012, <https://democracync.org/wp-content/uploads/2017/07/snapshot-of-latino-voters-in-nc.pdf>.

The Rising Significance of Latinx Voters

Starting in the 1990s, a significant demographic shift occurred in the state. Between 1990 and 2010, North Carolina's Latinx population grew more than tenfold, from just over 75,000 to roughly 800,000.¹⁰⁴ Between 2004 and 2010, the number of registered North Carolina voters who identified as Hispanic grew from just over 10,000 to 79,000.¹⁰⁵ And between 2010 and 2013 year end, the number of registered Latinx voters jumped again to almost 118,000.¹⁰⁶ Those figures represented 0.2 percent of all registered voters in 2004, 1.3 percent in 2010, and 1.8 percent in 2013 – relatively small numbers overall, but with the potential to swing North Carolina's notoriously close elections. More significantly, by the end of 2013, combined Latinx and African American voter registration comprised close to a quarter of the state's total registered voters.¹⁰⁷

Observers in 2009 noted that Latinx votes were “indispensable to Barack Obama's victory” in North Carolina.¹⁰⁸ According to exit poll data, 68 percent of Latinx voters in the 2012 election cast their ballot to re-elect President Obama.¹⁰⁹ While Obama did not win the state in 2012, the combined Black and Latinx vote share in that election cycle – 23 percent and 4 percent respectively – demonstrated what political science professor Michael Bitzer called “the making of a growing [multi-]racial coalition.”¹¹⁰

The Historic 2008 and 2010 Elections

In 2008, then-Senator Barack Obama won North Carolina by a narrow margin of less than 15,000 votes. According to a report authored by Democracy NC in 2009, a “record 2.4 million people voted at 368 early voting sites” across North Carolina. Black voters made use of newly available same-day registration during the 17-day early voting period to vote at historic levels, reaching parity with white voter turnout for the first time. Hall's analysis found that while Black North Carolinians comprised only 21 percent of eligible voters in 2008, they made up 33 percent of newly registered voters; 28 percent of those who participated in early voting; and 36 percent of voters utilizing same day registration. African American voters achieved a “record of 72 percent of registered Blacks voted, which surpassed the rate of whites (69 percent) for the first

¹⁰⁴ Elizabeth Ordoñez, “North Carolina's Hispanic Community: 2020 Snapshot,” Carolina Demography, February 5, 2021, <https://www.ncdemography.org/2021/02/05/north-carolinas-hispanic-community-2020-snapshot/>.

¹⁰⁵ North Carolina State Board of Elections, “Voter Registration Statistics,” Accessed August 7, 2021, <https://vt.ncsbe.gov/RegStat/Results/?date=08%2F07%2F2021>.

¹⁰⁶ North Carolina State Board of Elections, “Voter Registration Statistics: 2013,” December 28, 2013, <https://vt.ncsbe.gov/RegStat/Stats?Date=12/28/2013&CountyName=Totals>.

¹⁰⁷ On December 29, 2013, registered African American voters were 22.4 percent of the state's registered voters and Latinx voters were 1.8 percent, for a combined total of 24.2 percent of the state's total electorate.; Ibid.

¹⁰⁸ Janell Ross, “Number of Latino Registered Voters Doubles in North Carolina Creating Potential Long-Term Swing State,” *Huffington Post*, May 25, 2012, https://www.huffpost.com/entry/north-carolina-latino-vote_n_1544480?guccounter=1.

¹⁰⁹ Michael Bitzer, “A Look at North Carolina's Changing Numbers, 2000-2012,” *WFAE 90.7 - Charlotte's NPR News Source*, November 16, 2012, <https://www.wfae.org/politics/2012-11-16/a-look-at-north-carolinas-changing-numbers-2000-2012>.

¹¹⁰ Ibid.

time.”¹¹¹ The impressive Black turnout of the 2008 election demonstrated the success of voter access reforms in clearing some structural hurdles to participation, but it was accompanied by a volatile context of racial appeals and voter intimidation efforts reflecting persistent and rising racial resentment and appeals in the state, both in spite of and because of the progress of voters of color.

For example, on Sunday, October 19, 2008, a cohort of mostly Black voters traveled to a nearby early voting site after attending a rally in support of Barack Obama in Fayetteville, North Carolina. Upon their arrival, the group was met with a crowd of white protestors mocking and harassing them as they attempted to cast their ballots. The throng of protestors shouted about a variety of thinly veiled racist narratives – such as calling Obama a terrorist and complaining that “Sundays are for church, not voting.”¹¹² Nervous about large crowds of voters coming directly from the rally to the one open early voting site, the Cumberland County Board of Elections voted just two days before the rally to open two more Sunday early voting sites, drawing the ire of the NCGOP.¹¹³ Protesters came from around the state to object to the Cumberland County Board of Elections’ decision, including Roger Farina of Fayetteville, who told a reporter that all Sunday voting was “cheating.”¹¹⁴ Thirty vehicles outside the Obama rally that day had their tires slashed, leaving some attendees stranded afterward.¹¹⁵

In 2008, the NC NAACP also filed an intimidation complaint with the Department of Justice when a funeral casket with a picture of then-Senator Obama was displayed within view of voters at an early voting site in Craven County.¹¹⁶ As president of the NC NAACP, Rev. Dr. William Barber II testified that during this period he also received personal threats and death threats for standing up for voting rights, and other NC NAACP branch presidents have received threatening letters that resulted in calls to police departments and other authorities.¹¹⁷

In 2010, racial appeals in elections and public policy in North Carolina continued. In a congressional race for the state’s District 13 seat, Republican challenger Bill Randall’s campaign employed several forms of voter intimidation tactics, including the deployment of aggressive poll workers and illegal, racially targeted robocalls. Voters filed at least two dozen reports of Randall’s poll workers becoming antagonistic with voters inside poll sites, hovering around voters, noting

¹¹¹ Bob Hall, “2008 Recap: Same-Day Registration & Other Successes,” Democracy NC, March 19, 2009, <https://democracync.org/wp-content/uploads/2017/07/WrapUpYearofVoterPR2008.pdf>.

¹¹² Chris Kromm, “Voting Rights Watch: Voter Intimidation in Fayetteville, NC?” *Facing South*, October 20, 2008, <https://www.facingsouth.org/2008/10/voting-rights-watch-voter-intimidation-in-fayetteville-nc.html>.

¹¹³ Mike Baker, “N.C. GOP Lashes out at Voting Sites near Obama Rally,” *WRAL.com*, October 19, 2008. <https://www.wral.com/news/state/story/3769394/>.

¹¹⁴ Farina appears at the 2:38 mark in this video taken by *Washington Times* reporter Christina Bellatoni on October 20, 2018, accessible at <https://www.youtube.com/watch?v=R75OMc2SkvA>.

¹¹⁵ Associated Press, “Obama Rally Attendees Have Tires Slashed,” *Charlotte Observer*, October 21, 2000. <https://www.charlotteobserver.com/news/local/article9018389.html>.

¹¹⁶ Rob Schofield, “NAACP Files Complaint over Craven County Voter Intimidation,” *The Progressive Pulse*, November 4, 2008, <http://pulse.ncpolicywatch.org/2008/11/04/naacp-files-complaint-over-craven-county-voter-intimidation/>.

¹¹⁷ Rev. Barber Declaration - PX10 ¶ 34 (NC NAACP Decl.); 7/13/15 Trial Tr. 104:22-23 (Barber)

their names and addresses during the voting process, and questioning established voting law.¹¹⁸ In the same year, the North Carolina Republican Party's Executive Committee distributed a campaign mailer in a General Assembly race appealing to anti-immigrant and anti-Latinx sentiments. The mailer depicted incumbent Rep. John Christopher Heagarty above the title "Señor Heagarty," with a sombrero on top of his head and his skin darkened by photo editing, saying "Mucho taxó."¹¹⁹

The rise in intimidation and return of electoral tactics utilizing explicit or implicit racial appeals in 2008 and 2010 reflected a shift in politics nationally and in the state, including the emergence of a conservative "tea party," with increasingly negative sentiments directed toward gains made by voters of color in North Carolina.

2011 Redistricting Sets the Stage for Voter Discrimination Efforts Post Shelby County

In 2010, the Republican Party gained the majority of seats in each House of the North Carolina General Assembly, the first time they had done so since 1896. From there, the NCGA leadership used blatant, intentional racial discrimination in the redistricting process following the 2010 Census to entrench their own power by disadvantaging and discouraging voters of color. In both *North Carolina v. Covington* and *Cooper v. Harris*, the federal courts found that the General Assembly's statewide and federal legislative districts violated the Equal Protection Clause.

In 2011 the North Carolina General Assembly relied on a strained and cynical interpretation of the Voting Rights Act to justify packing Black voters into districts where African Americans already represented a large proportion of the electorate. Over the objections of Black voters, Black elected officials, and supporters, the General Assembly, working with map-maker Thomas Hofeller,¹²⁰ created segregated majority-minority districts, using race as a predominant factor for district creation, even in those districts where Black voters' candidates of choice were regularly being elected, and where multi-racial coalitions that already allowed voters of color to realize effective political strength were well-documented. As found by the federal court regarding the state legislature, the gerrymander "impact[ed] nearly 70 [percent] of the House and Senate districts, touch[ed] over 75 [percent] of the state's counties, and encompass[ed] 83 [percent] of the state's population – nearly 8 million people."¹²¹

This gerrymander was so thorough that, in effect, it undermined popular sovereignty in the state, transforming the state legislature from a body reflecting the will of the people to an unconstitutionally constituted body legislating with no fear of political repercussion. Under the

¹¹⁸ Sue Sturgis "N.C. GOP Congressional Campaign Accused of Poll Intimidation, Illegal Robocalls," *Facing South*, 27 Oct. 2010, <https://www.facingsouth.org/2010/10/nc-gop-congressional-campaign-accused-of-poll-intimidation-illegal-robocalls.html>.

¹¹⁹ See Appendix E at 58.

¹²⁰ Hofeller notoriously had written an unpublished study – unearthed by his daughter – that concluded that using responses from a citizenship question on the Census would be "advantageous to Republicans and Non-Hispanic Whites" when voting districts are redrawn. See Michael Wines, "Deceased G.O.P. Strategist's Hard Drives Reveal New Details on the Census Citizenship Question," *New York Times*, May 20, 2019, <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html>.

¹²¹ *Covington v. North Carolina*, 316 F.R.D. at 128, 176; *Covington v. North Carolina* ("Covington III"), 283 F. Supp. 3d 410, 419–20 (M.D.N.C. 2018), *aff'd in part, rev'd in part*, 138 S. Ct. 2548 (2018). (Almost two-thirds of all House and Senate districts had to be redrawn to create remedial maps.)

2011 state legislative district plans, drawn at the direction of Senate redistricting chair Bob Rucho and House redistricting chair David Lewis, North Carolina Black voters and their allies simply could not vote their way into a fairer, more representative, and responsive democracy.

Not only did the legislative majority engage in intentional racial discrimination in the 2011 construction of the state House and Senate districts, but it continued that racial discrimination in its 2017 proposal of a new districting plan to remedy the 2011 racial discrimination, continuing forward the core of the discriminatory maps while claiming to have given race no consideration.¹²² Because the legislature's remedy also was infected with racial discrimination, the federal court found it necessary to construct the remedial plan itself through appointment of a special master.¹²³

The court noted with disapproval that legislative maneuvering intentionally delayed the drawing of remedial maps. Disturbingly, a state court later found that the North Carolina legislative leadership had misrepresented its timeline for preparing remedial maps to the *Covington* court—in a fundamentally undemocratic attempt to garner one last election under illegal districts and extend the length of time they could hold onto their unconstitutionally constructed supermajority.¹²⁴ Through these dilatory litigation tactics, the legislative majority was able to keep the illegal districts in place for most of the decade, with new districts first put in place for the 2018 election. Holding power through unconstitutionally racially gerrymandered districts enabled the General Assembly to use its ill-gotten power to enact the monster voter suppression bill and other racially discriminatory laws.

In *Cooper v. Harris*, the U.S. Supreme Court found that the General Assembly similarly engaged in *intentional racial discrimination* in the construction of its U.S. House of Representative Districts 1 and 12, illegally concentrating African American voters into two districts in order to prevent their influence in a broader number of “crossover” or coalitional districts, where, for nearly 20 years, “African Americans made up less than a majority but their preferred candidates scored consistent.”¹²⁵ The General Assembly had contorted the race-protective measures prescribed by Section 2 and then-applicable Section 5 of the Voting Rights Act as *requiring* the mechanical caging of Black voters into districts to form 50 percent-plus-one or greater Black voting-age population districts wherever possible—even where no district-specific analysis had been conducted to determine the likelihood of a Voting Rights Act violation.¹²⁶

As Justice Elena Kagan described, for the majority in *Harris v. Cooper*:

The new map (among other things) significantly altered both District 1 and District 12. The 2010 census had revealed District 1 to be substantially underpopulated: To comply with the Constitution's one-person-one-vote principle, the state needed to place almost 100,000 new people within the district's boundaries. [Republican state legislative leaders

¹²² Anne Blythe, “U.S. Supreme Court Agrees NC Lawmakers Created Illegal Congressional District Maps in 2011,” *The News & Observer*, May 22, 2017, <https://www.newsobserver.com/article151912142.html>.

¹²³ Melissa Boughton, “PW Special Update: Lawmakers Commence Court-Ordered Redistricting Process,” *NC Policy Watch*, September 10, 2019, <http://www.ncpolicywatch.com/2019/09/10/pw-special-update-lawmakers-commence-court-ordered-redistricting-process/>.

¹²⁴ *Common Cause v. Lewis*, 373 N.C. 258 (2019).

¹²⁵ *Cooper v. Harris*, 581 U.S. _ (2017)

¹²⁶ *Covington*, 316 F.R.D. at 130-31, 173.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

Robert Rucho and David] Lewis, and [their expert, Dr. Thomas] Hofeller chose to take most of those people from heavily Black areas of Durham, requiring a finger-like extension of the district's western line. With that addition, District 1's BVAP [Black voting-age population] rose from 48.6% to 52.7%. District 12, for its part, had no need for significant total-population changes: It was overpopulated by fewer than 3,000 people out of over 730,000. Still, Rucho, Lewis, and Hofeller decided to reconfigure the district, further narrowing its already snakelike body while adding areas at either end – most relevantly here, in Guilford County. Those changes appreciably shifted the racial composition of District 12: As the district gained some 35,000 African Americans of voting age and lost some 50,000 whites of that age, its BVAP increased from 43.8% to 50.7%.¹²⁷

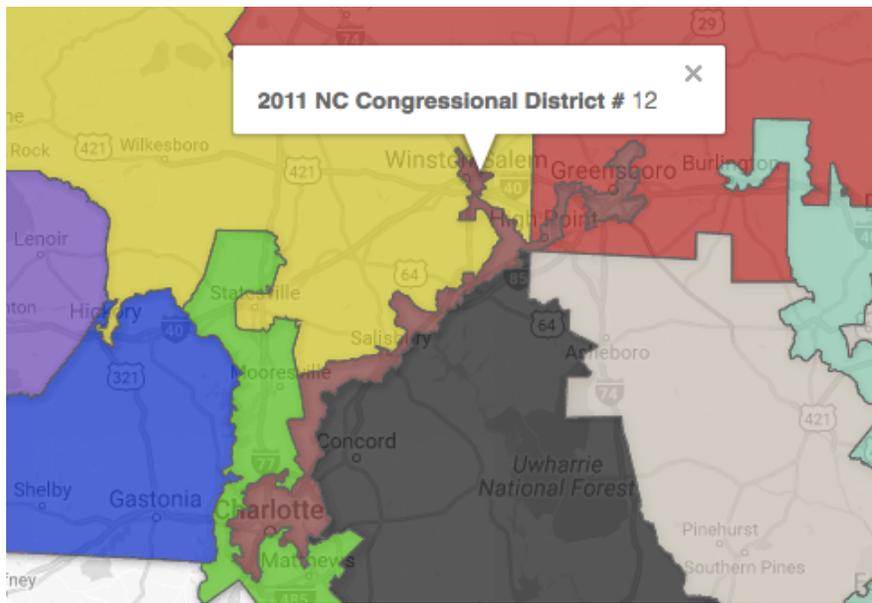


Figure 2. Map of 2011 NC Congressional District 12

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. In a particularly conspicuous example, legislators evenly split the nation's largest historically Black university, NC Agricultural & Technical State University (NC A&T), dividing the 13,000-person Greensboro campus into two congressional districts.¹²⁸ A year earlier in 2018, NC A&T student activists had held demonstrations and hosted "rolls to the polls" initiatives to highlight this modern form of voter suppression and connect it with the university's legacy of activism during the Civil Rights era. A student organizer with Common Cause North Carolina summarized the reason behind and effect of the gerrymander: "This many students has the ability to sway any election. Dividing that in half, putting half this

¹²⁷ *Harris v. Cooper*, 159 F. Supp. 3d 600 (M.D.N.C. 2016), affirmed, 581 U.S. ____ (2017).

¹²⁸ Lewis Kendall, "How a Republican Plan to Split a Black College Campus Backfired," *The Guardian*, November 1, 2020, <http://www.theguardian.com/us-news/2020/nov/01/republican-north-carolina-sixth-district-gerrymandering>.

way, half the other in a majority-Republican district, that definitely dilutes the vote.”¹²⁹ 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.”¹³⁰

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.”¹³¹ Ultimately, the partisan gerrymander, adopted after the General Assembly’s racial gerrymanders were struck down, 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.¹³²

Voter Intimidation and the 2012 Election

Relying on the gerrymandered maps, Republicans gained a supermajority in 2012 and also won the Governor’s Mansion for the first time since 1993.¹³³ African American voters in North Carolina once again turned out to vote at higher rates than white voters, repeating their historic performance in the 2008 election.¹³⁴ Incidents of voter intimidation continued during then-President Obama’s campaign for re-election, with the emergence of a new conservative activist group in the state, inspired by True the Vote’s tactics of scouring voter rolls and lodging mass challenges to voter eligibility as a way to initiate purges.¹³⁵

In May 2012, the founder and executive director of the newly founded Voter Integrity Project of North Carolina (VIP-NC), Jay DeLancy, made headlines by challenging the eligibility to vote of 528 Wake County registered voters – mostly voters of color¹³⁶ – on the grounds that

¹²⁹ Ella Nilsen, “North Carolina’s Extreme Gerrymandering Could Save the House Republican Majority,” *Vox*, May 8, 2018, <https://www.vox.com/policy-and-politics/2018/5/8/17271766/north-carolina-gerrymandering-2018-midterms-partisan-redistricting>.

¹³⁰ *Common Cause, et al., v. David Lewis*, North Carolina, Country of Wake, Superior Court Division, 18CVS 014001, Judgement (September 3, 2019), at 341

¹³¹ *Common Cause v. Lewis*, 373 N.C. 258 (2019).

¹³² *Ibid.*

¹³³ “McCrory First Republican NC Governor in 20 Years.” *WCTI*, 7 November 2012, <https://wcti12.com/archive/mccrory-first-republican-nc-governor-in-20-years>.

¹³⁴ Bob Hall, “Republicans, African Americans, Women and Seniors Post the Highest Voter Turnout Rates in North Carolina,” *Democracy North Carolina*, December 19, 2012, <https://democracync.org/wp-content/uploads/2017/07/NCVoterTurnout2012PR.pdf>.

¹³⁵ Suevon Lee, “A Reading Guide to True the Vote, the Controversial Voter Fraud Watchdog,” *ProPublica*, September 27, 2012, https://www.propublica.org/article/a-reading-guide-to-true-the-vote-the-controversial-voter-fraud-watchdog?token=9zllNFE-IranjTNIQnVEQF8_rMCwNh6u.

¹³⁶ Analysis of the challenged voters’ records by the Brennan Center for Justice showed that the majority of those challenged by VIP-NC were voters of color. See Nicolas Riley, “Voter Challenges,” *Brennan Center for Justice at New York University School of Law*, 2012, <https://www.brennancenter.org/sites/default/files/2019-08/ReportVoterChallengers.pdf>.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

they were not citizens.¹³⁷ DeLancy's accusations were based on responses to earlier jury summonses that indicated these voters were not U.S. citizens. Nicolas Riley, an attorney at the Brennan Center for Justice, noted that white Wake County residents in 1872 had also used mass challenges to contest the registration of 150 newly liberated African American voters: "It was one of the first organized attempts by private citizens to use the state's 'voter challenge' law to systematically undermine black political participation in North Carolina—a practice that would continue throughout the Jim Crow era."¹³⁸

The Wake County Board of Elections dismissed 510 of the challenges in a preliminary hearing for lack of evidence.¹³⁹ Eighteen of the challenges filed by DeLancy went on to a full hearing, where all were dismissed after the challenged voters provided evidence of their naturalization (which occurred after their response to the summons) to the county board of elections.¹⁴⁰ Following the hearing, then-director of the Wake County Board of Elections, Cherie Poucher, discussed how the challenges affected voters: "Many of them did feel questioned," she added. "'How come? Why was I asked to do this?' So I did have to apologize to them, because they did everything right. They were citizens, they were naturalized, and yet I still had to write to them and say, 'Your voter registration is being challenged.'"¹⁴¹

During the election, the state NAACP reported receiving over 600 complaints of voter intimidation,¹⁴² including a high-profile incident of a truck outside an early voting site in Wayne County, a formerly covered jurisdiction, with effigies of President Obama and other elected officials hanging from nooses.¹⁴³ (This truck, driven by "a self-styled 'patriot' from Duplin County in the eastern part of the state," also appeared in Charlotte during the Democratic National Convention in early September, parked near delegates' hotels.¹⁴⁴)

There were so many reports of aggressive electioneering, misinformation, and other harassing or obstructing incidents across the state that the North Carolina State Board of Elections (NCSBE) issued an administrative memo to county boards of elections midway through the early

¹³⁷ Jennifer Suarez, "New Group Takes Aim at Wake Voter Rolls." *Raleigh Public Record*, August 8, 2012, <https://theraleighcommons.org/raleighpublicrecord/news/2012/08/08/new-group-takes-aim-at-wake-voter-rolls/>; Mark Binker, "Voter Fraud Hard to Prove; Fears Spark Legislation." *WRAL.Com*, 16 May 2012, <https://www.wral.com/voter-fraud-hard-to-prove-fears-spark-legislation/11107478/>.

¹³⁸ Nicolas Riley, "A Lesson from North Carolina on Challengers," Brennan Center for Justice, July 2, 2021, <https://www.brennancenter.org/our-work/analysis-opinion/lesson-north-carolina-challengers>.

¹³⁹ Jennifer Suarez, "Wake Rejects Most Voter Challenges," *Raleigh Public Record*, June 27, 2012, <https://theraleighcommons.org/raleighpublicrecord/news/2012/06/27/wake-rejects-most-voter-challenges/>.

¹⁴⁰ Jennifer Suarez, "Wake Elections Board Dismisses Most Voter Challenges," *Raleigh Public Record*, August 21, 2012, <https://theraleighcommons.org/raleighpublicrecord/news/2012/08/21/wake-elections-board-dismisses-most-voter-challenges/>; Laura Leslie, "Voter-Fraud Activist 'frustrated' by Outcome in Wake Co.," *WRAL.com*, August 21, 2012, <https://www.wral.com/news/state/nccapitol/blog-post/11454426/>.

¹⁴¹ Ibid.

¹⁴² "NC NAACP Claims Voter Intimidation at Polls across the State," *Myfox8.Com*, November 6, 2012, <https://myfox8.com/news/nc-naacp-claims-voter-intimidation-at-the-polls-across-the-state/>.

¹⁴³ <https://www.miamiherald.com/latest-news/article1944168.html>

¹⁴⁴ Expert Report of James L. Leloudis II, *NAACP V. McCrory*, No. 1:13-cv-658 (M.D.N.C., April 11, 2014)

voting period.¹⁴⁵ The NCSBE memo mentions “profanity and aggressive language” being used toward “supporters of opposing candidates or political parties,” intentional entry into the buffer zone to speak to voters, and at least one incident involving a poll worker being injured while attempting to prevent a campaigner from entering the buffer zone.¹⁴⁶ The Board also reported on incidents of voter misinformation, including voters being told that they cannot vote if they have an outstanding ticket, that they have to re-register each time they vote, and that, depending on political party, Election Day for some voters would be on Wednesday rather than Tuesday.¹⁴⁷

IV. Voter Discrimination Post *Shelby County*: 2013-2019

In the wake of the *Shelby County* decision, with an intensity that ultimately inspired the revival of a state-based non-violent social movement for voting rights, the North Carolina General Assembly, party and county elections officials released an avalanche of discriminatory practices and procedures. The period included the revival of new redistricting bills passed by the General Assembly with discriminatory impacts on Black voters, which, in the absence of preclearance, had to be litigated by voting rights advocates, and most notoriously the passage of H.B. 589.¹⁴⁸

H.B.589 and Voter Suppression, 2013-2016

In North Carolina and across the country, the late-June 2013 decision in *Shelby County v. Holder* opened the door to a revival of voter restriction efforts.¹⁴⁹ In North Carolina, the decision transformed the interests of the state and covered jurisdictions – and the relative burden on African Americans and other voters of color – by ending the obligation to seek and gain approval (or “preclearance”) from the U.S. Department of Justice or federal panel before making changes affecting voting, including any “voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting.” Absent an act of Congress, federal enforcement of Section 5 of the Voting Rights Act of 1965¹⁵⁰ was nullified.

¹⁴⁵ https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2012/2012-26_MaintainingOrder_at_VotingSites.pdf

¹⁴⁶ *Ibid*, 1.

¹⁴⁷ *Ibid*.

¹⁴⁸ See *Raleigh Wake Citizens Ass'n v. Wake Cty. Bd. of Elections*, and *Wright v. North Carolina*, Consolidated Civil Action No. 5:15-CV-156 and No. 5:13-CV-607, 2017 U.S. Dist. LEXIS 162673 (4th Cir. September 29, 2017) (finding that the North Carolina General Assembly violated the Fourteenth Amendment in its systematic over- and under-population of Board of Education and Board of County Commissioner districts created in 2013 and 2015); *Brandon v. Guilford Cty. Bd. of Elections*, 921 F.3d 194, 196 (4th Cir. 2019) (Greensboro voters prevailed in a lawsuit alleging that legislatively drawn city council district boundaries created in 2015 violated the Fourteenth Amendment by under- and over- populating certain districts to disadvantage Black and Democratic voters).

¹⁴⁹ *Shelby County v. Holder*, 7. 133 S. Ct. 2612 (2013).

¹⁵⁰ *Ibid*, 2631. *Shelby County* ruled that the Section 4(b), which provided a formula that subjected certain “covered” jurisdictions to preclearance requirements defined in Section 5, was unconstitutional. *Id.* The Supreme Court issued its opinion in *Shelby County* on June 25, 2013. *Id.* at 2612. The following day, the Chairman of Senate Rules Committee announced that the General Assembly would now move ahead with the “full bill,” which would be “omnibus” legislation. See *McCrary* at 204, *supra* note 18.



Figure 3. Balcony Protest led by Youth & College Leaders of the NC NAACP, 2013¹⁵¹

On April 24, 2013, more than a dozen college-aged youth filled the balcony gallery seats of the House Chambers of the North Carolina General Assembly. Duct tape covering their mouths read: “do not silence my vote.” The students, including members of the youth and college division of the NC NAACP State Conference, were engaged in a coordinated expression of protest over the consideration of a voter photo ID bill that publicly available data showed would negatively and discriminately impact people of color, youth voters, women, and the elderly.¹⁵²In the four months that followed, the April voter photo ID bill expanded from fourteen to fifty-seven pages implementing an “omnibus” electoral package that overhauled election access and administration in the state of North Carolina.

In July of 2013, mere weeks after *Shelby County*, the NC General Assembly, divided strictly along party lines and with no support from African American legislators, voted to adopt the nation’s most sweeping voter restriction act in the modern era—North Carolina’s House Bill 589 (“H.B. 589”)—popularly known as the “monster voter suppression law.”¹⁵³ The new omnibus H.B. 589 (i) imposed a new in-person photo identification requirement; (ii) eliminated a full week of early voting access, including one of two Sundays disproportionately used by black churches to promote civic engagement; (iii) eliminated the opportunity for voters to register and vote on the same day (same-day registration or “SDR”); (iv) eliminated qualification of valid votes cast in the correct county but the incorrect precinct on Election Day (out-of-precinct voting or “OOP”); (v) eliminated the option for “pre-registration” of 16- and 17-year-olds, which provided a bridge to registration for young voters, particularly through high school registration drives and at times of likely interaction with the department of motor vehicles; (vi) loosened the requirements for challenges to voter eligibility; and (vii) increased the number of partisan observers who could monitor voters inside polling locations.

¹⁵¹ Photo by Chris Seward of the *News & Observer* on April 24, 2013

¹⁵² Rob Christensen, “Voter ID Takes Step Closer to Law,” *News & Observer*, April 25, 2013.

¹⁵³ Mark Joseph Stern, “North Carolina’s Voter-Suppression Law Was Killed by Its Own Racism,” *Slate Magazine*. May 15, 2017, <https://slate.com/news-and-politics/2017/05/north-carolinas-voter-suppression-law-was-apparently-too-racist-for-the-supreme-court.html>.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

Then-Governor Patrick McCrory enacted the law by his signature on August 12, 2013. Within hours, the NCNAACP State Conference, led by President William Barber II, and individual plaintiffs, including Mother Rosanell Eaton, Mary Perry, Maria Palmer, Armenta Eaton, and Carolyn Q. Coleman, challenged the omnibus law as imposing unjustified and discriminatory electoral burdens unlawful under the Fourteenth and Fifteenth Amendments to the U.S. Constitution and in violation of Section 2 of the Voting Rights Act of 1965.¹⁵⁴

At the same time, public opposition to the actions of the then- -GOP supermajority legislature escalated from the silent balcony protest of April 24, to greater than 1,000 people arrested after engaging in peaceful civil disobedience during weekly “Moral Monday” protest actions convened by the NC NAACP, faith and community leaders, and students. Those actions included 93-year-old civil rights activist Mrs. Rosanell Eaton, one of the first Black voters to register in her racially segregated community in Franklin County in 1942, and one of the state’s first African American voters since Reconstruction. Mrs. Eaton, a celebrated advocate of voting rights in North Carolina, after successfully overcoming the hurdle of reciting the preamble to the U.S. Constitution to register to vote – a test administered to her by three white men – and after successfully becoming a leader in her community and awarded for her work as a poll worker and a special registrar, registering hundreds of thousands of new voters in the state, was now “fed up, and fired up.” More than seventy years after she cast her first ballot, Mrs. Eaton did not know whether under the new photo voter ID provision of H.B. 589 she would be denied her right to vote in the next election.¹⁵⁵

The panoply of election regulation changes adopted simultaneously imposed new and intersecting restrictions on each step of the voting process. In addition to retaining a strict voter photo ID requirement, the final law eliminated specific identification options, such as government employee, university and community college, and public assistance IDs, more likely to be possessed by African Americans and previously deemed acceptable by the same legislature pre-*Shelby County*. All voting and registration practices eliminated were indisputably modes of voting disproportionately used by African Americans in North Carolina during a unique period of increased voting expansion—roughly between 2000 and 2012—and it was likewise indisputable

¹⁵⁴ Complaint, *NC NAACP*, 182 F. Supp. 3d 320 (No. 16-cv-1274); see also U.S. CONST. amends. XIV, XV; Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 445 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (2006)). Section 3(c), 52 U.S.C. 10302(c), which authorizes courts to impose a preclearance requirement if a discriminatory purpose is found. Other NC NAACP plaintiffs included churches and students: Emmanuel Baptist Church, Clinton Tabernacle AME Zion Church, Barbee’s Chapel Missionary Baptist Church, and Bethel A. Baptist Church; Baheeya Madany, Jocelyn Ferguson-Kelly, and Faith Jackson. The North Carolina-based League of Women Voters and A. Phillip Randolph Institute along with Common Cause, Uniform One Stop Collaborative and individual plaintiffs filed suit on the same day represented by the Southern Coalition for Social Justice and the ACLU and were later joined by intervening youth plaintiffs bringing a novel 26th Amendment challenge to the law. All private Plaintiffs’ actions were consolidated with the U.S. Department of Justice, which, under Attorney General Eric Holder, acted swiftly to enforce the Voting Rights Act of 1965 in a legal challenge filed shortly after the enactment of H.B. 589. See U.S. DEP’T OF JUSTICE, JUSTICE DEPARTMENT TO FILE LAWSUIT AGAINST THE STATE OF NORTH CAROLINA TO STOP DISCRIMINATORY CHANGES TO VOTING LAW (Sept. 30, 2013), <https://www.justice.gov/opa/pr/justice-department-file-lawsuit-against-state-north-carolina-stop-discriminatory-changes>.

¹⁵⁵ Ed Pilkington, “Woman Who Faced Jim Crow Takes on North Carolina’s Powers over Voting Rights,” *The Guardian*, Sept. 25, 2014, <http://www.theguardian.com/world/2014/sep/25/north-carolina-voter-id-law-jim-crow-african-american>.

that African Americans in North Carolina were less likely than whites to possess a form of qualifying voter ID under H.B. 589.¹⁵⁶ Other controversial provisions of the law included an expansion of the number of observers appointed by political parties, increased access for third parties to engage in voter challenges, and the elimination of the long-available and widely used option of straight-ticket voting.¹⁵⁷

Informed by data on the voting patterns of Black North Carolinians, the legislators fashioned specific provisions that would cumulatively suppress the political rights of Black voters. While the bill was accurately dubbed “The Monster Voter Suppression Bill,” understanding the effect of the bill in its totality requires an assessment of each of these provisions singularly so as to not obscure the diverse array of discrimination tactics employed by the NCGA – each of which could have been independently challenged as racially discriminatory.

(i) *H.B. 589’s strict photo ID requirement for in-person voting* permitted the use of only eight forms of photo identification in order to vote in person. Tellingly, legislators sought data on possession of types of IDs North Carolinians by race, and then used that data to exclude those forms of ID that Black voters were most likely to possess (such as government employee, university and community college, and public assistance IDs) from the final, post-*Shelby County* version of the bill. Multiple analyses have found that registered Black voters in North Carolina were disproportionately less likely to possess one of the approved IDs, making them more vulnerable to disenfranchisement as a result of this provision. Notably, studies have found that the suppressive effects of voter ID laws are not limited to those who do not possess an acceptable form of identification; even voters in possession of an acceptable form of identification may avoid voting under a strict ID regime, out of confusion over what forms of ID are accepted and anxiety about presenting an acceptable one.¹⁵⁸

(ii) *Eliminated the first week of the early voting period, shortening it from seventeen to ten days.* In the 2008 and 2012 elections, Black voters used early voting at disproportionately higher rates than white voters every day of the early voting period, with the highest rates of usage occurring at the beginning of the early voting period – the very week that H589 targeted for elimination. In 2008, 71 percent of Black voters voted early as compared to 51 percent of white voters, with 23 percent (as compared to 14 percent of white voters) voting during the first week. Similarly in 2012, 70 percent of Black voters cast their ballots during early voting.¹⁵⁹ This cut to early voting also targeted the first weekend of North Carolina’s early voting period – traditionally used by Black churches across the state for Souls to the Polls marches – in an intentional blow to the power of Black churches to motivate political participation.¹⁶⁰

(iii) *Eliminated same day registration during the early voting period.* First used by most North Carolina voters in the 2008 election, same-day registration is an extremely popular voting method, widely utilized for a variety of reasons: it provides those with incomplete registrations the opportunity to correct or complete their registrations; it gives registrants in need of assistance, due to low literacy skills or another disability, the support of poll workers to ensure the appropriate completion of their registration; and it provides a safety net for those who might need to

¹⁵⁶ *McCrorry* at 204.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ *McCrorry* at 204. *Supra* note 18 at 21.

¹⁶⁰ *McCrorry* at 204. *Supra* note 6 at 16.

re-register in between elections due to frequent moving.¹⁶¹ Same-day registration is disproportionately used by Black voters in part because Black North Carolinians are disproportionately likely to face administrative issues in successfully completing the registration process, to need additional support from poll officials, and to move more frequently. In 2008, 35 percent of same-day voter registrants were African American, 50 percent more than their share of the population.¹⁶² Based on this data, legislative leadership understood that in eliminating same-day registration, they would also effectively silence the Black voters using this method. In 2014, when the repeal of same-day voter registration was temporarily in effect, voting rights advocates captured the stories of some of the voters disenfranchised by the change; for example:

Morris is a middle-aged, African American Democrat who lives in Wayne County. He lived in Wake County for “25 to 30 years” before moving back to Wayne County, where he grew up. When he tried to vote at a Wayne County early voting site, he was told he needed to vote in Wake because he was registered there. But when he went to Wake County, the election officials sent him back to Wayne. So he made a third trip to an early voting site in Wayne County on the last day of early voting where he cast a provisional ballot that did not count. He says he remembers the DMV examiner asking him if he wanted to change his registration when he changed his license address to Wayne County, but for some reason that change didn’t go through. Morris is a very committed, regular voter who has a history of voting in midterm and primary elections. But, due to the elimination of same-day registration during early voting, his three attempts to make his voice heard in 2014 were fruitless.¹⁶³

(iv) Eliminated out-of-precinct voting for voters in the right county but at an incorrect precinct on Election Day. The architects of H.B. 589 targeted Black voters in North Carolina by ending out-of-precinct voting, which allowed NC voters who attempted to vote in the county where they were registered, but at a precinct other than their assigned precinct, to cast a provisional ballot—a common experience for those who move more frequently or whose busy schedules make it difficult to get to their home precinct.¹⁶⁴ When drafting H.B. 589, legislators were informed by the data they requested: a racial breakdown of provisional voting, including out-of-precinct.¹⁶⁵ In ending out-of-precinct voting, NC legislators sought to stymie a voting procedure disproportionately used by Black voters and thus diminish their participation in the political process. As with same-day voter registration, out-of-precinct voting was also temporarily eliminated in the 2014 election before the court’s final decision, disenfranchising voters who would have been able to vote if that provision had been in place. Ernestine’s and Dwight’s stories helped give voice to the impact of the law:

Ernestine is an African American woman in her early thirties who lives in Durham County. She is a single mom with two kids. She was working two jobs on Election Day and had limited time to vote. She went to the polling place across the street from her apartment, but the election officials said she was in the wrong place and needed to go

¹⁶¹ Ibid.

¹⁶² See Appendix E at 61.

¹⁶³ Isela Gutiérrez & Bob Hall, “Alarm Bells from Silenced Voters,” *Democracy NC*, June 2015, 3, <https://democracync.org/wp-content/uploads/2017/06/SilencedVoters.pdf>.

¹⁶⁴ *McCrory* at 204. *Supra* note 18 at 12.

¹⁶⁵ *McCrory* at 204. *Supra* note 6 at 12.

elsewhere. She didn't have a ride to the other polling place, so she asked the election official for a provisional ballot. Ernestine had voted with provisional ballots on Election Day in 2008 and 2010, and both times her ballots counted—but this time when she asked for one, the election official seemed somewhat upset with her. Due to the repeal of out-of-precinct voting, her vote did not count.¹⁶⁶

Dwight is an African American, Democratic voter in Mecklenburg County. He has voted in the last two presidential elections, but was thwarted in the 2014 election by the elimination of out-of-precinct voting and faulty information from poll workers. He showed up to vote at the same place where he had voted early in 2012. He was redirected to another precinct, but when he arrived there was told that he needed to go to a third precinct. After spending 1.5 hours and going to two different polling places, he “got fed up with the process” and “finally gave up when told that he needed to go to a third place.” He is a casualty of the elimination of out-of-precinct voting.¹⁶⁷

(v) *Repealed a pre-registration program for 16- and 17-year-olds.* As a way to fend off the consequences of demographic shifts, legislative leaders repealed the program that allowed 16- and 17-year-olds to pre-register to vote. At the time of its repeal, the program had succeeded in pre-registering 160,000 young North Carolinians in just four years and was predominately used by Black and Latinx teens.¹⁶⁸ African American youth were 27 percent of pre-registrants, while increasing numbers of young Latinx citizens aging into voter eligibility meant that the Hispanic community was also poised to take significant advantage of this option in the coming years. Of those pre-registered, Black teens comprised figures that were “significantly higher than Black representation in the general population,” according to historian James Leloudis.¹⁶⁹ By rescinding a voting program that reflected the shifting and increasingly racially diverse North Carolina electorate, legislative leaders sought to obstruct the growing political power of Black and Latinx voters.

(vi) *Loosened the requirements for challenges to voter eligibility,* creating the conditions for increased numbers of third-party voter challenges and intimidation. Challenger laws have historically been used to suppress and prevent Black voters' participation in the political process.¹⁷⁰ By the time that H.B. 589 became law, VIP-NC had already used the state's existing law to challenge the eligibility of hundreds of alleged non-citizen voters in Wake County, though the Wake County Board of Elections dismissed virtually all challenges for lack of evidence (see Section IV). Two provisions in H.B. 589 expanded the ability of third-party activists to challenge voter registrations. First, any resident of North Carolina was now legally permitted to examine the voting rolls in any county and challenge the eligibility of registered voters in that county during that examination, whereas previously only residents of that county were able to do so. Second, the

¹⁶⁶ Gutierrez & Hall, *supra*. (Ernestine was also interviewed about her experience in the 2014 election, see Cullen Browder, “Thousands of ballots not counted under new voting law, watch group says,” WRAL, May 15, 2015, <https://www.wral.com/thousands-of-ballots-not-counted-under-new-voting-law-watch-dog-group-says/14640634/>.)

¹⁶⁷ *Ibid*.

¹⁶⁸ Alex Kotch, “Why does North Carolina want to discourage the youth vote?” Facing South, August 25, 2016, <https://www.facingsouth.org/2016/08/why-does-north-carolina-want-discourage-youth-vote>.

¹⁶⁹ See Appendix E at 61

¹⁷⁰ Nicolas Riley, “Voter Challenges,” Brennan Center for Justice at New York University School of Law, 2012, <https://www.brennancenter.org/sites/default/files/2019-08/ReportVoterChallengers.pdf>

requirement that voter eligibility challenges could only be brought by a registered voter in the same precinct as the challenged voter was broadened so that those challenges could now be lodged by any registered voter in the same county as the challenged voter.

(vii) *Increased the number of partisan observers who could monitor voters inside polling places.* With this new revision, county political party chairs could appoint three “at-large” observers empowered to rove from polling place to polling place, targeting the sites they believed required scrutiny. These changes came after heated debate featuring testimony that pushed a false narrative claiming that voters, particularly voters of color, should be viewed as suspects of the crime of voter fraud instead of citizens that should be aided in exercising their constitutionally guaranteed right. Legislators devised another mechanism that could be used by groups promoting baseless suspicions and enable further targeting of Black and Latinx voters and their allies.¹⁷¹

Each of these provisions¹⁷² catalogued in is H.B. 589 is a uniquely egregious voting rights violation on its own merits. The cumulative impact laid bare the purpose of the NC General Assembly: to disenfranchise and stifle the Black vote by ending or limiting voting procedures Black voters predominately used, and inventing new requirements for voter eligibility that Black voters disproportionately could not meet.

H.B. 589 Overturned, but Not Without Great Costs of VRA Litigation

It would not be until roughly three years after plaintiffs filed suit that Mrs. Eaton and all voters in North Carolina would learn with certainty which rules would govern in the 2016 election. On July 29, 2016, the United States Court of Appeals for the Fourth Circuit ruled in *NC NAACP v. McCrory*¹⁷³ that H.B. 589 was enacted with an impermissible racially discriminatory purpose in violation of Section 2 of the Voting Rights Act and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, instituting an immediate and permanent injunction on five restrictions challenged by the NC NAACP. The landmark decision became final only in May 2017, when the Supreme Court denied the North Carolina General Assembly leadership’s petition for certiorari in the case.

Finding in favor of plaintiffs, the court concluded that “[t]he new provisions target African Americans with almost surgical precision” and “impose cures for problems that did not exist.”¹⁷⁴ “Upon receipt of [racially disaggregated data on voting patterns and usage],” the court found that “the General Assembly enacted legislation that restricted voting and registration in five different ways, all of which disproportionately affected African Americans.”¹⁷⁵

“[W]ith race data in hand,” the General Assembly had crafted a photo ID requirement that excluded the specific types of photo IDs that it knew Black voters disproportionately lacked, and enacted other provisions after learning that Black voters used early voting at a much higher

¹⁷¹ Ibid.

¹⁷² Plaintiffs were successful in overturning the first five of the eight provisions listed above — the repeal of straight-ticket voting, expanded access to voter challenges, and the addition of at-large county partisan observers remained the law in North Carolina.

¹⁷³ *McCrory*, *supra* at 204.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

rate than whites, Black voters specifically used the first week of early voting more heavily than whites, Black voters disproportionately benefited from same-day registration as compared to whites, Black voters voted out-of-precinct at higher rates than whites and thus benefitted more from the partial counting of those ballots, and Black youth used preregistration at higher rates than whites.¹⁷⁶ The court invalidated the challenged provisions of H.B. 589, eliminating the photo voter ID requirement, and reinstating the previously available early voting week, same-day registration during the early voting period, and the election day safeguard of out-of-precinct voting just in time for the 2016 presidential election. This case “comes as close to [including] a smoking gun as we are likely to see in modern times,” the court explained, “[when] the State’s very justification for a challenged statute hinges explicitly on race—specifically its concern that African Americans, who had overwhelmingly voted for Democrats, had too much access to the franchise.”¹⁷⁷

Prior to *Shelby County*, the omnibus H.B.589 could not have been implemented until reviewed and cleared as non-discriminatory by the Department of Justice or three-judge court. After *Shelby County*, such laws immediately go into effect and the burden is on private plaintiffs and the Department of Justice to bring lawsuits seeking to enjoin such racially discriminatory voting practices. This litigation often takes years prior to the issuance of an injunction, and during that time voters of color suffer under disproportionate burdens that ultimately are found to constitute racial discrimination.

For example, voters in North Carolina endured the elimination of same-day registration, of partial counting of out-of-precinct ballots, of the loss of 7 days of early voting and of preregistration of 16 and 17-year-olds during the 2014 federal election cycle, the 2015 local election cycle, and the 2016 primary. Voters in North Carolina also were required, during the 2016 primary elections, to show one of the approved types of photo voter ID under the ultimately overturned discriminatory law. All of these practices were ultimately overturned, but it is impossible to get back the votes that were lost while the suppression measures were in place.¹⁷⁸

Case by case after-the-fact litigation is also extremely expensive, and the burden of finding the resources to support such litigation falls disproportionately on voters of color already burdened by socioeconomic disadvantages caused by racial discrimination. For example, the private law firms representing plaintiffs in the H.B. 589 case publicly stated that they expended more than \$10 million on the case. Nonprofit groups’ additional costs exceeded several millions. Prevailing plaintiffs recovered only a fraction of the resources expended on the case as court-awarded attorneys’ fees. These fees as well as the millions of dollars paid by the state to its private attorneys ultimately fall on the taxpayers of North Carolina.¹⁷⁹

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*, 40.

¹⁷⁸ *Ibid.*, at 11.

¹⁷⁹ *Voting Rights & Elections Administration in North Carolina: Hearings Before H. Comm. on H. Admin. & H. Subcomm. on Elections*, 116th Cong., (April 18, 2019) (Written Testimony of Caitlin Swain, Co-Director of Forward Justice). Available at <https://www.congress.gov/116/meeting/house/109315/witnesses/HHRG-116-HA08-Wstate-SwainC-20190418-U1.pdf>.

Early Voting Restrictions, Polling Site Reductions, and Voter Impact in the 2016 Election

When the Fourth Circuit's ruling required restoration of early voting hours in the first seven days, North Carolina Republican Party Chairman Dallas Woodhouse produced and distributed a memo to Republican County Board of Election members instructing them to make “party-line” decisions in drafting new early voting plans required to comply with the court’s decision, including voting against Sunday hours for voting and maintaining decreased numbers of hours and sites available during early voting, particularly on weekends. These orders were sent—and to large degree carried out—despite the court’s clarity that “using race as a proxy for party . . . constitutes discriminatory purpose.”

The NC NAACP and other advocates for equality protested the reduced early voting plans before the State Board of Elections, bringing multiple challenges forward, and requesting the State Board to use its considerable discretionary power to give relief in favor of the voters and end the endorsement of voter suppression. Yet the State Board of Elections upheld a large number of the no-Sunday and reduced-hours plans approved by County Boards. For example:

- In Guilford County, where over 30 percent of voters are African American, voters had 16 early voting sites available to them in the first week of early voting in 2012; but in 2016, only one site was open, resulting in lines reported of over 3 hours.
- In Winston Salem, Greensboro, and Durham, early voting sites previously available on or near historically Black colleges and universities were not available in 2016.
- In Nash County, a polling site that served disproportionately African American voters in Rocky Mount was not included in the first-week early voting plan, over significant protests by the African American community.
- In Randolph County, a Republican County Board chairperson, who had previously voted for making hours on one Sunday available for voting during early voting, following the Fourth Circuit’s decision, changed his vote to against—eliminating any option for a Souls-to-the-Polls program in the county. When the State Board of Elections questioned this decision, the board member described being called a “traitor” and “villain” for supporting Sunday voting hours, which had been requested by the local NC NAACP and African American churches.¹⁸⁰

Overall, in just the 40 counties in North Carolina that were formerly covered by preclearance, there were at least 158 fewer polling places open during the 2016 presidential election than in 2012, despite the fact that the state’s population has grown.¹⁸¹ There were also dramatic reductions in early voting hours in Guilford (-660), Mecklenburg (-282), Brunswick (-165), Craven (-141), Johnston (-124), Robeson (-121), and Jackson (-113) counties. Of those, Guilford, Craven, and

¹⁸⁰ *Voting Rights & Elections Administration in North Carolina: Hearings Before H. Comm. on H. Admin. & H. Subcomm. on Elections*, 116th Cong., (April 18, 2019) (Written Testimony of William J. Barber II, Repairers of the Breach). Available at <https://www.congress.gov/116/meeting/house/109315/witnesses/HHRG-116-HA08-Wstate-BarberW-20190418.pdf>.

¹⁸¹ Ari Berman, “The GOP’s Attack on Voting Rights Was the Most Under-Covered Story of 2016,” *The Nation*, Nov. 2016, <https://www.thenation.com/article/archive/the-gops-attack-on-voting-rights-was-the-most-under-covered-story-of-2016/>.

Robeson counties were previously covered under Section 5; and Mecklenburg and Johnston have significant Black voting populations, 33 percent and 16 percent of all registered voters (as of October 22, 2016) respectively.¹⁸²

In a press release, the state's Republican Party officials appeared to herald the news in explicitly *racial* terms. The "North Carolina Obama coalition" was "crumbling" "[a]s a share of early voters, African Americans are down 6.0%, (2012: 28.9%, 2016: 22.9%) and Caucasians are up 4.2%, (2012: 65.8%, 2016: 70.0%)." ¹⁸³

The polling place reductions in 2016 were not limited to early voting sites. An analysis by the Leadership Conference for Civil and Human Rights found that of North Carolina's formerly covered counties, Pasquotank County, a county known for its attacks on the voting rights of students at Elizabeth City State, a HBCU, and now notorious for the murder of Andrew Brown, Jr. by county sheriff's deputies, was the largest closer of Election Day polling places, with a 31 percent drop in polling places from 2012 to 2016.¹⁸⁴ Cleveland County had the second largest reduction in Election Day polling places in the state, a drop of 19 percent. In "a textbook example of a change that would have received enhanced scrutiny under Section 5," the county board of elections merged five polling places in Shelby, North Carolina, a city that is 40 percent African American, into just two, despite the objections of the Cleveland County NAACP.¹⁸⁵

Voter Stories from 2016: Long Lines, Poll Worker Bias, and Intimidation

The 2016 election cycle was marked by troubling racist and sexist rhetoric and false claims of election "rigging" from then-Republican presidential candidate Donald Trump, which frequently spilled over into violence following his campaign rallies.¹⁸⁶ Highlighting North Carolina's importance in the campaign as a battleground state, precincts in two North Carolina cities, Fayetteville and Charlotte, were targeted by longtime Republican strategist and Trump ally Roger Stone's "Stop the Steal" effort for monitoring by Trump supporters concerned about fraud.¹⁸⁷ In response to the disturbing rhetoric and increasing racial tension, a broad coalition of voting rights groups, including Democracy NC, the Southern Coalition for Social Justice, Common Cause, and

¹⁸² *A North Carolina Perspective on the Importance of Reinstating Preclearance: Hearings Before the U.S. Comm. on Civil Rights*, (Feb. 2, 2018) (Testimony of Tomas Lopez, Executive Director of Democracy North Carolina). Available at <https://democracync.org/wp-content/uploads/2018/02/TomasLopezUSCCRT testimony-2.2.18.pdf>.

¹⁸³ "NCGOP Sees Encouraging Early Voting, Obama/Clinton Coalition Tired/Fail to Resonate in North Carolina," *North Carolina Republican Party*, Nov. 7, 2017, <https://us2.campaign-archive.com/?u=f3100bc5464cbba2f472ddf2c&id=8bfe229321&e=a3ab666622>.

¹⁸⁴ "The Great Poll Closure," *The Leadership Conference Education Fund*, Nov. 2016, 10, <https://civil-rights.org/edfund/resource/the-great-poll-closure/>.

¹⁸⁵ *Ibid.*

¹⁸⁶ Sarah McCammon, "Donald Trump has brought on countless controversies in an unlikely campaign," NPR, Nov. 5, 2016, <https://www.npr.org/2016/11/05/500782887/donald-trumps-road-to-election-day>; see also Dara Lind, "What the hell is going on with violence at Trump rallies, explained," Vox, March 21, 2016, <https://www.vox.com/2016/3/14/11219256/trump-violent>.

¹⁸⁷ Stone's organization targeted precincts with a majority of voters of color, claiming that it would engage in "exit polling" to identify any fraud that could affect the results. See Olivar Laughland & Sam Thielman, "Trump loyalists plan own exit poll amid claims of 'rigged' election," *The Guardian*, Oct. 20, 2016, <https://www.theguardian.com/us-news/2016/oct/20/citizens-for-donald-trump-exit-poll-roger-stone-rigged-election-claim>.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

the NC NAACP, launched a major Election Protection program, with more than 1,300 nonpartisan poll monitors at voting locations across the state documenting election administration issues and voter intimidation.¹⁸⁸ African American voters in North Carolina persevered through a disastrous hurricane, long lines caused by the drastic decline in early voting availability, biased and inadequately trained poll workers, and voter intimidation in order to make their voices heard. The NC NAACP reported that it received more complaints from voters in 2016 than in any election in the prior decade.

On October 8, just a few days before the voter registration deadline, Hurricane Matthew, the strongest storm to strike North Carolina in 17 years, hit the eastern part of the state. The storm caused catastrophic flooding and major infrastructure damage in the impacted counties, including unnavigable roads and loss of access to mail, electricity, and shelter, and required significant relocation and evacuation of the region's residents.¹⁸⁹ As a result of the devastation, 45 out of North Carolina's 100 counties were declared federal disaster areas.¹⁹⁰ The affected counties held a disproportionate number of African American voters, and many of the counties hit hardest also were some of the most impoverished in the state. Many voters in the impacted region were displaced well through Election Day, and county boards of elections had to make last-minute changes to polling places across the region due to flooding and hurricane damage.¹⁹¹ Despite the scale of the devastation, the State Board of Elections declined to formally extend the voter registration deadline for voters in those counties until ordered to do so by a state court.¹⁹² The NC NAACP also requested an extension of early voting hours and sites in 33 impacted counties, so that voters reeling from the storm's impact would still more easily be able to cast their ballots, but was denied.¹⁹³

North Carolina voters waited for hours in long lines at early voting sites in Guilford, Forsyth, Cumberland, Craven, Mecklenburg, Wake, and Durham counties at the beginning and end of the early voting period.¹⁹⁴ On the front end of the early voting period, the long lines were the direct result of the drastic reduction in early voting sites during the first week of early voting detailed above, while on the back end voters who were thwarted during the first, intentionally diminished week of early voting rushed to the polls to make their voices heard.¹⁹⁵ For example, on the first day of early voting in Craven County, a formerly covered jurisdiction, voters waited

¹⁸⁸ Isela Gutiérrez, "From the Voter's View: Lessons from the 2016 Election," *Democracy NC*, January 2018, 2, <https://democracync.org/wp-content/uploads/2021/01/VotersView2016Lessons-FINAL.pdf>.

¹⁸⁹ NC NAACP letter to NCSBE, October 13, 2016. On file with Forward Justice.

¹⁹⁰ "Hurricane Matthew 2016: Emergency Declarations & Evacuations," *N.C. Department of Public Safety*, 2016, <https://www.ncdps.gov/hurricane-matthew/emergency-declarations-and-evacuations>.

¹⁹¹ "Floodwaters leave some early voting locations in doubt," *ABC 11 Eyewitness News*, Oct. 17, 2016, <https://abc11.com/politics/floodwaters-leave-some-early-voting-locations-in-doubt/1559789/>.

¹⁹² *Ibid.*

¹⁹³ *Ibid.*, see also Lynn Bonner, "No response to requests to extend Friday's voter registration deadline over Hurricane Matthew flooding" *Charlotte Observer*, October 12, 2016.

¹⁹⁴ Gutiérrez, *supra* note 185, 10-11.

¹⁹⁵ On the last Friday of early voting, voters at the North Carolina State University polling site in Wake County faced excessively long lines – with less than 30 minutes until the site's scheduled 7 pm close, 470 voters were still in line. In some counties, those lines continued on Election Day. Lines in Durham County were at points reported to be more than 2.5 hours, and in at least one location more than 3 hours long due to a State Board of Elections order requiring the shutdown of all electronic poll-books countywide. At one precinct in Harnett County, a formerly covered jurisdiction, voters waited for 1.5 to 2 hours for most of Election Day, with many voters leaving due to the prohibitively long wait. *Ibid.*, 11.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

two and a half to three hours to cast their ballots at the one early voting location in the county. By 2:30 p.m., waits were down to just one to one and a half hours. Dozens of voters were observed by nonpartisan volunteers leaving the line, and some voters left the polling place without even getting out of their cars after hearing how long the wait was.¹⁹⁶

The sizeable 2016 Election Protection program documented a number of concerning interactions with poll workers, mainly consisting of complaints of “rudeness or misunderstanding of election rules.” Some of the reports showed a clear racial bias in how poll workers treated voters of color. For example, at the Agricultural Center in Pitt County, poll workers were observed ignoring one Latina voter, and dismissing another who needed language assistance, with one poll worker even saying, “When I was in school, we didn’t have any Spanish people around.”

The report also details a concerning lack of knowledge among poll workers about basic election rules and a failure to provide voters access to out-of-precinct provisional voting. Several poll workers in Davidson County insisted to a Latino voter that photo ID was required in order to same-day register, only allowing him to register after he insisted they contact the county board of elections. Poll workers in Johnston County also told a Latina woman, who was merely helping voters who needed physical assistance or language assistance, to leave the polling place, even though it is a voter’s right to receive help from anyone except their employer or union agent.¹⁹⁷ Out-of-precinct voters were sent to multiple, incorrect precincts by poll workers rather than being offered the choice of voting provisionally, and discouraged from casting out-of-precinct provisional ballots, even though the Fourth Circuit Court of Appeals had overturned H.B. 589’s ban on out-of-precinct voting. At the Chavis Community Center in Wake County, a popular early voting location in a predominantly African American area of Raleigh, this denial of access to out-of-precinct voting came at the direction of the polling place’s chief judge. Despite efforts by Election Protection volunteers to address the issue with local and state election officials, voters at Chavis waited in line for up to two hours only to be told they were “wasting their time” or that their out-of-precinct ballot would not count.¹⁹⁸

Throughout the early voting period, Black voters and their allies reported intimidating actions by white Trump supporters, primarily in the eastern part of the state. Some of the incidents of intimidation reported by Democracy North Carolina to the U.S. Commission on Civil Rights at its 2018 hearing in Raleigh, North Carolina, are below:

- On October 29, a Democratic Party campaign volunteer at the Pamlico County Board of Elections early voting site reported a repurposed military vehicle with the words “lock her up” and “make America great again” written on the sides of the vehicle. The vehicle was carrying people who were yelling at voters and people with disabilities. She reported that the vehicle was driving around the region, and had just left neighboring Craven County where it was doing the same thing. The volunteer was extremely worried that this form of intimidation would deter Black voters from showing up to vote because “there are lynching trees in the area.”
- On Election Day, a caller reported driving past the Bayboro precinct in Pamlico County (the same physical location as the BOE office, which was the county’s only early voting

¹⁹⁶ Ibid, 10.

¹⁹⁷ Ibid, 18-19.

¹⁹⁸ Ibid, 4-7.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

site) and seeing a black truck with people holding a Trump sign and yelling “Go home, n-----s! Trump will send you back to Africa!” and then driving off. In 2016, 43% percent of the registered voters at this precinct were African American.

- On Election Day morning, two young white men in a pickup truck with two large Trump signs were stationed in the parking lot of the Lynn Road Elementary School precinct in Wake County, blaring country music. Two African American women voters at the precinct contacted us to express feeling intimidated by their presence. In 2016, 29% percent of registered voters assigned to the precinct were voters of color.
- On October 31, a Democratic Party volunteer witnessed three large trucks leaving the Nash Agricultural Center early voting site in Nash County early in the morning before the polling place opened. When partisan volunteers arrived at the site, they found that all the Clinton signs had been slashed with knives and Trump signs had been placed under the Democratic Party’s tent.
- On Election Day around 11 a.m., an African American voter called to report a man who was wearing a jacket with a big Confederate flag on it and holding a dog, standing outside the Griffith Fire Station precinct in Winston-Salem in Forsyth County. In 2016, 33 percent of all registered voters assigned to the precinct were African American, and 43 percent were voters of color.¹⁹⁹

One African American man’s complaint from Forsyth County, as reported by Democracy North Carolina, vividly illustrates the toll that the high level of political and racial tension took on some voters of color and presciently points to the role that militia-affiliated individuals would play in voter intimidation in the next cycle:

D.G., a Forsyth County voter, expressed great concern and fear about the presence of a military convoy vehicle with a sign saying “Pfaftown Militia” on the front that is parked across the street from the Pfaftown Christian Church, an Election Day polling place. (Pfaftown is a predominately white and conservative suburb of Winston-Salem.) D.G. had seen the “Pfaftown Militia” vehicle around town before – he has a PO box at the same post office as the vehicle owner – and finds the vehicle so intimidating that he purposefully avoids making eye contact or interacting with vehicle owner. In general, D.G. described Pfaftown as hostile to African Americans. He was signed up to canvass in Forsyth County with the Democratic Party, but was “petrified” that he would be asked to canvass in Pfaftown, “because I am a Black man.” As the election got closer, pro-Trump and anti-Clinton signs were added to the vehicle, and its owner began parking it in a more prominent place – on a lawn across the street from the Pfaftown Christian Church polling place. D.G. asked that his concerns about the vehicle and the hostility it represented be reported to the Forsyth County Board of Elections, and said that he had taken pains to vote early because he was sure that “there will be people with guns on their hips on Election Day.”²⁰⁰

¹⁹⁹ *A North Carolina Perspective on the Importance of Reinstating Pre-Clearance Hearings Before United States Commission on Civil Rights*, (February 2, 2018) (Written Testimony of Tomás Lopez, Democracy North Carolina). Available at <https://democracync.org/wp-content/uploads/2018/02/TomasLopezUSCCRT testimony-2.2.18.pdf>.

²⁰⁰ *Ibid*, 6

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

In all of these cases, election officials who received the reports from Election Protection volunteers and voters claimed to lack authority over any actions occurring outside of the buffer zone and asserted that their hands were tied since most of the incidents did not rise to the level of criminal acts that could be pursued by law enforcement.

Illegal Voter Registration Challenges in 2016 Election

Just days prior to the start of early voting, Grace Hardison, a 100-year-old African American who was disenfranchised for decades by Jim Crow laws but had been a faithful voter for over three decades, received notice that her registration was being challenged by a white neighbor and heard by the Beaufort County Board of Elections, which had already scheduled a hearing on her eligibility to vote. On October 31, on behalf of Ms. Hardison and other impacted voters in at least three counties in the state, including Moore County, the NC NAACP filed an application for a temporary restraining order and complaint against the NC State Board of Elections and local County Boards of Elections under the National Voter Registration Act and the Voting Rights Act. On November 4, after an emergency hearing, a federal district court judge found for the NC NAACP and personally impacted plaintiffs, including Ms. Hardison, and issued an immediate restraining order to stop the illegal purging of voters in North Carolina and to reinstate more than 4,000 illegally purged voters to the rolls.²⁰¹

“[T]here is little question that the County Boards’ process of allowing third parties to challenge hundreds and, in Cumberland County, thousands of voters within 90 days before the 2016 General Election constitutes the type of “systematic removal prohibited by the [National Voter Registration Act],” U.S. District Judge Loretta C. Biggs wrote, in support of the injunction.²⁰²

The legal efforts took place while the 2016 election continued. Forced to divide its attention among multiple fronts, the NC NAACP found itself battling an illegal effort to prevent eligible voters from casting a ballot in federal court, while continuing to encourage its members and allies to vote despite the discriminatory efforts to silence Black voices and the mounting anger and understandable fears about the increasingly hostile voting experience.

Statewide Violation of Federal National Voter Registration Act Requirements

In 2015, the Lawyers’ Committee for Civil Rights Under Law and other civil rights organizations filed suit alleging that North Carolina was violating Sections 5 and 7 of the NVRA, in not adequately making assistance to register to vote available to people who visit motor vehicle and public assistance agencies. The court entered a preliminary injunction prior to the 2016 election to require the counting of provisional ballots by voters whose rights had likely been denied by the defendants. The case settled in 2018, with substantial improvements made at both DMV and NC social service agencies in how voter registration applications are offered and processed.²⁰³

²⁰¹ *N.C. State Conference of the NAACP v. N.C. State Bd. Of Elections*, No. 1:16-cv-1274, 2016 U.S. Dist. LEXIS 153249 (M.D.N.C. Nov. 4, 2016) (TRO Order); No. 1:16-cv-1274, 2018 U.S. Dist. LEXIS 134228 (M.D.N.C. Aug. 8, 2018) (MSJ Order).

²⁰² Anne Blythe, “Judge: N.C. Counties Must Restore Voters Removed from Rolls,” *Winston-Salem Journal*, Accessed July 9, 2021, https://journalnow.com/news/local/judge-n-c-counties-must-restore-voters-removed-from-rolls/article_8c1b62c1-7b03-5983-a257-0f6c320d96a4.html.

²⁰³ *Action NC, et al. v. Kim Westbrook Strach, et al.* (M.D.N.C., No. 1:15- cv-01063).

Post-Election Recount and Discriminatory Efforts to Undermine Electoral Outcome

While the presidential contest quickly came to a decisive end, with Republican candidate Trump winning the nation and North Carolina, the state's gubernatorial race would drag on for another month. By the end of election night 2016, Roy Cooper, the Democratic challenger, held a narrow lead of 4,000 votes over incumbent Republican Governor Pat McCrory.²⁰⁴ McCrory and his re-election team requested a recount (possible under North Carolina law as long as Cooper's lead was below 10,000 votes), and filed dozens of election protests claiming that about 600 voters in 37 counties had committed voter fraud.²⁰⁵ The protests alleged that ballots had been cast in the name of dead voters, by those still serving felony sentences,²⁰⁶ and by people who had voted in multiple states (so-called double voters).

In allegations targeting Black political participation in particular as illegitimate, the McCrory campaign claimed that there were hundreds of illegal absentee ballots cast in "ballot harvesting" operations in multiple counties voters and did not withstand scrutiny by local election officials.²⁰⁷ With county after county dismissing McCrory's protests, and Cooper's lead growing beyond the state recount threshold, McCrory finally conceded the race on December 5, 2016.²⁰⁸

In its 2017 investigation of the protests, Democracy North Carolina asked, "Why would the McCrory-NCGOP team mount such a giant legal and publicity campaign with so few cases of actual fraud?"²⁰⁹ Most observers believed that McCrory and his team hoped to create the appearance that the 2016 election was so riddled with irregularity and mischief that it would trigger a state law that would allow the GOP-dominated NCGA to determine the election's outcome – and presumably hand the victory to the Republican incumbent.²¹⁰ Like then-incumbent Trump would do following the 2020 election, McCrory and NC Republican Party "engaged in a coordinated legal and publicity crusade to disrupt, and potentially corrupt, the elections process with what amounted to fraudulent charges of voter fraud,"²¹¹ with the false insinuations of wrongdoing falling disproportionately on Black voters and Black-led mobilization efforts.

²⁰⁴ Amber Phillips, "North Carolina Governor Pat McCrory Concedes closely contested governor's race," *Washington Post*, December 5, 2016, <https://www.washingtonpost.com/news/the-fix/wp/2016/12/05/north-carolina-gov-pat-mccrory-r-concedes-closely-contested-governors-race>.

²⁰⁵ Bob Hall & Isela Gutiérrez, "The Deceit of Voter Fraud," Democracy NC, April 2017, <https://democracync.org/wp-content/uploads/2017/05/FraudReport.pdf>.

²⁰⁶ Most of the voters accused of voting while serving a felony sentence were African American. *Ibid.*, 4.

²⁰⁷ Democracy North Carolina interviewed some of the accused voters about the impact these false allegations had on them. Short videos from accused voters, as well as a recording from a meeting between some of the falsely accused voters and then-director of NCSBE Kim Strach, accessible at <https://democracync.org/research/voters-accused-fraud-share-stories-push-change/>.

²⁰⁸ Matthew Burns, "McCrory concedes gubernatorial race to Cooper," *WRAL.com*, December 5, 2016, <https://www.wral.com/mccrory-concedes-gubernatorial-race-to-cooper/16308570>.

²⁰⁹ Bob Hall & Isela Gutiérrez, "The Deceit of Voter Fraud," 4.

²¹⁰ Mark Binker and Laura Leslie, "Could NC Lawmakers choose the next governor?" *WRAL.com*, November 14, 2016, <https://www.wral.com/mccrory-concedes-gubernatorial-race-to-cooper/16308570>.

²¹¹ Bob Hall & Isela Gutiérrez, "The Deceit of Voter Fraud," 1.

NCSBE's Audit of the 2016 Election Leads to Prosecution of Black Voters and Non-Citizens for Simple Mistakes

On April 21, 2017, the NC State Board of Elections released a detailed post-election audit of the 2016 election focused on identifying cases of illegal voting.²¹² In the audit, NCSBE staff identified 508 cases of illegal voting—441 involving people still serving felony sentences, 41 involving non-citizens with legal status, 24 cases of double voting, and 2 incidents of voter impersonation.²¹³ The NCSBE report was careful to note what a minuscule percentage those 508 cases were of the total number of ballots cast in 2016 (0.01 percent of 4,769,640 total ballots), and that in 95 percent of these cases, those involving people serving felony probation or parole sentences and non-citizens, the act of voting seemed to be the result of a simple misunderstanding of the law by the voter.²¹⁴ However, headlines focused on the sensational aspect of the audit, and NC GOP Chair Robin Hayes used the report to vindicate the Republican Party's hyperbolic claims of "voter fraud," saying, "We are dismayed but not surprised by this report confirming unlawful voting during the 2016 elections ... by convicted felons, illegal immigrants, and people voting under other names, including dead voters".²¹⁵ In truth, the non-citizen voters were not "illegal," and those who had illegally committed voter impersonation were both Republican voters casting ballots for Trump in their dead loved one's names.

Despite acknowledging that the criminal courts and probation and parole systems were not adequately informing voters serving felony sentences in the community that they had lost the right to vote and that many of the 441 voters were not aware they were breaking the law, the NCSBE investigated and referred each of the cases to North Carolina district attorneys, claiming that they were obligated to do so because the statute making voting while serving a felony sentence a crime is "strict liability," with no requirement for intent.²¹⁶ The list of those who mistakenly voted while serving a felony sentence was disproportionately African American—68 percent of the 441 voters identified by the NCSBE were Black. In comparison, African Americans made up 22 percent of those registered to vote and about 46 percent of those serving felony probation or parole sentences.²¹⁷ By referring these cases, even with their rhetorical caveats, the NCSBE left these majority Black voters' fate to the whim of local prosecutors. The referrals gave county district attorneys eager to score political points a chance to charge these already justice-involved

²¹² "Post-Election Audit Report," North Carolina State Board of Elections, April 21, 2017, https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf.

²¹³ *Ibid*, 2.

²¹⁴ *Ibid*. See p. 3-4 for details on the 441 cases of people serving a felony sentence voting, including: "Some suspected felons provided information showing they were not active felons (they had completed their sentences, been convicted of a misdemeanor or received a deferred prosecution, for example), and were eligible to vote. Others told investigators that they did not know they had lost their voting rights upon conviction." See p. 4-5 for details on the 41 non-citizens, including: "A number of non-citizens said they were not aware that they were prohibited from voting."

²¹⁵ Colin Campbell, "508 ineligible voters cast ballots in 2016, according to NC elections agency report," *News & Observer*, April 22, 2017, <https://www.newsobserver.com/news/politics-government/state-politics/article145971264.html>; Jonathan Drew, "Report: 500 ineligible voters cast ballots in North Carolina," *AP News*, April 21, 2017, <https://apnews.com/article/0a1abca8f9ee487ba9fae828684620ca>.

²¹⁶ "Post-Election Audit Report," 3.

²¹⁷ Sam Levine, "A black woman faces prison because of a Jim Crow-era plan to 'protect white voters'," *The Guardian*, December 16, 2019, <https://www.theguardian.com/us-news/2019/dec/16/north-carolina-felony-vote-law-black-woman>.

voters with yet another felony, but with no requirement to show the person actually intended to commit the crime, and no statute of limitations for the charge.

While many county prosecutors declined to bring charges against those who unknowingly cast ineligible ballots, others forged ahead.²¹⁸ Patrick Nadolski, the Republican district attorney in Alamance County, prosecuted twelve Alamance County residents who had mistakenly voted in 2016 while on felony probation; nine of the twelve were Black, although Alamance County is two-thirds white. If convicted, the members of “Alamance 12,” as they came to be known, would face up to two years in prison.²¹⁹ Barrett Brown, president of the Alamance County NAACP branch, was outraged by the charges, saying, “It seems to me a political move to go after people who thought they could vote. ... I understand that it is illegal for felons to vote, but it is not like these people presented fraudulent information.” He called the incidents “more clerical than criminal,” saying that “the strictness of the law is akin to a Jim Crow law.”²²⁰ Brown was right about the law being akin to Jim Crow — both the felony disenfranchisement law and the strict liability law making it a felony for a person to vote while serving a felony sentence were adopted during Reconstruction as part of a campaign by the openly white supremacist Democratic Party to prevent liberated African Americans from voting.²²¹

Ultimately, five of the Alamance 12 had their felony charges dismissed in exchange for an Alford plea to a misdemeanor charge.²²² At least one of the defendants told the *New York Times* he intended to fight the charges because “he could not afford the fees that come with a probation sentence and did not want to stay under the scrutiny of the legal system.”²²³ Afterward many of the defendants vowed that they would never vote again. One such defendant was Ebonie Oliver, a 24-year-old packaging worker who lived in Burlington, North Carolina who told the *Huffington Post*, “I’m not trying to even go back down this course again.”²²⁴ Keith Sellars, who was arrested at a traffic stop in front of his crying 7- and 10-year-old daughters, had been a long-time voter who had registered and given rides to the polls to others on behalf of the NAACP and other groups before getting in trouble with the law, leading to his felony conviction.²²⁵ He told journalist Sam Levine, “I’m very discouraged to vote. Right now, it’s going to really take a mighty wind from heaven to make me vote again.”²²⁶ Taranta Holman, a 28-year-old who voted for the first

²¹⁸ “In 2017, the North Carolina State Board of Elections and Ethics Enforcement opened 562 investigations into cases where felons were suspected of voting, and just 227 were referred to local district attorneys, who have the discretion to decide whether to prosecute. Just 17 of those referrals resulted in indictments.” See Sam Levine, “They Didn’t Know They Were Ineligible to Vote. A Prosecutor Went After Them Anyway.,” *Huffington Post Politics*, August 13, 2018, huffpost.com/entry/alamance-county-felon-voting_n_5b71f4d8e4b0530743cca87d;

²¹⁹ Ibid.

²²⁰ Kate Croxton, “Felons voting stirs debate in Alamance County” *Times-News*, December 23, 2017, <https://www.thetimesnews.com/news/20171223/felons-voting-stirs-debate-in-alamance-county>.

²²¹ Levine, “A black woman faces prison because of a Jim Crow-era plan to ‘protect white voters.’”

²²² Lynn Bonner, “Felony charges of illegal voting dismissed for five NC residents,” *News & Observer*, August 14, 2018, <https://www.newsobserver.com/news/politics-government/article216584335.html>.

²²³ Jack Healy, “Arrested, Jailed and Charged with a Felony. For Voting.,” *New York Times*, August 2, 2018, <https://www.nytimes.com/2018/08/02/us/arrested-voting-north-carolina.html>.

²²⁴ Levine, “They Didn’t Know They Were Ineligible to Vote. A Prosecutor Went After Them Anyway.”

²²⁵ Bonner, “Felony charges of illegal voting dismissed for five NC residents.”

²²⁶ Levine, “They Didn’t Know They Were Ineligible to Vote. A Prosecutor Went After Them Anyway.”

time in 2016 at the urging of his mother, said, “Even when I get this cleared up, I still won’t vote. That’s too much of a risk.”²²⁷

But the Alamance 12 would not be the last North Carolinians to face felony charges for a mistake. In late July 2019, over two and a half years after casting her ineligible ballot in the 2016 election, Lanisha Bratcher and three other African American Hoke County residents were arrested for voting while serving a felony sentence in 2016.²²⁸ Ms. Bratcher, who was on felony probation for a 2013 charge when she voted, now faces up to 38 months in prison for her mistake. No one had told her that she could not vote, so when her church had an event to take members to the polls in 2016, she and her mother went to vote early.²²⁹ Ms. Bratcher, now a mother of three, had a hard past in Hoke County, but she had begun making changes after her 2013 conviction. She and her husband moved to Wake County, where she had gotten a new job and was hoping for a promotion, but her arrest in 2019 halted her efforts at a fresh start. Ms. ‘Bratcher’s’ initial charge for voting while serving a felony sentence carried a possible sentence of 19 months in prison, but in 2020, Hoke County District Attorney Kristy Newton added a second charge under a different part of the same law, for knowingly swearing to a false statement in an election, doubling the potential penalty.²³⁰ John Carella, Ms. Bratcher’s attorney, who challenged her original charge by arguing that the law she was being charged under was unconstitutionally racist, believes she is being punished for fighting back.²³¹ “In response to being made aware of the explicitly white supremacist history of the law and the unconstitutional way in which it was applied, the DA decided... to essentially double down with more felonies ...The prosecutions serve the same purpose as the original law – to intimidate black voters in North Carolina,” Carella told the *Guardian* in 2020.²³²

The Revival of Photo Voter ID: North Carolina’s Constitutional Amendment and S.B.824 During the 2017- 2018 Legislative Session

Mere days after the Supreme Court issued its denial of the General Assembly’s petition for certiorari in *N.C. NAACP v. McCrory*, the Republican caucus – comprised largely of the same lawmakers responsible for passing the Monster Voter Suppression Law with racially discriminatory intent – announced that they would begin work on passing a new photo voter ID bill.²³³ The Republican Chair of the House Elections Committee quickly revealed that, this time, leadership would seek to enact the photo voter ID requirement as a state constitutional amendment, reasoning that enshrining photo voter ID in the state constitution, rather than merely in statute, would

²²⁷ Healy, “Arrested, Jailed and Charged with a Felony. For Voting.”

²²⁸ “Four Arrested for Voter Fraud in Hoke County” *Spectrum News*, July 26, 2019, <https://spectrumlocalnews.com/nc/charlotte/news/2019/07/26/four-arrested-for-voter-fraud-in-hoke-county>; Gilbert Baez, “Convicted felons charged with illegally voting in Hoke” *WRAL.COM*, August 1, 2019, <https://www.wral.com/convicted-felons-charged-with-illegally-voting-in-hoke/18545541/>.

²²⁹ Levine, “A black woman faces prison because of a Jim Crow-era plan to ‘protect white voters.’”

²³⁰ Sam Levine, “A black woman faces prison for a voting mistake. Prosecutors just doubled the charges” *The Guardian*, July 21, 2020, <https://www.theguardian.com/us-news/2020/jul/21/voting-arrest-racist-law-north-carolina-lanisha-brachter>.

²³¹ *Ibid.*

²³² *Ibid.*

²³³ Anne Blythe, “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, <http://www.newsobserver.com/news/politics-government/politics-columnsblogs/under-the-dome/article150554992.html>.

serve to “mute future court challenges.”²³⁴ 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 statewide, and eliminated Saturday early voting.²³⁵

The GOP leadership caucus viewed their agenda as urgent to enact during the 2017-2018 legislative session, as the U.S. Supreme Court had issued a final ruling in *Covington v. North Carolina* in the summer of 2017, summarily affirming in a *per curiam* decision, the lower court’s finding that the 2011 maps were infected by a sweeping unconstitutional racial gerrymander.²³⁶ The General Assembly was able to engage in various delay tactics to hold up the drawing of court-ordered remedial maps, and ultimately succeeded in making it impossible for special elections to be held before the regularly-scheduled November 2018 elections.²³⁷ But this still left the General Assembly with only one more regular legislative session left before a new legislature would be elected in 2018 without the racially discriminatory maps that were the illegal source of the GOP legislative supermajority.

Knowing the power of their unconstitutional supermajority was on the precipice of disappearing, in the months before the November 2018 election, the General Assembly took the step, unprecedented in this state, of using that supermajority to enact a slate of *six* proposed constitutional amendments to be placed on the 2018 ballot—including one to require photo voter ID. Several of these vague and misleadingly worded proposed amendments, including the photo voter ID amendment, were passed by statewide vote in the 2018 election. The voter ID amendment read simply “*Constitutional amendment to require voters to provide photo identification before voting in person.*” Duke University Professor Mac McCorcle said at the time, “The voter ID amendment is a classic case of an empty vessel that will be filled by legislation.”²³⁸ The 2018 election also saw the end to the extremist supermajority in the General Assembly, who could not hold on to their seats without the aid of their illegally racially gerrymandered 2011 legislative maps.

Rather than waiting for the new legislature to be seated, however, GOP leadership convened again in the few short weeks after the election, intent on completing a long-held purpose to impose a discriminatory photo voter ID barrier to the ballot box. During a December lame-duck special session, which was met by the strong protest of the NC NAACP and its partners, the GOP leadership rushed through S.B. 824, legislation to implement the photo voter ID constitutional amendment. Ultimately, the final act of the unconstitutional GOP supermajority’s six-year reign was to use its purported power to override the gubernatorial veto of S.B. 824, enacting the implementation of photo voter ID into law.²³⁹ The General Assembly that enacted the new photo

²³⁴ Tiberii, *supra* at note 39.

²³⁵ See Appendix D.

²³⁶ *North Carolina v. Covington*, 138 S.Ct. 974 (2018).

²³⁷ *Covington* 270 F.Supp.3d at 881, 884. (Noting with disapproval that Legislative Defendants had “acted in ways to that indicate they are more interested in delay than they are in correcting this serious constitutional violation” and reluctantly declining to order special elections due to concerns that the “compressed and overlapping schedule such an election would entail is likely to confuse voters, raise barriers to participation, and depress turnout”).

²³⁸ Joel Luther, “What Would the Six Constitutional Amendments on the NC Ballot Do?” *Duke Today*, Oct. 25, 2018, <https://today.duke.edu/2018/10/what-would-six-constitutional-amendments-nc-ballot-do>.

²³⁹ Lynn Bonner, “Voter ID Becomes Law in North Carolina as House Overrides Veto,” *News & Observer*, Dec. 19, 2018, <https://www.newsobserver.com/news/politics-government/article223310620.html>.

voter ID legislation—S.B. 824—in the lame-duck session in the winter 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 NC NAACP, represented by Forward Justice and Southern Environmental Law Center, challenged the photo voter ID constitutional amendment in state court. On February 22, 2019, the Wake County Superior Court ruled that “the General Assembly has the authority to submit proposed amendments to the constitution only insofar as it has been bestowed with popular sovereignty.” The court found 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,” and therefore “the constitutional amendments placed on the ballot in November 6, 2018, were approved by a General Assembly that did not represent the people of North Carolina.”²⁴⁰ Accordingly, the court ordered the photo voter ID amendment (along with the also-challenged “tax cap” amendment, N.C. Sess. L. 2018-128) void *ab initio*. The case is now on appeal, and ultimate resolution will come following review by the North Carolina Supreme Court, in a case set for oral argument this August 2021.

The NC NAACP’s separate challenge, filed on December 20, 2018 against S.B. 824 as unconstitutionally racially discriminatory both in its intent and in its results, also remains pending before a federal district court.²⁴¹ Within days of the enactment of the new photo voter ID legislation, and on the heels of a lawsuit challenging the new constitutional amendment requiring a form of photo voter ID in the state,²⁴² the North Carolina State Conference of the NAACP, as well as local NAACP chapters, filed a lawsuit challenging the validity of S.B. 824 in federal court (*NAACP v. Cooper*, No. 1:18-cv-01083, M.D.N.C.), while a group of African American and biracial plaintiffs brought a parallel suit in state court (*Holmes v. Moore*).²⁴³

The federal case alleged that the law violates Section 2 of the Voting Rights Act, as well as the Fourteenth and Fifteenth Amendments because the passage of this law was motivated by discriminatory intent as part of an effort to dilute the voting strength of the African American and Latinx populations in the state.²⁴⁴ Plaintiffs argue in *NAACP v. Cooper* that the newly enacted photo ID requirement suffers from the same flaws as the prior version (in H.B. 589) and violates Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments by discriminating against Black and Latinx voters. Both were the product of rushed legislative processes, and were devoid of meaningful input from protected classes and fulsome consideration of the impact of voting changes on voters of color. (During the passage of S.B. 824, members of the public were often shut out entirely from speaking at committee hearings or limited to only one minute of

²⁴⁰ *NC NAACP v. Moore*, 18 CVS 9806, Order (Feb. 22, 2019).

²⁴¹ *NC NAACP v. Cooper*, 18-cv-01034 (M.D.N.C. filed Dec. 20, 2018).

²⁴² On August 6, 2018, the NC State Conference of the NAACP filed a lawsuit against the leadership of the North Carolina General Assembly, challenging several constitutional amendments they were seeking to place on the ballot, including a photo I.D. requirement to vote. *North Carolina NAACP v. Moore*, No. 18-cvs-9806 (Wake Ct. Super. Ct.).

²⁴³ *Holmes v. Moore*, No. COA19-762 (N.C. Ct. of Appeals Feb. 18, 2020). Accessible at <https://law.justia.com/cases/north-carolina/court-of-appeals/2020/19-762.html>.

²⁴⁴ *NC NAACP v. Cooper*, 18-cv-01034 (M.D.N.C. filed Dec. 20, 2018).

commentary.)²⁴⁵ Both H.B. 589 and S.B. 824 were based on a pre-textual rationale of “preventing voter fraud,” despite the fact that the Legislature had already been informed that the state’s own report on this topic revealed fewer than *three instances* of possible in-person voter fraud in the last 20 years.²⁴⁶ And both carve out classes of identification or otherwise impose onerous rules that will have a disproportionate impact on citizens’ ability to participate in the political process based on race. Instead of greatly expanding the types of IDs accepted under S.B. 824, the Legislature made only minor changes, as compared to H.B. 589, and continued to place the heavy burden on citizens to obtain an ID card from the State Board of Elections or the DMV, and on institutions to get their university or employee ID cards approved for voting.

On December 31, 2019, the U.S. District Court for the Middle District of North Carolina issued a 60-page opinion, announcing that it would block North Carolina’s voter ID law.²⁴⁷ The court found that the passage of this law was likely motivated by racially discriminatory intent in violation of the Voting Rights Act and the Constitution. The court’s decision to grant the NC NAACP’s motion for a preliminary injunction meant that voters were not subjected to a new, discriminatory photo ID requirement to vote in the March 2020 primary and the November 2020 election. The Fourth Circuit later overturned the preliminary injunction decision of the Middle District, but the law remains enjoined due to an injunction entered in the *Holmes* case. This case awaits full trial on the merits in federal court, scheduled for January 2022.

The *Holmes* litigation challenges S.B. 824 under the North Carolina Constitution and its plaintiffs have litigated this case in the North Carolina Superior Court and the North Carolina Court of Appeals. In February of 2020, the Court of Appeals found that the *Holmes* plaintiffs are likely to succeed on discriminatory intent claims, and, without injunctive relief, the court recognized there would be irreparable harm to North Carolinians. “Voter ID requirements are likely to disproportionately impact African American voters to their detriment,” the court found, preliminarily enjoining the voter ID requirement.²⁴⁸ *Holmes* was tried on the merits in June 2021 in front of a three-judge panel in Wake County Superior Court and currently is under consideration by the court.

2017 Case Remedied At-Large County Commissioners’ Districts that Diluted African American Voting Strength

In 2017, a group of plaintiffs, represented by the Lawyers’ Committee, challenged the at-large scheme of electing members to the Jones County, the North Carolina Board of Commissioners under Section 2 of the Voting Rights Act. The at-large scheme diluted the voting strength of African American voters, and no African American candidate had been elected to the Jones County Board of Commissioners since 1998. The case was settled with an agreement that the Board of Commissioners would implement a seven single-member district electoral plan, including two single-member districts in which African American voters constitute a majority of the voting-age population.²⁴⁹

²⁴⁵ Amended Memorandum of Law in Support of Motion for Preliminary Injunction, *N.C. NAACP v. Cooper*, No. 1:18-cv-01034 (M.D.N.C.) (Oct. 9, 2019), at 7.

²⁴⁶ *Ibid*, 18.

²⁴⁷ *North Carolina NAACP v. Cooper*, 430 F. Supp. 3d 15 (M.D.N.C. 2019).

²⁴⁸ *Holmes v. Moore*, 270 N.C. App. 7, 35 (2020).

²⁴⁹ *Hall v. Jones Cty. Bd. of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Aug. 23, 2017).

Early Voting Reduction and Polling Location Reductions

In 2018, the Republican majority in the 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). County election officials from both parties objected strongly to the law.²⁵⁰ Prior to *Shelby County*, this reduction would have required pre-clearance review by the Department of Justice and likely would have been found to be retrogressive. In a post-election assessment of the effects of S325 on the 2018 contests, Democracy North Carolina found that the law had the following effects:

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.²⁵¹

The bill also eliminated voting on the last Saturday before the election, ending the early voting period on Friday. In response to an outcry that this provision unfairly discriminated against minorities who disproportionately utilized weekend voting, the General Assembly restored Saturday voting temporarily for 2018.²⁵² However, the law eliminating Saturday voting remained on the books until the following year.

²⁵⁰ Blake Paterson, "Bipartisan Furor as North Carolina Election Law Shrinks Early Voting Locations by Almost 20 Percent," *ProPublica*, September 24, 2018, <https://www.propublica.org/article/bipartisan-furor-as-north-carolina-election-law-shrinks-early-voting-locations-by-almost-20-percent>.

²⁵¹ Sunny Frothingham, "Greater Costs, Fewer Options: The Impact of the Early Voting Uniform Hours Requirement in the 2018 Election" Democracy NC, accessed August 13, 2021, <https://democracy-cync.org/research/greater-costs-fewer-options-the-impact-of-the-early-voting-uniform-hours-requirement-in-the-2018-election/>.

²⁵² Paterson, "Bipartisan Furor as North Carolina Election Law Shrinks Early Voting Locations by Almost 20 Percent."

V. Protecting and Advancing Voting Rights During the Unprecedented 2020 Election

The deadly Coronavirus Disease 2019 (COVID-19) pandemic disrupted, upended, and devastated our society. It has also tragically exposed and deepened systemic social and racial inequalities in our country and worldwide. By the end of September 2020, the disease had claimed the lives of over 200,000 people in the United States alone.²⁵³ While the pandemic's irreparable losses struck families and communities of all backgrounds, Black, Indigenous, and Latinx communities faced increased vulnerability and disproportionate harm —experiencing the first and worst outcomes economically and by health outcomes.²⁵⁴

Over the course of the year, state and local governments grappled with adopting public health mandates piecemeal, including stay-at-home and quarantine orders, business and building closures and hygiene mandates to prevent spread of the virus. On March 10, 2020, Governor Cooper declared North Carolina in a state of emergency and a federal emergency was declared on March 13.²⁵⁵ In this unprecedented context, the practical and political challenges of voting in a pandemic suddenly introduced novel risks and obstacles for voters across the country and, in most states, required rapid, unanticipated legal and administrative changes. Those changes under consideration included determining how ballots would actually be cast and counted inside and outside of the traditional polling place.²⁵⁶ In this rapidly shifting climate, new challenges in the voting process were multiplied by pressures already weighing down on voters, who were trying to protect their lives, families, communities, and livelihoods.

For voting rights advocates and communities working to prepare for foreseeable threats to the free and fair right to vote in 2020, the threats of the pandemic now had to be addressed urgently alongside pre-existing work to mitigate voter suppression, both overt and subtle. For example, as states nationwide began to consider eliminating or reducing in-person voting options in response to COVID-19, advocates in North Carolina understood that those changes would disproportionately impact many African American voters, voters with disabilities, American Indian and Alaska Native voters, and others who rely on same-day voter registration and historically relied on in-person voting.

²⁵³ Bill Chappell, "Enormous and Tragic: U.S. Has Lost More Than 200,000 People To COVID-19," *NPR.org*, September 22, 2020, <https://www.npr.org/sections/coronavirus-live-updates/2020/09/22/911934489/enormous-and-tragic-u-s-has-lost-more-than-200-000-people-to-covid-19>.

²⁵⁴ See COVID Racial Tracker <https://covidtracking.com/race>. One study published in July 2020, assessing differential impacts of COVID-19 on Black communities concludes that while "nearly 20% of US counties are disproportionately Black. They accounted for 52% of COVID-19 diagnoses and 58% of COVID-19 deaths nationally. Gregorio A. Millett, Austin T. Jones, David Benkeser, Stefan Baral, Laina Mercer, Chris Beyrer, Brian Honermann, Elise Lankiewicz, Leandro Mena, Jeffrey S. Crowley, Jennifer Sherwood, Patrick S. Sullivan, Assessing differential impacts of COVID-19 on black communities, *Annals of Epidemiology*, Volume 47,2020, Pages 37-44, ISSN 1047-2797, <https://doi.org/10.1016/j.annep>

²⁵⁵ N.C. Exec. Order No. 170 (Oct. 21, 2020), <https://governor.nc.gov/media/2155/open>.

²⁵⁶ Michael Wines, "Covid-19 Changed How We Vote. It Could Also Change Who Votes.," *New York Times*, June 19, 2020, <https://www.nytimes.com/2020/06/14/us/voter-registration-coronavirus-2020-election.html>.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

2020 also marked the first election since the expiration of the 1982 consent decree prohibiting certain actions and voter intimidation by the Republican National Committee.²⁵⁷ Mounting evidence nationwide signaled a serious threat of white supremacist violence and extremism potentially intersecting with voter-suppressive tactics, including in the form of third-party efforts seeking to interfere in the 2020 election through “ballot security” style actions.²⁵⁸ On October 6, the Department of Homeland Security released its inaugural threat assessment, and identified that white supremacists, “remain the most persistent and lethal threat in the homeland.”²⁵⁹ A proliferation of possible digital voter suppression efforts and strategic disinformation, already of great concern for advocates, could be particularly pernicious in the confusing context of changing election rules and the new societal isolation created by the pandemic.²⁶⁰ Finally, the election took place during a national reckoning over systemic racial injustices, and, in the wake of the murders of George Floyd, Breonna Taylor, Ahmaud Arbery, and massive protests in solidarity with the Black Lives Matter movement worldwide calling for the end racism in policing and the transformation of an unjust criminal legal system in the United States.²⁶¹ Both National and state political campaigns were characterized by heightened racial appeals and tensions that presented a high risk of stoking or inciting discriminatory violence.²⁶²

In North Carolina, advocates worked to ensure that voters did not feel that they had to place their health at-risk to be able to exercise the fundamental right to vote, and then, to ensure that all eligible voters who cast a ballot would have that ballot count. These efforts included litigation seeking to ensure equitable access to voting by mail, and other safeguards against the

²⁵⁷ Nicole Hemmer, “Trump’s call for freelance poll-watchers summons a dark history” *CNN*, October 2, 2020, <https://www.cnn.com/2020/10/02/opinions/poll-watching-voter-intimidation-1981-consent-decree-hemmer/index.html>.

²⁵⁸ See, e.g., “Responding to Violence and Security Concerns Relating to the 2020 Elections Information for mayors and other city officials,” The United States Conference of Mayors, Accessed Aug. 14, 2021, <https://www.usmayors.org/issues/election-security-and-safety/>. (“There is significant concern that we may see voter intimidation efforts and protests, some possibly violent, in the days leading up to November 3, on that day, and on the days following.”); Jane C. Timm, “Trump asked supporters to watch the polls. How states are countering fears of intimidation.” *NBC News*, October 30, 2020, <https://www.nbcnews.com/politics/2020-election/trump-asked-supporters-watch-polls-how-states-are-countering-fears-n1244569>; Matt Dixon, “Feds point to Iran, Russia for emails urging Floridians to vote Trump” *Politico*, October 21, 2020, <https://www.nbcnews.com/politics/2020-election/trump-asked-supporters-watch-polls-how-states-are-countering-fears-n1244569>.

²⁵⁹ Paul D. Shinkman, “DHS: White Supremacists ‘The Most Persistent and Lethal Threat’ Within the U.S.” *US News*, October 6, 2020, <https://www.usnews.com/news/national-news/articles/2020-10-06/dhs-white-supremacists-the-most-persistent-and-lethal-threat-within-the-us>.

²⁶⁰ “Preparing Your State for an Election Under Pandemic Conditions,” The Brennan Center, March 24, 2020, <https://www.brennancenter.org/our-work/research-reports/preparing-your-state-election-under-pandemic-conditions>.

²⁶¹ John Eligon & Audra D. S. Burch, “After a Summer of Racial Reckoning, Race Is on the Ballot” *New York Times*, October 30, 2020, <https://www.nytimes.com/2020/10/30/us/racial-justice-elections.html>; Gabrielle Wanneh, “POLITICO-Harvard poll: Pandemic fallout, racial reckoning are deeply personal to 2020 voters” *Politico*, September 23, 2020, <https://www.politico.com/news/2020/09/23/poll-pandemic-race-election-420706>.

²⁶² Frida Ghitis, “Trump encourages voter intimidation tactics in bid to hold on to power” *CNN*, October 2, 2020, <https://www.cnn.com/2020/10/02/opinions/trump-proud-boys-voter-intimidation-ghitis/index.html>; Danny Hakim, Stephanie Saul, Nick Corasaniti & Michael Wines, “Trump Renews Fears of Voter Intimidation as G.O.P. Poll Watchers Mobilize” *New York Times*, September 30, 2020, <https://www.nytimes.com/2020/09/30/us/trump-election-poll-watchers.html>.

pandemic. At the same time, community-led groups and organizations across the state stepped in to provide heightened protections against threats of discrimination and voter intimidation. Finally, in a continuation of a legal challenge filed pre-Pandemic, which came to fruition on the eve of the election in North Carolina, voters and organizations coming together under the leadership of the North Carolina Second Chance Alliance succeeded in a groundbreaking legal challenge to the state’s racially discriminatory felony disenfranchisement laws.

Pandemic Changes to Early Voting and Absentee Voting

The pandemic forced North Carolina’s election officials to adapt in wholly unexpected ways, some of which functioned to offset discriminatory efforts by legislative leadership to limit Black and Latinx voter access. For example, the uniform early voting hours requirement passed by the NCGA in 2018, which reduced access to early voting sites and weekend hours in a way that negatively impacted Black voters’ access (see Section IV), would likely have significantly reduced the number of early voting sites available in North Carolina in 2020, as it did in the 2018 midterm. However, the need for physical distancing at polling places, in order to prevent the election from becoming a super-spreader event and to protect the safety of voters and election workers, led the NC State Board of Elections (NCBSE)²⁶³ at the urging of the public, to require counties to open one early voting site for every 20,000 registered voters.²⁶⁴ That adaptation gave North Carolina voters a temporary respite in a critical election from a law designed to diminish Black voters access to early voting, but the law remains in place for the upcoming 2022 midterm election.

As it became clear that many more voters would choose to vote absentee to mitigate the COVID risk, the state’s absentee ballot process became the subject of multiple lawsuits in North Carolina. One key issue was whether and how the state would offer a “cure process” to give voters who had made administrative mistakes in completing their absentee ballot the chance to correct them. Also at issue in several pending lawsuits were the receipt deadline for absentee ballots and whether the absentee witness requirement should be eliminated altogether.²⁶⁵

²⁶³ Shortly after Democratic Governor Roy Cooper took office, the NCGA leadership launched a two-year effort to seize control of the NC State Board of Elections in an attempt to prevent Cooper’s Democratic appointees from holding majorities on the state and county boards of elections. Cooper ultimately prevailed, but not until January 31, 2019. See Anne Blythe, “In power struggle with GOP lawmakers, Cooper wins election board revamp lawsuit,” *News & Observer*, January 29, 2018, <https://www.newsobserver.com/news/politics-government/state-politics/article196932269.html>; “Governor Cooper Appoints New State Board” NC State Board of Elections, January 31, 2019,

<https://www.ncsbe.gov/news/press-releases/2019/01/31/governor-cooper-appoints-new-state-board>.

²⁶⁴ “Emergency Order Administering the November 3, 2020, General Election During the Global COVID-19 Pandemic” NC State Board of Elections, July 17, 2020, https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Executive%20Director%20Orders/Emergency%20Order_2020-07-17.pdf, 6.

²⁶⁵ See, e.g., *Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 U.S. Dist. LEXIS 213077 (M.D.N.C. June 15, 2020); *Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 U.S. Dist. LEXIS 214153 (M.D.N.C. June 24, 2020), *mot. denied*; *Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 U.S. Dist. LEXIS 213075 (M.D.N.C. June 30, 2020), *mot. denied, mot. granted*; *Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 U.S. Dist. LEXIS 213082 (M.D.N.C. July 8, 2020), *mot. granted*; *Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 U.S. Dist. LEXIS 213073

Following the issuance of a preliminary injunction in the League of Women Voters and Democracy N.C. federal lawsuit mandating a notice and cure process, on August 11, the NC NAACP, Voting Rights Lab, Forward Justice, Advance Carolina, and Common Cause North Carolina came together “to urge the North Carolina State Board of Elections to issue clear and uniform cure process guidance in advance of the November 2020 election that is voter friendly and will not result in discrimination and disenfranchisement” and provide touchstones to guard against racial inequity.²⁶⁶

In mid-September, early reports in North Carolina showed that Black voters’ mail-in ballots were being rejected at a greater rate than white voters, in statistics that NCSBE was updating daily. As of September 17, that data showed that Black voters’ ballots were being “rejected at more than four times the rate of white voters” for reasons such as incomplete witness information or mistakes in the voter signature. At the time “Black voters [had] mailed in 13,747 ballots, with 642 rejected, or 4.7 percent. White voters [had] cast 60,954 mail-in ballots, with 681 – or 1.1 percent – rejected.” An analysis by scholar Michael Bitzer, showed that 55 percent of these voters whose ballots were rejected, used in person voting in 2016.²⁶⁷ Data available from 2018, showed that mail-in ballots cast by Black voters were more than twice as likely to have been rejected than those submitted by white voters.²⁶⁸

(M.D.N.C. July 8, 2020), *mot. dismissed as moot; Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 U.S. Dist. LEXIS 131980 (M.D.N.C. July 27, 2020), *mot. granted in part; Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158 (M.D.N.C. 2020) *injunct. granted in part, injunct. denied in part, injunct. denied as moot; League of Women Voters of N.C. v. Republican Nat’l Comm.*, No. 20-1728, 2020 U.S. App. LEXIS 27265 (4th Cir. Aug. 26, 2020), *stay granted; related proceeding at Moore v. Circosta*, No. 5:20-CV-507-D, 2020 U.S. Dist. LEXIS 213512 (E.D.N.C. Sep. 30, 2020); *later proceeding at Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 U.S. Dist. LEXIS 214345 (M.D.N.C. Sep. 30, 2020); *Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 U.S. Dist. LEXIS 213083 (M.D.N.C. Oct. 2, 2020), *injunct. denied, mot. granted in part, mot. denied in part w/o prejudice; later proceeding at Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 U.S. Dist. LEXIS 213670 (M.D.N.C. Oct. 5, 2020); *Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 U.S. Dist. LEXIS 190190 (M.D.N.C. Oct. 14, 2020), *mot. granted in part, mot. denied in part w/o prejudice, injunct. granted, injunct. denied; Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 U.S. Dist. LEXIS 245586 (M.D.N.C. Oct. 27, 2020), *mot. granted; later proceeding at Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 U.S. Dist. LEXIS 245587 (M.D.N.C. Oct. 29, 2020); *Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 U.S. Dist. LEXIS 202595 (M.D.N.C. Oct. 30, 2020), *mot. denied*.

²⁶⁶ “Letter to Chairman Damon Circosta, Members of the State Board, and Karen Brinson Bell, Executive Director,” *Voting Rights Lab, Forward Justice, N.C. NAACP, Advance N.C., Common Cause N.C.*, Aug. 11, 2020. Available at <https://forwardjustice.org/wp-content/uploads/2020/08/Letter-to-SBOE-NC-Cure-Process-Recommendations-8-11-2020.pdf>.

²⁶⁷ Kaleigh Rogers, “North Carolina Is Already Rejecting Black Voters’ Mail-In Ballots More Often Than White Voters’” *FiveThirtyEight*, September 17, 2020, <https://fivethirtyeight.com/features/north-carolina-is-already-rejecting-black-voters-mail-in-ballots-more-often-than-white-voters/>.

²⁶⁸ Sophie Chou & Tyler Dukes, “In North Carolina, Black Voters’ Mail-In Ballots Much More Likely to Be Rejected Than Those From Any Other Race” *ProPublica*, September 23, 2020, <https://www.propublica.org/article/in-north-carolina-black-voters-mail-in-ballots-much-more-likely-to-be-rejected-than-those-from-any-other-race>.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

In a series of numbered memos in September and October, the NCSBE sought to address all the outstanding lawsuits related to absentee voting.²⁶⁹ The September 22, 2020 versions of numbered memos 2020-19 and 2020-22 established a cure process for county boards of elections, functionally eliminating the witness requirement by defining the lack of a witness signature as a curable deficiency, and extended the absentee ballot deadline to November 12, 2020, six days later than provided in statute.²⁷⁰

These memos were challenged in a flurry of filings in state and federal courts from local legislative leaders as well as the Republican Party. Specifically objecting to the treatment of the witness signature requirement, while early voting was continuing, a federal district judge enjoined the NCSBE from implementing the new cure process as set forth in Numbered Memo 2020-19.²⁷¹ Meanwhile, the Fourth Circuit in the *Wise v. Circosta* litigation upheld the State Board's six-day ballot extension deadline. The issue was ultimately resolved on October 14, when the federal district court approved a revised cure process that required each absentee ballot be witnessed by one individual and permitted all ballots received by November 12 at 5 p.m., and the NC State Board of Elections issued a second numbered memo 2020-19 on October 19, conforming with the court's decision.

Voter Intimidation Intensifies in 2020

While North Carolina voting and civil rights groups had been working in close coalition around election protection since 2014, in 2020 that collaboration was broadened and fortified, with new groups and thousands of volunteers stepping up to protect voters statewide, including in response to increasingly alarming political rhetoric and rising racial tension.²⁷² Running a scaled-up version of its standard program, the Election Protection program anchored by Democracy NC recruited, trained, and stationed 2,043 nonpartisan poll monitors at polling places across the state. Voter protection volunteers were on the ground observing conditions and speaking to voters at least the first day of early voting, the last day of early voting, and on Election Day. Working in close partnership with Southern Coalition for Social Justice, Self-Help and other statewide partners, Democracy NC also recruited and trained volunteers to answer its nonpartisan, local 888-OUR-VOTE hotline, as well as answer North Carolina calls to the national Election

²⁶⁹ N.C. State Board of Elections, *Num. Memo 2020-19* (Aug. 21, 2020 (revised Sept. 22, 2020)), <https://www.documentcloud.org/documents/7215563-Numbered-Memo-2020-19-Absentee-Deficiencies.html>.

²⁷⁰ *Ibid.*

²⁷¹ Elise Viebeck, "A legal fight over how to fix ballot errors in North Carolina has left thousands of voters in limbo. Nearly half are people of color," *Washington Post*, October 12, 2020, https://www.washingtonpost.com/politics/north-carolina-ballot-errors/2020/10/12/cd7bd50a-0981-11eb-a166-dc429b380d10_story.html.

²⁷² One of the new formations for 2020 created with a specific racial justice lens was the Protect Our Vote NC Coalition, hosted by Forward Justice, NC Black Alliance, and Democracy NC in partnership with more than 30 organizations including the NC NAACP, the North Carolina Second Chance Alliance, Black Voters Matter and the NC Poor People's Campaign, which held weekly calls, webinars, and strategic advocacy coordination in the lead-up to the election to ensure that grassroots activists of color were receiving up-to-date information about rapidly-changing election rules, such as the cure process, and the voter intimidation landscape, while the pandemic continued. To learn more about the coalition, information is accessible at <https://www.protectourvotenc.org/>.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

Protection hotline 866-OUR-VOTE, operated by the Lawyers' Committee for Civil Rights Under Law.

The Election Protection hotline volunteers answered an unprecedented 14,135 calls from North Carolina voters – four times as many calls as the hotline received in 2016.²⁷³ Due to heightened concern for voter safety, hotline calls about voter intimidation and racial discrimination incidents were directed to a specially-trained team at Forward Justice. Other programs developed specifically to combat voter intimidation and encourage voters in the 2020 cycle included Advance Carolina's Black and Brown Legal Network, which trained and deployed dozens of attorneys of color to respond to voting-related issues as well as incidents of race-based intimidation that occurred outside of the buffer zone, and You Can Vote's Help Desk program, which stationed nonpartisan volunteers outside early voting sites throughout the 17-day period, with a specific commitment to identifying support for incidents of intimidation and answering any questions about voting rules.

One of the more innovative approaches developed in 2020 was the Protection, Power, and Encouragement (PPE), or "Safe Sites," program, developed by Blueprint NC. Based on the principle that building community increases safety for marginalized groups, Blueprint partner organizations focused on creating a welcoming environment outside early voting sites and Election Day polling places for voters of color. Rather than training their racially diverse volunteers on election rules and laws as in the traditional voter protection framework, PPE volunteers were trained in de-escalation techniques to maintain calm even in the face of aggressive behavior. Volunteers, many of whom were drawn from deep-rooted local organizations with longstanding relationships in the communities where they were placed, provided food and water to voters waiting in line, celebrated new voters, and played music to add a festive feeling to a potentially fraught voting experience.

This expansion of existing election protection programs' broad engagement resulted in the collection of hundreds of stories and witness statements from voters and nonpartisan observers across the state. During the 2020 election cycle, the Election Protection Hotline, Forward Justice, and the legal redress Chair of the NC NAACP responded to over 115 reports of possible voter intimidation from voters and volunteers throughout the state. Of North Carolina's 100 counties, such reports of possible intimidation were received from at least 42 counties ranging from egregious incidents to more subtle concerns resolved on site. The incidents described below are examples drawn from qualitative data and documented in news reports, giving voice to the significance of voter intimidation threats to elections in the state.²⁷⁴

²⁷³ Preliminary Report: Election Protection Program 2020 General Election. Democracy North Carolina. December 2020. On file with Forward Justice.

²⁷⁴ Joel Brown, "Voter intimidation is happening during early-voting but majority of reports are encouraging, NC NAACP says," *ABC11.com*, October 23, 2020, <https://abc11.com/voter-intimidation-nc-naacp-national-association-for-the-advancement-of-colored-people/7287550/>.

Racially Intimidating Symbols and Taunts at Early Voting Poll Entrance in Chatham County

On February 15, 2020, during the primary early voting period, voters at the Chatham County²⁷⁵ Agriculture and Conference Center (Agricultural Center) were greeted by demonstrators yelling slurs and “Trump 2020” while flying both Confederate flags and the League of the South flag – a group designated as a violent hate group by the Southern Poverty Law Center. The demonstrators were gathered protesting a panel discussion at the Agricultural Center entitled “The Civil War Today.” Because there was only one entrance and exit to the site, voters could not avoid the group when they both arrived and left the voting location. Voters at the site described the presence of the demonstrators as “heart-sickening” and “the most intimidating voting experience of my life.”²⁷⁶ One of the voters, a 62-year-old Black woman told a local paper, “Because I am older and I was a pre-teen during segregation, I’ve seen it all and heard it all, you know.... It did bother me. I mean, it bothered me to the point of, ‘OK, we should be way past this.’”²⁷⁷ Chatham County election officials placed additional signage outside the entrance to the early voting location so it would be easier for voters to find their way amidst the numerous flag-waving demonstrators, but did not intervene otherwise.

The NC NAACP, Forward Justice, and a coalition of statewide and national groups wrote to the North Carolina State Board of Elections on February 24, 2020, requesting the agency investigate the incident and issue a public response “condemning as unlawful the use of racially intimidating symbols at polling places,” to update their previously issued guidance on voter intimidation at polling places, and to form an advisory group on the issue of voter intimidation.²⁷⁸ The NCSBE updated its guidance to state that voter intimidation is illegal under both federal and state law,²⁷⁹ but did not state that the Agricultural Center protest was illegal intimidation or further define what constitutes illegal voter intimidation outside of the buffer zone.

²⁷⁵ Although not previously covered under Section 5 of the VRA, Chatham County has a history of racist voter intimidation and neo-Confederate activism. In 2008, racist graffiti was found on the AME church before holding a Souls to the Polls march. In 2019, neo-Confederates held a large rally in support of a local Confederate monument. And in October 2020, racist flyers were distributed.

²⁷⁶ Elizabeth Moore, “Confederate Presence at Chatham County Early Voting Site Raises Intimidation Questions,” *The Daily Tar Heel*, March 2, 2020, <https://www.dailytarheel.com/article/2020/03/pittsboro-confederates-near-voting-site>.

²⁷⁷ Ibid.

²⁷⁸ N.C. NAACP Letter to Katelyn Love (General Counsel, State Board of Elections). 24 Feb. 2020. Available at <https://forwardjustice.org/wp-content/uploads/2020/09/September-24-2020-Letter-re-Voter-Intimidation-Response-SBOE.pdf>

²⁷⁹ Bell, Karen. *Voter Intimidation Numbered Memo 2020-09*. North Carolina State Board of Elections, 28 Feb. 2020, https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-09_Conduct%20at%20the%20Polls.pdf.

Aggressive Partisan Poll Observers and Souls to the Polls Monitoring in Guilford County

In Guilford County, a formerly covered jurisdiction and the state's third most populous county, official Republican poll observers engaged in unusually aggressive and intimidating behavior throughout the first week of the early voting period.²⁸⁰ The incidents took place at multiple polling places over multiple days. Several examples are summarized below.

- On the first day of early voting in the general election, a Republican poll observer at an early voting site in Greensboro singled out a small group of Latinx voters in line to vote, staring at them for at least five minutes while taking notes.²⁸¹ The observer retreated into the polling place once a group of supporters intervened on the voters' behalf. The group, affiliated with the grassroots organization Siembra North Carolina, was there to support and celebrate a first-time voter. The group was speaking in Spanish and recording a video for social media to encourage voting. Thanks to the support of experienced activists in the group, the first-time voter was not discouraged, but likely would have been without the group accompanying him. A member of the group said, "It's these kinds of small acts that add up to voter suppression, especially when our people vote alone."²⁸²
- GOP poll observers illegally took photos of voters inside and outside numerous polling places, including NC A&T University, a HBCU, the Agricultural Center and the Roy Culler Center in High Point, North Carolina.²⁸³ Even more disturbing, a GOP poll observer was illegally allowed to go inside the voting enclosure at NC A&T, helping people put their ballots in the machine and taking pictures. GOP poll observers with badges also illegally questioned voters at the Roy Culler Center.²⁸⁴
- As described by a voter, a Republican poll observer at the Brown Center site in Greensboro gave "menacing looks" to voters in line visible even from behind his mask. An African American woman who experienced this while waiting to vote later wrote to the Guilford County Board of Elections that his gaze "reminded me of the slave movies when the overseer checks the slaves and lets them know [of] his presence. It took a lot of control not to cry."²⁸⁵ After this experience outside of the

²⁸⁰ Jordan Green, "Extensive Complaints about GOP Poll Observers Reported by Guilford Election Officials," *The NC Triad City Beat*, October 21, 2020, <https://triad-city-beat.com/extensive-complaints-gop-poll-observers/>.

("I've got more calls about observers in this election than the entire 17 years I've been doing elections," Guilford County Elections Director Charlie Collicutt told board members during the meeting on Tuesday.)

²⁸¹ Siembra NC [@SiembraNC]. "NEW: Latinxs warn of attempted intimidation..." *Twitter*. 15 Oct 2020. <https://twitter.com/siembranc/status/1316756207663800320>.

²⁸² Ian McDowell, "Siembra NC accuses Republican poll observer of 'voter intimidation,'" *Yes! Weekly: The Triad's Alternative Voice*, October 15, 2020, https://www.yesweekly.com/news/siembra-nc-accuses-republican-poll-observer-of-voter-intimidation/article_07a8dd12-0f0f-11eb-9b73-3f7d7d724976.html.

²⁸³ Under NC law, partisan poll observers are not permitted to take pictures of voters or inside a polling place without the express permission of the voters being photographed and the chief judge. N.C. Gen. Stat. 163-166.3(b).

²⁸⁴ Under NC law, partisan poll observers are not permitted to speak to voters. N.C. Gen. Stat. 163-45(c).

²⁸⁵ D. Burney email to Guilford County Board of Elections, 10/18/20. On file with Forward Justice.

polling place, even conduct that is not prohibited under state law was frightening to the voter. She was disconcerted to see the observer inside the polling place where he was “seated about 10 to 15 feet away from the poll workers inside the gymnasium. He was sitting close enough to hear you speak your name and address.” While this is acceptable conduct for partisan poll observers in North Carolina under the law, the voter experienced it as a continuation of the intimidation she had experienced outside the polling place. The voter, who had brought her children with her to vote, stayed and cast her ballot—in her own words, she “thought of all the Americans black and white who fought for my right to vote. That’s what made me stay.”

Reports of intimidation and aggressive monitoring by GOP poll observers continued without effective action by election officials for over a week.²⁸⁶ After the Guilford County Board of Elections distributed a one-page memo to its early voting site supervisors and poll workers clarifying (1) what kind of conduct by partisan poll observers is permitted and not permitted, and (2) that if an issue could be resolved through a simple conversation correcting the observers’ behavior, site supervisors and poll workers *must* do so themselves,²⁸⁷ the illegal behaviors abated.

Also in Guilford County, on the second Sunday of the early voting period, a leader of North Carolina’s Voter Integrity Project (VIP) urged his supporters via a Facebook post to follow and record church vans participating in a Greensboro “Souls to the Polls” event organized by a consortium of Guilford County African American churches. The leaders of this Souls to the Polls organizing, including the Black and Brown Women’s Voting Initiative, described the posting as a “targeted effort to disrupt or harass our efforts to encourage and assist voters by instigating people to follow and videotape [our work]” and asked the North Carolina Department of Justice to stop this group’s “efforts to engage in or incite intimidation of voters in the state of North Carolina.”²⁸⁸

Police Pepper Spray Peaceful March to the Polls in Alamance County

On October 31, the last day of early voting and same-day registration, peaceful attendees at a get-out-the-vote march in Graham, North Carolina, were pepper-sprayed by local police and Alamance County Sheriff’s deputies. Organized by Greensboro ministers, the October 31 “I Am Change” march to the polls, held in honor of George Floyd, Breonna Taylor, Trayvon Martin, and Wyatt Outlaw,²⁸⁹ was advertised as a family-friendly event and the crowd included many children and senior citizens. The march was slated to begin at the Wayman’s Chapel AME Church,

²⁸⁶ Danie Pierce, “Guilford County Sees More Complaints about Poll Observers.” *Myfox8.Com*, October 24m 2020, <https://myfox8.com/your-local-election-hq/guilford-county-sees-more-complaints-about-poll-observers/>.

²⁸⁷ Guilford County Board of Elections, “Poll Observer Conduct” Memo, October 2020. On file with Forward Justice.

²⁸⁸ Letter, Oct. 10, 2020, from Black and Brown Women’s Voting Initiative et al. to Attorney General Josh Stein. On file with Forward Justice.

²⁸⁹ Ian McDowell, “Wyatt Outlaw and the white men who put a monument where they lynched him.” *Yes! Weekly: The Triad’s Alternative Voice*, August 11, 2020, https://www.yesweekly.com/education/wyatt-outlaw-and-the-white-men-who-put-a-monument-where-they-lynched-him/article_7ef182a0-dc2b-11ea-a508-ab7d42bfc93b.html.

stop at the Alamance County Historic Courthouse and Confederate monument for a brief program, then end at the Elm Street Polling Site, where attendees were encouraged to cast their vote.²⁹⁰



Figure 4. Law enforcement pepper spraying march in Alamance, NC

At the Courthouse, marchers stopped and knelt in silence for 8 minutes and 46 seconds, in “symbolic remembrance” of George Floyd’s death.²⁹¹ Before the program could begin, according to witnesses, Graham police officers suddenly and without warning began pepper-spraying attendees, including children. The previously peaceful scene turned chaotic as marchers with burning eyes, noses, and throats panicked, ran, and vomited from the effects of the spray. About an hour later, after the organizers were able to deescalate the situation enough to begin the program, Alamance County Sheriff’s deputies attempted to disconnect the sound system.²⁹² When

²⁹⁰As with many Confederate monuments across the country and in North Carolina, the Confederate monument in downtown Graham has been a flashpoint for controversy and the site of numerous clashes between anti-racist protestors and neo-Confederate counterdemonstrators. On July 2, 2020, one of the organizing ministers successfully sued both Graham and Alamance County officials over an ordinance prohibiting more than two people from gathering near the monument, and subsequently led a march to the monument protesting racism in Graham on July 11 that was attended by over 1,000 peaceful protestors. *Allen, et. al v. City of Graham, NC et. Al*, No. 1:20-CV-00997 (M.D.N.C. 2018). See also Michelle Wolf, “More than 1,000 activists gather in Graham’s town square, call for removal of confederate statue at historic courthouse.” *Fox8 News*, July 13, 2020, <https://myfox8.com/news/more-than-1000-activists-gather-in-grahams-town-square-call-for-removal-of-confederate-statue-at-historic-courthouse/>.

²⁹¹*Drumwright v. Cole*, 1:20-CV-997, Plaintiffs’ First Amended Complaint, ECF 25 at *27 (M.D.N.C. Dec. 14, 2020). Available at <https://lawyerscommittee.org/wp-content/uploads/2020/12/2020-12-14-J4tNG-et-al-CORRECTED-First-Amended-Complaint.pdf>.

²⁹²Erik Ortiz, “Voter intimidation lawsuit filed after police use pepper-spray at North Carolina march,” *NBC News*, November 3, 2020, <https://www.nbcnews.com/politics/2020-election/voter-intimidation-lawsuit-filed-after-police-use-pepper-spray-north-n1245944>.

an organizer of the march approached a deputy to ask what was going on, he was grabbed and marchers were pepper sprayed a second time by Graham police and Alamance County Sheriff's deputies.²⁹³ Law enforcement began to yell at marchers to disperse and, without allowing any time for attendees to move or telling them where to go, sprayed them a third time, even as they were attempting to leave.²⁹⁴ An attendee stated that "the protestors could not have been more peaceful."²⁹⁵

Twenty people, as well as two poll observers and a reporter, were arrested by law enforcement that day.²⁹⁶ Two groups of plaintiffs filed federal lawsuits alleging unlawful voter intimidation by law enforcement. The suit brought by the NAACP Legal Defense Fund²⁹⁷ was settled this year while the one brought by the Lawyers' Committee for Civil Rights Under Law and the American Civil Liberties Union is pending.²⁹⁸

When leaders of the march returned to Graham on Election Day for a second attempt at a peaceful march to the polls, Graham police officers "stationed themselves prominently" at the polling place when marchers arrived. Voters had to pass through or walk by officers to reach the polling place. The Graham police cars also obstructed curbside voting access for about eight minutes and remained at the polling site even after the march had passed.²⁹⁹

Although it is not a previously covered jurisdiction, Alamance County has a history of racial terror and is also the home of Alamance County Taking Back Alamance County (ACTBAC) a group that was named by the Southern Poverty Law Center as a neo-Confederate hate group in 2017.³⁰⁰ Alamance County Sheriff Terry Johnson is notorious in the Latinx community for his aggressive enforcement of immigration laws, and was sued by the U.S. Department of Justice in

²⁹³ Ibid.

²⁹⁴ *Allen*, *supra* note 292, 31-33.

²⁹⁵ Bennett, Rain [@rainbennett]. "The protestors could not have been more peaceful..." *Twitter*, 31 Oct 2020, <https://twitter.com/rainbennett/status/1322585436431286274>.; Sarah Ovaska (@SarahOvaska), "I just talked with Faith Cook, a Graham mom of 3 who organized the rally to the polls and is now standing in line to vote. "It was intended to suppress the vote," she said about the sheriff's decision to stop the rally," *Twitter*, Oct. 31, 2021, 1:53 p.m. <https://twitter.com/SarahOvaska/status/1322597617268936708>.

²⁹⁶ *Ortiz*, *supra* note 293.

²⁹⁷ *Allen v. City of Graham*, 1:20-CV-997, Plaintiffs' Complaint, ECF 1 (M.D.N.C. Nov. 1, 2020). Available at <https://www.naacpldf.org/wp-content/uploads/North-Carolina-Voter-Intimidation-Filed-Complaint.pdf>.

²⁹⁸ *Drumwright*, *supra*.

²⁹⁹ Ibid.

³⁰⁰ Joe Killian, "The battle for Alamance: A look at the past and present of one of North Carolina's most divided counties," *NC Policy Watch*, March 19, 2021, <http://www.ncpolicywatch.com/2021/03/19/pw-special-report-the-battle-for-alamance-a-look-at-the-past-and-present-of-one-of-north-carolinas-most-divided-counties/>; Paige Paurosom "Non-profit lists local Alamance County organization as hate group," *Elon News Network*, February 21, 2017. <https://www.elonnewsnetwork.com/article/2017/02/alamance-county-org-listed-as-hate-group>.; Kate Croxton, "ACTBAC removed from 'SPLC' hate map for 2018," *The Times News*, February 26, 2019, <https://www.thetimesnews.com/news/20190226/actbac-removed-from-splc-hate-map-for-2018>.

2012 for racial profiling of Latinx people.³⁰¹ (The case was later dismissed with prejudice and settled on appeal.³⁰²) And, in 2017, Alamance County District Attorney Pat Nadolski brought unfair charges against the “Alamance 12” for voting mistakes made in 2016 (see Section V).

Armed Man Arrested in Charlotte on Election Day

Electioneers and other persons with firearms in the vicinity of polling places is a recurring problem in North Carolina and intensified in 2020. North Carolina law does not prohibit guns in polling places per se, although some buildings such as schools, are weapon free zones. In Charlotte on Election Day, a former Republican candidate for City Council, – wearing a holstered semi-automatic handgun, camouflage, a Trump hat, and boots – spent almost an hour walking back and forth with his dog in front of voters at Oasis Shrine Temple precinct.³⁰³ Two prominent African American women candidates who were holding an event outside the precinct³⁰⁴ curtailed the presentations and were whisked away out of safety concerns, and voters were frightened.³⁰⁵ After the armed man finally voted, the precinct’s chief judge, asked him to leave and not return.³⁰⁶ However, he returned a couple of hours later with his weapon, and set up in a folding chair, near tables of volunteers outside of the buffer zone. Upon his return, he was arrested by Charlotte-Mecklenburg Police Department.³⁰⁷

³⁰¹ Oliver Hinds & Jack Norton “No Chance Alamance: Immigration Detention and Jail Expansion in the North Carolina Piedmont” *Vera Institute*, July 28, 2020, <https://www.vera.org/in-our-backyards-stories/no-chance-alamance>.; Billy Ball, “Feds sue Alamance sheriff for alleged racial profiling of Latinxs,” *Indy Week*, January 2, 2013, <https://indyweek.com/news/northcarolina/feds-sue-alamance-sheriff-alleged-racial-profiling-Latinxs/>.

³⁰² Sarah Williamson, “U.S. District Court judge dismisses lawsuit against Alamance County sheriff,” *News & Record*, August 7, 2015, https://greensboro.com/news/u-s-district-court-judge-dismisses-lawsuit-against-alamance-county-sheriff/article_c06a1d4e-c214-5a9d-9fed-8776b28c00bd.html.; Simone Weichselbaum, “A rural sheriff stares down the justice department,” *The Marshall Project*, October 6, 2015, <https://www.themarshallproject.org/2015/10/06/a-rural-sheriff-stares-down-the-justice-department>.

³⁰³ Michael Gordon & Theodan Janes, “Armed Trump supporter told to leave NC voting site. He was arrested when he came back,” *Charlotte Observer*, November 3, 2020, <https://www.charlotte-observer.com/news/state/north-carolina/article246933672.html>. One observer noted that Dunn seemed to allow his dog to linger in front of Black voters in particular.

³⁰⁴ Axios Charlotte (@axioscharlotte), “Thread: As several prominent local female politicians spoke at precinct 212, one of the largest Democratic polling places in the state, the event was cut short when a maskless white man open carrying a gun showed up and began circling the property,” Twitter, Nov. 3, 2020, 11:36am, <https://twitter.com/axioscharlotte/status/1323667935668424704>.

³⁰⁵ Gordon & Janes, *supra*. See also Julia Reinstein, “A Former Republican Candidate Was Arrested After Showing Up to The Polls with A Gun,” *BuzzFeed News*, November 3, 2020, <https://www.buzzfeednews.com/article/juliareinstein/armed-trump-supporter-arrested-outside-polls-charlotte>.

³⁰⁶ Axios Charlotte, *supra*. Axios Charlotte reported that he was at the polling place for an hour.

³⁰⁷ CMPD News (@CMPD), “Thread: Office with Charlotte Mecklenburg Police Department have made an arrest at Mecklenburg County polling site in the University City Division,” Twitter, Nov. 3, 2020, accessible at <https://threadreaderapp.com/thread/1323709634247614464.html>.

The Need for Stronger Enforcement and More Clarity to Address Widespread Voter Intimidation

Federal law says that “no person ... shall intimidate, threaten, coerce ... any other person for the purpose of interfering with the right of [that] person to vote or to vote as he may choose.”³⁰⁸ While some forms of voter intimidation are blatant, contemporary manifestations of voter intimidation can be nuanced, subjective, and difficult to prove.

In its letter to the State Board of Election about the Chatham County incident which took place during the primary election, the coalition of voter protection advocates headed by the NC NAACP proposed that the Board provide clear guidance about prohibited conduct that under federal and North Carolina laws constitutes voter intimidation and proactively seek to develop guidance, in partnership with the coalition, on how to enforce protections against voter intimidation in what voters understood was likely to be a highly volatile and racially charged election, suggesting:

“Private citizens, acting as challengers, poll watchers, or otherwise, may not directly confront voters in an intimidating discriminatory manner. They also may not use insulting, offensive, or threatening language, which includes racial slurs, or display racially hostile signs or symbols, including Confederate flags or other white nationalist or neo-Confederate symbols.”³⁰⁹

A letter from Chatham County Board of Elections member Mark Barroso to the NCSBE, from July 2020, also described the need for more clarity and stronger enforcement of laws against voter intimidation in North Carolina:

[T]he definition of “voter intimidation” is vague, and enforcement is left in the hands of ordinary citizens working as chief judges who are not trained in dealing with conflict. We are asking them to risk their own personal safety by calling law enforcement on people who may be their neighbors. This is not a reasonable expectation. Yet, these are the only ones authorized to call law enforcement.

Secondly, complaints about voter intimidation are registered after the fact, after the voter has been discouraged from exercising their right to vote and fled the polling station. Fearing for their safety, they have been denied access to the ballot.³¹⁰

³⁰⁸ 18 U.S.C. § 594. “Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both.” Available at <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section594&num=0&edition=prelim>.

³⁰⁹ N.C. NAACP Letter to Katelyn Love (General Counsel, State Board of Elections). February 24, 2020, Available at <https://www.naacpldf.org/wp-content/uploads/2-24-20-Coalition-Letter-to-SBOE-re-Voter-Intimidation-in-Chatham-County.pdf>

³¹⁰ Mark Barroso, “Letter to N.C. NAACP re: Chatham County Voter Intimidation,” (written July 8, 2020). On file with Forward Justice.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

Under North Carolina law, the chief judge has the responsibility and authority to maintain order at a polling place.³¹¹ These ordinary citizens come to the role with their own community ties, preconceptions, and partisan orientation. Many officials may not share the same lived experience of racial discrimination, meaning that presumably well-intentioned election officials and poll workers may not experience symbols like the Confederate or League of the South flags in the same way, with the same historical context, or the same reaction of visceral intimidation.

The primary enforcement mechanism relied on by election officials in North Carolina for enforcement against illegal voter intimidation is local law enforcement, which presents several challenges. As advocates working in the 2020 cycle explained in public trainings, acts of intimidation in the context of elections, such as racist speech and symbols, may not in and of themselves be criminal acts outside of the context of the ballot box, leading even presumably well-intentioned law enforcement to dismiss a voter intimidation incident as “not illegal.”³¹² In such cases, a voter may report a race-based voter intimidation incident, only to have law enforcement dismiss the incident as not actionable, leaving the voter essentially abandoned by the very systems entrusted with protecting them and others from the act of race-based voter intimidation or harassment. Lack of law enforcement training about how to recognize and act in the face of intimidating acts in the context of elections may further compound issues of racially biased enforcement. A separate but equally important concern regarding law enforcement is that their very presence at polling places may be considered intimidating for voters of color. In Numbered Memo 2020-30, the NC State Board of Elections recognized this, stating that, “[i]t is not appropriate or permissible for law enforcement to be stationed at a polling site.”³¹³

Incorporating lessons learned in the 2020 cycle, advocates in North Carolina crafted potential recommendations in the report, *Blueprint for a Strong Democracy: Best Practices and Policy Proposals for North Carolina to Improve Voting, Combat Corruption, and Promote Good Government* to begin to address some of the intricacies at the state level regarding policy recommendations to address voter intimidation through statutory and administrative actions. Selected recommendations include:

- Clearly define “intimidation” from the voter perspective, acknowledging the historical and structural contexts that inform voters’ individual experiences, such as racial violence and displacement associated with disasters.

³¹¹ N.C.G.S. § 163-48. “The chief judge and judges of election shall enforce peace and good order in and about the place of registration and voting. They shall especially keep open and unobstructed the place at which voters or persons seeking to register or vote have access to the place of registration and voting. They shall prevent and stop improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting. They shall protect challenger and witnesses against molestation and violence in the performance of their duties, and they may eject from the place of registration or voting any challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult, or disorder.” Available at https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/By-Section/Chapter_163/GS_163-48.pdf.

³¹² Ibid, 10. “Hate incident is here defined as: A bias motivated incident committed, in whole or in part, because of actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, disability, and/or ethnicity. *Hate incidents may or may not constitute a crime.*” (Emphasis added)

³¹³ N.C. State Board of Elections, *Num. Memo 2020-30* (Oct. 9, 2020 (revised Oct. 12, 2020)), https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-30_Conduct%20at%20the%20Polls.pdf.

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

- Expand the definitions of “voting place” and “voting enclosure” to include voting by mail. In 2020, due to the COVID-19 pandemic, more than a million North Carolina residents voted absentee by mail.
- Ensure that election officials recognize and respond to the fact that police presence at the voting place may create an unintended consequence of voter intimidation, and educate and train police departments and sheriff’s offices about the history of voter intimidation in North Carolina, its contemporary manifestations, and how to appropriately respond to it.
- Mandate data collection on all intimidation incidents and direct uniform reporting standards.³¹⁴

These recommendations provide a strong starting point to enhance protections against voter intimidations at the state level; yet, additional standards, support, funding, and infrastructure are needed federally to enforce existing protections, strengthen protections against new forms of intimidation, document and consider the impact of trends in intimidation tactics and implement much-needed proactive voter intimidation regulation.³¹⁵

Successful Challenge to North Carolina’s Felony Disenfranchisement: Restricting Black Community Voting Power

In 2019, Community Success Initiative, along with other organizational and individual plaintiffs, brought a state constitutional challenge to the practice of disenfranchising people who have previously been convicted of a felony until they have completed their term of probation or post-release supervision, under North Carolina General Statute § 13-1.³¹⁶

In North Carolina, over 50,000 individuals living in our communities are currently prohibited from voting because they have a prior felony conviction, and in many cases are disenfranchised solely due to their inability to pay fines and fees.³¹⁷ The impact of the law is grossly racially disproportionate. In North Carolina, Black people currently make up 22 percent of North Caro-

³¹⁴ Institute for Southern Studies, *Blueprint NC Democracy, Blueprint for a Strong Democracy: Best Practices and Policy Proposal for North Carolina To Improve Voting, Combat Corruption, and Promote Good Government*, June 2021, <https://www.southernstudies.org/sites/default/files/Blueprint%20NC%20Democracy.pdf>

³¹⁵ The 2021 For the People’s Act subtitle D offers solutions for federal enforcement, as currently written would establish a uniform national standard and boost related safeguards. This subtitle would, among other things, prohibit knowing and intentional communication of false and misleading information – including about the time, place, or manner of elections, public endorsements, and the rules governing voter eligibility and voter registration – made with the intent of preventing eligible voters from casting ballots; establish federal criminal penalties for deceiving or intimidating voters; direct the attorney general to: (1) upon learning that false information is being disseminated to the public, disseminate accurate information if state officials fail to do so, in a manner that does not favor any party or candidate; (2) develop written procedures for the dissemination of such corrective information; and (3) submit a report to Congress within 180 days of a federal general election documenting all allegations of deceptive practices.

³¹⁶ *CSI v. Moore*, 19CVS 15941 (November 20, 2019).

³¹⁷ Expert Report of Dr. Frank Baumgartner at 5, Table 1, *CSI v. Moore*, 19 CVS 15941 (May 11, 2020)

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

lina’s voting age population but 42 percent of individuals who are disenfranchised while on probation or post-release supervision; by contrast, [white people] represent 52 percent of the disenfranchised, but 72 percent of the voting age population.”³¹⁸

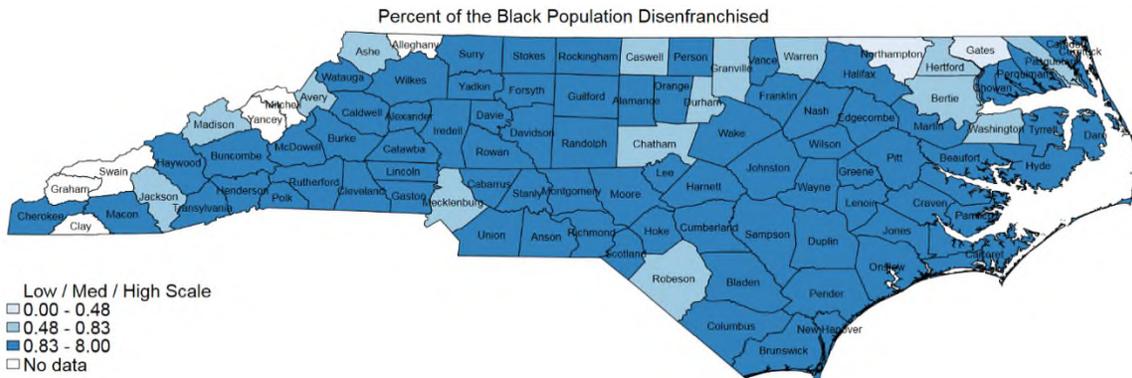


Figure 5. Percent of the Black Population Disenfranchised

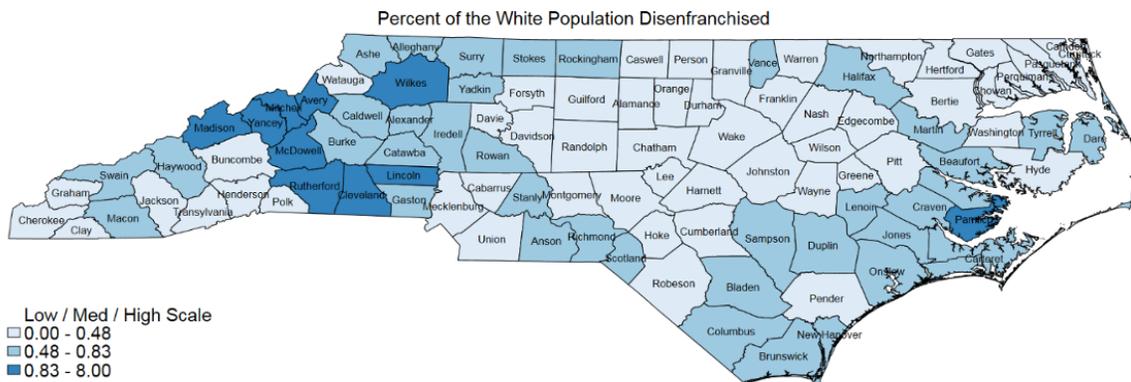


Figure 6. Percent of the White Population Disenfranchised

On September 4, 2020, on the eve of the start of in-person early voting for the general election, a three-judge state court panel in *Community Success Initiative v. Moore* ruled that North Carolina’s felony disenfranchisement scheme does violate sections of the state Constitution, and that thousands of people on community supervision whose inability to pay fines and fees extended their probation can register to vote.³¹⁹ The majority of the three-judge panel found that, “Article I, § 11, of our Constitution is clear: no property qualification shall affect the right to vote. Therefore, when legislation is enacted that restores the right to vote, thereby establishing qualifications which certain persons must meet to exercise their right to vote, such legislation must not do so in a way that makes the ability to vote dependent on property qualifications. The requirement of an ‘unconditional discharge’ imposed by N.C.G.S. § 13-1 does exactly that—the ability

³¹⁸ Ibid, 7.

³¹⁹ Order on Injunctive Relief, *CSI v. Moore*, 19 CVS 15941 (September 4, 2020). See also: <https://www.hendersonville.com/news/2020/10/court-said-felons-who-only-owe-fees-can-vote-in-nc-but-making-it-happen-involves-obstacles/>

for a person convicted of a felony to vote is conditioned on whether that person possesses, at minimum, a monetary amount equal to any fees, fines, and debts assessed as a result of that person's felony conviction."³²⁰

As Dr. Orville Vernon Burton, expert witness in the litigation, explains: "Felony disenfranchisement in North Carolina mirrors and intersects with the disenfranchisement of black voters throughout the state's history. As black political activism threatened the power of the white ruling elite, legislators turned not only to felony disenfranchisement, but also to segregation, suffrage restrictions, and other measures designed to break the political and economic power of black communities."³²¹

While this ruling was a partial victory, the fight continues. Tens of thousands of people on community supervision remain disenfranchised because the ruling only applied to those who still owe fines and fees. The Plaintiffs return to court this week for a full trial to continue to fight to expand the "we" in "we the people" and create a more inclusive democracy.

VI. 2021 Legislative Session Voting Expansion to Contraction – Unsubstantiated Election Integrity Efforts Advance in the NCGA

As aforementioned, the pandemic forced election officials to adapt in unexpected ways to expand and make accessible voting options for their citizens. However, like other similar GOP-majority state legislatures across the nation, the NCGA also moved to restrict voting access following the 2020 election. Around the country, politicians, and cynics are pushing efforts to both make it harder to vote and easier to undermine an election's results.

Voting rights advocates are opposing a battery of efforts that would restrict our freedom to vote, including legislation to change the deadline to request absentee ballots, limiting funding for election officials, facilitate the implementation of a voter ID law still being litigated, cut off resources for elections by barring philanthropic support for local election agencies, and mandate election officials to initiate a new purge process in a witch hunt for foreign citizens on the voter rolls. The following paragraphs highlight and provide brief summaries of the legislative bills introduced in the 2021 session.

Senators Ralph Hise, Paul Newton, and Warren Daniel, the chairs of the Senate Redistricting and Elections Committee, filed S.B. 326, the "Election Integrity Act," on March 18, 2021. As initially filed, the bill would have shortened the deadline for voters to request absentee ballots from two week before the election to one week, eliminated the three-day grace period for receipt of absentee ballots postmarked by Election Day, prohibited the state and county boards of elections from receiving private donations for staffing or election administration as they did in 2020 at the height of the COVID-19 pandemic, and, in a continued bid to gain judicial approval for voter ID, appropriated funds for the NCSBE "to establish a program to identify individuals...who

³²⁰ *Cnty. Success Initiative v. Moore*, 19-cvs-15941, 2020 NCBC LEXIS 113, Order on Summary Judgement at *11 (Wake Cty. Sup. Ct., Sept. 4, 2020). See also, *Id.*, Order on Injunctive Relief (Wake Cty. Sup. Ct., Sept. 4, 2020).

³²¹ Expert Report of Orville Vernon Burton at 3, *Cnty. Success Initiative v. Moore*, No. 19-cvs-15941, (N.C. Sup. Ct., Wake Cty., May 8, 2020).

need photo identification,” including a “mobile component to visit voters identified as needing photo identification.”³²²

Sen. Daniel, one of the bill’s primary sponsors, described S.B. 326 as “part of our ongoing effort to refine the [election] process, make it more secure and increase election integrity.”³²³ In language evocative of that used in 2013 to describe H.B. 589, another bill sponsor, Sen. Newton, said that “the purpose of the bill is to restore faith and confidence and trust in the electoral process in North Carolina.”³²⁴ He added that allowing absentee votes to be counted after Election Day “breeds suspicion in the mind of some North Carolinians ... So this bill will fix that.”³²⁵ Ironically, the NCGA passed the law creating the three-day grace period unanimously in 2009, with both the current North Carolina Speaker of the House and the President Pro Tem voting in favor.³²⁶

The view that absentee voting is a suspect method of voting marks a reversal from legislative leadership’s position in 2013, when lawmakers exempted absentee voting from the photo ID requirement in H.B. 589.³²⁷ One major change in absentee voting from since 2013 lies in which voters used it. While prior to the pandemic North Carolina’s absentee voters were typically white and Republican, in the 2020 election that changed. Data analysis by Democracy North Carolina shows that in 2016, 83 percent of all absentee voters were white, while Black voters cast less than 1 percent of all mail-in ballots. By contrast, white voters made up 68.5 percent of all mail-in voters in 2020, with 15 percent of all absentee votes cast by Black voters, 2.6 percent cast by Asian-Americans, and 2.4 percent cast by Latinx voters.³²⁸

S.B. 326 was split into three separate “election integrity” bills. Streamlined via committee substitute into just the absentee ballot provisions, S.B. 326 passed out of committee on June 9, 2021, and passed the NC Senate on June 16. The remaining elements of the original bill were divided into S.B. 724 and S.B. 725.

S.B. 724 (“Expand Access to Voter ID & Voting”), which also passed out of committee on June 9 and passed the Senate on June 16,³²⁹ cleverly combines S.B. 326’s original appropriation for voter ID outreach program with two voter access provisions – (1) codifying in statute the online

³²² “S.B. 326: Election Integrity Act,” *N.C.G.A. Session 2021*, (filed Mar. 18, 2021), <https://web-services.ncleg.gov/ViewBillDocument/2021/1611/0/DRS45168-LUa-12C>.

³²³ A.P Dillon, “Election Integrity Act filed at NC General Assembly,” *The North State Journal*, March 24, 2021, <https://nsjonline.com/article/2021/03/election-integrity-act-filed-at-nc-general-assembly/>.

³²⁴ Cindy Choi, “Election Integrity Act filed at NC General Assembly,” *WITN.com*, March 19, 2021, <https://www.witn.com/2021/03/19/nc-political-science-experts-break-down-absentee-ballots-and-the-election-integrity-act/>.

³²⁵ *Ibid*.

³²⁶ Lynn Bonner, “‘There’s no integrity in it.’ Voting-rights advocates denounce NC elections legislation” *NC Policy Watch*, June 14, 2021, <https://pulse.ncpolicywatch.org/2021/06/14/theres-no-integrity-in-it-voting-rights-advocates-denounce-nc-elections-legislation/>.

³²⁷ Ari Berman, “The Country’s Worst Anti-Voting Law Was Just Struck Down in North Carolina” *The Nation*, July 26, 2016, <https://www.thenation.com/article/archive/the-countrys-worst-anti-voting-law-was-just-struck-down-in-north-carolina/>.

³²⁸ Analysis of NC State Board of Elections data provided to Forward Justice by Democracy North Carolina.

³²⁹ “S.B. 724: Expand Access to Voter ID & Voting,” *N.C.G.A. Session 2021*, (filed June 7, 2021), *see* <https://www.ncleg.gov/BillLookup/2021/s724>

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

voter registration option introduced in 2020, and (2) expanding access to absentee voting for visually impaired voters, an attempt to address issues raised in a Disability Rights North Carolina lawsuit.³³⁰

S.B. 725 (“Prohibit Private Money in Election Admin”) contains the provision prohibiting state and county agencies from accepting private donations to administer elections. Speaking in favor of the bill, S.B. 725 primary sponsor Sen. Newton noted that, “We have ample money to fund a solid elections process.”³³¹ Yet, according to Sen. Dan Blue (D), the Senate Democratic Minority Leader, that money was essential:

Ninety-seven out of 100 counties in this state had to accept money from private sources. ... It was done in such a way that it had credibility, stuff like pens and pencils to mark ballots with, hand sanitizers, safety masks and all those other things that we had not paid for that the local boards had not gotten money from their local boards of commissioners to pay for and the state had no funds or insufficient funds to cover those kinds of expenses.³³²

S.B. 725 also passed the state Senate on June 16. (All three of these bills passed out of committee on party-line votes and are currently parked in the House Rules, Calendar, and Operations Committee.)

While the S.B. 326, S.B. 724, and S.B. 725 are the only election bills that currently appear to be moving through the legislature, the NCGA leadership notoriously makes last-minute changes to bills via committee substitutes forcing legislation through the process quickly with limited input from the public, and exempting election bills from typical legislative deadlines. Three of the pending bills demonstrate the continued interest of GOP lawmakers in forcing the NCSBE to use jury excusal records to purge alleged non-citizens from the voting rolls (H.B. 377), granting partisan observers increased access to polling places (H.B. 819), and emphasizing legislative control over the actions of county and state boards of elections (H.B.715).

S.B. 377 (“Remove Foreign Citizens from Voting Rolls”), a bill that would require state and county boards of elections to remove voters suspected of being noncitizens from the rolls based on data from jury excusals, is identical to S.B. 250, passed in 2019.³³³ That bill was vetoed

³³⁰ “Press Release: Federal Judge Orders NC to Provide Accessible Absentee Voting,” Disability Rights North Carolina, June 17, 2021, <https://disabilityrightsnorthcarolina.org/news/press-release/federal-judge-orders-nc-to-provide-accessible-absentee-voting>.

³³¹ Lynn Bonner, “Republicans aim to shorten absentee ballot deadlines, end private donations for elections,” *NC Policy Watch*, April 1, 2021, <https://pulse.ncpolicywatch.org/2021/04/01/republicans-aim-to-shorten-absentee-ballot-deadlines-end-private-donations-for-elections/>; Jordan Wilkie, “Concerns about private funding for elections have little grounding in truth,” *Carolina Public Press*, June 15, 2021, <https://carolinapublicpress.org/46529/concerns-about-private-funding-for-elections-have-little-grounding-in-truth/>; Michael Falero, “A Pandemic In 2020 Meant New Costs For North Carolina Election Officials,” *WFAE 90.7*, January 18, 2021, <https://www.wfae.org/politics/2021-01-18/a-pandemic-in-2020-meant-new-costs-for-north-carolina-election-officials>.

³³² Rusty Jacobs, “Election Integrity Means Different Things to NC GOP, Democrats,” *WUNC 91.5*, January 18, 2021, <https://www.wunc.org/politics/2021-06-30/election-integrity-different-nc-gop-democrats-ncpol-carolina>.

³³³ “S.B. 377: Remove Foreign Citizens from Voting Rolls.” *N.C.G.A. Session 2021*, (filed March 30, 2021), see <https://www.ncleg.gov/BillLookup/2021/sb377>

THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006 – 2021

by Democratic Governor Cooper, whose veto statement noted, “This legislation creates a high risk of voter harassment and intimidation and could discourage citizens from voting.”³³⁴ Filed March 29, 2021 and referred to the Senate Committee on Rules and Operations, the bill has not yet moved this session.

H.B.819 (“Alternate Observers at Voting Places”), which passed out of the House Election Law and Campaign Finance Reform Committee on May 5, 2021, and is currently parked in the House Rules, Calendar, and Operations Committee, defines the three types of party-appointed observers created by NCGA leadership since 2013 – precinct-specific, county at-large, and state at-large – and eliminates the requirement that they serve for 4-hour minimum shifts, giving partisan observers new freedom to enter and leave the polling place as well as to alternate with another observer of the same type.³³⁵ Given the aggressive actions of poll observers in the 2020 election, the interest of conservative “voter integrity” groups in using poll observers to identify so-called “fraud,” and the H.B. 589 and S.B. 824 creation of countywide and statewide “at-large” observers, the ability for observers to move in and out of polling places without restriction during the voting day and be replaced by others raises voter intimidation concerns.

H.B.715 (“Penalty/Election Law Violation/Board Meetings”) would make it a felony for any county or state Board of Elections member to “sanction or set a rule that violates election law as enacted by the General Assembly” or “certify any election ... that was carried out in violation of elections law as enacted by the General Assembly.”³³⁶ This bill criminalizing boards of elections members for doing their job in a way that NCGA leadership disagrees with in response to the 2020 settlement agreement resolving the multiple absentee voting lawsuit. The NCGOP was so deeply unhappy with the content of the settlement that it reportedly forced its own NCSBE members to resign for signing off on it.³³⁷ This bill would allow for similar bullying of local election officials, this time carrying the threat of a serious criminal penalty. Filed on April 28, H.B.715 has not yet been heard in committee.

In the final days of the creation of this report, the immediate need to protect voting rights is reaffirmed as the NCGA has slipped in anti-voter provisions within North Carolina’s annual state budget, Senate Bill 105 2021 Appropriations Act. The anti-voter provisions within the budget are not related to the state’s funding priorities thus, hiding them within the more than 400-page budget bill is a clear attempt to limit public knowledge and substantive debate on election laws. The provisions included in the budget legislation seek to: (1) Restrict the power of the Governor to issue a state of emergency, which will directly impact the ability of election officials to ensure a smooth election when public health emergencies – such as the COVID-19 pandemic – take place;³³⁸ (2) Prevent the State Board of Elections and Attorney General from independently settling lawsuits, giving more power to the state legislature and Council of State. This power grab is

³³⁴ “Press Release: Gov. Cooper Signs Six Bills into Law, Vetoes Another,” NC Governor Roy Cooper, November 6, 2019, <https://governor.nc.gov/news/gov-cooper-signs-six-bills-law-vetoes-another>.

³³⁵ “H.B. 819: Alternative Observers at Polling Places,” *N.C.G.A. Session 2021*, (filed May 4, 2021), *see* <https://www.ncleg.gov/BillLookup/2021/h819>.

³³⁶ “H.B. 715: Penalty/Election Law Violation/Board Meetings,” *N.C.G.A. Session 2021*, (filed April 28, 2021), *see* <https://www.ncleg.gov/BillLookup/2021/H715>.

³³⁷ Will Doran & Danielle Battaglia, “Republican election officials resigned after call with lawyer for ‘very unhappy’ NCGOP,” NC Governor Roy Cooper, September 28, 2020, <https://www.newsobserver.com/article246017110.html>.

³³⁸ Section 19E.6(a)

an attempt to weaken the role of the State Board of Elections, which will have a direct, negative impact on voters;³³⁹ (3) Fund a program that implements North Carolina’s voter ID law even though voters are not required to show ID;³⁴⁰ and (4) Strip the State Board of Elections of its power to investigate election law violations.³⁴¹ The state budget is a place for appropriating funds to communities in dire need of resources particularly while in a pandemic – not making substantial changes to election administration without public input and administrative transparency.

VII. Conclusion



Figure 7. Picture of Mass Moral Monday March & Rally for Voting Rights

North Carolina’s precipitous decline from an emerging model for voting rights advancement to ground-zero for voting rights retrenchment is a national cautionary tale. The state’s recent history, including the violations and victories detailed in the report over the last twenty-five years, presents decisive evidence of both the effectiveness of and current need for Section 5 review and, following the recent Supreme Court decision in *Brnovich v. Democratic National Committee*, clarification of the strength Section 2. Section 2, even before *Brnovich* cannot hold the full weight of the Voting Rights Act’s purpose and nationwide prohibitions.

³³⁹ Sections 18.7.(a - c), 114-2.

³⁴⁰ Senate committee report, page F62.

³⁴¹ “S.B. 105: 2021 Appropriations Act,” N.C.G.A. Session 2021, (filed February 17, 2021), see <https://www.ncleg.gov/BillLookup/2021/s105>

Despite tremendous, combined resources from attorneys, advocates, and activists since *Shelby County*, pushing back on the scale and scope of suppressive legislation and other tactics without the preventative protections of federal oversight in place has proven to be a cyclical and unremitting battle.

The 2021 cycle will be the first redistricting round since the 1970s where covered states will not have to submit their plans for Department of Justice preclearance. Legislative hearings are proceeding to prepare for an expedited redistricting cycle, after the release of the new 2020 decennial data, detailing population demographics and housing.³⁴² In Fayetteville, a city where Section 5 was needed in the past, there is already work being done to shift the district elections to at-large elections, despite some troubling evidence that racially polarized voting may have increased.³⁴³

Population growth earned the state a new seat in the U.S. House delegation, from 13 to 14 representatives. So, this year's redistricting process will include 14 U.S. House Districts, 50 N.C. Senate districts and 120 N.C. House districts. As former U.S. Attorney General Eric Holder said, "North Carolina really is, in some ways, ground zero for partisan and racial gerrymandering."³⁴⁴ Advocates, organizations, activists, and litigators are anticipating continued repercussions through 2022, as communities are still experiencing pandemic-related obstacles, seemingly ever-shifting voting requirements, and the need to educate and mobilize the public months before the midterms.

In this report, we have detailed North Carolina's long and disturbing history of racial discrimination in voting, because when properly viewed, the most recent, offensive acts of racial discrimination and intimidation of voters of color appear, unfortunately, to be part of a single portrait: a portrait of a state where the party in power attempts to stay in power by suppressing the votes of persons of color.

As Rev. Dr. William Barber, II, lead architect of the North Carolina Forward Together Moral Movement reminds us, "The brazen, surgically targeted vote suppression sweeping this country is both unconstitutional and immoral. It results in what we should understand to be an impoverished democracy: a democracy deprived of the wealth and representation of its peoples' voices and the expressive force and legitimacy of the true will of its people."³⁴⁵

³⁴² Tyler Dukes, "How has your NC neighborhood grown since 2010? Use this map of census data to find out" *News & Observer*, August 14, 2020, <https://www.newsobserver.com/news/local/article253375248.html>.

³⁴³ See Vote Yes Fayetteville advocacy group website: <https://www.voteyesfayetteville.com/>; Troy Williams, "Black candidates in Fayetteville and Cumberland can win large," *Fayetteville Observer*, March 27, 2021, <https://www.fayobserver.com/story/opinion/2021/03/27/troy-williams-black-candidates-fayetteville-and-cumberland-can-win-large/7012191002/>.

³⁴⁴ Will Doran, "Get ready for more gerrymandering suits in NC, former Obama AG Holder says in UNC speech" *News & Observer*, February 19, 2021, <https://www.newsobserver.com/news/politics-government/article249368665.html>.

³⁴⁵ *Oversight of the Voting Rights Act: The Evolving Landscape of Voting Discrimination Hearings Before H. Comm. on H. Judiciary Committee & H. Subcomm. on Constitution, Civil Rights, and Civil Liberties*, 117th Cong., (April 22, 2021) (Written Testimony of William J. Barber II, Repairers of the Breach). Available at <https://docs.house.gov/meetings/JU/JU10/20210422/112481/HMTG-117-JU10-Wstate-BarberIID-20210422-U1.pdf>.



Figure 8. Picture of Mrs. Mary Perry, Mrs. Rosanell Eaton, and Rev. Dr. William Barber, II

The premise of *Shelby County*—that there is no longer a need for preclearance of voting changes—has been proven woefully wrong in North Carolina and many other formerly covered jurisdictions. The facts compel immediate, full restoration of the Voting Rights Act. Our experience in North Carolina—and the evidence of a tidal wave of voter suppression across this nation—makes absolutely clear that the right to vote remains under attack and it is imperative upon us to eliminate the discriminatory and burdensome barriers to the ballot box. Generations have called upon Congress to protect voting rights as new alterations and adaptations of suppressing the vote emerge. The time is past due for Congress to listen to the warning signs from voters and voting rights groups, particularly in previously covered jurisdictions, and act.

APPENDICES

North Carolina DOJ Section 5 Objections, 2006-2013.....**Appendix A**

Voting Rights Cases in Federal & NC State Courts, 2006-2021.....**Appendix B**

Demographic & Socioeconomic Data for North Carolina Population,
2019.....**Appendix C**

Preliminary Expert Report of Allan J. Lichtman, *North Carolina NAACP v. Cooper*,
1:18-cv-01034 (M.D.N.C. 2019)**Appendix D**

Preliminary Expert Report of James L. Leloudis II, *North Carolina NAACP v. Cooper*
1:18-cv-01034 (M.D.N.C.
2019).....**Appendix E**

APPENDIX A

APPENDIX A: North Carolina DOJ VRA Section 5 Objections, 2006 – 2013

Date	County	Type of Submission	Basis for Objection	Assistant Attorney General
June 25, 2007	Cumberland (City of Fayetteville)	Method of election from nine single-member districts to six and 2007 City Council redistricting plan (2007-2233)	<ul style="list-style-type: none"> • The proposed changes would be retrogressive. • Under the existing system, African Americans elected candidates of their choice to four out of nine positions, but under the proposed system, African Americans voters would have substantially less than certain prospects of electing candidates of their choice. • Election data revealed that African Americans have had an extremely mixed record of success in at-large contests. 	Wan J. Kim
August 17, 2009	Lenoir (City of Kingston)	Nonpartisan method of election for mayor and council members. (2009-0216)*	<ul style="list-style-type: none"> • Elimination of party affiliation on the ballot will likely reduce the ability of Blacks to elect candidate of choice. • Blacks comprise a majority of Kinston’s registered voters. However, African Americans comprised a minority of the electorate during several elections. • The change would likely eliminate the party campaign support and other assistance provided to black candidates because it would eliminate the political party’s role in the election. 	Lorretta King

*After the Attorney General objected to the proposed changes outlined in the submission, a lawsuit was filed by private citizens and an organization in the U.S. District Court for the District of Columbia, challenging the constitutionality of Section 5. Plaintiffs lost at the district court level, appealed, and on remand from the appeal, the district court upheld the law. Appellants then filed a second appeal. While the second appeal was pending, the Attorney General’s office changed its position and withdrew the objection based on additional information later received from an unrelated preclearance proceeding and from Lenoir County. In light of the Attorney General’s withdrawn objection, they argued the case was moot. The Court of Appeals for the District of Columbia dismissed the case shortly thereafter. See *LaRoque v. Holder*, 400 U.S. App. D.C. 424, 679 F.3d 905 (2012).

April 30, 2012	Pitt (Pitt County Schools)	Method of election from twelve single-member districts to seven. (2011-2474)	<ul style="list-style-type: none">• The addition of the at-large seat would decrease the representation of minority-preferred officials on the school board from two out of twelve to one out of seven.• The change would have a discriminatory effect on minority voters.	Thomas E. Perez
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APPENDIX B

Appendix B: Voting Rights Cases in Federal & NC State Courts, 2006 – 2021

Year	Parties	Citation	Published opinion?	Court (final decision)	Claim
2008	Dean v. Leake	550 F. Supp. 2d 594	Yes	E.D.N.C.	Equal Protection Voting Rights Act
2009	Blankenship v. Bartlett	681 S.E.2d 759	Yes	N.C. S. Ct.	Equal Protection One Man, One Vote
2009	Bartlett v. Strickland	566 U.S. 1	Yes	U.S. S. Ct.	Vote Dilution
2012	Greensboro Branch of the NAACP vs. Guilford Cty. Bd. of Elections	858 F. Supp. 2d 516	Yes	M.D.N.C.	Equal Protection Article 1, § 19 of the NC Constitution
2016	Action N.C. v. Strach	216 F. Supp. 3d 597	Yes	M.D.N.C.	National Voting Rights Act
2016	NAACP v. McCrory	831 F.3d 204	Yes	U.S. Ct. App. (4 th Cir.)	U.S. Const., Amend. 14 & 15 VRA § 2
2017	Cooper v. Harris (formerly Harris v. McCrory)	137 S. Ct. 1455	Yes	U.S. S. Ct.	Racial Gerrymandering
2017	Dickson v. Rucho	813 S.E.3d 230	Yes	N.C. Supreme Court	Racial Gerrymandering

2017	Raleigh Wake Citizens Ass'n v. Wake Cty. Bd. of Elections	2017 U.S. Dist. LEXIS 162673	Yes	U.S. Ct. App. (4 th Cir.)	Racial Gerrymandering
2018	Cooper v. Berger	Wake Cnty, No. 17 CVS 6465, <i>aff'd</i> ; 268 N.C. App. 468, 837 S.E.2d 7 (2019); 376 N.C. 22, 852 S.E.2d 46 (2020), <i>decided</i> .	Yes	N.C. S. Ct.	N.C. Const., Art. I & XIII
2018	NAACP v. Moore	Wake Cnty, No. 18 CVS 9806, <i>rev'd</i> ; 273 N.C. App	Yes	N.C. Ct. App.	Illegal Gerrymandering
2018	Covington v. North Carolina	138 S. Ct. 2548.	Yes	U.S. S. Ct.	Racial Gerrymandering
2019	Holmes v. Moore	Wake Cnty, No. 18 CVS 15292, <i>rev'd and rem'd</i> by 270 N.C. App. 7, 840 S.E.2d 244 (2020).	Yes	N.C. Ct. App.	N.C. Const., Art. I §§ 10, 12, 14 & 19
2019	Common Cause v. Lewis	358 F. Supp. 3d 505 (E.D.N.C. 2019); No. 5:18-CV-589-FL, 2019 U.S. Dist. LEXIS 8650 (E.D.N.C. Jan. 17, 2019); 956 F.3d 246 (4 th Cir. 2020); 373 N.C. 258, 834 S.E.2d 425 (2019)	Yes	N.C. Super. Ct., Wake Cnty.	N.C. Const. Art. I §§ 10, 12, 14 & 19
2019	Harper v. Lewis	No. 5:19-CV-452-FL, 2019 U.S. Dist. LEXIS 182412 (E.D.N.C. Oct. 22, 2019); No. 5:19-CV-452-FL, 2020 U.S. Dist. LEXIS 81443 (E.D.N.C. May 8, 2020).	Yes	M.D.N.C.	N.C. Const., Art. I §§ 10, 12, 14 & 19
2019	Brandon v. Guilford Cty. Bd. of Elections	921 F.3d 194	Yes	U.S. Ct. of Appeals (4 th Cir.)	Racial Gerrymandering
2020	NAACP v. NCBOE	No. 20-CVS-5035	Ye	N.C. Super. Ct., Wake Cnty.	N.C. Const., Art. I, §§ 10 & 19
2020	Community Success Initiative v. Moore	No. 19-CVS-15941, 2020 NCBC LEXIS 113.	No	N.C. Super. Ct., Wake Cnty.	N.C. Const., Art. I, §§ 11, 12, 14, & 19

2020	Democratic Senatorial Campaign Committee v. NCBOE	No. 20-CV-09947	No	Gen. Ct. Justice, Super. Ct. Division, Wake Cnty.	N.C. Const.
2020	North Carolina Alliance for Retired Americans v. North Carolina	No. 20-CVS-8881 (Gen. Ct. Justice, Super. Ct. Div., Wake Cnty.) No. P20-513 (N.C. Ct. App.) No. 440P20 (sup. Ct. N.C.) No. 20A74 (S. Ct.) (<i>Berger</i>)	Yes	N.C. S. Ct.	N.C. Const.
2020	North Carolina Democratic Party v. NCBOE	No. 1:20-CV-457	No	M.D.N.C.	U.S. Const. Amend. 1 & 14 VRA § 208 Rehab. Act, § 504
2020	Arnette v. NCBOE	No. 20-CV-570	No	N.C. Super. Ct., Duplin Cnty.	N.C. Const. N.C. Pub. Rec. Act
2020	Wise v. Circosta	978 F.3d 93	Yes	U.S. Ct. App. (4 th Cir.)	Equal Protection
2020	NAACP v. Cooper	No. 1:18-CV-1034 (M.D.N.C) Nos. 19-1091, 19-1094, 19-2273 & 20-1092 (4 th Cir.)	Yes	U.S. Ct. App. (4 th Cir.)	U.S. Const., Amend. 14 & 15 VRA § 2
2020	Taliaferro v. NCBOE	No. 5:20-CV-411	Yes	E.D.N.C.	Title 2 of Amer. w/Dis. Act Rehab. Act. of 1973, § 504

2021	Wise v. NCBOE	Nos. 5:20-CV-505, 1:20-cv-912 (E.D.N.C) No. 20-2014 (4 th Cir.) No. 20A71	No	U.S. Ct. App. (4 th Cir.)	U.S. Const. Amend. 14, Art. I § 4 U.S. Const., Amend. 14, Art. II § 1
2021	Chambers v. North Carolina	No. 20-CVS-500124	No	N.C. Super. Ct. Wake Cnty.	N.C. Const., Art. I §§ 10, 12, 14, & 19
2021	Moore v. Circosta	Nos. 4:20-CV-182, 5:20-cv-507, 1:200cv- 911 (E.D.N.C.) No. 20-2104 (4 th Cir.) No. 20A72 (S. Ct.)	Yes	U.S. Ct. App. (4 th Cir.)	Free Elections Clause U.S. Const., 14 th Amend.
2021	Allen, et. al v. City of Graham, NC et. al	No. 1:20CV997, 2021 U.S. Dist. LEXIS 96769 (M.D.N.C. May 21, 2021), <i>Mot. granted by, dismissed by, in part, Mot. denied by, in part, reserved by, Mot. denied by</i> ; No. 1:20-CV-997, 2021 U.S. Dist. LEXIS 103255 (M.D.N.C. June 2, 2021).	No	M.D.N.C.	Civil Rights: Voting
2021	Advance North Carolina v. North Carolina State	No. 20-CV-2965	No	N.C. Super. Ct. Wake Cnty.	N.C. Const., Art. I §§ 10, 14 & 19

APPENDIX C

Appendix C: Demographic & Socioeconomic Data for the North Carolina Population in 2019 and Their Reflection of the Impact of Racial Discrimination

North Carolina Current Demographics

Prior to the implementation of the amended and newly strengthened Voting Rights Act of 1982, North Carolina's total population was approximately 5,881,766, of which 75.3% were white (not of Hispanic origin) and 22% were African American (not of Hispanic origin) in 1980.¹

Close to three decades later, according to the U.S. Census Bureau's 2019 American Community Survey, those demographics have shifted to a nearly doubled total population, estimated at 10,488,084, with a 62.6% white (not of Hispanic origin), 22.2% African American (not of Hispanic origin), and 9.8% Latinx.² The citizen voting age population of North Carolina in 2019 was 8,187,369, of whom 71.6 % are White (not of Hispanic origin), 21.9 % African American (not of Hispanic origin), and 4.7 % Latinx, and 1.2 % American Indian and Alaska Native.³

Socioeconomic Disparities by Race

This Appendix provides a snapshot of continued disparities in the areas of educational attainment, economic security, and necessary resources such as health care and transportation experienced by African American, Latinx, American Indian, and White North Carolinians. These socioeconomic indicators illustrate the broader context of racial inequality and discrimination across the state and provide necessary context to understand the interaction between consequences on North Carolinians' access to the political process.

By 2008, the Office of Minority Health and Health Disparities at the North Carolina Department of Health and Human Services (NCDHHS) noted "North Carolina had the sixth highest total African American population, and the seventh highest percentage African American population, of the 50 states."⁴ Yet, significant socioeconomic disparities exist between the growing African American population in North Carolina and the white population. The Office of Minority Health and Health Disparities also

¹ Cambell Gibson & Kay Jung, "HISTORICAL CENSUS STATISTICS ON POPULATION TOTALS BY RACE, 1790 TO 1990, AND BY HISPANIC ORIGIN, 1970 TO 1990, FOR THE UNITED STATES, REGIONS, DIVISIONS, AND STATES," U.S. Census Bureau, 2002, <https://www.census.gov/content/dam/Census/library/working-papers/2002/demo/POP-twps0056.pdf>.

² "QuickFacts: North Carolina," U.S. Census Bureau, 2019 American Community Survey (pub. July 2019), <https://www.census.gov/quickfacts/fact/table/NC/RHI825219#RHI825219>.

³ "Citizen, Voting-Age Population by Selected Characteristics," U.S. Census Bureau, 2019 American Community Survey 1-Year Estimates Subject Tables, 2019.

⁴ "North Carolina Minority Health Facts: African Americans," Office of Minority Health and Health Disparities at NCDHHS & State Center for Health Statistics, July 2010, https://schs.dph.ncdhhs.gov/schs/pdf/AfricanAmer_FS_WEB_080210.pdf.

concluded “the unemployment rate for African Americans [in NC] was double that for whites (11.4 % vs. 5.4 %)” in 2008.⁵

Table 1 and Charts A, C, and D illustrate the substantial disparities in 2019 (the latest available data) between the African American, Latinx, and American Indian populations and the White population in North Carolina when examining respective poverty rates, average household and per capita incomes, and households with zero or negative net worth. The poverty rate in 2019 was over twice as high for Black, American Indian, and Hispanic North Carolinians compared to White North Carolinians, similar to the differences in 2000 and 2008 (*See Chart A*). The median household income in 2019 for African American households was \$24,144 less than white households, and the per capita income for African Americans was \$14,708 lower than whites in North Carolina (*See Chart C*).

TABLE 1: ECONOMIC INDICATORS FOR AMERICAN INDIAN & ALASKAN NATIVE, HISPANIC OR LATINX, AND NON-HISPANIC BLACK AND WHITE NORTH CAROLINIANS (2019)

	NC Total Population	American Indian & Alaska Native	Hispanic or Latinx	White (<i>not Hispanic or Latinx</i>)	Black or African American (<i>not Hispanic or Latinx</i>)
Total population	10,488,084	126,708	1,022,995	6,552,128	2,214,270
Median household income	\$57,341	\$39,887	\$46,933	\$65,244	\$41,100
Per capita income	\$32,021	\$20,173	\$16,983	\$37,790	\$23,082
With Food Stamp/SNAP benefits	11.60%	24.70%	12.50%	7.40%	24.00%
Poverty rate	13.60%	26.20%	22.10%	9.40%	21.60%
Unemployment rate	4.60%	5.40%	4.70%	3.70%	7.30%
Households with zero or negative net worth*	15.20%	<i>Not calculated</i>	19.50%	12.90%	18.60%

Population, income, food stamps, poverty & unemployment rates from U.S. Census, American Community Survey (2019).

*Net worth data from Prosperity Now Scorecard, (2016). <https://scorecard.prosperitynow.org/data-by-issue#finance/outcome/households-with-zero-net-worth>

⁵ Ibid.

CHART A: POVERTY RATE BY RACE, NORTH CAROLINA

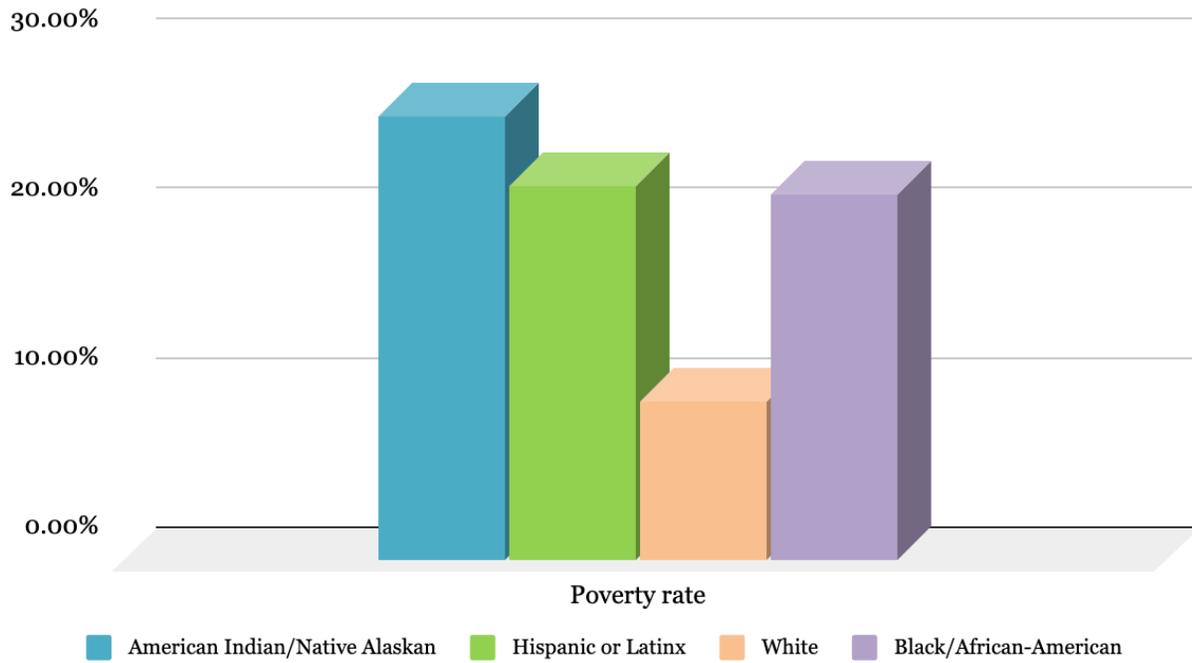


CHART B: UNEMPLOYMENT RATE BY RACE, NORTH CAROLINA

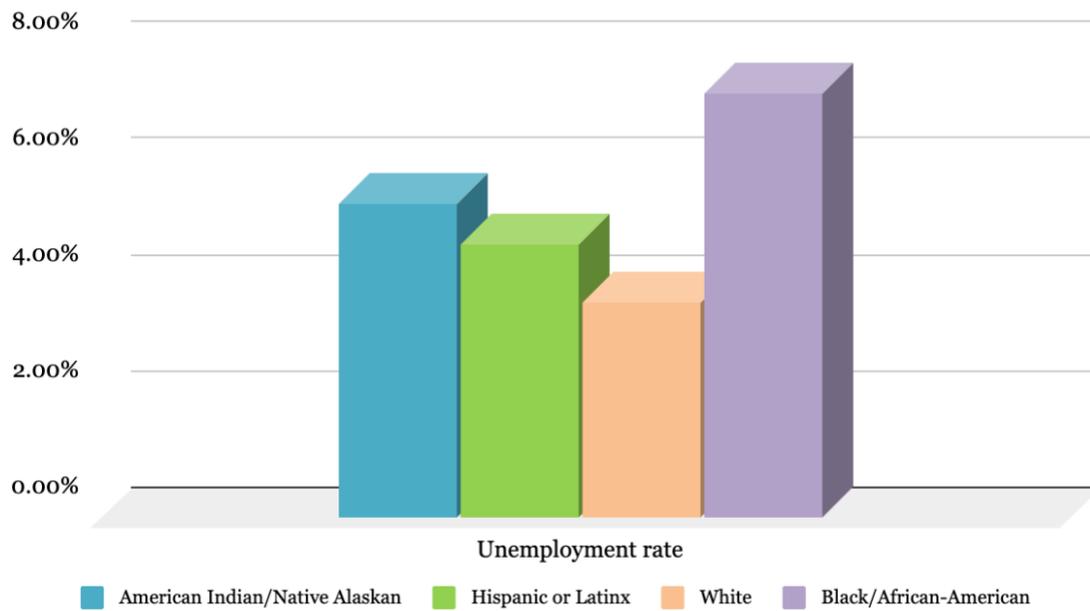


CHART C: MEDIAN HOUSEHOLD INCOME & PER CAPITA INCOME BY RACE, NORTH CAROLINA

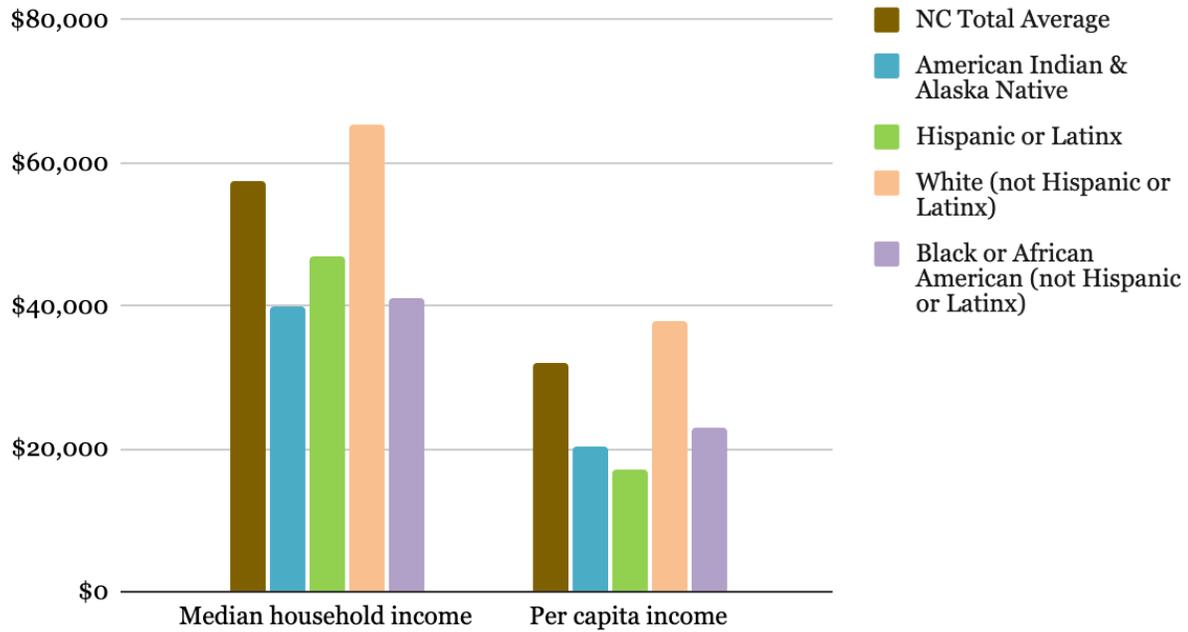
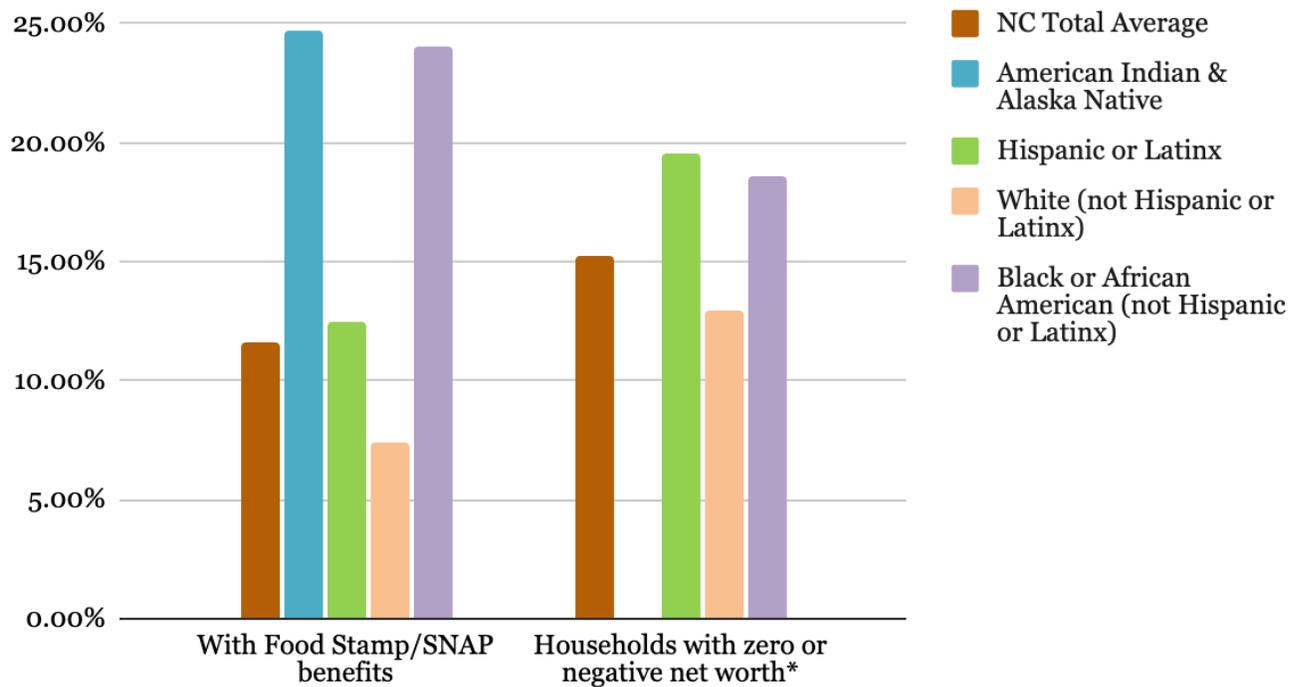


CHART D: FOOD STAMPS/SNAP RECIPIENTS, ZERO OR NEGATIVE NET WORTH BY RACE, NORTH CAROLINA



Access to Education & Educational Attainment

Today, the effects of discriminatory and unequal schools in the state of North Carolina heavily influence students' educational proficiency and attainment. There continues to be significant disparities between Black, American Indian, Hispanic, and White students' proficiencies in eighth grade basic level mathematics and reading. In 2019, Black students were nearly twice as likely as White students to lack a high school degree (or equivalent). When comparing achievements of a bachelor's degree or a post-secondary education, the rate for White North Carolinians was 36%, which was 13.6% higher than the rate for Black North Carolinians (22.4%) (*See Chart E*).

TABLE 2: HIGHEST EDUCATIONAL ATTAINMENT & PROFICIENCY OF AMERICAN INDIAN & ALASKAN NATIVE, HISPANIC OR LATINX, AND NON-HISPANIC BLACK AND WHITE NORTH CAROLINIANS (2019)

	NC Total Population	American Indian & Alaska Native	Hispanic or Latinx	White (<i>not Hispanic or Latinx</i>)	Black or African American (<i>not Hispanic or Latinx</i>)
Total population	10,488,084	126,708	1,022,995	6,552,128	2,214,270
Population 25 years and over	7,187,077	81,694	513,662	4,805,279	1,469,229
Less than high school diploma	11.4%	22.6%	37.2%	7.8%	13.5%
High school graduate (includes equivalency)	25.6%	31.9%	25.1%	24.7%	30.5%
Bachelor's degree or higher	32.3%	14.7%	17%	36%	22.4%
Percentage at or above NAEP basic level, 8th grade mathematics*	71%	48%	62%	82%	52%
Percentage at or about NAEP basic level, 8th grade reading*	72%	58%	66%	82%	54%

Population & Educational Attainment data from U.S. Census, American Community Survey (2019).
 Education proficiency data from the National Center for Education Statistics, Mathematics (2019):
<https://nces.ed.gov/nationsreportcard/subject/publications/stt2019/pdf/2020013NC8.pdf>; Reading (2019):
<https://nces.ed.gov/nationsreportcard/subject/publications/stt2019/pdf/2020014NC8.pdf>

CHART E: EDUCATIONAL ATTAINMENT BY RACE, NORTH CAROLINA

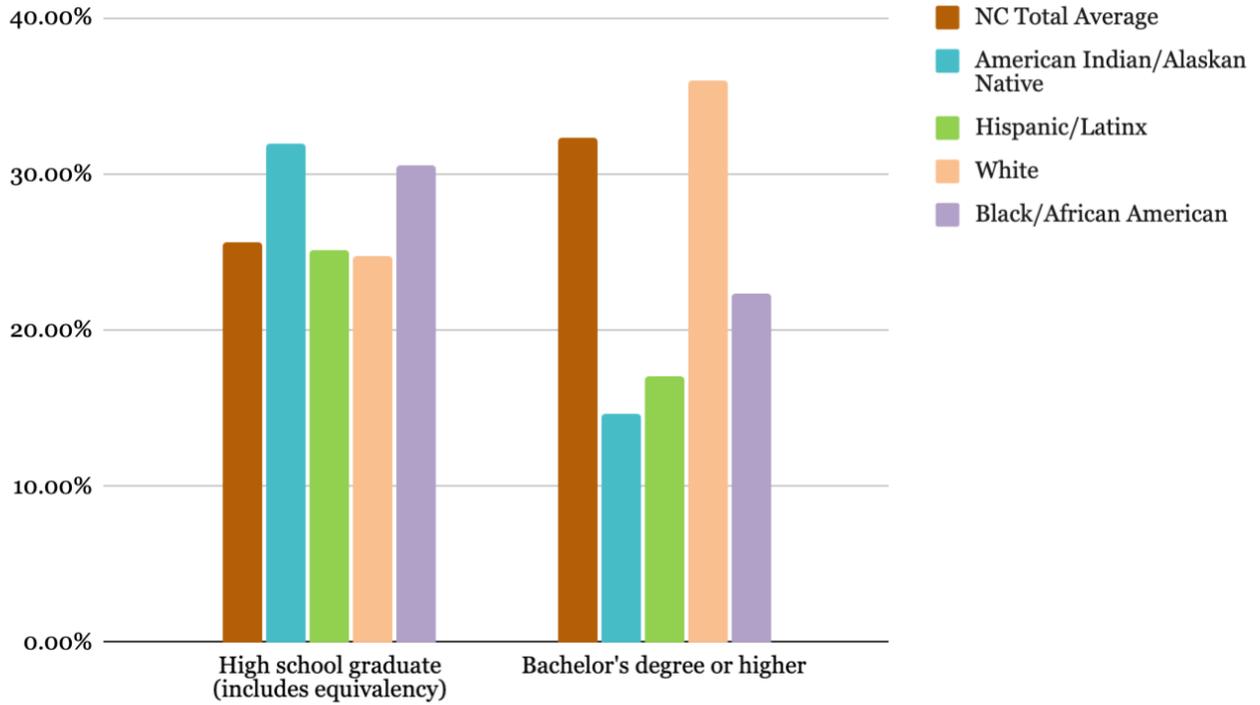
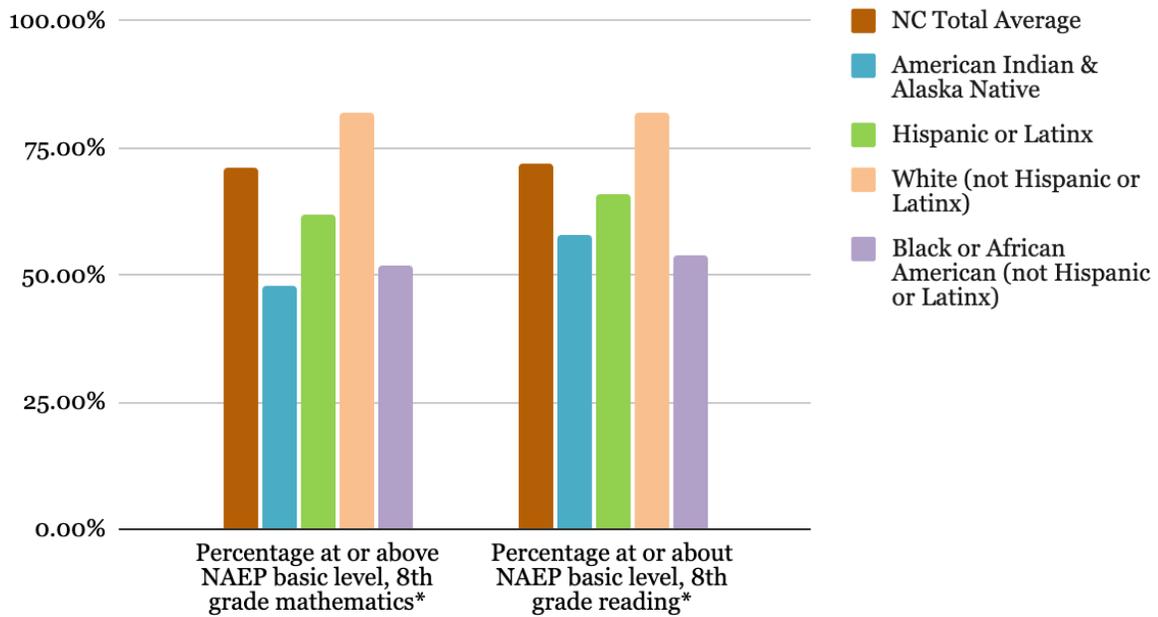


CHART F: 8TH GRADE MATHEMATICS & READING LEVELS BY RACE, NORTH CAROLINA



African American, Latinx, and American Indian North Carolinians Experience More Limited Access to Healthcare and Transportation than White North Carolinians

The Office of Minority Health and Health Disparities at NCDHHS reported in June 2010 that between 2003 and 2005, 22.5% of Black adults ages 18-64 lacked health insurance.⁶ When comparing the percentage of White adults without insurance they concluded that African Americans were 1.5 times more likely to have no insurance at the time.⁷ By 2015 the percentage of those uninsured had decreased for both Black (11.6%) and White (10%) North Carolinians. Fast forward to 2019, the percentage of Black adults without health insurance stayed relatively the same at 11.4% (a mere .2% decrease of those uninsured), while the percentage of uninsured White adults fell by 2 percentage points (8.2 %) widening the disparity gap between the two groups (*See* Table 3). The charts below further detail disparities in access to and use of modes of transportation based on race. Black adults are more likely to take public transportation among all racial/ethnicity groups at 2.50%. Hispanic or Latinx adults are more likely to walk (2.10%) and less likely to have their own transportation (68.90%) among all groups.

TABLE 3: HEALTH & TRANSPORTATION INDICATORS BY RACE, NORTH CAROLINA (2019)

	Total NC Population	American Indian & Alaska Native	Hispanic or Latinx	White (<i>not Hispanic or Latinx</i>)	Black or African American (<i>not Hispanic or Latinx</i>)
Health Insurance Coverage					
With private health insurance	66.60%	48.40%	39.50%	74.10%	56.60%
With public coverage	34.90%	44.30%	32.80%	33.20%	43.00%
No health insurance coverage	11.30%	15.50%	31.30%	8.20%	11.40%
Commuting to Work					
Workers 16 years and over	4,937,952	52,544	454,119	3,166,396	1,011,335
Car, truck, or van - drove alone	80.20%	83.80%	68.90%	82.20%	79.90%
Public transportation (excluding taxicab)	1.10%	1.00%	1.30%	0.60%	2.50%
Walked	1.80%	1.50%	2.10%	1.60%	1.90%

Commuting to work & health insurance coverage data from U.S. Census, American Community Survey (2019).

⁶ Ibid.

⁷ "North Carolina Population & Health Data by Race & Ethnicity 2011-2015," NC Department of Health & Human Services, 2017, <https://schs.dph.ncdhhs.gov/schs/pdf/NCPopHealthDatabyRaceEthJan2017.pdf>.

CHART G: HEALTH INSURANCE COVERAGE BY RACE, NORTH CAROLINA

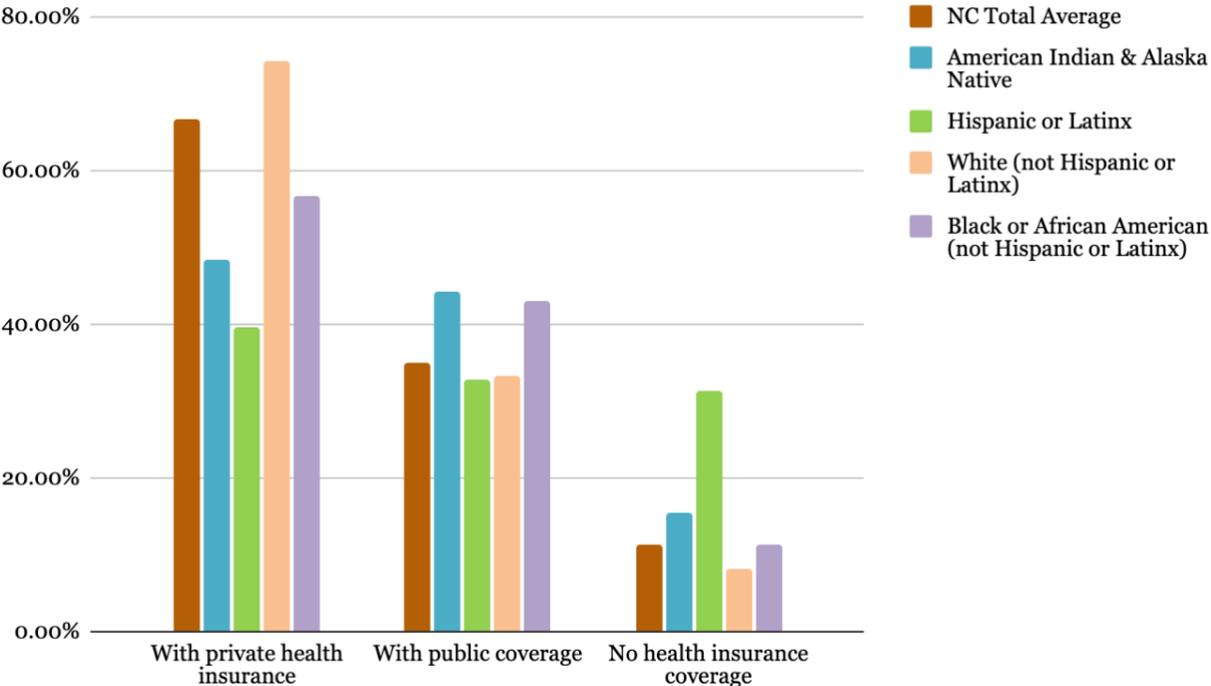
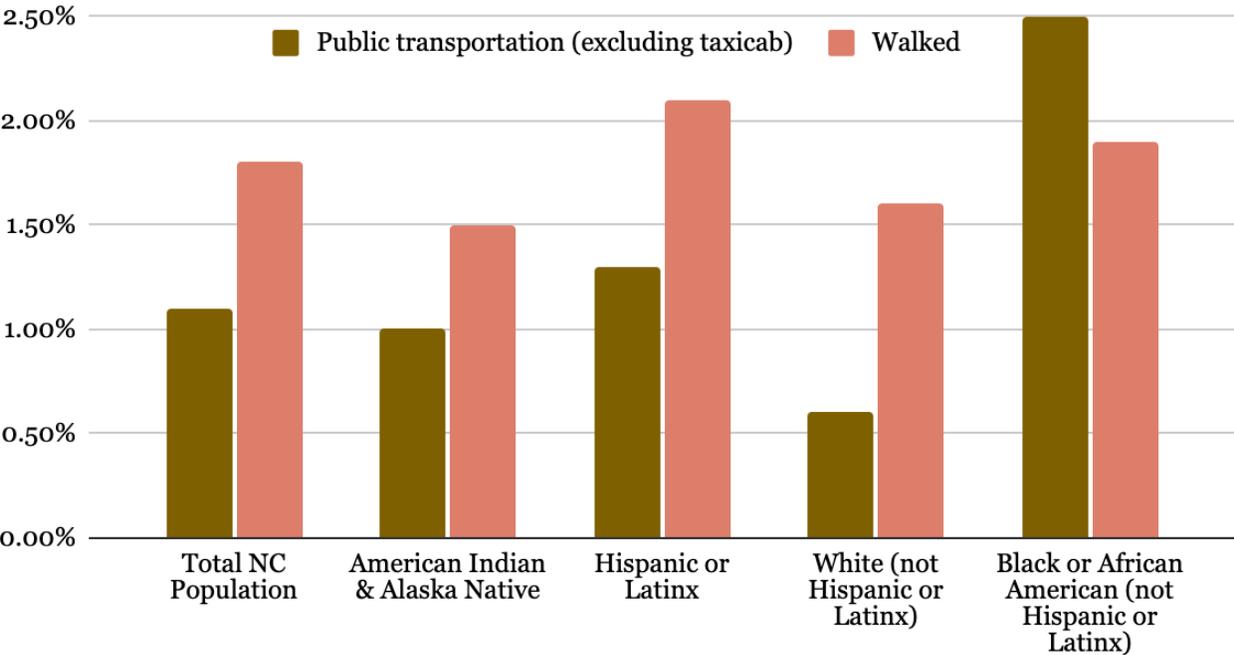


CHART H: COMMUTING TO WORK - PUBLIC TRANSPORTATION VS. WALKING BY RACE, NORTH CAROLINA



APPENDIX D

**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

TABLE OF CONTENTS

	<u>Page</u>
I. STATEMENT OF PURPOSE	1
II. QUALIFICATIONS	1
III. EVIDENCE, METHODOLOGY, AND SUMMARY OF OPINIONS	2
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.....	8
A. Fourth Circuit Found Discriminatory Intent in 2013 Voter ID Law	9
B. Legislative Leaders’ Statements Demonstrate that the Same Intent Animates the 2018 Voter ID Law	9
C. Many of the Same Individual Legislators Lead 2013 Voter ID and 2018 Voter ID	11
D. The Voting Strength of White Voters is Waning in the Context of Racially Polarized Voting	12
E. The General Assembly Engaged in Racial and Partisan Gerrymandering and other Instances of discrimination against African Americans in Voting and Elections Since 2013	12
F. The General Assembly’s Stated Rationales for a Photo ID Law are Inconsistent with the Facts and Therefore Pretextual	20
V. DISCRIMINATORY EFFECT OF 2018 VOTER PHOTO ID LAW	20
A. As Compared to Whites, African Americans Disproportionately Lack Possession of Authorized Photo IDs Under S. 824.....	20
B. Evidence of Vote Denial Through a Voter ID Requirement	29
VI. SUBSTANTIVE CHANGES TO SL 2018-144 FROM EARLIER VERSIONS DEMONSTRATE DISCRIMINATORY INTENT AND EFFECT.....	37
A. New and Continued Restrictions in the 2018 Voter Photo ID Law.....	37

VII.	SEQUENCE OF EVENTS LEADING TO CONSTITUTIONAL AMENDMENT AND VOTER PHOTO ID LAW.....	46
A.	The Fall of White Voting Strength in North Carolina, 2004-2018.....	46
B.	Racial Polarization in Recent North Carolina Elections.....	47
C.	Prior Photo Voter ID Legislation.....	63
D.	Circuit Court Opinion.....	66
E.	Republican Solidarity on Voter Photo ID Legislation.....	68
VIII.	PROCEDURAL DEVIATIONS.....	68
A.	Misleading the Court to Retain Republican Super-Majorities in the General Assembly.....	68
B.	Lack of a Full Review Process.....	68
C.	Rushed and Unusual Process for Enacting the Proposed Constitutional Amendment on Voter Photo ID.....	69
D.	Rushed and Restricted Process for Enacting Implementing Legislation on Voter Photo ID.....	71
E.	Use Of The Unconstitutionally and Deceptively Elected Lame Duck Legislature For Enabling Legislation On Voter Photo ID.....	81
IX.	EVIDENCE OF DISCRIMINATORY PURPOSE: HISTORIC AND ONGOING DISCRIMINATION AGAINST AFRICAN AMERICANS IN NORTH CAROLINA...81	
A.	Ongoing Disparities in Socioeconomic Status Between Whites and African Americans in North Carolina.....	82
X.	STATED RATIONALES FOR RE-ENACTING PHOTO VOTER ID ESTABLISH PRETEXT.....	100
A.	Speaker Moore Stated that Photo IDs are Unnecessary to Meet Policy Goals.....	100
B.	State House Rejected Amendment to Allow Non-Photo IDs.....	101
C.	General Assembly Rejected Amendment to Allow Public Assistance IDs.....	101
D.	Backers of Voter Photo ID Took an Inconsistent Position on Military IDs and Public Assistance IDs.....	102

E.	Backers of Voter Photo ID Provided Misleading and Pretextual Justifications on Preventing Voter Fraud.....	105
F.	Backers of Voter Photo ID Provided Misleading and Pretextual Justifications on Voter Confidence.....	111
G.	Backers of Voter Photo ID Provided Misleading and Pretextual Justifications on Conforming to ID Laws in Other States	114
H.	The Positions Taken by Decision Makers on Absentee Ballots Contradicts Their Claims About the Constitutional Amendment and S. 824	117
I.	Backers of Voter Photo ID Relied on a Misleading Common Sense Analogy.....	120
XI.	CONCLUSIONS.....	121

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.

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 (SPAEE) 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 and 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. 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

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

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.

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 Counsel 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	41 of 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

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

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

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

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.”

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

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 (SPAЕ), 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 SPAЕ 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

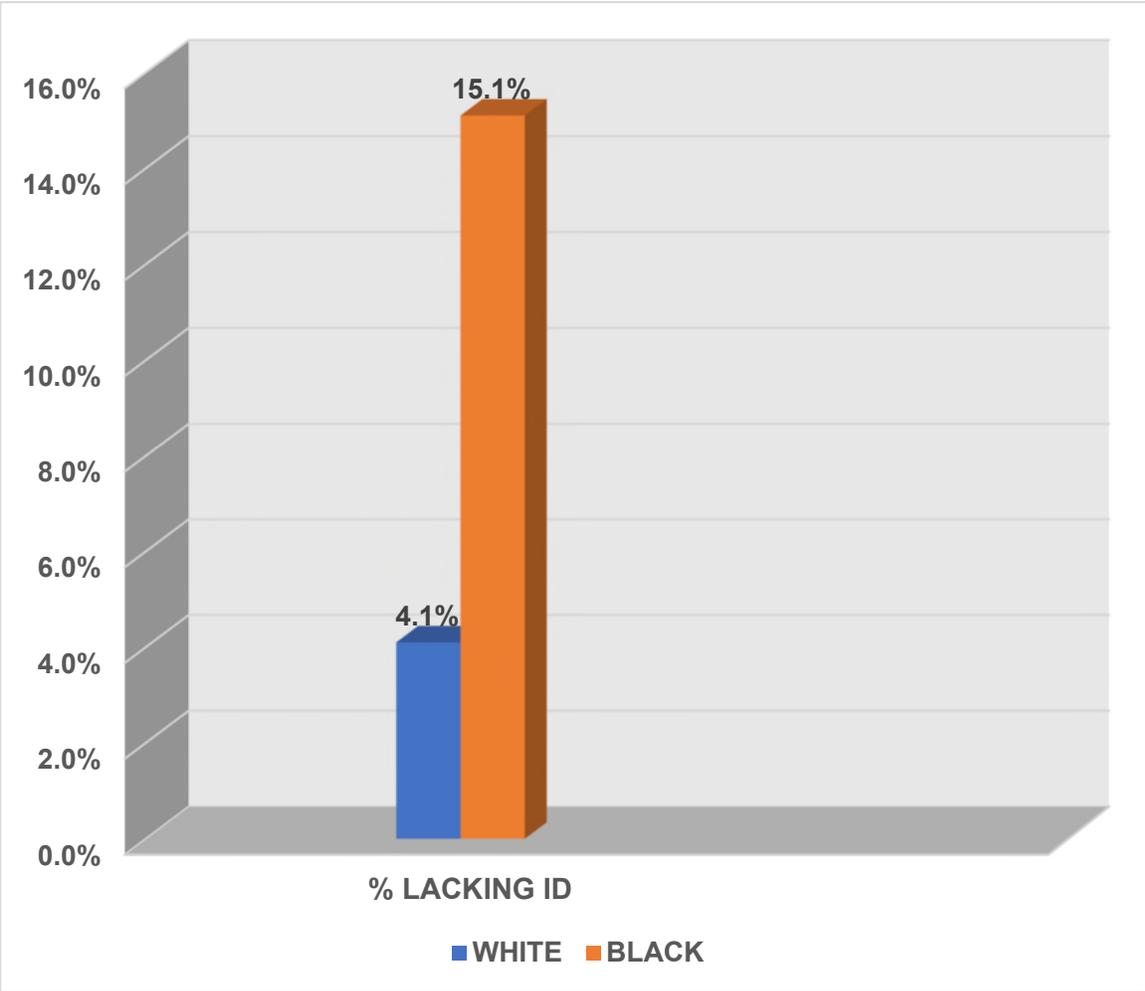
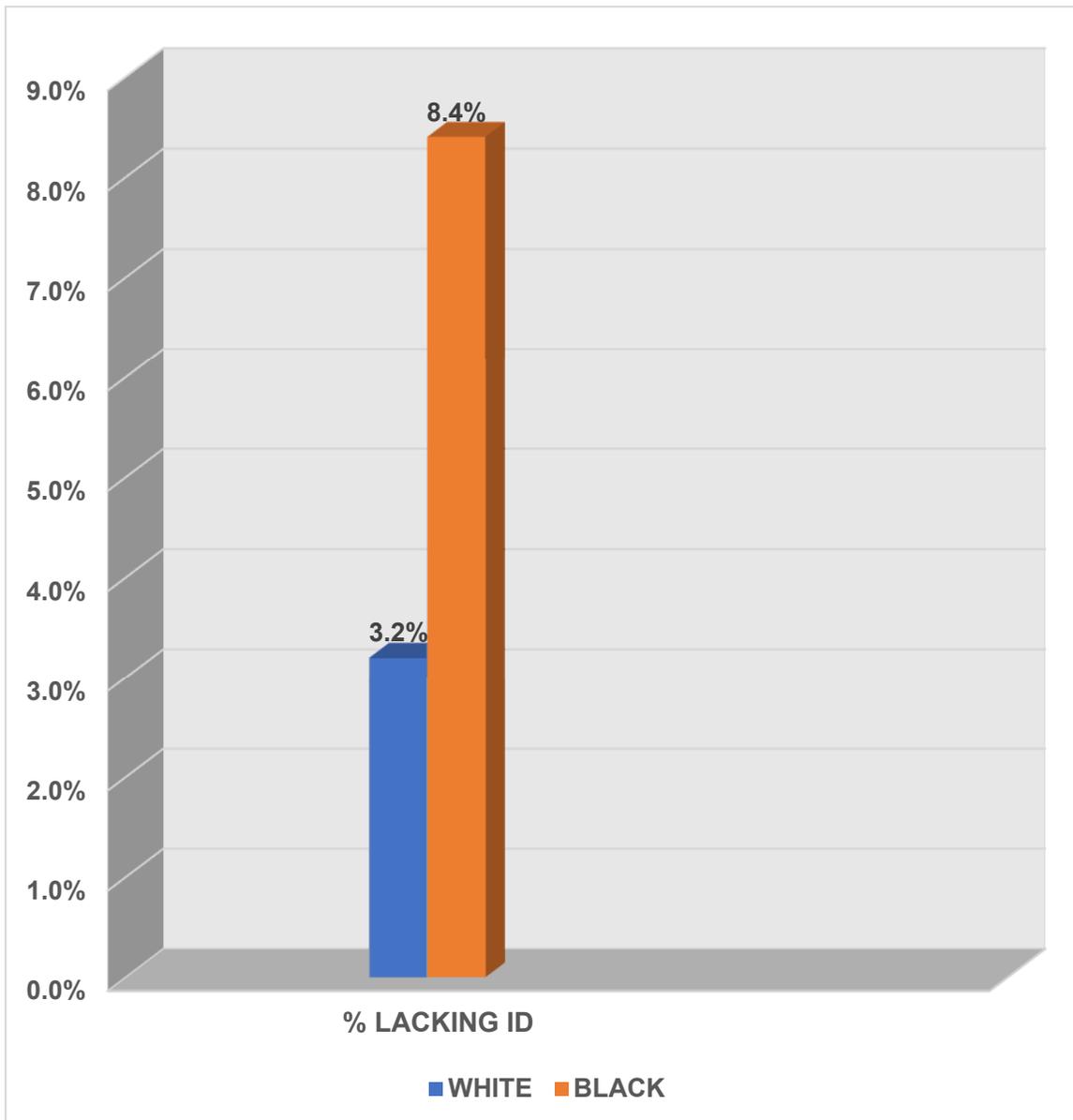


TABLE 3
PERCENT OF WHITES & BLACKS NORTH CAROLINA WITH
PHOTO IDS: UNEXPIRED DRIVER'S LICENSE, UNEXPIRED
PASSPORTS, MILITARY AND TRIBAL IDS, IN-STATE
STUDENT IDS AND IN-STATE OR LOCAL GOVERNMENT IDS
+ PUBLIC ASSISTANCE IDS

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



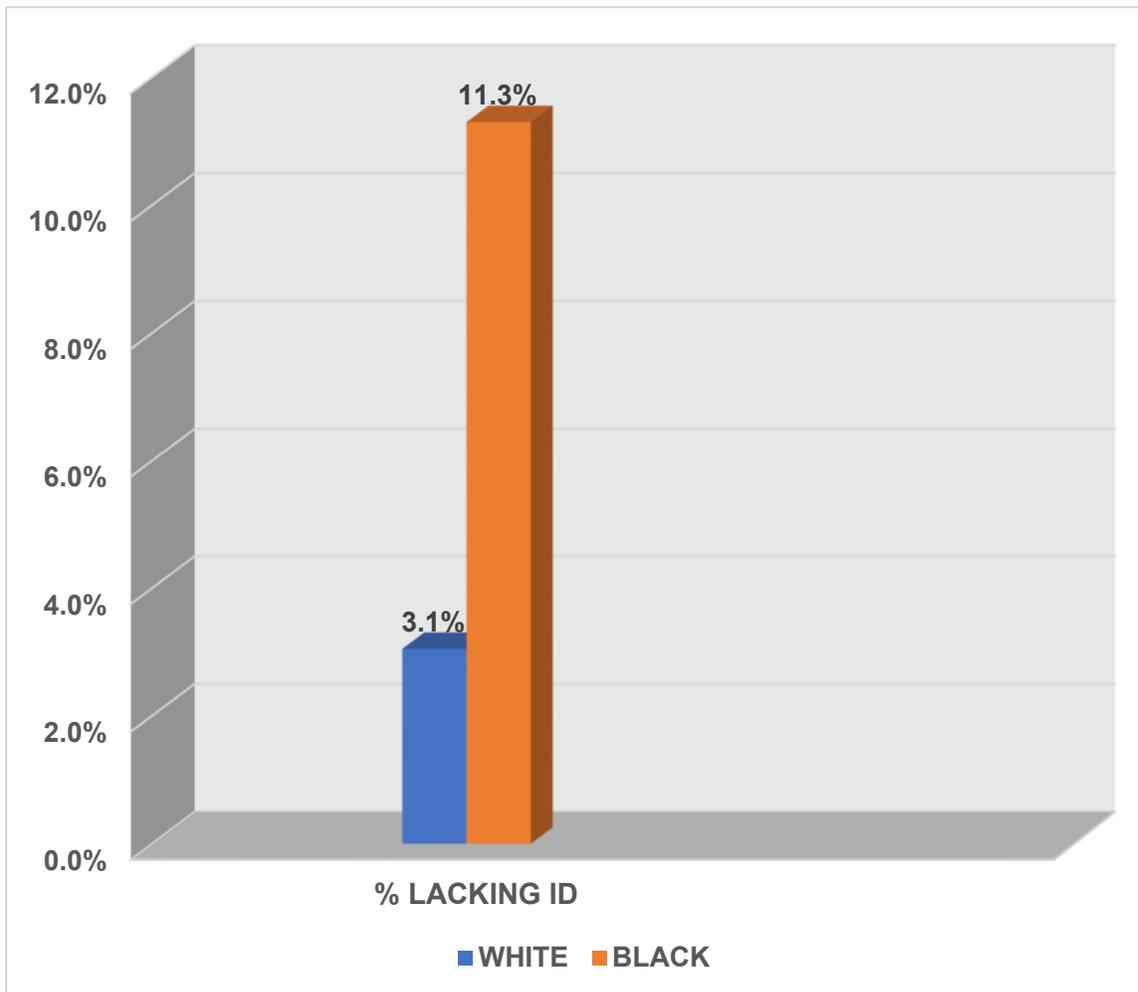
**TABLE 4
 PERCENT OF WHITES & BLACKS NORTH CAROLINA WHO VOTED
 IN YEARS OF SPAE SURVEY, WITH PHOTO IDS: UNEXPIRED
 DRIVER’S LICENSE, UNEXPIRED PASSPORTS, MILITARY AND
 TRIBAL IDS, IN-STATE STUDENT IDS AND IN-STATE STATE OR
 LOCAL GOVERNMENT IDS**

**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



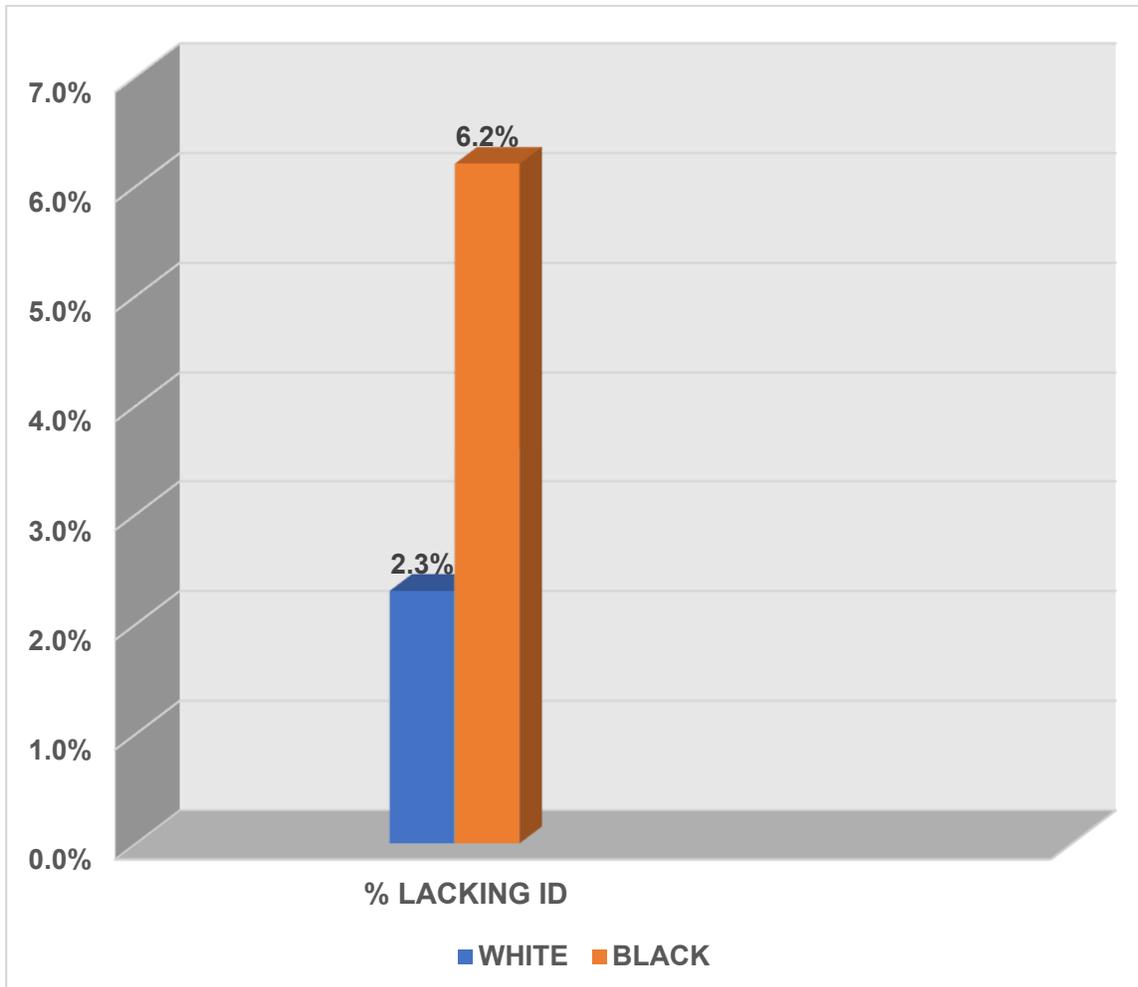
**TABLE 5
 PERCENT OF WHITES & BLACKS NORTH CAROLINA WHO VOTED
 IN YEARS OF SPAE SURVEY, WITH PHOTO IDS: UNEXPIRED
 DRIVER'S LICENSE, UNEXPIRED PASSPORTS, MILITARY AND
 TRIBAL IDS, IN-STATE STUDENT IDS AND IN-STATE STATE OR
 LOCAL GOVERNMENT IDS + PHOTO PUBLIC ASSISTANCE IDS**

**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 voters 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 higher* 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 higher* 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 All Primary Voters	53.4%	36.0%	10.6%	
	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.

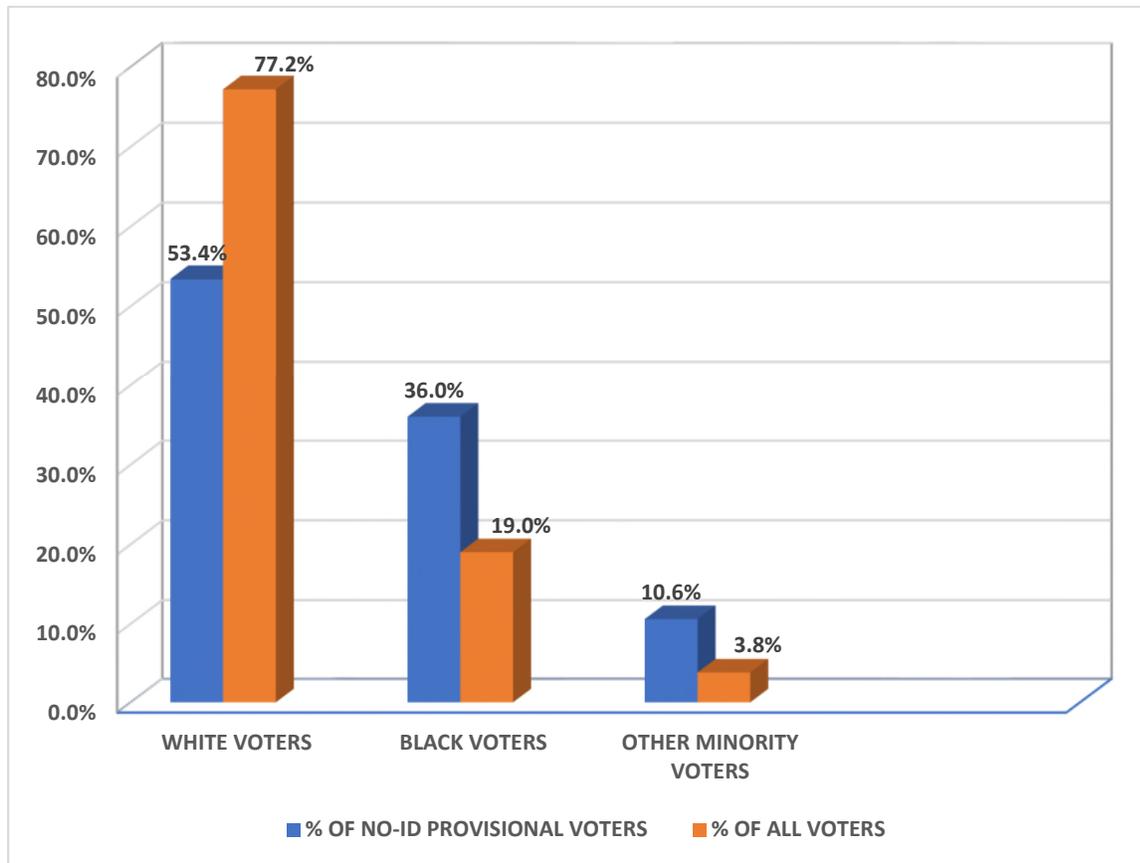
The data reported in Table 7 and Chart 5, indicates that white voters comprised 53.4 percent of racially identified voters casting a not-counted, no-ID provisional ballot, compared to 77.2 percent of all primary voters. Thus, white percentage among not-counted, no-ID provisional voters was *23.8 percentage 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 higher* 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 higher* 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

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 –

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

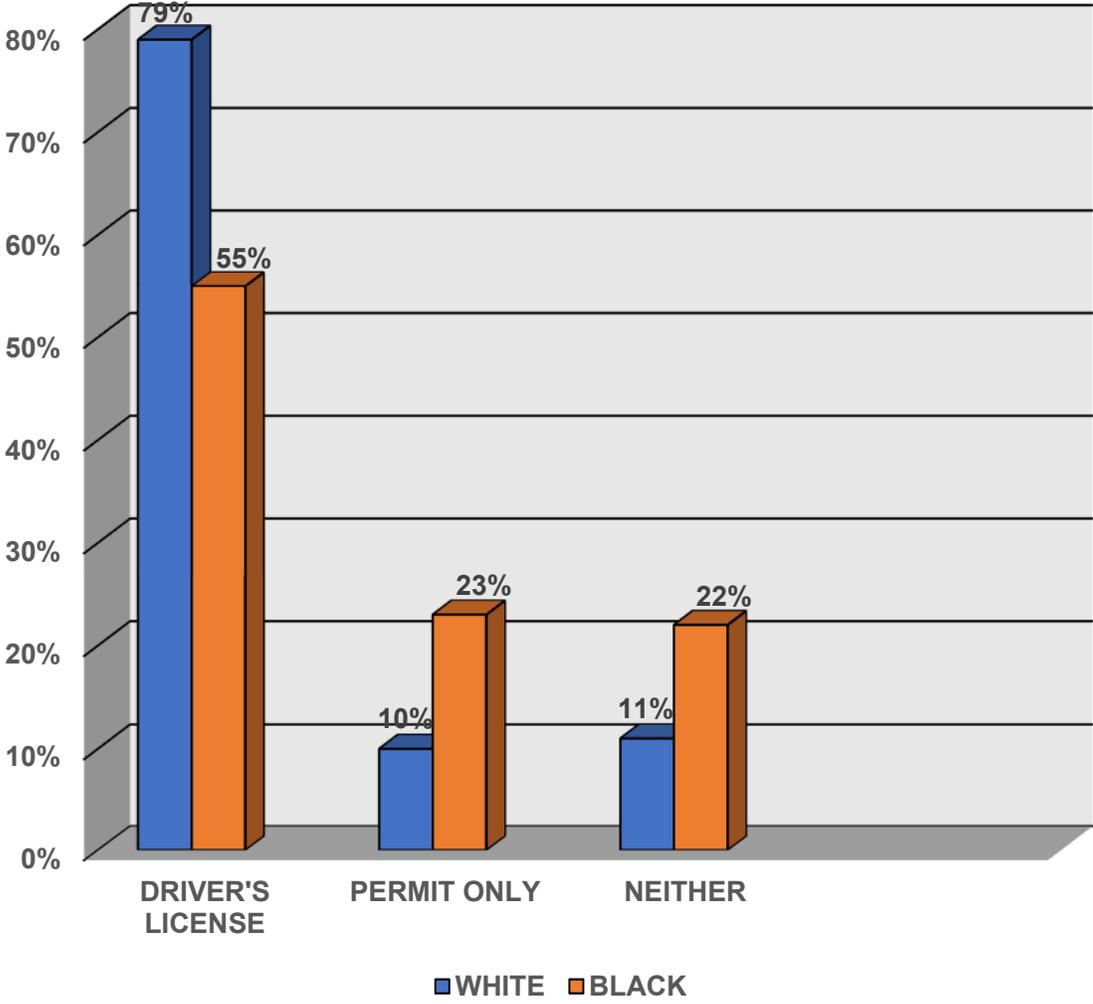
⁵³ *McCrorry*, 831 F. 3d at 43.

**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

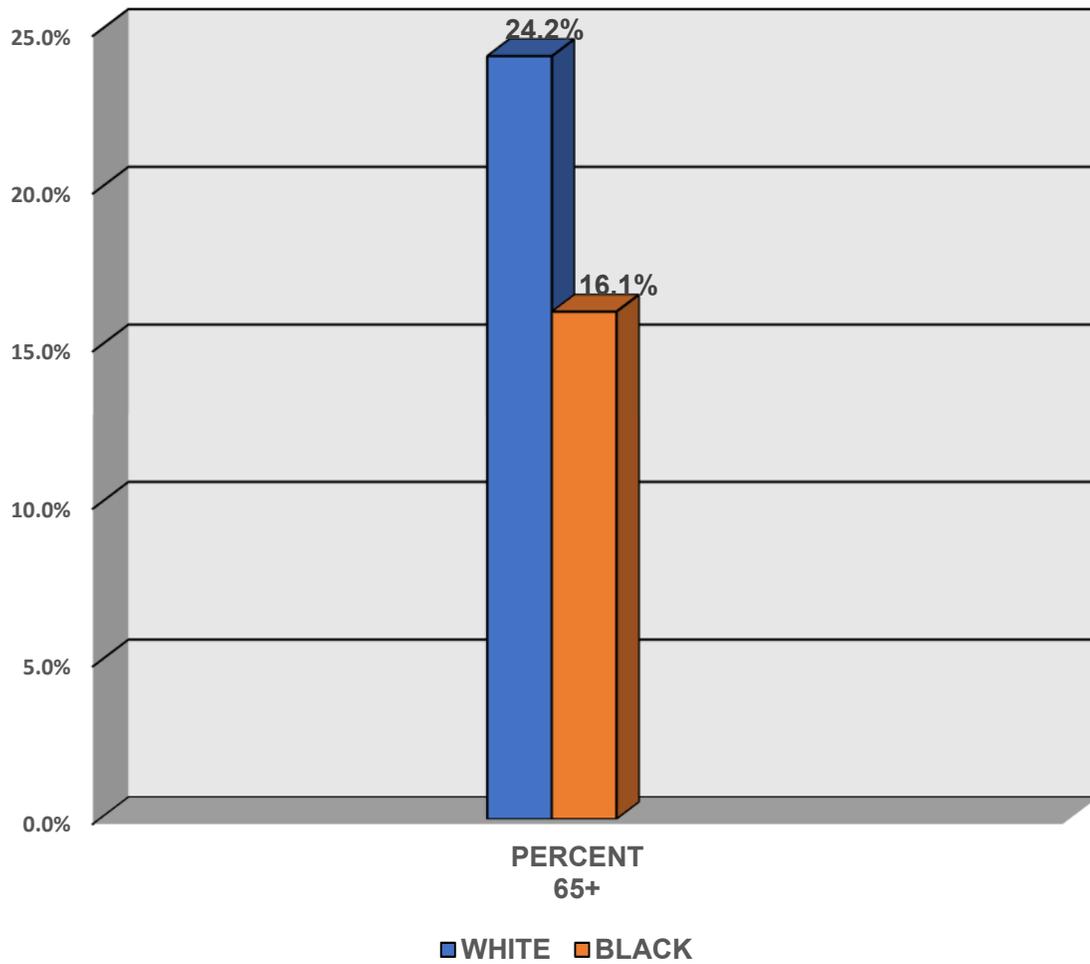


**TABLE 10
 PERCENTAGE OF VOTING AGE POPULATION 65-YEARS+ BLACK COMPARED
 TO WHITE, NORTH CAROLINA**

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

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 NAACP 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 she 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

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

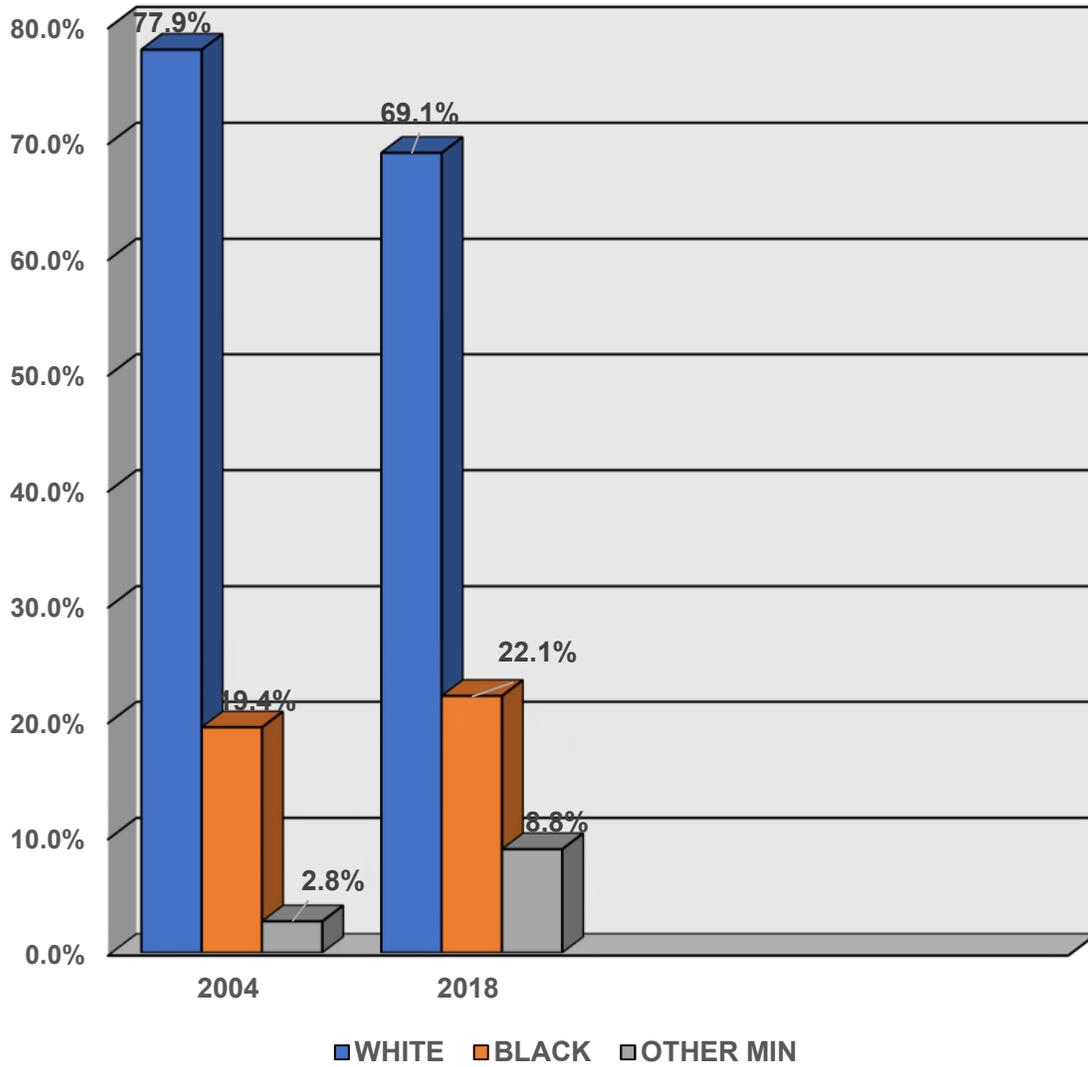
This shifting pattern of voter strength is especially consequential in light of the substantial racial polarization that exists in general elections in North Carolina. My previous report for *NAACP v. McCrory* established substantial racially polarized voting in North Carolina through the elections of 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

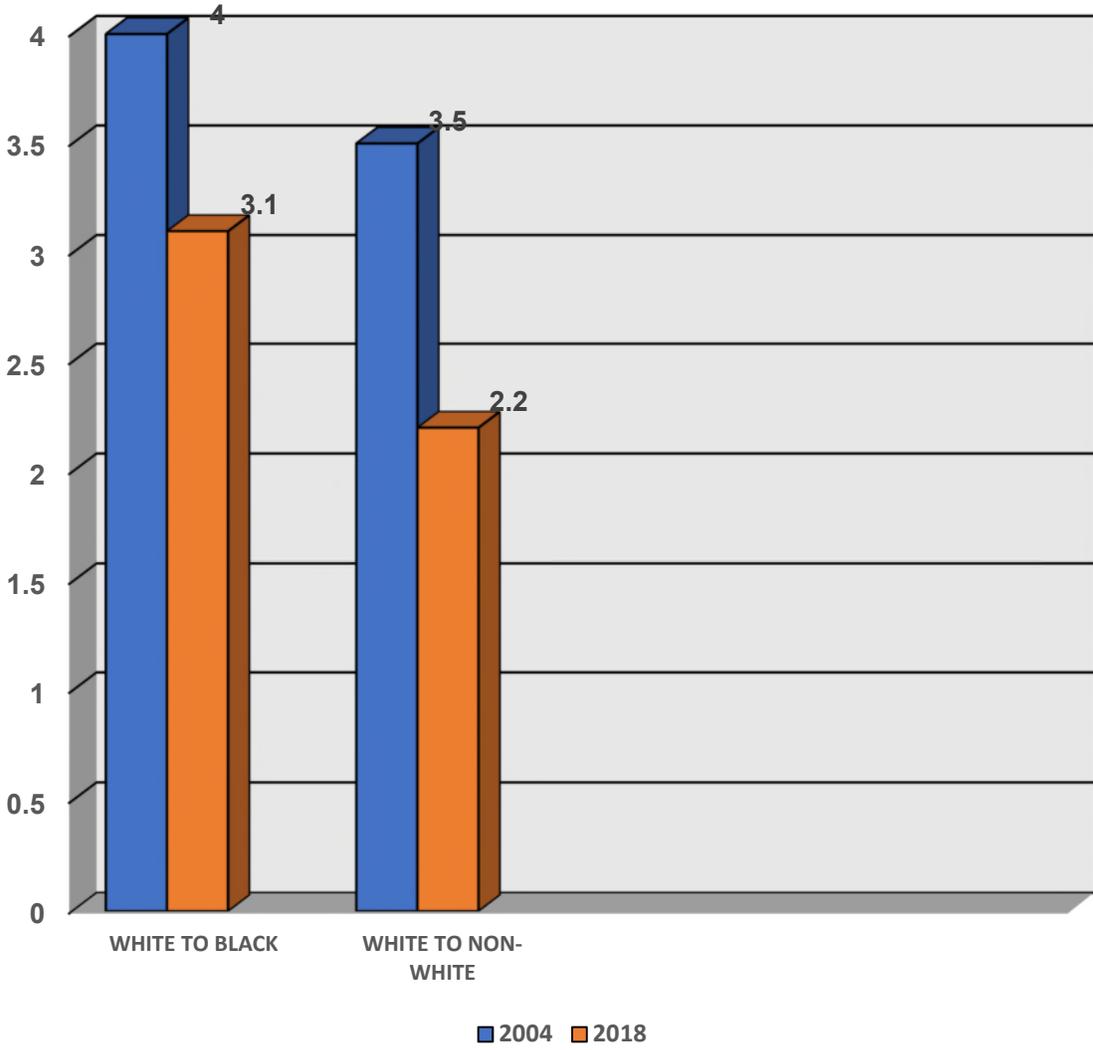


**TABLE 12
REGISTRATION BY RACE NORTH CAROLINA, 2004-2018, RATIOS: WHITE TO
BLACK AND WHITE TO NON-WHITE**

	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.

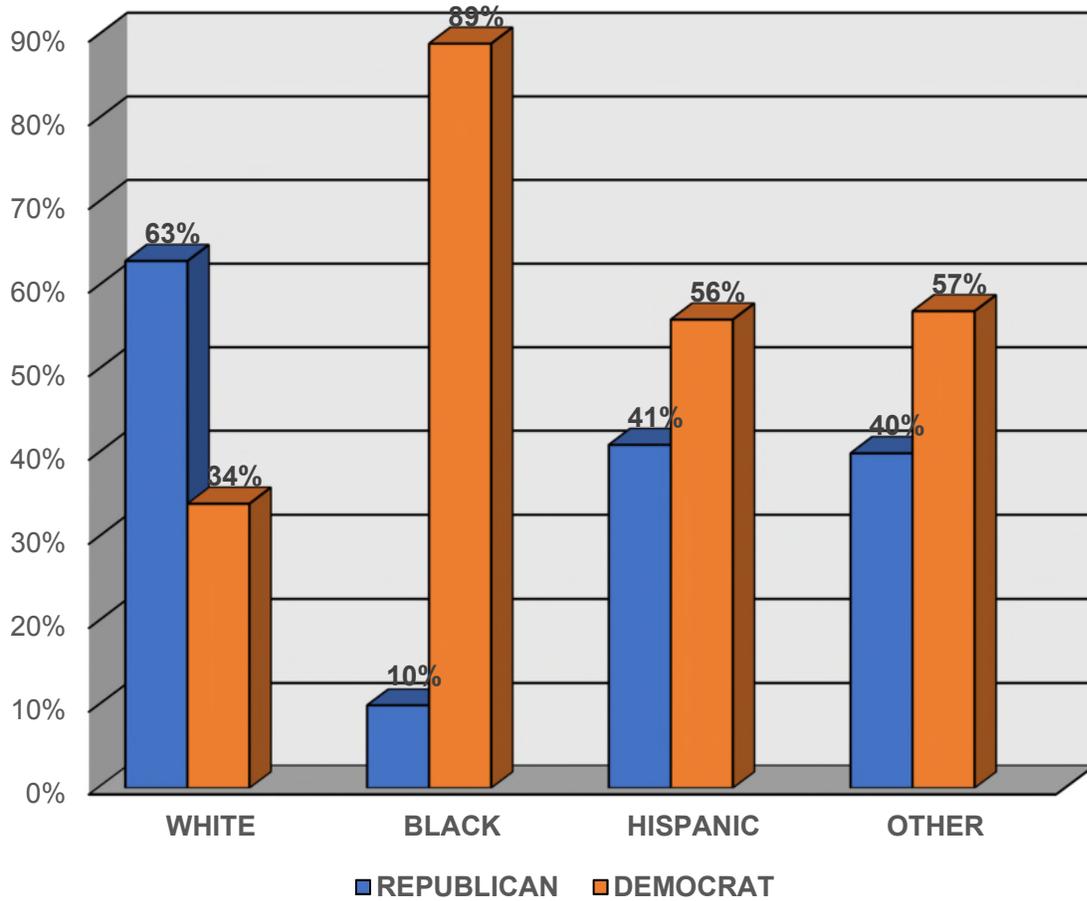
⁵⁹ Latino Vote 2016: Actual Vote, LD Polling and Exit Poll Errors (Presentation Deck); available at: <https://latinodecisions.com/polls-and-research/post-election-analysis/>

**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.

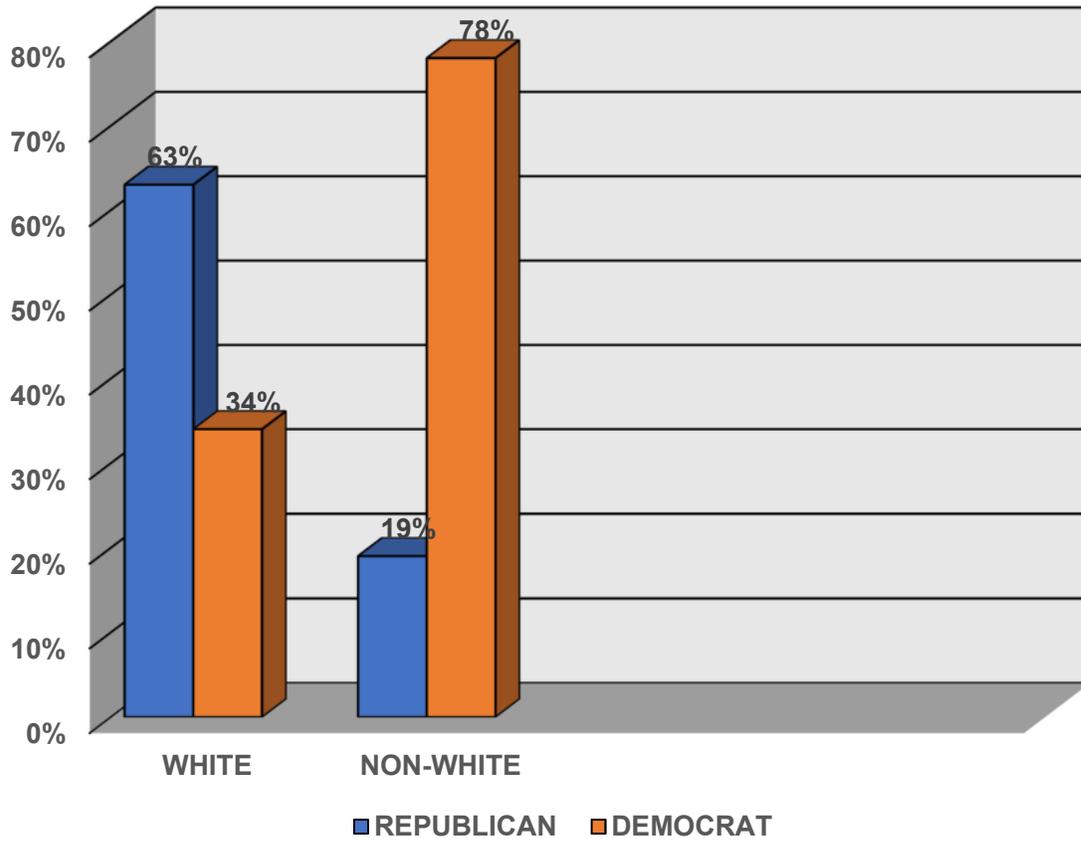
CHART 10: RACIAL DISPARITIES IN PARTY VOTING, 2016, NORTH CAROLINA, WHITE, BLACK, HISPANIC, OTHER



**TABLE 14
NORTH CAROLINA EXIT POLL RESULTS BY RACE, WHITE
VERSUS NON-WHITE ONLY 2016**

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

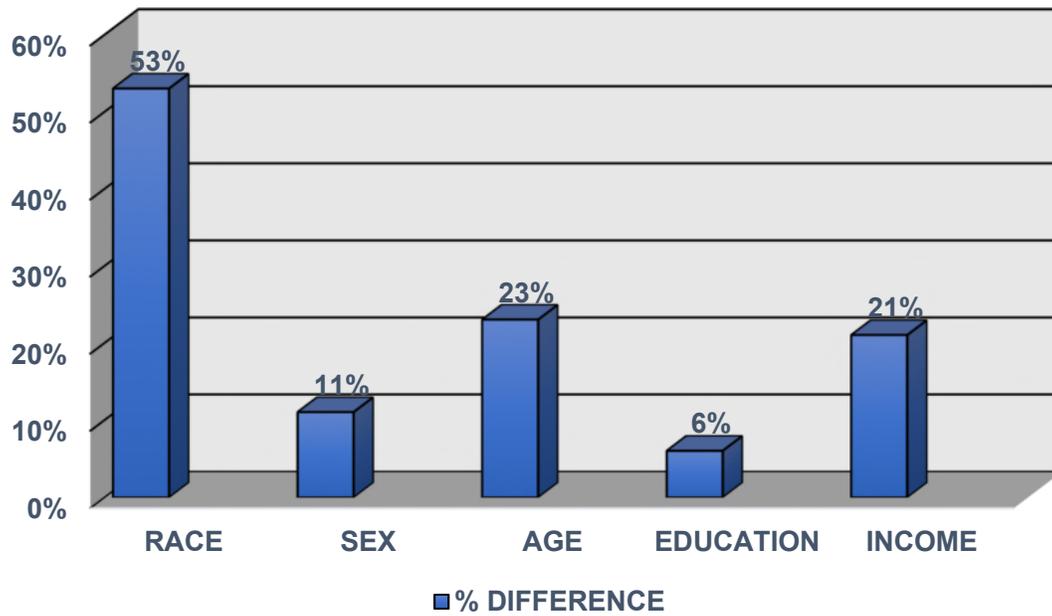


**TABLE 15
EXIT POLLS, COMPARISON OF DEMOCRATIC VOTING, BLACK V. WHITE, AND OTHER SOCIAL &
ECONOMIC CHARACTERISTICS, NORTH CAROLINA, 2016**

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

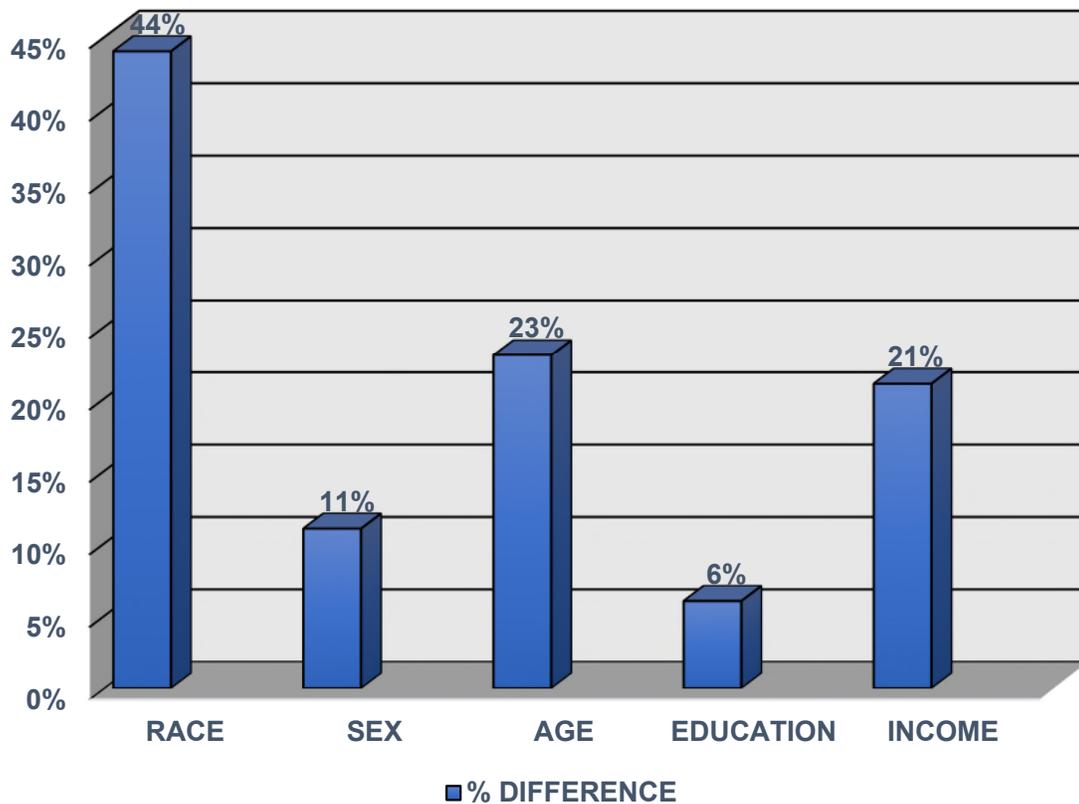


**TABLE 16
EXIT POLLS, COMPARISON OF DEMOCRATIC VOTING, NON-WHITE V. WHITE, AND OTHER SOCIAL
& ECONOMIC CHARACTERISTICS, NORTH CAROLINA, 2016**

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

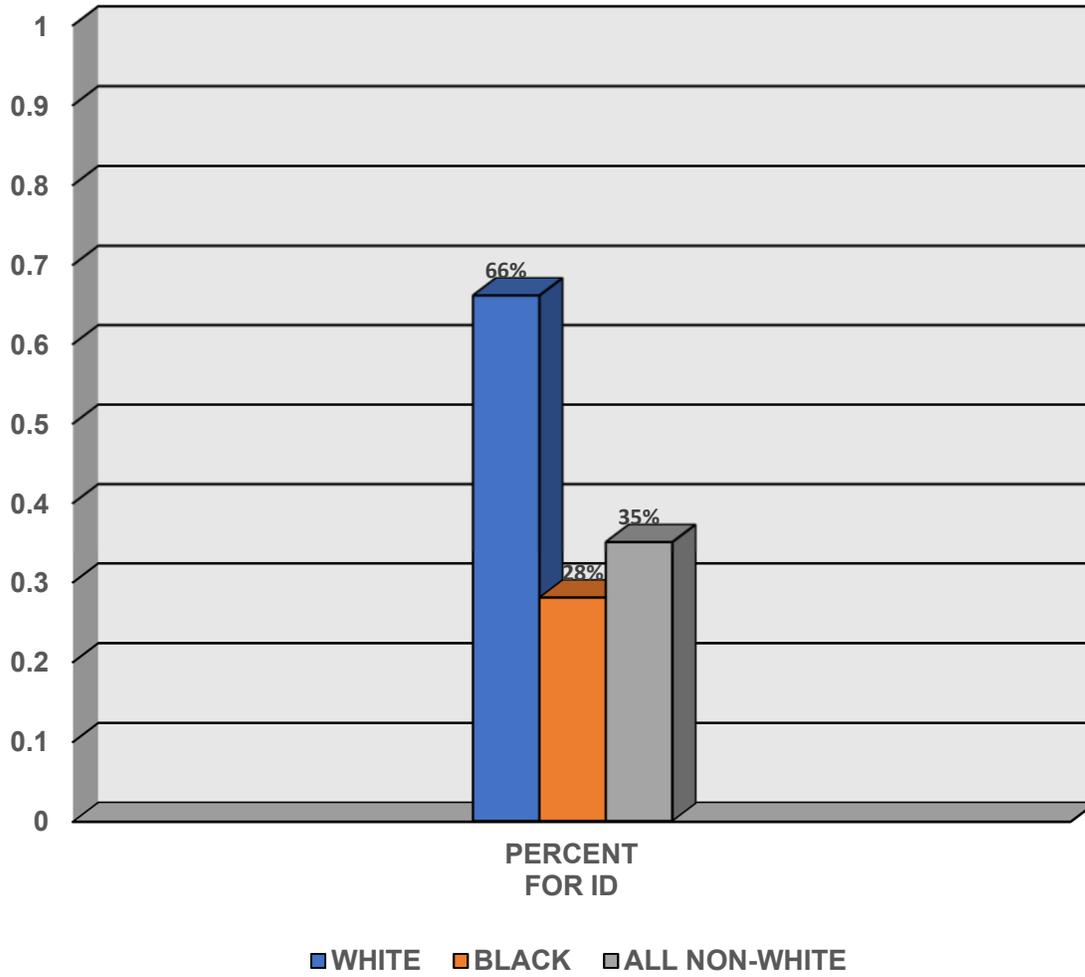
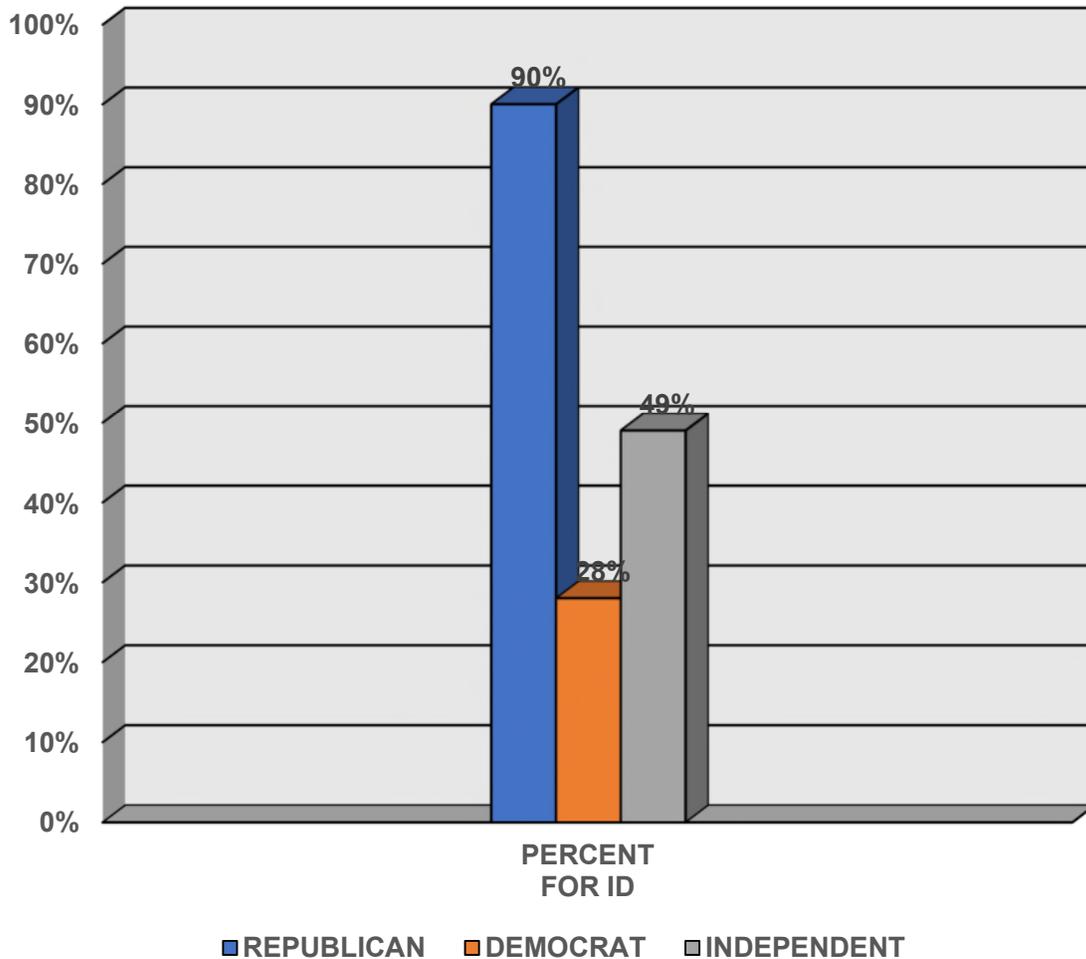


CHART 15: SURVEYUSA POLL ON SUPPORT FOR CONSTITUTIONAL AMENDMENT ON VOTER PHOTO ID, BY PARTY



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,

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-chowannewsheald.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:

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 Press*, 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.”

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_\(2018\)](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 thorough 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

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 Counsel 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

⁷⁴ David Sinclair, “Lawmakers, Opponents Weigh 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,

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,

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>.

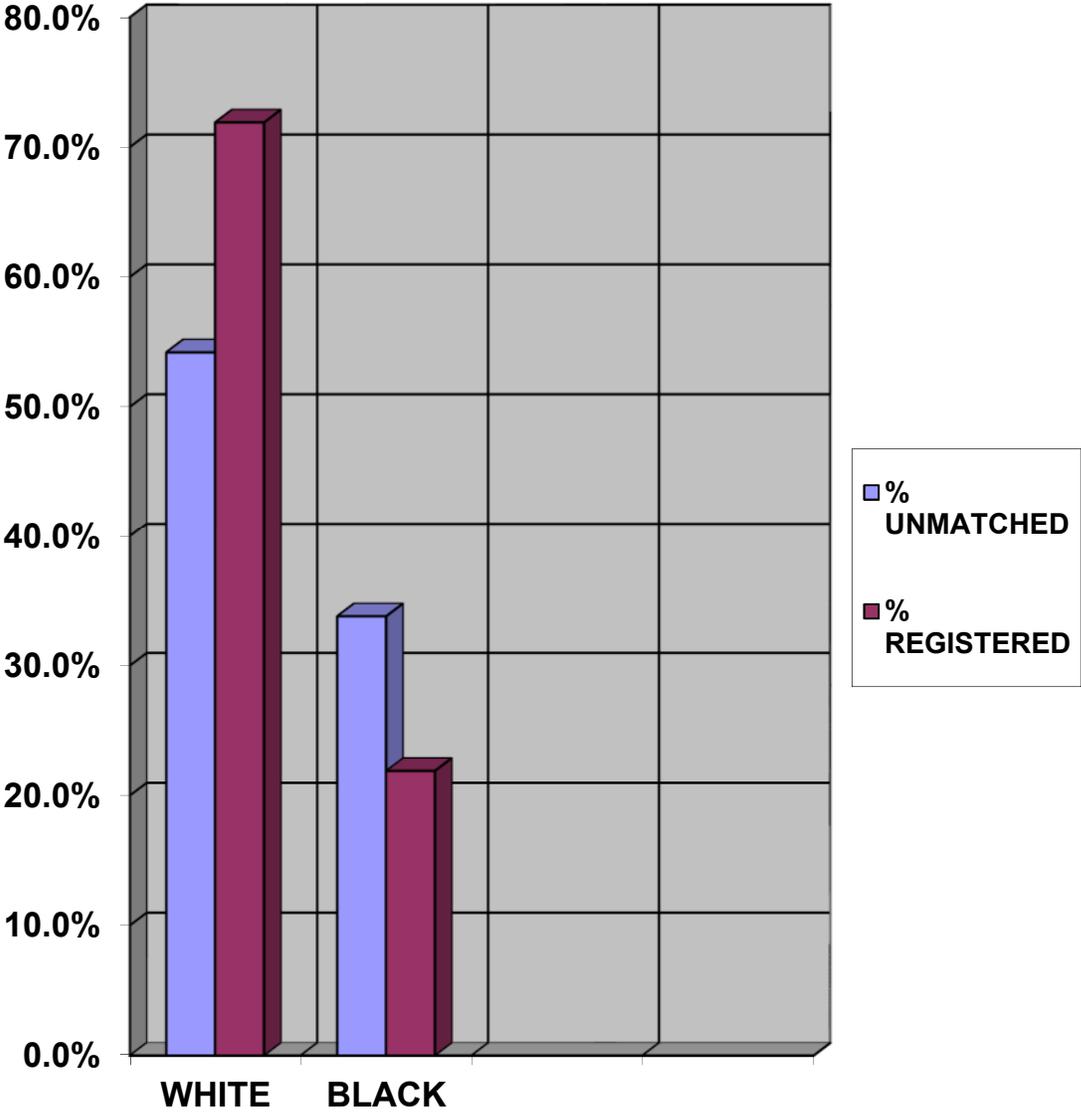
⁸⁰ Ross, Kirk, “Voter ID Delayed, College Student IDs Remain In Question” *Carolina Public Press*, 15 March 2019, <https://carolinapublicpress.org/28647/voter-id-delayed-student-ids-in-question/>; H.B. 646/SL 2019-22, 2019-2020 Gen. Assemb., Reg. Sess. (N.C. 2019), “ID Approval/Flex Muni One-Stop,” <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, <i>April 2013 SBOE-DMV ID Analysis</i> , 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.

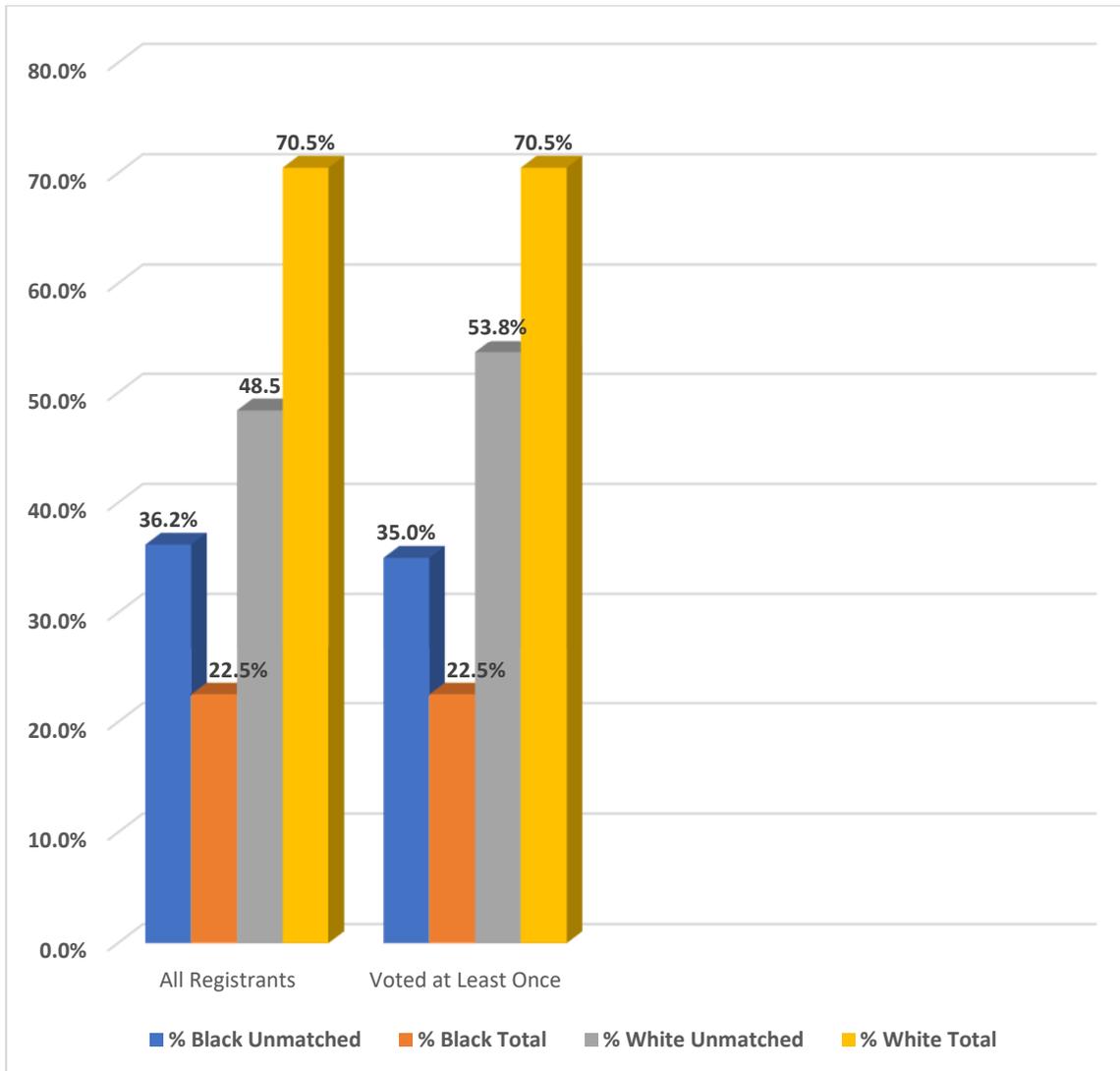
The Board indicated that the no-match list may be overinclusive because it likely includes some registrants who are no longer eligible to vote in North Carolina. However, the no-match list is far more likely to be underinclusive with respect to the 2018 law because it includes registrants matched to 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

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

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.); *McCrary*, 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

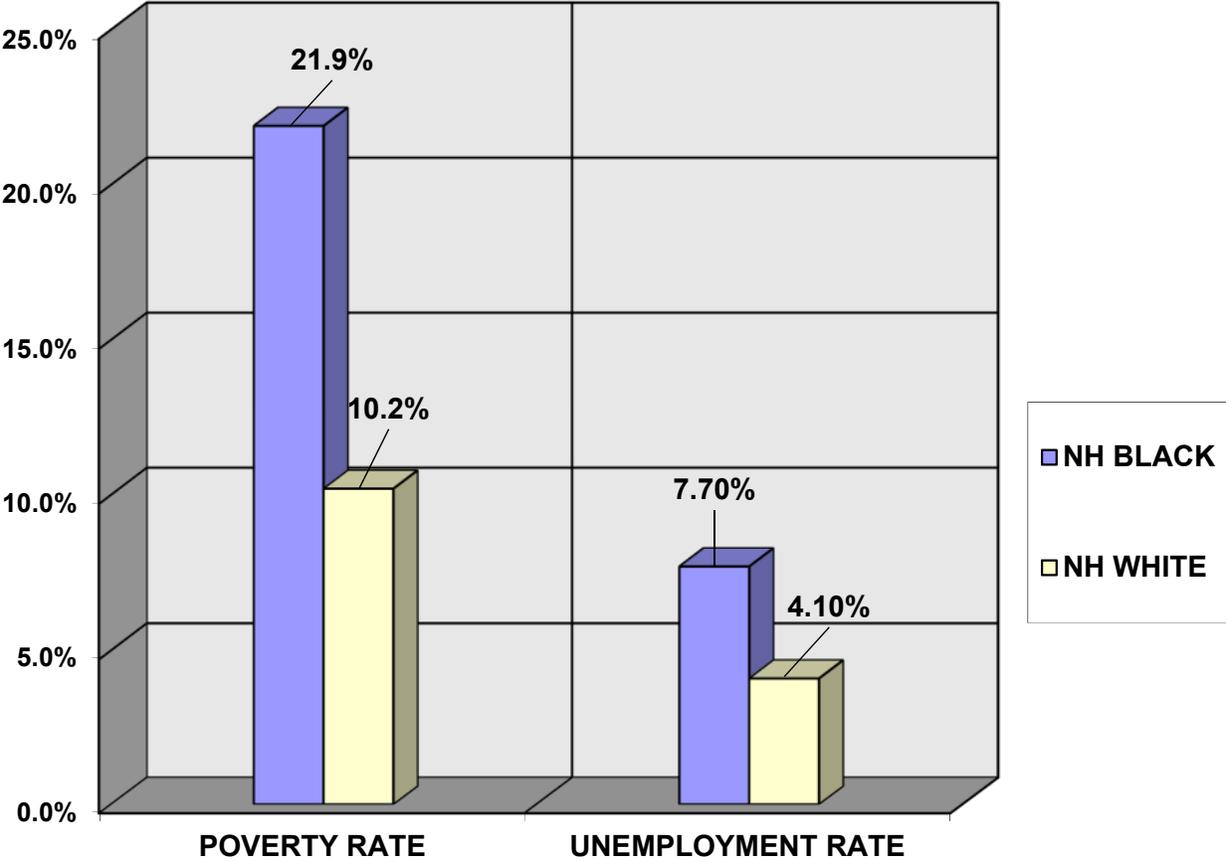


CHART 19: PER CAPITA INCOME BY RACE, NORTH CAROLINA

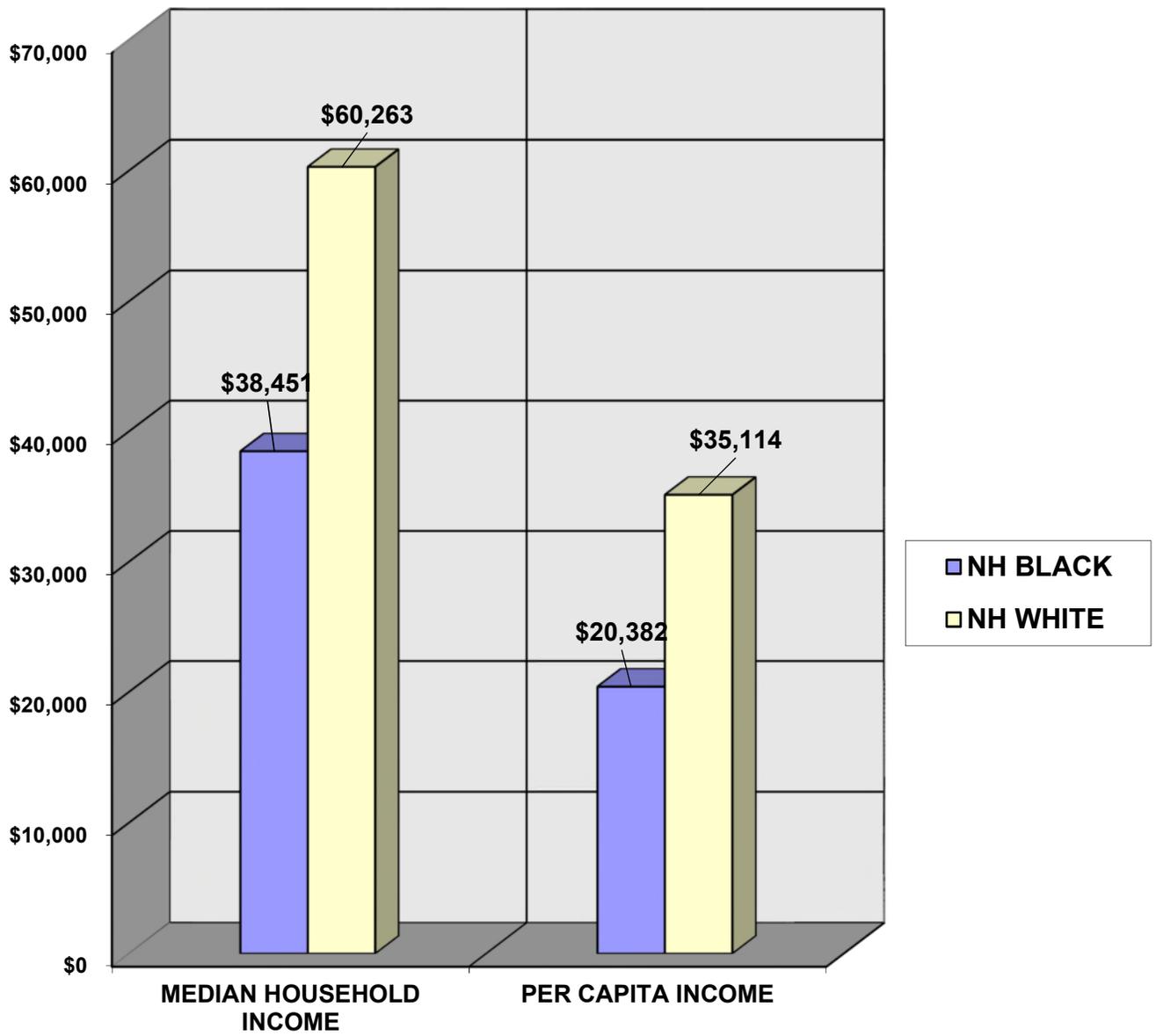


CHART 20: FOOD STAMPS/SNAP RECIPIENTS, ZERO OR NEGATIVE NET WORTH BY RACE, NORTH CAROLINA

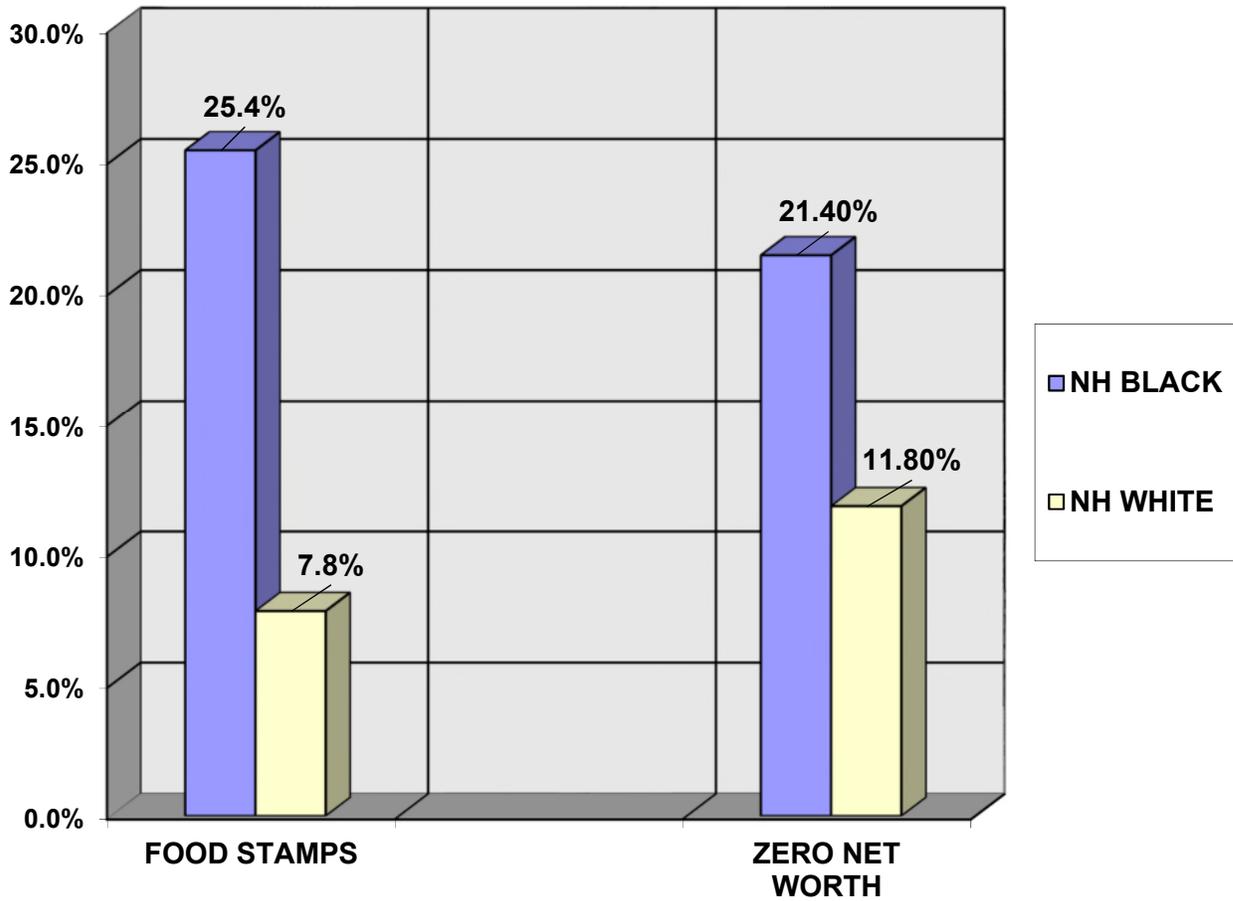


Table 22 and Charts 21 and 22 demonstrate relatively small racial differences on high school graduation rates, but large differences on college graduation rates between African Americans and whites in North Carolina. The Table and charts also show substantial disparities in educational proficiency between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

⁸⁶ *McCrary*, 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%93case>

**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

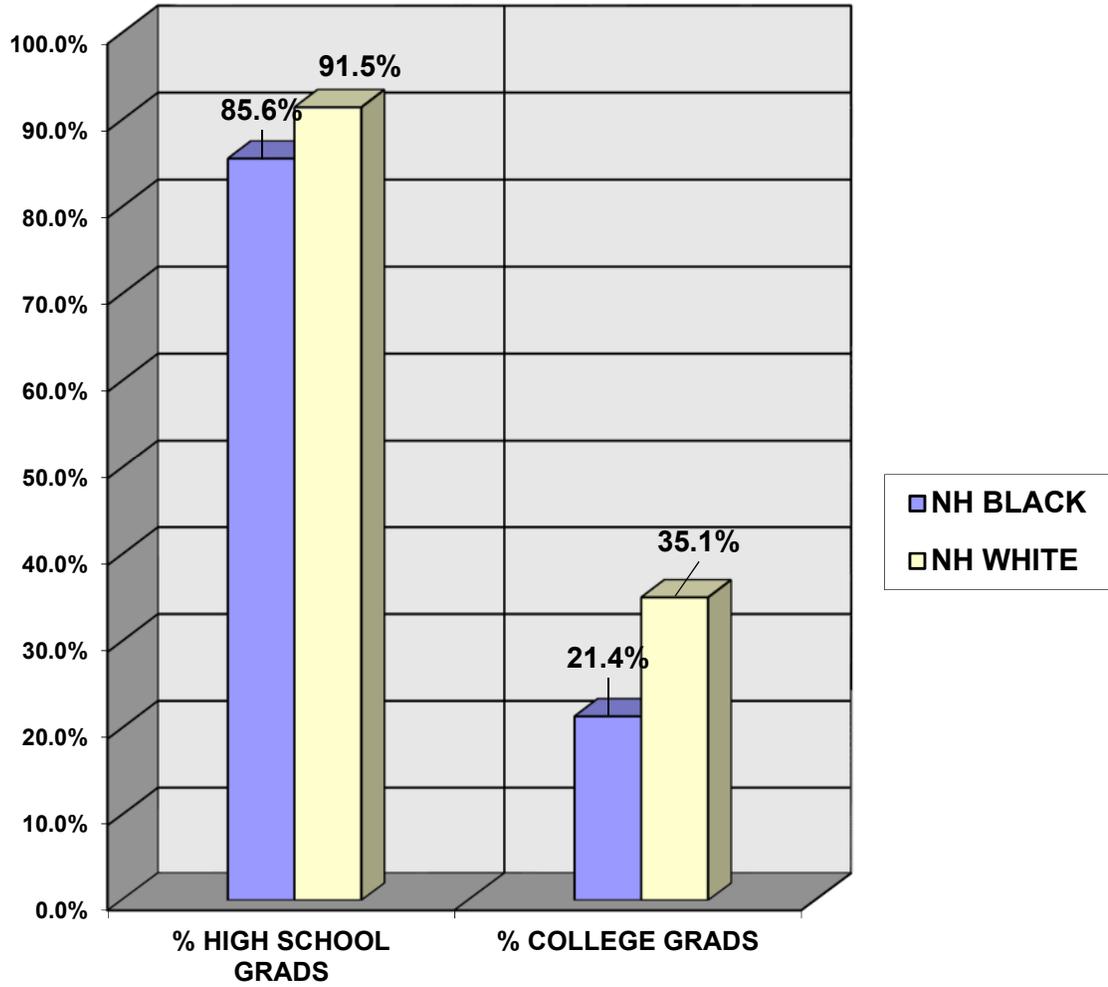


CHART 22: EDUCATIONAL PROFICIENCY BY RACE, NORTH CAROLINA

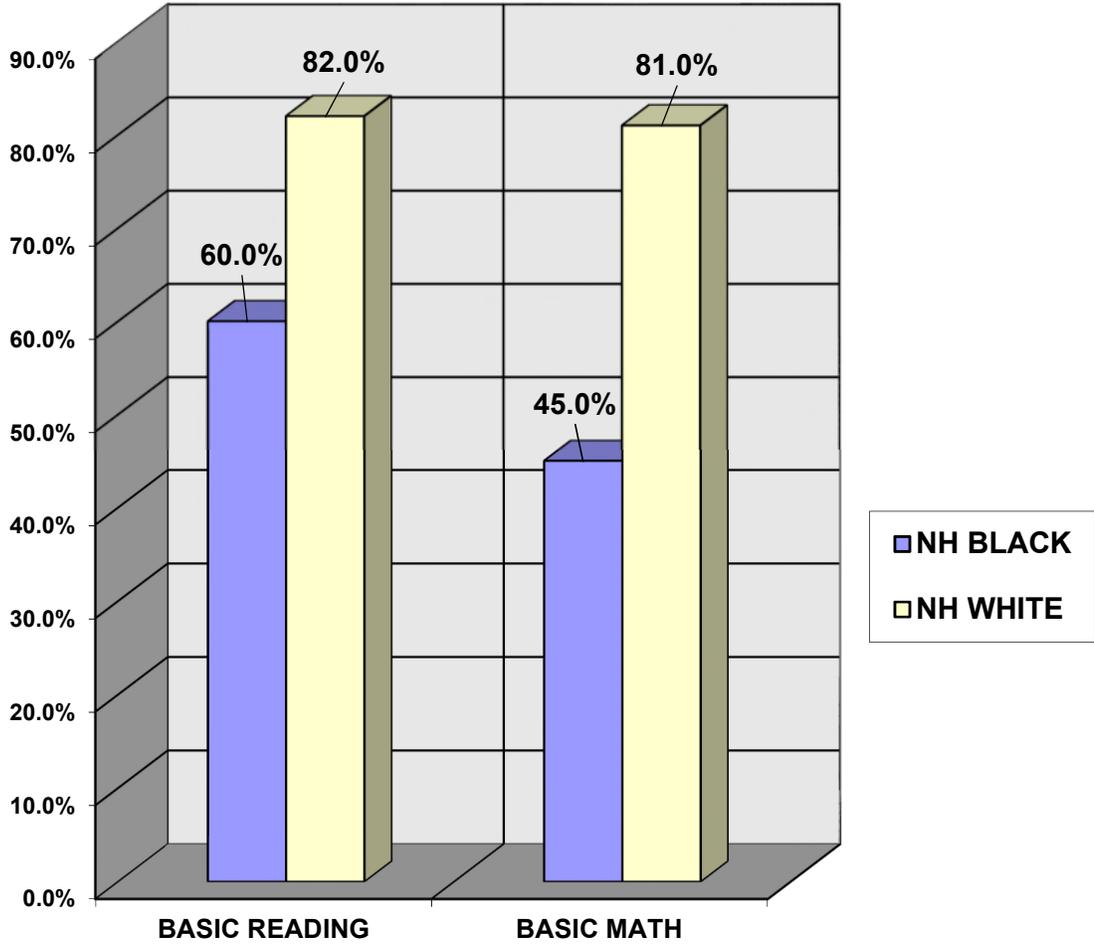


TABLE 23
HOUSING CHARACTERISTICS OF NON-HISPANIC BLACKS AND
WHITES IN NORTH CAROLINA, 2017 US CENSUS, AMERICAN
COMMUNITY SURVEY

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**

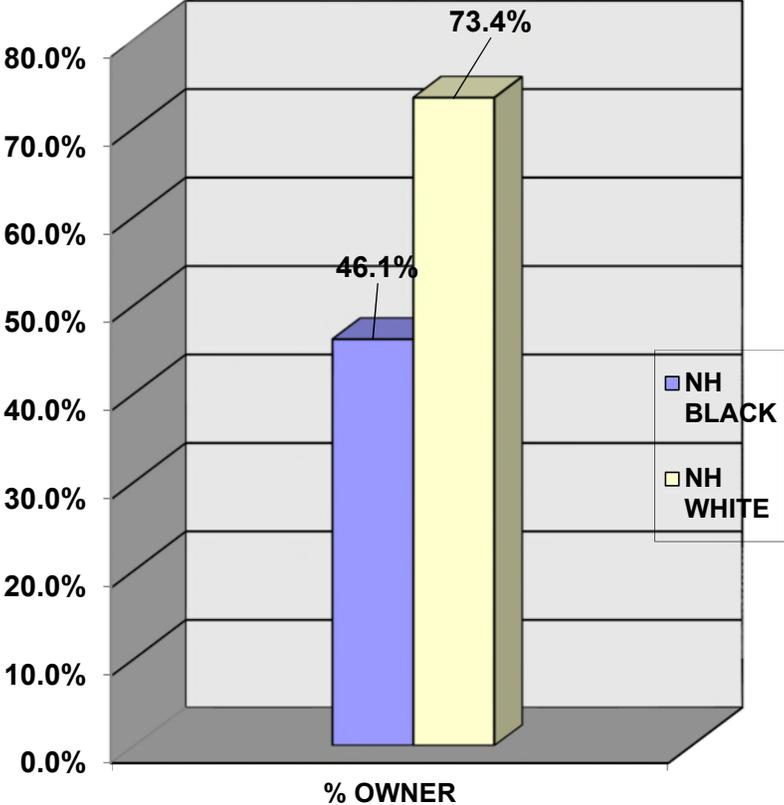


CHART 24: MEDIAN HOME VALUE BY RACE NORTH CAROLINA

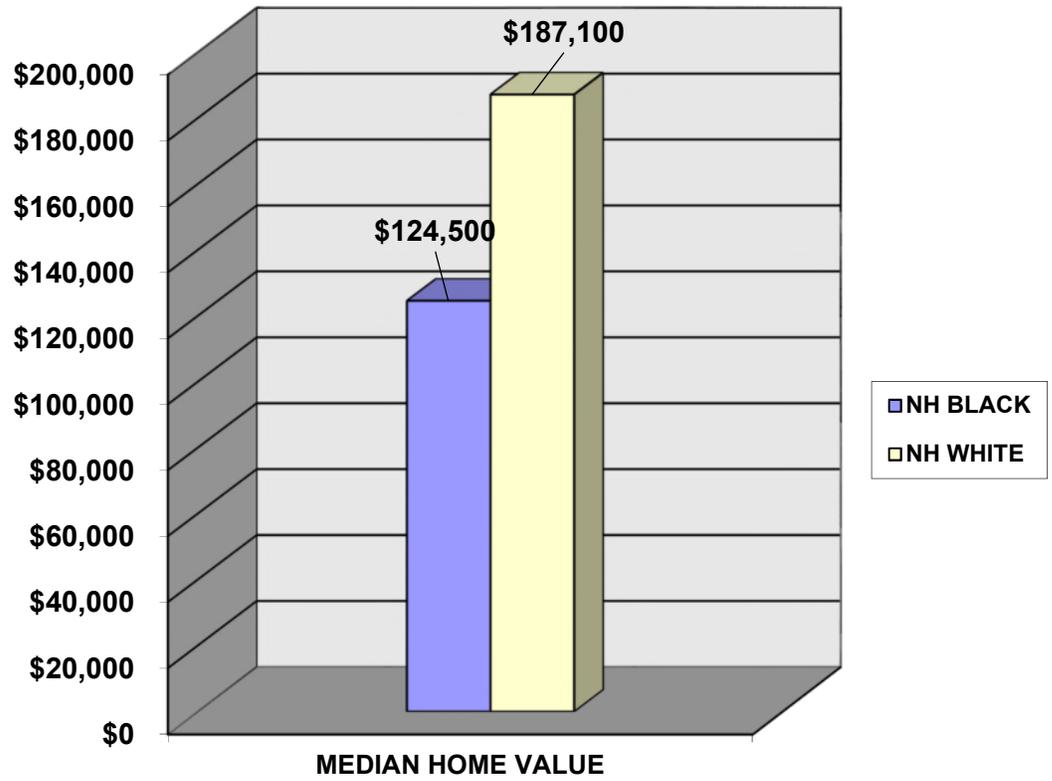
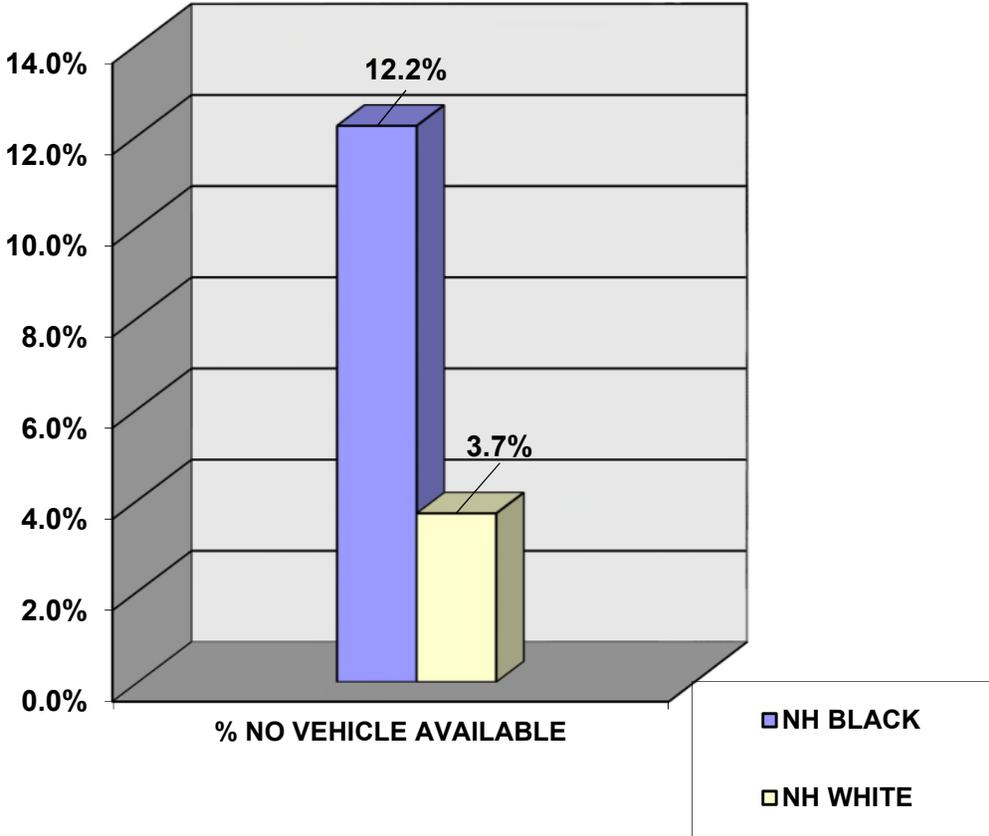


CHART 25: VEHICLE AVAILABILITY BY RACE, NORTH CAROLINA



**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

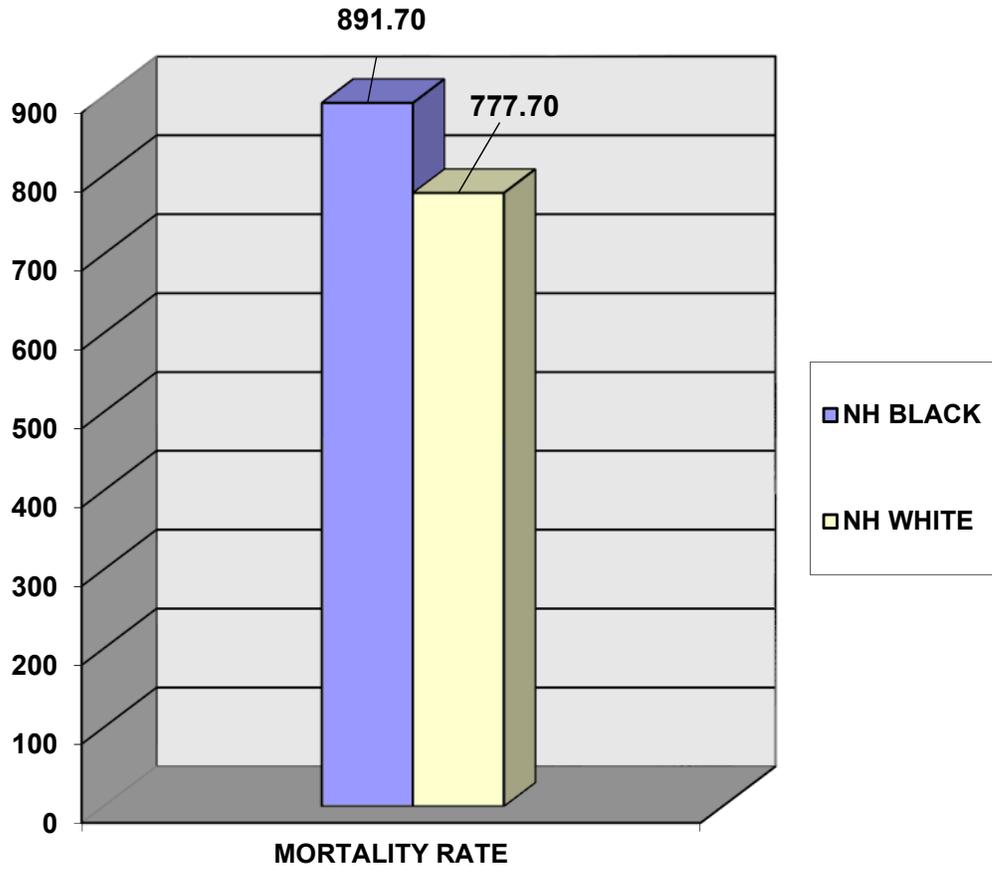
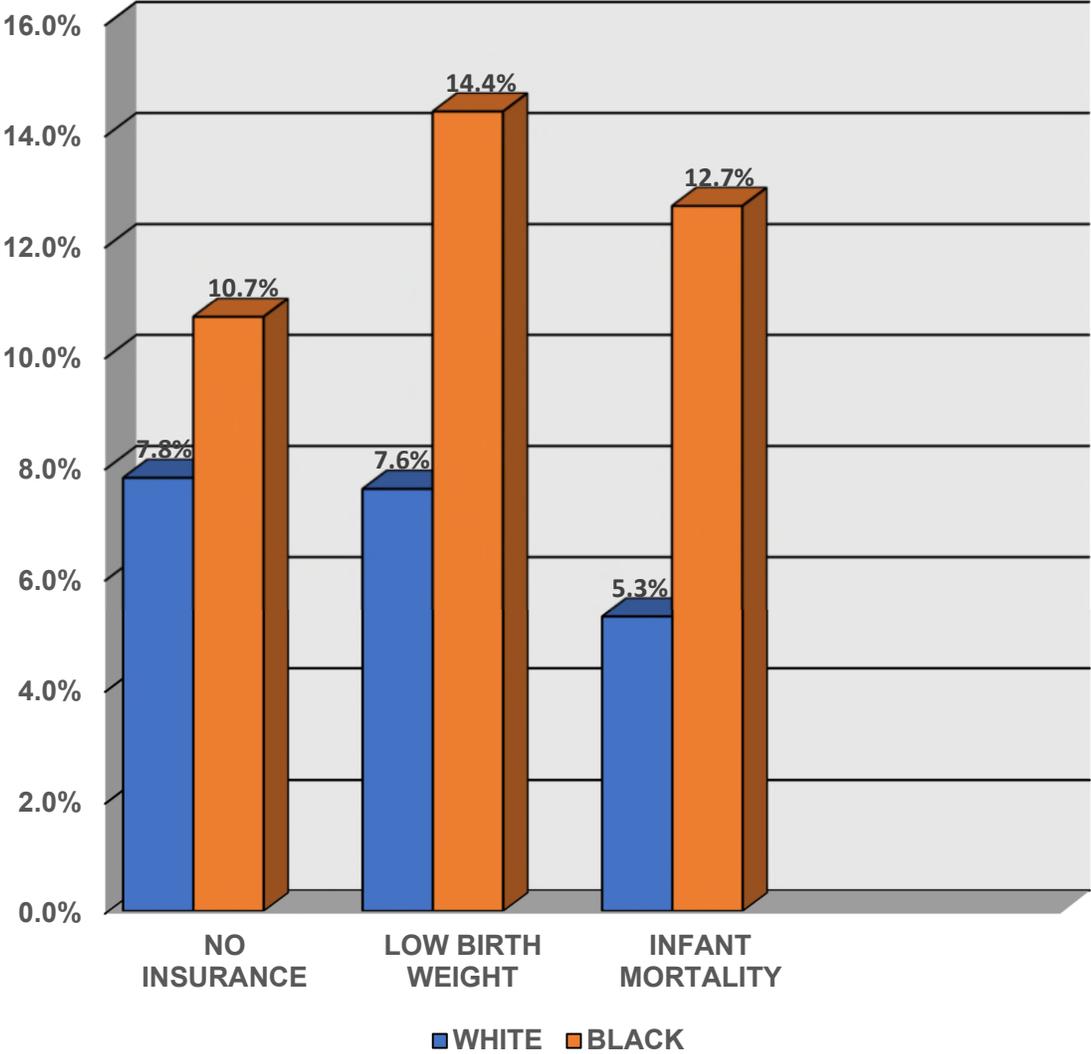


CHART 27: HEALTH INDICATORS, BLACK, WHITE, NORTH CAROLINA



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 to 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

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

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.

⁹⁶ *McCrorry*, 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/>.



- AFFILIATION
- PAY GRADE/RANK
- EXPIRATION DATE
- DoD IDENTIFICATION NUMBER





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

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

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](https://www.ncleg.gov/Documents/9#2017-2018%20Session\Audio%20Archives\2018;Senate%20Floor-House%20Bill%201092-Constitutional%20Amendment%20Requiring%20Voter%20Photo%20ID), 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

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 filed 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

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

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

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

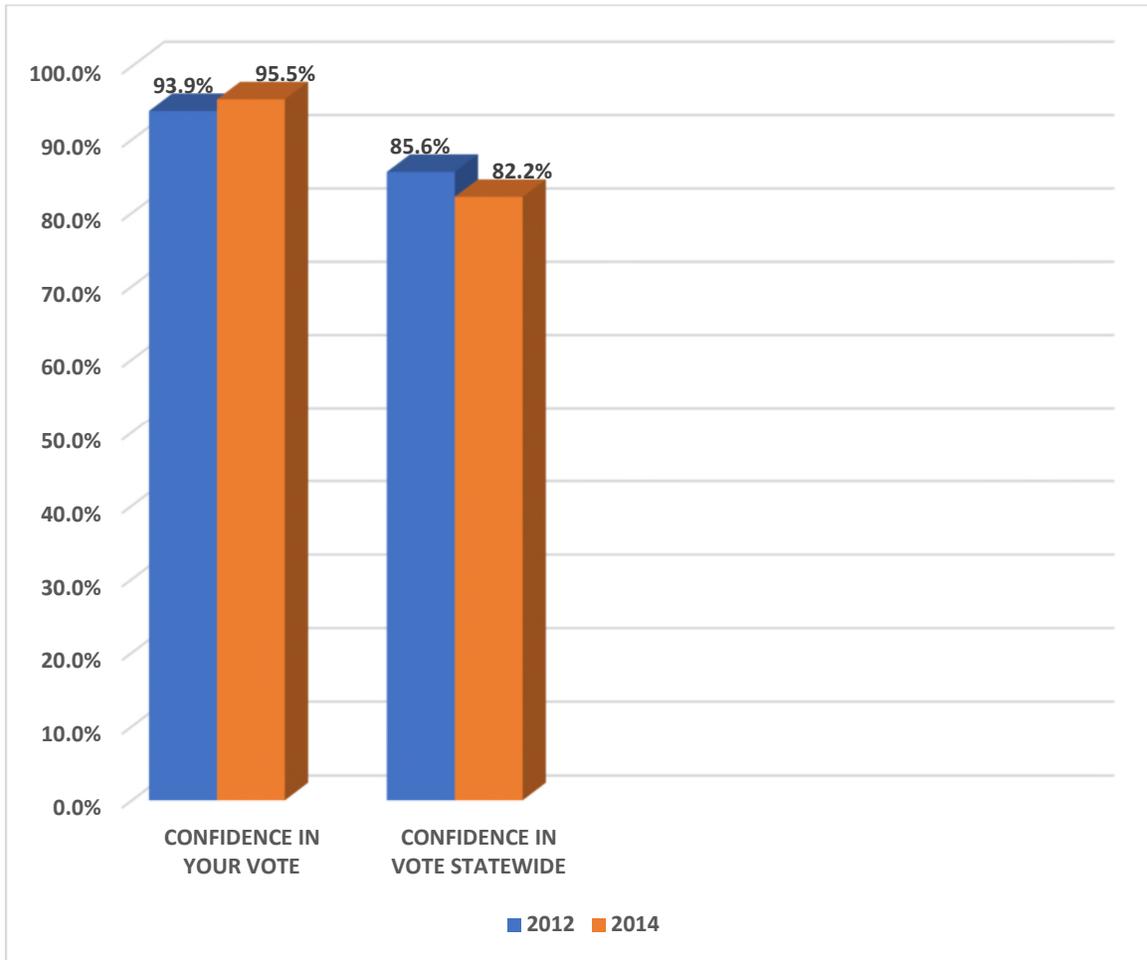
¹¹⁸ Sam Levine, “North Carolina Voters Amend State Constitution To Require Photo ID At Polls,” *Huffpost*, 6 November 2018, https://www.huffpost.com/entry/north-carolina-voter-id_n_5bdb7f22e4b01ffb1d009477.

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

¹²⁰ “Is North Carolina’s Voter ID Law ‘Common Sense’ Policy or Discrimination?” *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

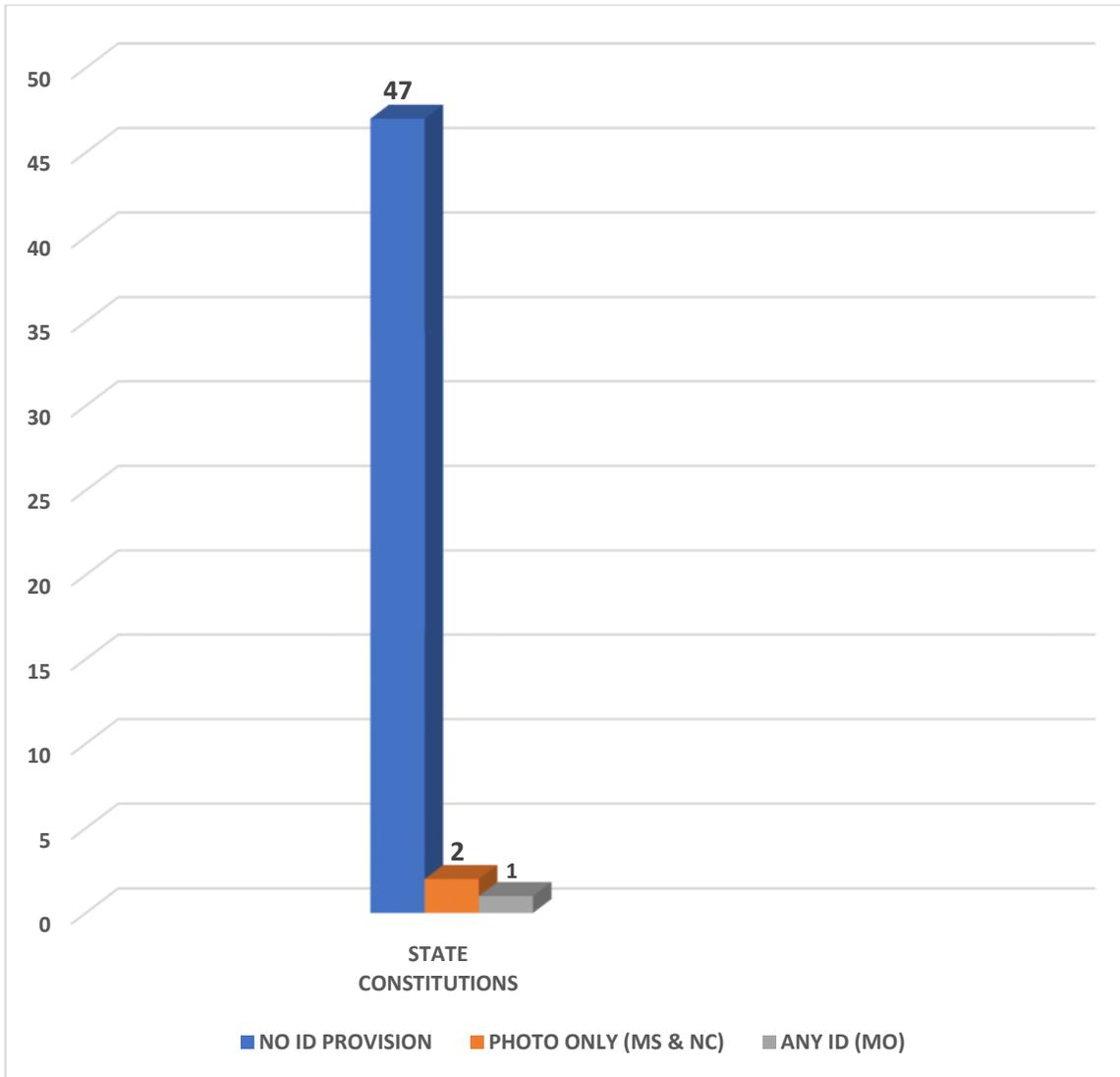
North Carolina also stepped out the mainstream of other voter photo ID states by eliminating three forms of commonly accepted photo identification: U.S. government employee IDs, U.S. government certificate of naturalization, and public assistance IDs from the list of acceptable forms of identification. 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_\(2016\)](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

¹²⁶ North Carolina State Board of Elections, “Documented Cases of Voter Fraud in North Carolina,” Attach. F., 11 March 2013, https://www.ncleg.gov/documents/sites/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

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

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-aeaa-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

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.

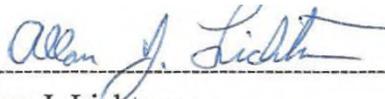
Despite clear evidence that absentee voter fraud in North Carolina was a far more serious problem than voter impersonation at the polls, the General Assembly in 2013 and again in its initial presentation of implementing legislation in 2018 limited the voter photo ID requirement only to voting at the 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).

"A General Theory of Vote Dilution," LA RAZA (with Gerald Hebert) 6 (1993). REF

"Adjusting Census Data for Reapportionment: The Independent Role of the States," JOURNAL OF LITIGATION (December 1993, with Samuel Issacharoff)

"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 (Elsevier, 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, Yomhuri 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 Realignment 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 Forum, 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.

APPENDIX E

**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.

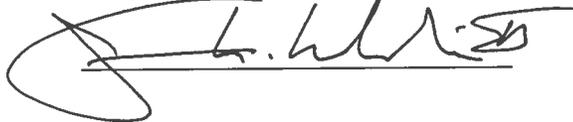
No. 1:18-cv-01034

**PRELIMINARY EXPERT REPORT OF
JAMES L. LELOUDIS II
FOR PURPOSES OF PRELIMINARY INJUNCTION**

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

Respectfully submitted,

Executed on: September 17, 2019

A handwritten signature in black ink, appearing to read "J. LeLOUDIS II", written over a horizontal line.

Fragile Democracy: Race and Voting Rights in North Carolina, 1860-2019

TABLE OF CONTENTS

I. Summary of Opinions	3
II. Background and Qualifications	3
III. Materials Reviewed	4
IV. Discussion	4
V. Introduction – Democracy, Racial Equality, and Voting Rights	5
VI. War, Emancipation, and Reconstruction in North Carolina	6
VII. Fusion Politics and a New Campaign for White Supremacy	11
VIII. Jim Crow	21
IX. Black Advance and White Reaction in the Forgotten 1950s	31
X. Civil Rights at Last Civil Rights at Last	43
XI. Judicial Intervention and a More Inclusive Democracy	51
XII. Retrenchment	55
XIII. Conclusion	68
Bibliography	72

I. Summary of Opinions

My name is James L. Leloudis II. I have taught history at the University of North Carolina at Chapel Hill for 30 years, with a focus on North Carolina and the American South. I have published extensively on the history of the state and region, and my scholarship has won awards from the nation's leading professional associations in my field.

I was retained by the NC NAACP Plaintiffs in this case to assess whether there is a history of racial discrimination in North Carolina, specifically with respect to voting practices. Based on my 40 years of researching, writing, and teaching in this field, and having reviewed published works by historians of race and politics in the American South, newspapers from the time period covered by this declaration, the public laws of North Carolina, archival sources for individuals and institutions, and reports from various federal and state agencies, it is my opinion that:

- North Carolina has a long and cyclical history of struggle over minority voting rights, from the time of Reconstruction to the present day.
- Throughout the period covered in this declaration, political campaigns have been characterized by racial appeals, both overt and subtle.
- Over the last century and a half, North Carolina leaders have employed a variety of measures to limit the rights of racial and ethnic minorities to register, to vote, and to participate in the democratic process. Those measures have included vigilante violence, a literacy test and poll tax, multi-member legislative districts, the prohibition of single-shot voting, and a host of other regulations regarding the preparation of ballots, procedures for challenging electors' right to register and to vote, and the monitoring of polling sites by election judges.
- Historically, when minority voting rights have been constrained, the North Carolina state government has been decidedly unresponsive to minority concerns and interests related to social and economic policy. That lack of responsiveness to blacks and, in recent years, a rapidly growing population of Hispanics, has perpetuated to this day minority disadvantages in employment and education, further hindering the ability of minority populations to participate fully and freely in the political process.¹
- SB824, like its predecessor HB589, represents the latest chapter in the long struggle over minority voting rights in North Carolina, and in its origins and provisions recapitulates the history of earlier eras.

Each of these opinions is explained and supported in detail below.

II. Background and Qualifications

I am employed as Professor of History at the University of North Carolina at Chapel Hill. I received a B.A. degree, with highest honors, from the University of North Carolina at Chapel Hill (1977), an M.A. degree from Northwestern University (1979), and a Ph.D. degree from the

¹ The terms 'Hispanic' and 'Latino' are often used interchangeably to describe immigrants from Mexico, Cuba, and Central and South America. I will use 'Hispanic' throughout this report, because that is the term most often employed by the U.S. Census Bureau, the North Carolina State Board of Elections, and other government agencies and researchers to characterize voters who have ties to those regions.

University of North Carolina at Chapel Hill (1989). My primary training was in the history of the United States, with a specialization in the history of race, politics, labor, and reform in the 19th- and 20th-century American South. For the past 30 years I have taught undergraduate and graduate courses in my area of specialization. I have published four books, nine articles, and numerous book reviews. I have also made more than 50 presentations to academic and lay audiences.

My scholarship has won a number of prestigious awards, including the Louis Pelzer Prize for the best essay by a graduate student (1982, Organization for American Historians), the Philip Taft Labor History Award for the best book on the history of labor (1988, New York State School of Industrial and Labor Relations, Cornell University), the Merle Curti Award for the best book on American social history (1988, Organization of American Historians), the Albert J. Beveridge Award for the best book on the history of the United States, Latin America, or Canada (1988, American Historical Association), the Mayflower Cup for the best non-fiction work on North Carolina (1996, North Carolina Literary and Historical Association), and the North Caroliniana Society Award for the best work on North Carolina history (2010).

In 1982, as a graduate student in history at the University of North Carolina at Chapel Hill, I conducted research that became part of the expert testimony provided by Professor Harry Watson in *Gingles v. Edmisten*, 590 F. Supp. 345 (1984).² I previously provided expert testimony in *N.C. NAACP v. McCrory*, 831 F. 3d 204, 215 (2016). This report serves to update research conducted in that matter. A detailed record of my professional qualifications is set forth in the attached curriculum vitae, which I prepared and know to be accurate.

III. Materials Reviewed

I have conducted qualitative research on the history of race, voting rights, and voter suppression in North Carolina, from the end of the Civil War to the present. Sources that I have consulted include published works by historians of race and politics in the American South, newspapers from the time period covered by this declaration, the public laws of North Carolina, archival sources for individuals and institutions, court cases, and reports from various federal and state agencies.

IV. Discussion

Senate Bill 824, like its predecessor HB59, is best understood in the context of three historical periods of political realignment in which black citizens' access to the franchise in North Carolina has been significantly redefined. This history of voting rights in the state reflects significant ebbs and flows in those citizens' ability to exercise their fundamental constitutional rights.

This report details that history, reviewing the fierce conflict between highly successful efforts to expand access to voting rights to all citizens, especially blacks, and campaigns to impose extreme restrictions on access to the franchise. The report begins with the Civil War and Reconstruction era and concludes with the present day.

² *Gingles v. Edmisten*, 590 F. Supp. 345 (1984).

This report additionally highlights the origins and persistent effects of race-based and economic subjugation of blacks in North Carolina that continues to limit their opportunities and those of other minorities to exercise voting rights.

V. Introduction – Democracy, Racial Equality, and Voting Rights

Today, Americans are sharply divided over issues of electoral security and voter infringement. To understand how we came to this impasse, we must look back to 1865 and the end of America's Civil War. The Union had been preserved and the Confederacy was in ashes, but the sacrifice of nearly three quarters of a million lives had not decided the republic's future. Would there be a "new birth of freedom," as Abraham Lincoln had imagined in his Gettysburg Address, or would the nation be reconstituted as a "white man's government," the outcome preferred by his successor, Andrew Johnson? Between 1865 and 1870, self-styled "radicals" in Lincoln's Republican Party answered that question with three constitutional amendments that historians have described as America's "Second Founding."³

The Thirteenth Amendment (1865) abolished slavery and guaranteed the liberty of four million black men, women, and children who had been enslaved in the South. The Fourteenth (1868) granted them citizenship by birthright and established the principle of "equal protection of the laws." And the Fifteenth (1870) forbade the states from denying or abridging male citizens' right to vote "on account of race, color, or previous condition of servitude."

These constitutional guarantees tied the fate of American democracy to the citizenship rights of a newly emancipated black minority and their descendants. For 150 years, the exercise of those rights and the connection between racial justice and democratic governance have been the centermost issues in American politics. This has been particularly true for the right to vote.

In North Carolina, battles over the franchise have played out through cycles of emancipatory politics and conservative retrenchment. In a pattern repeated multiple times, blacks and their allies have formed political movements to end racial exploitation and claim their rights as equal citizens. They have done so not only to advance their own interests but to promote participatory democracy more generally and to make government responsive to the needs of all its people. Invariably, these efforts have met resistance from conservative lawmakers who erected safeguards – or what advocates of enfranchisement called barriers – around the ballot box. Conservatives have been remarkably creative in that work. When one restriction was struck down in the courts or through protest and political mobilization, they quickly invented another. Sometimes, they spoke in overtly racial terms and implemented reforms through violent means. At other times, they cast franchise restrictions in the more euphemistic language of fraud and corruption. Consistently, they presented strict regulation of the right to vote as a means of ensuring "good order" and "good government."

Some pundits have suggested that the fight over ballots represents little more than competition between Democrats and Republicans to reshape the electorate and gain partisan advantage. No doubt the contest has been intensely partisan, but the ideological realignment of the Democratic and Republican parties reminds us that something far more significant has been at

³ Carmichael, *Lincoln's Gettysburg Address*, 72, and Foner, *Second Founding*. Johnson spoke often of a "white man's government"; for the example used here, see Speech on the Restoration of State Government, January 21, 1864, in Graf and Haskins, eds., *Papers of Andrew Johnson*, 6: 577-78.

stake. In the decades immediately after the Civil War, Conservatives called themselves Democrats, campaigned for limited social provision, and took the vote from black men, while Republicans identified as social progressives, championed an expansive and generous state, and fought for equality at the ballot box. Beginning in the mid 20th century, these positions flipped. Grassroots activists and national leaders reshaped the Democratic Party to support the advancement of civil rights, and Republicans aligned themselves as advocates for small government, limited federal involvement in state and local affairs, and a protective stance toward citizenship and its attendant rights.

Through all of these changes, the core issues have remained the same: racial equality and the right of all citizens to participate fully in a democratic society. When racial equality has been denied, and when race has been used for partisan gain or as a mechanism of exclusion from the democratic polity, the result has been a society in which vast numbers of citizens – not only racial minorities – have had their right to fair and effective representation compromised.

Understood in this historical context, today's conflicts over voting rights are reminders that we live in a time every bit as consequential as the flush of reform that followed the Civil War. Then, as now, democracy was imperiled by divisive racial appeals, violent expressions of white supremacy, and efforts to roll back newly won citizenship rights. In such a moment, history has a clarifying power.

VI. War, Emancipation, and Reconstruction in North Carolina

A. Civil War to the Black Code

On the eve of the Civil War, North Carolina's government was an oligarchy, not a democracy. The state constitution gave political advantage to a slaveholding elite concentrated in the eastern counties of the coastal plain. Seats in the state Senate were apportioned among fifty districts defined by the value of the taxes that residents paid into state coffers; in the House of Representatives, apportionment was governed by the "federal ratio," which counted slaves as three-fifths of a person. These provisions, together with property requirements for election to high state office, effectively removed a large majority of middling and poor whites from governance of the state and their local communities. Free black men with property had been entitled to vote under the state constitution of 1776, but that right was rescinded in 1835 by a constitutional amendment. This was the first time in the state's history that the franchise was restricted on the basis of race. Political leaders framed black disenfranchisement as a necessary response to Nat Turner's rebellion in 1831 and the founding of the American Anti-Slavery Society in 1833. They saw it as protection against the threat of slave insurrections encouraged by white abolitionists and their perceived agents, free black men exercising the rights of citizenship.⁴

By 1860 more than 85 percent of lawmakers in the North Carolina General Assembly were slaveholders, a higher percentage than in any other southern state. Wealth was closely held by this elite, who constituted roughly seven percent of the state's population of one million and resided primarily in the east. These men also maintained a firm grip on political power. Indeed, the principles of oligarchy were written into the state's constitution. At the local level, voters elected only two county officials: a sheriff and a clerk of court. The power to govern rested in the hands

⁴ Escott, *Many Excellent People*, 3-31, and Morris, "Panic and Reprisal," 52.

of justices of the peace who were nominated by members of the state House of Representatives and commissioned for life terms by the governor.⁵

North Carolina's antebellum oligarchs did not rule with unchallenged authority. In the 1850s, they faced political revolt by white yeoman farmers in the central Piedmont and mountain West who called for removal of property requirements for the right to vote for state senators and demanded an *ad valorem* tax on slaveholders' human property – more than 330,000 black men, women, and children. Dissenters won the first contest by popular referendum on free suffrage in 1856, and they prevailed in the second when delegates to the state secession convention gave ground on taxation for fear that in war with the North, ordinary whites "would not lift a finger to protect rich men's negroes."⁶

Most of North Carolina remained behind Confederate lines until the final days of the Civil War, and for that reason the state bore a Herculean share of hardship and deprivation. By 1863, North Carolina troops were deserting by the thousands. Many did so with support from the Order of the Heroes of America, an underground network of Unionists and Quaker pacifists. Food riots broke out in the state's largest towns, and in the 1864 gubernatorial election, William Woods Holden, a self-made newspaper publisher, ran on a peace platform, arguing that a negotiated return to the Union offered North Carolina's only chance to "save human life" and "prevent the impoverishment and ruin of our people." Holden lost to incumbent governor Zebulon B. Vance by 58,070 to 14,491 votes, but his candidacy exposed a deep rift between the state's wealthy rulers and a significant minority of whites – twenty percent of the electorate – who had "tired of the rich man's war & poor man's fight."⁷

As defeat grew imminent, Calvin H. Wiley, a distinguished educator and publicist, warned of the insurrection that collapse of the Confederacy and the end of slavery would unleash. "The negroes [and] the meanest class of white people would constitute a majority," he warned, and those "who were once socially & politically degraded" would make common cause and rise up in rebellion. To forestall this political realignment, self-styled "Conservatives" took advantage of President Andrew Johnson's desire for a quick reconstruction of the South by acting decisively to retain political power and dominion over black labor through legislative action.⁸

In the spring of 1866, Conservatives in the General Assembly passed an "Act Concerning Negroes and Persons of Color," known informally as the Black Code. The act sought to keep blacks subjugated and "fix their status permanently" by attaching to them the same "burthen and disabilities" imposed on free persons of color by antebellum law.⁹

Under the Black Code, freedmen could not vote, carry weapons without a license, migrate into the state, return to the state after more than ninety days absence, or give testimony against a

⁵ On antebellum North Carolina's economic and political structure, see Escott, *Many Excellent People*, chapt. 1. The figure on slaveholders in the state legislature is from p. 15.

⁶ *Ibid.*, 28-30, and 34.

⁷ Escott, *Many Excellent People*, 44 and 49, and Raper, *William W. Holden*, 51. On internal dissent during the Civil War, see also Durrill, *Uncivil War*.

⁸ Escott, *Many Excellent People*, 89-90.

⁹ *Ibid.*, 130, and *Public Laws of North Carolina, 1865-66*, chapt. 40. For North Carolina law governing slaves and free blacks before the Civil War, see *Revised Code of North Carolina, 1854*, chapt. 107. See also Browning, "North Carolina Black Code."

white person in a court of law, except by consent of the white defendant. The law also gave sheriffs broad authority to prosecute freedmen for vagrancy, a crime punishable by hiring out to "service and labor."¹⁰

B. A New State Constitution and Expansion of the Franchise

The Republican majority in the U.S. Congress watched developments in North Carolina and elsewhere in the South with growing concern, particularly for the rights of freedmen. Thaddeus Stevens, Senator from Pennsylvania, warned North Carolina Conservatives that they would "have no peace until a negro is free as a white man . . . and is treated as a white man!" To that end, Congress approved the Fourteenth Amendment to the federal Constitution in June 1866 and tendered it for ratification by the states. The amendment gave citizenship to freedmen and struck directly at the Black Code by guaranteeing all citizens equal protection under the law and forbidding the states to deprive any citizen of life, liberty, or property without due process.¹¹

In North Carolina, as in all other southern states except Tennessee, Conservative lawmakers stood firm. They refused to ratify an amendment that, in their view, turned "the slave master, and the master, slave." Congress answered that defiance by asserting its authority once more, this time through passage of the Military Reconstruction Acts of 1867. The acts ordered the continued military occupation of the South, instructed army commanders to organize conventions that would rewrite the southern states' constitutions, and granted all adult male citizens – "of whatever race, or color, or previous condition" – the right to vote for convention delegates.¹²

That extension of a limited franchise to black men radically rearranged the political landscape in North Carolina. It was now possible that an alliance between freedmen and dissenting whites could constitute a political majority. With that end in view, opponents of Conservative rule gathered in Raleigh in March 1867 to establish a biracial state Republican Party. William Holden, the Confederate peace candidate who had served briefly as provisional governor after the South's surrender, stood at the party's head and directed efforts to build a statewide organization using networks established during wartime by the Heroes of America and by the Union League in its campaigns to mobilize freedmen.

When voters went to the polls to elect delegates to the constitutional convention, leaders of the old elite were stunned: Republicans won 107 of the convention's 120 seats. Of that majority, fifteen were black, including religious and political leader James W. Hood, who had presided over the first political convention of blacks in North Carolina in late 1865. At that gathering, a hundred and seventeen delegates, most of them former slaves, met in Raleigh to petition white leaders for "adequate compensation for our labor . . . education for our children . . . [and abolition of] all the oppressive laws which make unjust discriminations on account of race or color."¹³

During the winter of 1867-68, delegates to the constitutional convention crafted a document that defined a thoroughly democratic polity. The proposed constitution guaranteed universal manhood suffrage, removed all property qualifications for election to high state office, and at the county level put local government in the hands of elected commissioners rather than

¹⁰ *Public Laws of North Carolina, 1865-66*, chapt. 40.

¹¹ Raper, *William W. Holden*, 91.

¹² Escott, *Many Excellent People*, 135, *Statutes at Large, Treaties, and Proclamations*, 429.

¹³ Escott, *Many Excellent People*, 125 and 142; Bernstein, "Participation of Negro Delegates in the Constitutional Convention of 1868," 391; and Hamilton, *Reconstruction in North Carolina*, 240-46.

appointed justices of the peace. North Carolina would no longer be "a republic erected on race and property." The constitution of 1868 also expanded the role of the state in advancing the welfare of its citizens by levying a capitation tax to fund education and "support of the poor," mandating for the first time in North Carolina history a state system of free public schools, and establishing a state board of public charities to make "beneficent provision for the poor, the unfortunate and orphan."¹⁴

Black delegates to the convention knew that the success of these reforms would depend on safeguarding broad access to the franchise and appealed for the forceful defense of voting rights. The convention passed an ordinance to criminalize efforts to intimidate "any qualified elector of this State . . . by violence or bribery, or by threats of violence or injury to his person or property."¹⁵

In May 1868, voters ratified the constitution, elected William Holden governor, and gave the biracial Republican Party six of North Carolina's seven Congressional seats and control of more than two-thirds of the seats in the state legislature. The scale of the Republicans' victory reflected the fact that in North Carolina the percentage of whites who crossed the color line and made common cause with former bondsmen was larger than in any other southern state.¹⁶

That alliance and the democratic society it envisioned were startling, even by today's standards. In 1869, twenty black political leaders from North Carolina traveled to Washington, D.C. to attend the Colored National Labor Convention, where they joined nearly two hundred other delegates from points across the South and throughout the nation. James H. Harris, a black lawmaker and one of the founders of the North Carolina Republican Party, was elected president of the convention. Over the next five days, the delegates drafted a manifesto for a future built upon racial cooperation, labor solidarity, and respect for the rights of women and immigrants. They called for unions organized "without regard to color"; extended a "welcome hand to the free immigration of labor of all nationalities"; and implored the states to fund "free school system[s] that know no distinction . . . on account of race, color, sex, creed or previous condition." These things, they believed, would make the "whole people of this land the wealthiest and happiest on the face of the globe"¹⁷

C. Klan Violence and "Redemption"

Historian Paul Escott writes that the state Republican Party "offered a new and vibrant democracy. It seemed inspired with a mission: to open up North Carolina's . . . politics and social system." But as he observes, the party's Conservative rivals were determined to make race, not democracy, the "central question." They described Republicans as a "mongrel mob" spawned by "negro suffrage and social disorder," and they warned non-elite whites of the loss of racial privilege. "IT IS IN THE POOR MAN'S HOUSE," the editor of the *Wilmington Journal* railed, "THAT THE NEGRO WILL ENFORCE HIS EQUALITY."¹⁸

Such provocations struck deep chords of sentiment in a society that had been organized around racial division for more than two hundred years. But in the new order, words alone could

¹⁴ *Constitution of North Carolina, 1868* Article V, sec. 2 Article VI, Sec. 1; Article VII, Sec. 1; and Article, XI, sec. 7; and Orth, "North Carolina Constitutional History," 1779.

¹⁵ *Constitution of North Carolina, 1868*, Ordinances, chapt. XXXVI.

¹⁶ Raper, *William W. Holden*, 101, and Foner, *Reconstruction*, 332.

¹⁷ *Proceedings of the Colored National Labor Convention*, 4 and 11-12.

¹⁸ Escott, *Many Excellent People*, 145-48 and 151.

not loosen the Republicans' hold on power. To strike the crippling blow, Conservatives turned to the Ku Klux Klan and vigilante violence. The Klan was first organized in Tennessee in 1868 and subsequently spread across the South. In North Carolina, its leader was one of the Conservatives' own: William L. Saunders, a former Confederate colonel and later a trustee of the state university and secretary of state.

The Klan's masked nightriders committed "every degree of atrocity; burning houses, whipping men and women, beating with clubs, shooting, cutting, and other methods of injuring and insult." In Graham, they murdered Wyatt Outlaw, the first black town commissioner and constable, and hung his body from a tree in the public square; and in Caswell County, Klansmen lured state senator John W. Stephens, a white Republican, into the basement of the county courthouse, where they beat and stabbed him to death.

Violence occurred in all parts of the state, but as the murders of Outlaw and Stephens attest, backlash against black political power was especially fierce in the central Piedmont, where the Klan aimed to intimidate not only black voters, but also the large number of dissenting whites who had crossed the race line. As one Klan leader explained, he and his compatriots aimed not to restore "a white man's government only, but – mark the phrase – an *intelligent* white man's government."¹⁹

On July 8, 1870, Governor Holden declared Alamance and Caswell Counties to be in open insurrection and ordered the state militia to suppress the Klan and arrest its leaders. That move quelled the worst violence but gave Holden's Conservative opponents the issue they needed to win back control of the General Assembly in the fall election. In 1871, Conservatives successfully impeached and removed Holden from office on charges of unlawfully suspending the prisoners' right of habeas corpus.²⁰

From there, the democratic experiment of Reconstruction rapidly unwound. White northerners, weary of a decade of struggle with the South, had little will to continue a states'-rights battle with their neighbors. Slavery had been abolished and secession, punished. That was enough for most whites, who found it perfectly consistent to hate the institution of slavery and to despise the slave with equal passion. For a majority, racial equality had never been a part of the Civil War's purpose. The last federal troops pulled out of North Carolina in 1877, a year after Conservatives – now calling themselves Democrats – elected Zebulon B. Vance Governor, a post that he had held for two terms during the Civil War. Across the state, Democrats celebrated "redemption" from what they had long described as the "unwise . . . doctrine of universal equality."²¹

In an effort to secure their victory, white Democrats abolished elected county government, returned authority to appointed justices of the peace, and limited appointed offices to whites only. But continued black political participation at the state level sustained a competitive two-party system. White Democrats never polled more than 54 percent of the gubernatorial vote, and between 1877 and 1900, forty-three black lawmakers served in the state House of Representatives, eleven served in the Senate, and four served in the U.S. House of Representatives.²²

¹⁹ Raper, *William W. Holden*, 156, 160, 165-66, and 174-75.

²⁰ *Ibid.*, chaps. 8-9.

²¹ Escott, *Many Excellent People*, 147.

²² Crow, "Cracking the Solid South," 335, and Escott, *Many Excellent People*, 181. On North Carolina's black Congressmen, see Anderson, *Race and Politics in North Carolina, 1872-1901*.

D. New Forms of Economic Subjugation

Economic change swept through rural North Carolina in the decades after Reconstruction as an emerging merchant class pressed freedmen and white yeoman farmers into commercial production. The result was the notorious system of sharecropping that turned once-independent whites into debtors and locked blacks in virtual peonage. Each spring, sharecroppers took out loans in the form of the seeds, tools, and supplies they needed in order to plant the year's crop. To ensure repayment – often at interest rates as high as 50 percent – merchants demanded that their clients grow cotton or tobacco, which could be sold readily for cash. As farmers produced more of these cash crops, prices fell and rural families spiraled downward into debt. Whites who owned their land sometimes managed to escape this trap, but blacks – the vast majority of whom were landless and had to pay rent to landlords as well as interest to merchants – had no recourse. Black sharecroppers often ended the agricultural year with no profit and were unable to accumulate wealth. This process of immiseration repeated itself from generation to generation and produced enduring poverty. In eastern North Carolina, where sharecropping had dominated the agricultural economy, the effects could still be seen a century later, when blacks' per capita income in the region was as low as 22 percent of that of whites.²³

Desperation and resentment over a new economic order that rewarded manipulators of credit more than cultivators of the land led farmers into revolt. Whites joined the Southern Farmers Alliance, first organized in Texas and then spread throughout the South by means of local chapters, and blacks affiliated with a parallel organization, the Colored Farmers Alliance. In 1892, these groups sought redress through the political process. Blacks remained true to the Republican Party, while whites, calling themselves "Populists," bolted from the Democratic Party – controlled by the state's economic elite – to the new national People's Party. The results were disastrous for the Populists. In the governor's race, the Democratic candidate won 48.3 percent of the vote, while the Republican candidate received 33.8 percent and the Populist candidate trailed with 17.04 percent. Those numbers contained a lesson that was obvious to voters who were less than a generation removed from the biracial politics of Reconstruction. Divided, the dissidents were all but certain to lose; united, they could challenge Democratic power.²⁴

VII. Fusion Politics and a New Campaign for White Supremacy

A. Biracial Alliance, Electoral Reform, and Investment in Social Provision

In 1894, white Populists and black Republicans in North Carolina forged a political partnership under the banner of "Fusion" and ran a historic joint slate of candidates. A former slave named Walter A. Patillo was one of Fusion's chief architects. After Emancipation, he had made a career as a Baptist minister, educator, and reformer. He served as superintendent of schools in Granville County, established North Carolina's only black orphanage, and edited two newspapers. Most notably, he also led the organization of local chapters of the Colored Farmers Alliance, an organization for black farmers and agricultural laborers that paralleled the white Southern Farmers

²³ Petty, *Standing Their Ground*, and Goldfield, *Still Fighting the Civil War*, 277-78.

²⁴ Beckel, *Radical Reform*, 135-77, and Our Campaigns, North Carolina Governor, 1896, <<http://bit.ly/32oUHPk>>, September 5, 2019.

Alliance. In all of that work, Pattillo devoted himself to "bringing about peace and goodwill between the colored and white races."²⁵

In the *Arena*, a national magazine of progressive opinion, Populist congressman Thomas Watson explained Fusion's appeal:

Now the People's Party says to [the white tenant and the Negro tenant], "You are kept apart that you may be separately fleeced of your earnings. You are made to hate each other because upon that hatred is rested the keystone of the arch of financial despotism which enslaves you both. You are deceived and blinded that you may not see how this race antagonism perpetuates a monetary system which beggars both." . . . The conclusion, then, seems to me to be this: the crushing burdens which now oppress both races in the South will cause each to make an effort to cast them off. They will see a similarity of cause and a similarity of remedy. They will recognize that each should help the other in the work of repealing bad laws and enacting good ones. They will become political allies, and neither can injure the other without weakening both. It will be to the interest of both that each should have justice. And on these broad lines of mutual interest, mutual forbearance, and mutual support the present will be made the stepping-stone to future peace and prosperity.²⁶

Fusion's logic was indeed persuasive. In the 1894 election, Populists and Republicans took control of seventy-four of the one hundred and twenty seats in the North Carolina legislature. On the local level, in 1894 and 1896, they also elected more than one thousand black officials, including county commissioners, deputy sheriffs, school committeemen, and magistrates.²⁷

A commitment to participatory democracy was at the heart of the Fusion experiment. Once in power, Fusionists undertook a broad program of reform. They capped interest rates at 6 percent, a godsend for cash-strapped black and white farmers who relied on credit to survive, and restored elected county government, a Reconstruction-era reform that Democrats had reversed after their return to power in the 1870s.²⁸

Most important, Fusion legislators revised state election law with the aim of guaranteeing full and fair access to the franchise:

- The revised law required that the clerk of the superior court in every county lay out compact precincts "so as to provide, as near as may be, one separate place of voting for every three hundred and fifty electors." The clerks were also instructed to publish the details of precinct boundaries and polling places in local newspapers and to post that information in public places. In a rural state in which population was widely dispersed, these provisions ensured that neither travel nor lack of public notice would be an impediment to voting. Legislators revisited the law in 1897 to provide additional protection for the opportunity as well as the

²⁵ Ali, *In the Lion's Mouth*, 61.

²⁶ Watson, "Negro Question in the South," 548 and 550.

²⁷ Escott, *Many Excellent People*, 247, and Gershenhorn, "Rise and Fall of Fusion Politics in North Carolina," 4.

²⁸ *Public Laws and Resolutions, Session of 1895*, chaps. 69, 116, and 135.

right to cast a ballot. They stipulated that every elector was "entitled," without penalty, "to absent himself from service or employment" for sufficient time to register and to vote.²⁹

- To safeguard impartiality in voter registration and the supervision of elections, the law gave clerks of court – who were elected officials, and therefore accountable to voters – the authority to appoint in every precinct one registrar and one election judge from "each political party of the state." Prior to this time, that responsibility had belonged to county officers who owed their appointment and their loyalty to the majority party in the legislature.³⁰
- The law also criminalized various forms of physical and economic intimidation. It specified that "no regimental, battalion or company muster shall be called or directed on election day, nor shall armed men assemble on the day of election." In addition, any person who attempted "by force and violence" to "break up or stay any election" was guilty of a misdemeanor, punishable by imprisonment and a fine of up to one hundred dollars. Similar penalties applied to "any person who shall discharge from employment, withdraw patronage from, or otherwise injure, threaten, oppress, or attempt to intimidate, any qualified voter."³¹
- The law sought to limit frivolous and obstructive challenges to voter eligibility and the legality of ballots cast by presuming the truthfulness of citizens' declarations. Challenges were allowed only on a specified day prior to an election, at which time registration books were opened for public review, and challengers were required to present proof that an elector had withheld or provided false information at the time of registration. Otherwise, the law treated "entry of the name, age, residence, and date of registration of any person by the registrar, upon the registration book of a precinct, [as] presumptive evidence of the regularity of such registration, the truth of the facts stated, and the right of such person to register and to vote at such precinct."³²
- The law accommodated illiterate voters – 22 percent of whites and 70 percent of blacks – by authorizing political parties to print ballots on colored paper and to mark them with party insignia, an old practice that Democrats had abolished. In this period, before the introduction of official, non-partisan ballots and secret voting, electors received ballots from the party, or parties, they favored, marked through the names of any candidates they did not support, and handed their ballots to an election judge for deposit in boxes labeled with the office or group of offices for which they were voting. The use of color coding and party insignia helped illiterate voters correctly identify and cast the ballot of the party they favored. To protect voters from fraudulent handling of their ballots, the law also specified that "any ballot found in the wrong box shall be presumed to have been deposited there by mistake of the officers of election, and unless such presumption shall be rebutted, the ballot

²⁹ *Public Laws and Resolutions, Session of 1895*, chapt. 159, sec. 5, and *Public Laws and Resolutions, Session of 1897*, chapt. 185, sec. 72.

³⁰ *Public Laws and Resolutions, Session of 1895*, chapt. 159, sec. 7.

³¹ *Ibid.*, chapt. 159, secs. 38, 39, and 41.

³² *Ibid.*, chapt. 159, secs. 10-12 and 14.

shall be counted." This was important, because there could be as many as six boxes at each polling place, and apart from their labels, they all looked alike.³³

- Finally, the law required public disclosure of campaign financing. Every candidate had to provide, within ten days after an election, "an itemized statement, showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself or through any other person in aid of his election." Those reports also were to "give the names of the various persons who received the moneys, the specific nature of each item, and the purpose for which it was expended or contributed."³⁴

The new election law produced momentous results in the 1896 election. Republican registration overall increased by 25 percent, and turnout among registered black voters rose from 60 to nearly 90 percent. Fusionists won more than three-fourths of the seats in the legislature and elected a white Republican, Daniel L. Russell Jr., as governor. Fusion insurgencies arose in other southern states, but only in North Carolina did a biracial alliance take control of both the legislative and executive branches of government.³⁵

In the 1897 legislative session, Fusionists used their super-majority to address two decades of Democrats' underinvestment in education. This was a particularly important issue for black Republicans, whose predecessors had led the campaign to include a mandate for public schools in the 1868 constitution and whose constituents were profoundly disadvantaged in their day-to-day interactions with landlords, merchants, and employers by an inability to read and do basic arithmetic. In An Act to Encourage Local Taxation for Public Schools, lawmakers instructed county commissioners to hold elections in every school district under their supervision on the question of "levying a special district tax" for public education. Districts that voted in favor of taxation were entitled to apply for matching funds from the state. To pressure those that refused, legislators ordered an election every two years until a special tax was approved.³⁶

In separate legislation, black lawmakers used their influence in the Fusion alliance to ensure equitable provision for students in their communities. A revised school law abolished separate white and black committees appointed at the township level to manage schools for each race and replaced them with consolidated committees made up of five appointees, no more than three of whom could come from the same political party. The law charged the new committees with managing the schools in their districts as a single enterprise. They were to appropriate funds on a strict per capita basis and to apportion "school money . . . so as to give each school in their district, white and colored, the same length of school term." Districts were also required to limit enrollments to no more than 65 students per school, so as to ensure a rough measure of equity in school facilities.³⁷

The election and education reforms enacted in 1895 and 1897 constituted a reassertion of the values that James Hood and the constitutional convention delegates wrote into the state

³³ *Public Laws and Resolutions, Session of 1895*, chapt. 159, sec. 19 and 20; Trelease, "Fusion Legislatures of 1895 and 1897," 282; and Beeby, *Revolt of the Tar Heels*, 40. On illiteracy, see *Report on Population of the United States*, 1890, lii and lv.

³⁴ *Public Laws and Resolutions, Session of 1895*, chapt. 159, sec. 72.

³⁵ Escott, *Many Excellent People*, 245-247; Beckel, *Radical Reform*, 179-80; and Kousser, *Shaping of Southern Politics*, 182 and 187.

³⁶ *Public Laws and Resolutions, Session of 1897*, chapt. 421.

³⁷ *Ibid.*, chapt. 108.

constitution in 1868, which had been abrogated first by slavery, and then by the collapse of Reconstruction. That constitution opens by invoking the Declaration of Independence and connecting the ideals of the American republic to the economic and political struggles set in motion by Confederate defeat and the abolition of slavery: "We do declare . . . that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, *the enjoyment of the fruits of their own labor*, and the pursuit of happiness. . . . That all political power is vested in, and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted *solely for the good of the whole*."³⁸ Fusion lawmakers in North Carolina, historian Morgan Kousser has observed, created "the most democratic" political system "in the late nineteenth-century South."³⁹

B. Resurgent White Supremacy and the Wilmington Coup

As they approached the election of 1898, Democrats once again made white supremacy their rallying cry and vigilante violence their most potent political weapon. Responsibility for orchestrating the party's return to power fell to former congressman Furnifold M. Simmons. Simmons lived in eastern North Carolina, in the Second Congressional District, which was known as the "Black Second" because of its large and politically active black population. Counties in the district sent more than fifty black representatives to the General Assembly in Raleigh and elected all four of the state's 19th-century black congressmen, including Henry P. Cheatham, who deprived Simmons of his seat in the 1888 election. Simmons and other Democratic leaders dodged the economic and class issues that held the Fusion coalition together and appealed instead to the specter of "negro domination."⁴⁰



The Vampire that Hovers Over North Carolina,
Raleigh News and Observer, September 27, 1898

³⁸ *Constitution of North Carolina, 1868*, Article I, secs. 1-2. Italics added to highlight language added by the framers of the 1868 Constitution.

³⁹ Kousser, *Shaping of Southern Politics*, 183.

⁴⁰ Escott, *Many Excellent People*, 253-58, and Korstad and Leloudis, *To Right These Wrongs*, 206. On the Black Second, see Anderson, *Race and Politics in North Carolina, 1872-190*, and Justesen, *George Henry White*.

Democratic newspapers took the lead in whipping up race hatred. None was more influential than the *Raleigh News and Observer*, published by Josephus Daniels. Day after day, in the weeks leading up to the election, Daniels ran political cartoons on the front page of the paper to illustrate the evils unleashed by black political participation. The cartoons depicted black men as overlords and sexual predators who were intent on emasculating white men, turning them into supplicants and ravaging their wives and daughters. Across scores of images, the *News and Observer's* message was clear: in an inversion of the racial order, blacks had lifted themselves by pressing white men down.



The New Slavery,
Raleigh News and Observer, October 15, 1898

Democrats wielded racial appeals as a wrecking ball, much as they had done during Reconstruction. Some white Populists buckled. They gave in to the deeply entrenched ways that race shaped political and social perception and began arguing that they, not Democrats, were the most ardent defenders of white supremacy. Even so, the political battle would not be won by words alone.

In the closing days of the 1898 campaign, leaders of the Democratic Party turned once more to violence and intimidation. They organized local White Government Unions and encouraged the party faithful to don the paramilitary uniform known as the "red shirt," a symbol of the blood sacrifice of the Confederacy and the late-19th-century equivalent of the hooded robes worn by Klansmen in an earlier era. Democrats engaged in open intimidation of voters at registration and polling places across the state. In Winston, for instance, the local Republican

newspaper reported that "there were crowds of men who gathered around the polls in each ward and . . . boldly drove a large per cent of the colored Republican voters and a good many white voters away from the polls."⁴¹



Armed Red Shirts in Laurinburg, North Carolina, and their uniform,
Courtesy of the North Carolina State Archives and
the North Carolina Museum of History

Democrats' determination to defeat their challengers at any cost was revealed most starkly in the majority-black coastal city of Wilmington. Revisions to the city charter made by the Fusion legislatures of 1895 and 1897 had undone Democratic gerrymandering and produced a Republican majority – including three blacks – on the board of aldermen. Democrats were enraged by that development and the fact that they would not be able to challenge local Republican rule at the polls until the next municipal election in 1899.⁴²

On November 9, the day after the 1898 election, Democratic leaders drew up a declaration of independence that called for the restoration of white rule. They acted on belief "that the Constitution of the United States contemplated a government to be carried on by an enlightened people; [belief] that its framers did not anticipate the enfranchisement of an ignorant population of African origin, and [belief] that those men of the State of North Carolina, who joined in forming the Union, did not contemplate for their descendants a subjection to an inferior race." "The negro [has] antagonized our interest in every way, and especially by his ballot," the *Wilmington Morning Star* exclaimed. "We will no longer be ruled, and will never again be ruled, by men of African origin."⁴³

⁴¹ Korstad, *Civil Rights Unionism*, 53.

⁴² For a detailed account of events in Wilmington, see *1898 Wilmington Race Riot Report*, 1898 Wilmington Race Riot Commission, May 31, 2006, <<http://bit.ly/2HOWsgJ>>, September 5, 2019. The report was commissioned by the state legislature in 2000. In 2007, lawmakers expressed "profound regret that violence, intimidation and force' were used to overthrow an elected government, force people from their homes and ruin lives" ("Senate Apologizes for Wilmington Race Riot," *Raleigh News and Observer*, August 2, 2007).

⁴³ *Raleigh News and Observer*, November 10, 1898; *Wilmington Morning Star*, November 10, 1898; and *Wilmington Messenger*, November 10, 1898.

The next day, armed white men under the command of former congressman Alfred M. Waddell staged the only municipal coup d'état in the nation's history. They marauded through Wilmington's black district, set ablaze the print shop of the city's only black newspaper, murdered as many as thirty black citizens in the streets, and drove the sitting board of alderman from office in order to make room for a new, self-appointed city government with Waddell at its head.



A postcard produced by a local photographer documented destruction of Love and Charity Hall, which housed the *Daily Record*, Wilmington's black newspaper. From *1898 Wilmington Race Riot Report*, 128.

Democrats won the 1898 election statewide by a narrow margin. They claimed only 52.8 percent of the vote, but that was enough to oust most Fusionists from the legislature. The victors moved immediately to "rid themselves . . . of the rule of Negroes and the lower classes of whites."⁴⁴

C. The 1899 Act to Regulate Elections and Black Disenfranchisement

In the 1899 legislative session, Democrats drafted an amendment to the state constitution that aimed to end biracial politics once and for all by stripping black men of the most fundamental privilege of citizenship: the right to vote. The Fifteenth Amendment to the federal Constitution, adopted during Reconstruction, forbade the states from denying the ballot to citizens on the basis of race. North Carolina Democrats, like their counterparts elsewhere in the South, circumvented the prohibition by adopting a literacy test.

In order to vote, citizens first had to demonstrate to local election officials that they could "read and write any section of the Constitution in the English language." That gave Democratic registrars wide latitude to exclude black men from the polls. Democrats also included a grandfather clause in the amendment that exempted from the literacy test adult males who had been eligible to vote or were lineal descendants of men who had been eligible to vote on or before January 1, 1867. That was a magic date, because it preceded the limited right to vote given to black men under the

⁴⁴ Kousser, *Shaping of Southern Politics*, 191, and Escott, *Many Excellent People*, 258.

Military Reconstruction Act, passed in March of that year. The literacy test was thus designed to achieve the very thing the federal Fifteenth Amendment expressly outlawed—voter exclusion based on race.⁴⁵

Male citizens could also be denied access to the franchise if they failed to pay the capitation tax (poll tax) levied in accordance with Article V, Section 1, of the 1868 state constitution.⁴⁶ This link between payment of the capitation tax and the right to vote was a new impediment put in place by the disfranchisement amendment. The amendment required that electors pay the tax before the first day of May, prior to the election in which they intended to vote. At that time of year, prior to the fall harvest, black sharecroppers were unlikely to have cash on hand for such a payment.

Democrats rewrote state election law to boost the odds that the amendment would win approval. In the 1899 Act to Regulate Elections, they repealed reforms made by the Fusion legislatures of 1895 and 1897, and they put in place new provisions that were crafted to deliver "a good Democratic majority."⁴⁷

- With the aim of purging as many Fusion voters as possible, lawmakers ordered an "entirely new registration" in advance of the next election. In that process, registrars could, at their discretion, require an applicant to "prove his identity or age and residence by the testimony of at least two electors under oath." The law also gave "any by stander" the right to challenge a registrant's truthfulness and force a lengthy examination.⁴⁸
- In a reversal of provisions made in the 1895 election law, information recorded in a registration book no longer stood as presumptive evidence of an individual's right to vote. On polling day, "any elector [could] challenge the vote of any person" on suspicion of fraud. In such cases, election officials were to question the suspect voter and compel him to swear an oath of truthfulness. But even that might not be proof enough. The law stipulated that after an oath was sworn, "the registrar and judges may, nevertheless, refuse to permit such a person to vote."⁴⁹
- The law loosened safeguards against partisanship in the management of elections. Lawmakers took the authority to appoint local election officials from the county clerks of superior court, who were directly accountable to voters, and gave it to a seven-member state board of elections that was appointed by the Democratic majority in the legislature. That board's power was expansive. For instance, it had the authority to remove county election officials from office "for any satisfactory cause."⁵⁰
- The law also put an end to practices that accommodated illiterate voters. All ballots were now to be "printed upon white paper, without ornament, symbol, or device." And if a voter or election official placed a ballot in the wrong box (there were six), it was declared void and was discarded.⁵¹

⁴⁵ *Laws and Resolutions, 1900*, chapt. 2.

⁴⁶ *Ibid.*

⁴⁷ Kousser, *Shaping of Southern Politics*, 190, and *Public Laws and Resolutions, Session of 1899*, chapt. 16.

⁴⁸ *Public Laws and Resolutions, Session of 1899*, chapt. 507, secs. 11 and 18.

⁴⁹ *Ibid.*, chapt. 507, secs. 11, 21, and 22.

⁵⁰ *Ibid.*, chapt. 507, secs. 4, 5, 8, and 9.

⁵¹ *Ibid.*, chapt. 507, secs. 27 and 29.



White supremacy souvenir badge, 1898,
North Carolina Gallery, Wilson Library,
University of North Carolina at Chapel Hill

With the new election law in place, Democrats approached the 1900 election confident of victory. Democratic gubernatorial candidate Charles B. Aycock made disfranchisement the centerpiece of his campaign. On the stump, he offered the white electorate a new "era of good feeling" in exchange for racial loyalty. Aycock argued that the presence of blacks in politics was the source of bitterness among whites, and that only their removal would heal the white body politic. "We must disfranchise the negro," he explained to white voters. "Then we shall have . . . peace everywhere. . . . We shall forget the asperities of past years and . . . go forward into the twentieth century a united people."⁵²

To whites who were unconvinced and blacks who were determined to resist, Aycock issued veiled threats. "We have ruled by force, we can rule by fraud, but we want to rule by law," he told one audience. In Wilmington, Alfred Waddell was more direct. On election eve, he exhorted a white crowd, "You are Anglo-Saxons. You are armed and prepared, and you will do your duty. . . . Go to the polls tomorrow, and if you find the negro out voting, tell him to leave the polls, and if he refuses, kill him, shoot him down in his tracks. We shall win tomorrow if we have to do it with guns." The beleaguered Populist and Republican opposition could not counter the Democratic

⁵² Connor and Poe, *Life and Speeches of Charles Brantley Aycock*, 82 and 218-219.

onslaught. With a turnout of 75 percent of the electors allowed to register under the revised election law of 1899, Aycock and disfranchisement won by a 59 to 41 percent margin.⁵³

VIII. Jim Crow

A. Racial Segregation and Economic Exploitation

The Democrats' triumph in 1900 cleared the way for a new order characterized by one-party government, segregation, and cheap labor. With the removal of black men from politics, North Carolina's Republican Party became little more than an expression of regional differences among whites that set the western Mountains, the party's surviving stronghold, against the central Piedmont and eastern Coastal Plain.

Leaders of the Democratic Party controlled the selection of candidates through a tightly managed state convention. That arrangement, combined with the fact that no Republican had a realistic chance of winning election to a statewide office, convinced most electors that there was little reason to cast a ballot. Only 50 percent of the newly constrained pool of eligible voters turned out for the 1904 gubernatorial election, and by 1912 the number had declined to less than 30 percent.⁵⁴

Having regained control of the machinery of government, Democrats began implementing public policies that secured what one scholar has termed their "reactionary revolution." Black subjugation was at the head of their agenda. Over time, they developed an elaborate regime of law and custom that they called Jim Crow, a name taken from the blackface characters in 19th-century minstrel shows. Most Americans – certainly most white Americans – think of Jim Crow as an expression of prejudice and discrimination. But it was much more than that: Jim Crow was a system of power and plunder that concentrated wealth and opportunity in the hands of the few and mobilized racial animosity in defense of that accumulation.⁵⁵

Lawmakers passed North Carolina's first Jim Crow law in 1899, during the same session in which they crafted the disfranchisement amendment to the state constitution. The law required separate seating for blacks and whites on trains and steamboats. The aim of that and other such regulations – including the segregation of streetcars in 1907, legislation in 1921 that made miscegenation a felony, and a host of local ordinances that segregated drinking fountains, toilets, and cemeteries – was to mark blacks as a people apart and make it psychologically difficult for whites to imagine interracial cooperation. Segregation also divided most forms of civic space – courthouses, neighborhoods, and public squares – that might otherwise have been sites for interaction across the color line.⁵⁶

In Charlotte, soon to be North Carolina's largest city and the hub of its new textile economy, neighborhoods in 1870 had been surprisingly undifferentiated. As historian Thomas Hanchett has noted, on any given street "business owners and hired hands, manual laborers and white-collared

⁵³ Orr, *Charles Brantley Aycock*, 155; Daniels, *Editor in Politics*, 368; and Kousser, *Shaping Southern Politics*, 193.

⁵⁴ Escott, *Many Excellent People*, 261, and Kousser, *Shaping of Southern Politics*, 195.

⁵⁵ Kousser, *Shaping Southern Politics*, 261. The account that follows is adapted from Korstad and Leloudis, *To Right These Wrongs*, 16-18, and Korstad, *Civil Rights Unionism*, 54-57.

⁵⁶ *Public Laws and Resolutions, Session of 1899*, chapt. 384, and "Sampling of Jim Crow Laws."

clerks . . . black people and white people all lived side by side." By 1910, that heterogeneity had been thoroughly "sorted" along lines of race and class. In communities large and small across the state, this process played out a thousand times over. White supremacy denied blacks access to economic and political power and erected a nearly insurmountable wall between blacks and poor whites who had risen in the mid 1890s to challenge Democrats' rule by asserting their shared grievances and claim to the franchise.⁵⁷

Hardening racial segregation relegated the majority of black North Carolinians to the countryside and created, in effect, a bound agricultural labor force. In the 1910s, Clarence Poe, editor of the *Progressive Farmer*, led a movement to perfect that arrangement by proposing "territorial segregation" in rural areas and an amendment to the state constitution that would have allowed white communities to prohibit the sale of land to blacks. He modeled the idea on policies implemented in the new Union of South Africa that laid the foundation for the system of apartheid established in 1948.

Poe believed that his reforms would lock blacks into permanent status as tenants and sharecroppers and would make way for a "great rural civilization" to flourish among whites. He understood that the scheme might run afoul of the Fourteenth Amendment but brushed that concern aside. "If our people make up their minds that segregation is a good and necessary thing," Poe argued, "they will find a way to put it into effect – just as they did in the case of Negro disfranchisement despite an iron-bound Amendment specifically designed to prevent it." Poe's proposal ultimately failed in the state legislature, but it had broad backing among small-scale white farmers. It also revealed how tightly Poe and North Carolina were connected to a global movement to assert white dominion over peoples of color.⁵⁸

Blacks who lived in cities and small towns had opportunities that were only modestly better than those available in rural areas. Most black women worked in white households as maids, cooks, and laundresses. In Durham and Winston, both tobacco manufacturing centers, and in tobacco market towns in the eastern part of the state, black women and men labored in stemmeries where they processed the leaf before it was made into cigarettes and chewing plugs. The work was dirty and undesirable – the kind of labor that whites expected blacks to perform.⁵⁹

Jim Crow held most black North Carolinians' earnings to near-subsistence levels. That, in turn, depressed the market value of all labor and dragged white wages downward. In textiles – North Carolina's leading industry – men, women, and children worked for some of the lowest wages in the country. Prior to the implementation of a national minimum wage in the 1930s, they earned on average 40 percent less than workers in comparable jobs in the North. Even so, textile manufacturers often boasted that they had built their mills to save poor whites from destitution. That, they said, was also their reason for restricting textile employment, with few exceptions, to whites only. The message to white laborers was clear: mill owners would make up for slim pay envelopes by safeguarding what W.E.B. Du Bois called the "psychological wages" of whiteness.⁶⁰

Such insistence on maintaining the color line denied black North Carolinians something they had prized since the time of Emancipation: quality education for their children. In the 1880s,

⁵⁷ Hanchett, *Sorting Out the New South City*, 187.

⁵⁸ Herbin-Triant, "Southern Segregation South African-Style," 171 and 186.

⁵⁹ See Sharpless, *Cooking in Other Women's Kitchens*, and Korstad, *Civil Rights Unionism*.

⁶⁰ Hall, Leloudis, Korstad, Murphy, Jones, and Daly, *Like a Family*, 80; Williamson, *Crucible of Race*, 430-32; and Du Bois, *Black Reconstruction*, 700.

the state spent roughly equal amounts per capita on white and black students in the public schools, but by 1920 spending on white students outpaced that for blacks by a margin of three-to-one. The state spent ten times as much on white school buildings as it did on black schools, and black teachers made only half of the \$252 a year paid to whites. The results were predictable: in 1920, 24.5 percent of blacks over the age of ten were illiterate, as compared to 8.2 percent of whites. Racial disadvantage was also persistent.⁶¹

Added to all of this, black North Carolinians were plagued by "sickness, misery, and death." In 1940, the annual mortality rate for blacks was 11.6 per thousand, compared to 7.6 per thousand for whites. Blacks were one-and-a-half times more likely than whites to die from tuberculosis and malaria, and black infant mortality exceeded that for whites by the same margin.⁶²

B. World War I and the Great Migration

A casual observer of the Jim Crow South could have been forgiven for concluding that white supremacy's victory was complete, its hold of the region unassailable. Josephus Daniels, one of the regime's architects, suggested as much shortly after the 1900 election. "When Governor Aycock was elected," Daniels explained to a friend, "I said to him that I was very glad that we had settled the Negro question for all times." Aycock replied, "Joe, you are badly mistaken. . . . Every generation will have the problem on their hands, and they will have to settle it for themselves." The governor was more prescient than he might have imagined. Even at the height of Jim Crow's power, black Americans refused to surrender their claim on equal citizenship and a fair share of social resources and economic opportunity. Over half a century – through two world wars and a global economic crisis – they clawed their way back into politics. Progress was slow and small gains often met fierce white resistance, but by the late 1950s blacks had built a new freedom movement and prepared the way for a second Reconstruction.⁶³

World War I produced the first chink in Jim Crow's armor. When fighting broke out in Europe in 1914, it cut off the supply of European immigrant laborers on which the factories of the Midwest and Northeast relied. Industrial recruiters ventured southward to entice sharecroppers off the land. By 1919, nearly 440,000 blacks had left the South in what came to be called the Great Migration. They made new homes in Baltimore, Philadelphia, New York, Pittsburgh, Chicago, and Detroit. Another 708,000 migrants followed during the 1920s. In the absence of poll taxes and literacy tests, these refugees gained access to the ballot box and influence in city politics. They also created large enclaves from which a vibrant urban black culture emerged. Literature, art, and music gave voice to the "New Negro" – a figure dignified and defiant, determined to hold the nation accountable to its democratic promise.⁶⁴

C. The Great Depression, a New Deal, and Good-Bye to the Party of Lincoln

⁶¹ Thuesen, *Greater Than Equal*, 31, 86, and 268 n. 48.

⁶² Carlton and Coclanis, *Confronting Southern Poverty*, 33, 42, 54-55, 59; Larkins, *Negro Population of North Carolina*, 29; and Shin, "Black-White Differentials in Infant Mortality in the South, 19540-1970," 17. The infant mortality rate for blacks was 76.6 per thousand live births, compared to 50.3 per thousand live births for whites.

⁶³ Josephus Daniels to John Temple Graves, December 21, 1942, cited in Ward, *Defending White Democracy*, 2.

⁶⁴ Estimates of the scale of the Great Migration vary. The figures cited here are from Gregory, "Second Great Migration," 21. On the New Negro, see Whalan, *The Great War and the Culture of the New Negro*.

During the 1930s, newly enfranchised black voters reshaped national politics by abandoning the party of Lincoln in favor of Franklin D. Roosevelt and his New Deal. Many were at first wary of Roosevelt, a Democrat whose party stood for white supremacy in the South. That was reason enough for a majority to stand by Republican incumbent Herbert Hoover in 1932. But blacks were especially hard hit by the Great Depression, and the New Deal delivered much-needed relief. The largest federal jobs programs employed blacks in proportion to their representation in the general population and paid them the same wages as whites; black appointees in New Deal agencies served President Roosevelt as a shadow cabinet; and First Lady Eleanor Roosevelt publicly supported the NAACP's civil rights agenda. America remained a Jim Crow nation, but at no time since Reconstruction had the federal government held out such hope for redressing racial injustice. In his 1936 bid for re-election, Roosevelt won 71 percent of the black vote in a landslide victory over Republican challenger Alf Landon.⁶⁵

The effects were felt in North Carolina. In 1932, newspaperman Louis E. Austin helped to organize a "political conference" in Durham that attracted more than five hundred black business, civic, and religious leaders from across the state. Austin was editor of the city's *Carolina Times*, a paper widely regarded as an exemplar of "new Negro journalism." Like others at the conference, he believed that southern blacks needed a new strategy for advancing civil rights.⁶⁶

Since Emancipation, blacks had cast their lot with the Republican Party, but Republican leaders largely abandoned them in the early 20th century. In North Carolina, the party was controlled by men who rejected its biracial heritage, and at the national level, Republican president Herbert Hoover showed little concern for blacks' disproportionate suffering in the Great Depression. The times seemed to call for a radical change of direction, one that would challenge white supremacy at its root by mounting a political assault from within the Democratic Party.

That is what participants in the Durham conference had in mind when they made plans for a statewide voter registration drive. Their aim was "to become a factor in the party that has the power" by adding black voters to the registration rolls as Democrats, not Republicans. Success came slowly, but by the mid-1930s upwards of forty thousand black men and women had managed to pass the state's literacy test and affiliate themselves with the Democratic Party. In Durham, these new voters elected Louis Austin and black theater owner Frederick K. Watkins as justices of the peace on the Democratic ticket. The *Pittsburgh Courier*, one of the nation's leading black newspapers, pronounced that win "the beginning of the 'New Deal' in the South."⁶⁷

Incremental black gains and the temerity of men like Austin angered the keepers of white rule. When blacks registered as Democrats in Raleigh, Josephus Daniels used the *News and Observer* to warn that they were part of a plot "to destroy the great victory" won in 1900 under his leadership and that of Charles Aycock. "The Democratic Party in North Carolina is a white man's party," he exclaimed. "It came through blood and fire in allegiance to that principle." At his urging, election officials in Raleigh attempted to disqualify every black registrant – Democrat and Republican alike – but black citizens sued and won a court order to have the names of 210 restored

⁶⁵ Election data from Ladd Jr., with Hadley, *Transformations of the American Party System*, 59.

⁶⁶ "North Carolinians Hold State-wide Political Confab," *Pittsburgh Courier*, April 12, 1932, and "Durham, Thriving Southern Metropolis of 17,000 Negro Inhabitants," *Norfolk Journal and Guide*, April 16, 1932.

⁶⁷ "Carolina Whites Horrified as Negro Democrats Vote," *Atlanta Daily World*, June 6, 1932, and "Elect Magistrates on Democratic Ticket in North Carolina," *Pittsburgh Courier*, November 24, 1934.

to the voter rolls. They also taunted white Democrats. "Why," they wondered, "is it a crime for the Negro to seek to vote the triumphant ticket of the major party of the section in which he lives?"⁶⁸

North Carolina Senator Josiah Bailey shared Daniels' fear of black claims on the rights of citizenship. In 1937, shortly after President Roosevelt's election to a second term, he threatened a Congressional revolt against the New Deal. Bailey recruited southern Democrats and a number of Republicans to endorse a Conservative Manifesto, which, had it been implemented, would have given local officials control over federal jobs programs for the unemployed. That was key to maintaining the black-white wage differential and Jim Crow's promise to ordinary whites that blacks would always be beneath them.

The manifesto affirmed the value of small government; called for reduced taxation of private and corporate wealth; and insisted on the primacy of "states' rights, home rule, [and] local self-government." On the Senate floor and in private exchanges, Bailey criticized President Roosevelt for pandering to the "Negro vote," caricatured the New Deal as "a gift enterprise [conducted] at the expense of those who work and earn and save," and warned that he and his allies were prepared to defend white supremacy, whatever the cost. "Keep your nose out of the South's business," he warned, or "be assured that a [new] white man's party [will] arise" to claim the region's loyalty.⁶⁹

That threat was more than empty bluster. From the outset, southern Democrats had worked to blunt the New Deal. In North Carolina, Democratic officials backed tobacco manufacturers who resisted the National Recovery Administration's efforts to raise wages for black workers. They also managed the Agricultural Adjustment Administration's price support programs in ways that allowed white landlords to dismiss thousands of black tenants and keep government crop subsidies for themselves. At the national level, southern Democrats led the effort to exclude agricultural and domestic workers – the vast majority of whom were black – from the old-age pensions established by the Social Security Act of 1935 and the minimum-wage protection afforded by the Fair Labor Standards Act of 1938.⁷⁰

University of North Carolina sociologist Guy Johnson recognized in all of this "a tendency to perpetuate . . . existing inequalities." Blacks had made important gains, but they still lacked the means "to command" an adequate wage and a "decent share of the services and benefits of government." The consequences were tragic – for blacks, most obviously, and for poor whites in ways that Jim Crow obscured. Johnson urged politicians to confront those truths, surrender white rule, and substitute "fairness and justice" for a "policy of repression." Doing so would make possible "better homes, better health, better living, cultural development, and human adequacy for both races." White southerners had "all to gain and nothing to lose," Johnson declared. "Self-interest, simple justice, and common-sense demand that [they] give the Negro a new deal."⁷¹

⁶⁸ "Dagger at the Heart," *Raleigh News and Observer*, May 25, 1932; "More Talk About Negro Situation," *Raleigh News and Observer*, June 1, 1932; and Gershennhorn, *Louis Austin*, 49.

⁶⁹ Moore, "Senator Josiah W. Bailey and the 'Conservative Manifesto' of 1937"; Patterson, "Failure of Party Realignment in the South," 603; Bailey to Peter Gerry, October 19, 1937, Senatorial Series, General Correspondence Subseries, Bailey Papers, and "Roosevelt 'Purge' Rapped by Bailey," *The Atlanta Constitution*, September 11, 1938, and Dunn, *Roosevelt's Purge*, 237.

⁷⁰ Katznelson, *Fear Itself*, chapt. 5.

⁷¹ Johnson, "Does the South Owe the Negro a New Deal?"

D. World War II and Civil Rights Unionism

World War II lifted the nation out of economic depression and further eroded white southerners' capacity to hold the line on civil rights. Millions more blacks left the land. Some moved along familiar paths to work in northern war industries; others found employment in southern cities or on the sprawling military bases that were scattered across the region. They expanded their influence in Democratic Party politics, swelled the national ranks of the NAACP from 50,000 to 450,000 members, and through the militant unions of the Congress of Industrial Organizations (CIO) gained new bargaining power on the factory floor. The federal government, concerned that racial tensions not impede the war effort, acted to limit employment discrimination and to restrain white violence.⁷²

All of this played into what civil rights activists came to call a Double V strategy that encouraged black mobilization – in the military and on the home front – to defeat the twin evils of fascism and white supremacy.

The potential for making change at home was apparent even before a formal declaration of war. In early 1941, A. Philip Randolph, president of the Brotherhood of Sleeping Car Porters, proposed a march on Washington to pressure President Franklin Roosevelt to desegregate the military and guarantee equal employment opportunities in war industries. Noting the strength of grassroots support for the march, some observers predicted that more than one hundred thousand people would participate. In June, months before the Japanese attack on Pearl Harbor, Roosevelt handed the organizers a partial victory. He issued Executive Order 8802, which prohibited racial discrimination in federal job training programs and defense industry employment.⁷³

This positioning of the federal government as a civil rights ally gave courage to the nearly 8,000 black women and men who labored in the R.J. Reynolds tobacco factories in Winston-Salem, North Carolina. In 1943, they began organizing with assistance from the CIO's Food, Tobacco, and Allied Workers union (FTA). Under ordinary circumstances, Reynolds would have easily crushed the effort, but the war years were anything but ordinary.

When workers staged a sit-down strike, the federal Mediation and Conciliation Service intervened to negotiate a temporary settlement. Months later, the National Labor Relations Board – a New Deal agency established in 1935 by the Wagner Act – set the ground rules for a fair election in which black workers and a significant minority of whites voted to establish a union local. Despite that result, Reynolds managers refused to sign a contract until forced by the National War Labor Board to pay higher wages and improve working conditions. Stemmerly worker Ruby Jones said of that victory, "it was just like being Reconstructed."⁷⁴

Jones and others understood that winning in the workplace was but one step toward equal citizenship. Dethroning Jim Crow required that they also organize politically. "If you are going to defeat these people," union leader Robert Black explained, "not only do you do it across the negotiating table in the R.J. Reynolds Building, but you go to city hall, you elect people down there that's going to be favorable and sympathetic and represent the best interest of the working

⁷² On the growth of the NAACP and the CIO, see Dalfiume, "'Forgotten Years' of the Negro Revolution," 99-100, Zieger, *The CIO*.

⁷³ Jones, William P., *March on Washington*, chapt. 1.

⁷⁴ Korstad, *Civil Rights Unionism*, 202.

class." To that end, the union sponsored citizenship and literacy classes and launched a city-wide voter registration drive. Those efforts paid off in 1947, when black voters elected Reverend Kenneth R. Williams to the Winston-Salem board of aldermen. He was the first black politician in the South to defeat a white opponent at the state or local level since the Fusion era of the 1890s.⁷⁵

The unionists in Winston-Salem and ten thousand members of a sister FTA local in eastern North Carolina's tobacco warehouses and stemmeries were in the vanguard of a statewide campaign for more inclusive politics. They provided local support for the Progressive Party, formed in 1947 by left-wing Democrats to back the presidential candidacy of Henry A. Wallace.

Wallace had served in Franklin Roosevelt's New Deal administration as vice president, secretary of agriculture, and secretary of commerce. He established a reputation as a full-throated critic of Jim Crow and, during the early years of the Cold War, opposed hardline anticommunism as a threat to democratic values at home and abroad. In 1948, Wallace challenged Roosevelt's successor, Harry S. Truman, with demands for peaceful cooperation with the Soviet Union and an immediate end to racial segregation.⁷⁶

In North Carolina, the Progressive Party nominated a slate of candidates that represented an extraordinary commitment to equality. Of the nineteen nominees, five were white women, including journalist and civil rights activist Mary Watkins Price, who was the first woman to run for governor in the state:

- Reverend William T. Brown from Maxton opposed Democratic U.S. Senate candidate and former governor J. Melville Broughton;
- Robert E. Brown, also from Maxton, sought election in the Eighth Congressional District, and Robert Latham, an FTA organizer in Rocky Mount, ran in the historic "Black Second";
- Conrad O. Pearson, a civil rights lawyer from Durham, stood for state attorney general;
- Gertrude Green, a tobacco worker from Kinston, and Randolph Blackwell, a student at the Agricultural and Technical College of North Carolina in Greensboro (now North Carolina Agricultural and Technical University), sought seats in the state House of Representatives; and
- Leila B. Michael, a teacher and NAACP leader from Buncombe County, vied for a place on her local board of education.

These candidates ran on a platform that demanded repeal of North Carolina's anti-union labor laws and regressive sales tax, "civil rights for all people, improved schools, higher teacher pay, [and] increased aid to needy people." Those priorities were not so different to those of Reconstruction-era Republicans and the Fusion politicians of the 1890s.⁷⁷

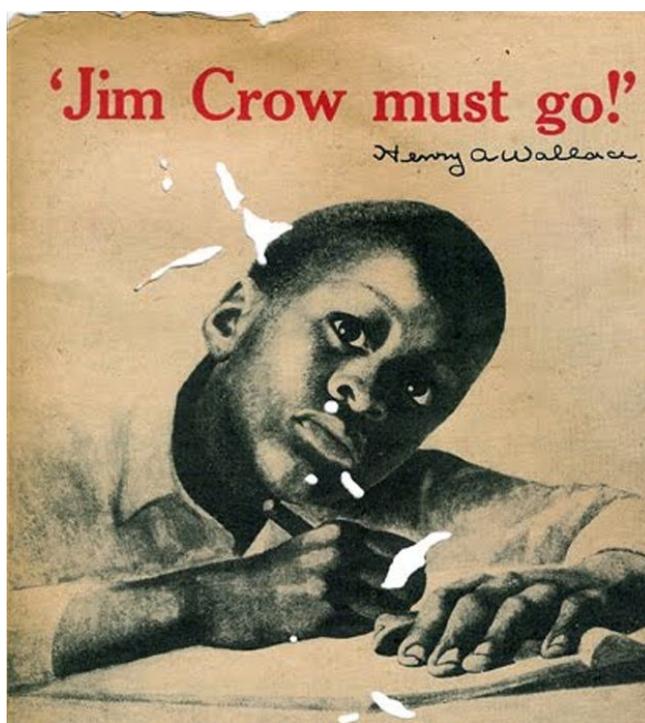
⁷⁵ Ibid., 251-52.

⁷⁶ On Wallace's life and career, see Culver and Hyde, *American Dreamer*.

⁷⁷ "Wallace Party Names Picks for N.C. Posts," *Norfolk Journal and Guide*, September 4, 1948, and Report of the Nominating Committee, Progressive Party of North Carolina, box 2, folder 13, Scales Papers. On Blackwell, see Chafe, *Civilities and Civil Rights*, 27-28. For more on the Progressive Party and the Wallace campaign in North Carolina, see Uesugi, "Gender, Race, and the Cold War."

When Wallace stumped the state for the Progressive ticket in August 1948, bands of hecklers, sometimes numbering in the thousands and waving Confederate flags, followed his entourage from town to town and pelted them with eggs and tomatoes. Shouts of "nigger lover" filled the air and were echoed in more genteel terms by the state's newspapers. The editors of the *Charlotte Observer* suggested that Wallace and his compatriots had brought the trouble upon themselves by announcing in advance that the candidate "would speak to none but unsegregated audiences."⁷⁸

Wallace gave his detractors no quarter. In a 1947 speech, he had declared that "Jim Crow in America has simply got to go." His reasoning echoed a long tradition of dissent within the South: "The cancerous disease of race hate, which bears so heavily upon Negro citizens . . . at the same time drags the masses of southern white citizens into the common quagmire of poverty and ignorance and political servitude . . . Jim Crow divides white and Negro for the profit of the few. It is a very profitable system indeed."



Henry A. Wallace campaign poster,
in author's possession

The price exacted by Jim Crow was measured not just in dollars, but in lives as well. Wallace made that point with a "single grim fact": "a Negro child born this day has a life expectancy ten years less than that of a white child born a few miles away." "Those ten years," he explained, "are what we are fighting for. I say that those who stand in the way of the health, education, housing, and social security programs which would erase that gap commit murder. I

⁷⁸ Devine, *Henry Wallace's 1948 Presidential Campaign*, p. 245, and "Deplorable Disorders," *Charlotte Observer*, September 1, 1948.

say that those who perpetuate Jim Crow are criminals. I pledge you that I shall fight them with everything I have."

Wallace understood the fury his words would provoke. "Every uttered truth," he observed, "produces a tremor in those who live by lies."⁷⁹

Wallace's prospects, and those of the Progressive Party in North Carolina, were hamstrung from the start. He faced the problem that has plagued every third-party candidate in American politics: a concern among potential supporters that to cast a ballot for him was to waste a vote. His strong stand against racism and opposition to Cold War anticommunism also meant that he drew most of his support from the Left, including the Communist Party USA, which endorsed his candidacy. On Election Day, Wallace and his North Carolina running mates garnered only a fraction of the vote. But the issues they raised were far from settled. That became evident two years later in the Democratic primary election for the U.S. Senate.

E. The Senate Campaign of 1950 and Reassertion of White Rule

The story of that election began in 1949, when Senator J. Melville Broughton died in office. Governor W. Kerr Scott appointed University of North Carolina president Frank Porter Graham to fill the post until the next general election. Graham's liberal views were well known. He was an outspoken supporter of labor unions; he had served as a member of the White House advisory council that helped establish Social Security in 1935, and as chairman of the President Roosevelt's Advisory Council on Economic Conditions in the South, which documented widespread poverty in the region; and in 1938 he was founding president of the Southern Conference for Human Welfare, an interracial organization devoted social justice and civil rights.⁸⁰

In the 1950 Democratic primary, Graham faced a field of challengers that included Willis Smith, a respected Raleigh attorney and former president of the American Bar Association. On the first ballot, Graham defeated Smith and the other candidates by winning a plurality, but not a majority, of votes. As runner-up, Smith was entitled to call for a runoff, but he hesitated. He was unsure that he could raise the necessary money or that he had the stamina for another contest.

Then, on June 5, just days before the deadline for Smith's decision, the U.S. Supreme Court handed down rulings that affirmed black students' right to equal access to publicly funded graduate education and banned segregation on railroads. The court's actions galvanized Smith's supporters. On the afternoon of June 6, Jesse Helms, a young news director for WRAL Radio in Raleigh, made arrangements to air at fifteen-minute intervals a plea for Smith backers to rally at his home and urge him to demand a runoff. The crowd that gathered on Smith's lawn was persuasive. The next morning, Smith called for a second primary vote.

The political battle that followed was the rawest since the white supremacy campaigns of 1898-1900. Smith's backers brought race front and center. They focused particularly on Frank Graham's service in 1946-47 on President Harry Truman's Committee on Civil Rights, which issued the first federal report on race relations and laid the groundwork for Truman's desegregation of the military a year later. The report, titled *To Secure These Rights* (a phrase taken from the

⁷⁹ Campaign speech, December 28, 1947, Series X, box 67, Henry A. Wallace Papers (MsC0177), Special Collections Department, University of Iowa Libraries.

⁸⁰ Pleasants and Burns, *Frank Porter Graham and the 1950 Senate Race*, 18-30

Declaration of Independence), called unequivocally for "the elimination of segregation, based on race, color, creed, or national origin, from American life."⁸¹

The Smith campaign directed its harshest criticism at the committee's recommendation that Truman establish a federal Fair Employment Practices Commission charged with eliminating racial discrimination in the workplace. Frank Graham – who preferred moral suasion over government intervention as an instrument of social change – had dissented from that part of the committee report, but Smith and his lieutenants paid no mind. In campaign press releases, they warned that Graham supported reforms that would allow blacks to steal white jobs. Handbills distributed in rural communities and white working-class neighborhoods raised the alarm even more shrilly. "White People Wake Up Before It's Too Late," one exclaimed. "Frank Graham Favors Mingling of the Races."⁸²

WHITE PEOPLE WAKE UP

BEFORE IT'S TOO LATE
YOU MAY NOT HAVE ANOTHER CHANCE

DO YOU WANT?

- Negroes working beside you, your wife and daughters in your mills, and factories?
- Negroes eating beside you in all public eating places?
- Negroes riding beside you, your wife and your daughters in buses, cabs and trains?
- Negroes sleeping in the same hotels and rooming houses?
- Negroes teaching and disciplining your children in school?
- Negroes sitting with you and your family at all public meetings?
- Negroes going to white schools and white children going to Negro schools?
- Negroes to occupy the same hospital rooms with you and your wife and daughters?
- Negroes as your foremen and overseers in the mills?
- Negroes using your toilet facilities?

Northern political labor leaders have recently ordered that all doors be opened to Negroes on union property. This will lead to whites and Negroes working and living together in the South as they do in the North. Do you want that?

FRANK GRAHAM FAVORS MINGLING OF THE RACES

HE ADMITS THAT HE FAVORS MIXING NEGROES AND WHITES — HE SAYS SO IN THE REPORT HE SIGNED. (For Proof of This, Read Page 147, Civil Rights Report.)

DO YOU FAVOR THIS — WANT SOME MORE OF IT? IF YOU DO, VOTE FOR FRANK GRAHAM

BUT IF YOU DON'T
VOTE FOR AND HELP ELECT

WILLIS SMITH for SENATOR

HE WILL UPHOLD THE TRADITIONS OF THE SOUTH

KNOW THE TRUTH COMMITTEE

Will You Go— **BACK TO THIS?**

With **WILLIS SMITH**



15¢ an HOUR! 12 HOURS a DAY! CHILDREN WORKING in the MILLS!

The picture above is photograph of Spinning Room Workers of a North Carolina Mill. The picture was made some years BEFORE the coming of Franklin D. Roosevelt and the New Deal for Textile Workers.

It's a picture none of you will remember... of working for 10¢, 15¢, and 20¢ an hour... working 12 hours a day, 66 to 72 hours a week... children of 10 and 12 going to work in the Mill 'cause there wasn't enough food to eat, not enough clothes to wear and keep warm... kids with rickets because there was no money for milk... yes, some of you remember...

But things are better now... BETTER because men like FRANKLIN D. ROOSEVELT and FRANK GRAHAM fought for Federal Laws to give YOU a BETTER LIFE... Laws to give you HIGHER WAGES, SHORTER HOURS, BETTER WORKING CONDITIONS, UNEMPLOYMENT INSURANCE, BETTER SCHOOLS for YOUR CHILDREN, BETTER HOUSES, and OLD-AGE PENSIONS...

But the Willis Smith Crowd says that these things for which ROOSEVELT and GRAHAM fought are Bad... the Smith Crowd says that these laws which have brought you a better life are the tools of the "Welfare State" and these laws are the "Roads to Socialism"... THEY want to WIPE OUT the NEW DEAL of ROOSEVELT and GRAHAM!

The Smith Crowd would like to take you back to the days of the picture above... 15¢ an HOUR for a 12-HOUR DAY and a 66-HOUR WORK WEEK is SMITH'S IDEA of "SOUTHERN DEMOCRACY"!

WHY? It's a matter of Simple Arithmetic:

WILLIS SMITH is a COTTON MILL OWNER. The LESS WAGES SMITH HAS TO PAY his WORKERS, THE MORE PROFIT MILL-OWNER SMITH MAKES!

FRANK P. GRAHAM

PROVEN FRIEND of the WORKING PEOPLE

Cotton Mill Workers for Graham, Columbia
211 Avenue G, Columbia, S. C.
(SEE REVERSE SIDE)

1950 campaign handbills, Daniel Augustus Powell Papers,
Southern Historical Collection, The Wilson Library,
University of North Carolina at Chapel Hill

These attacks were powerful in the simplicity of their message: Graham posed a threat to white privilege and the racial division of labor from which it was derived. Graham's campaign countered by warning white working people that Smith would roll back the hard-won economic gains of the New Deal, but on Election Day race trumped class. Smith won the second primary by more than 19,000 votes. He traveled to Washington to take his Senate seat in 1951 and carried

⁸¹ President's Committee on Civil Rights, *To Secure These Rights*, 166.

⁸² Pleasants and Burns, *Frank Porter Graham*, 140 and 223.

Jesse Helms with him as a member of his staff. Twenty-two years later, Helms returned as a Republican Senator and a leader of the New Right.

IX. Black Advance and White Reaction in the Forgotten 1950s

A. Challenging Jim Crow at the Ballot Box

In the aftermath of the election, Graham's supporters were distraught. "I weep for the people of North Carolina," one woman wrote, "because they [were] swayed by prejudices [and] lies." But editor Louis Austin found cause for hope, even as he mourned Graham's defeat. He reminded his readers that more than 260,000 voters – the vast majority of them white – had cast their ballots for Graham, and in doing so had refused to bow to "race hatred." Despite obvious similarities, Graham's loss was not a calamity on the same scale as the defeat of Fusion half a century before. Appeals to justice and decency had loosened Jim Crow's grasp and created new room for blacks to maneuver. Austin urged his readers to seize that opportunity, to light a "torch of freedom" that would "send bright rays into the dark corners of [a] benighted State."⁸³

Leaders and ordinary folk in black communities across North Carolina took up that challenge. In 1951, a "rush" of thirteen black candidates stood for election in eleven cities, from Rocky Mount in the east to Winston-Salem in the central Piedmont. Three of them won seats on their municipal councils.⁸⁴ Two years later, twenty-four black candidates ran in nineteen cities, and six bested their white opponents.⁸⁵

The victories in 1953 were, in many respects, predictable. With one exception, they occurred in Piedmont cities with substantial black populations and active black civic organizations. In Winston-Salem, unionized tobacco workers had spurred voter registration and created a political movement that continued to elect a black candidate to the city's board of aldermen. Black business leaders in Durham had similar success. Under the auspices of the city's Committee on Negro Affairs, they had been registering voters and sponsoring candidates for the better part of two decades. In 1953, they broke through with the election of Rencher N. Harris, a real estate appraiser,

⁸³ Ibid., 247-48, and "Victorious in Defeat," *Carolina Times*, July 1, 1950.

⁸⁴ "Rush of Negro Candidates for City Posts in N. Carolina," *Atlanta Daily World*, May 8, 1951; "Two Win City Council Seats in No. Carolina," *Atlanta Daily World*, May 17, 1951; and "First Negro to N.C. League of Municipalities," *Atlanta Daily World*, November 10, 1951. Dr. William Hampton won a seat on the Greensboro city council, Reverend William R. Crawford won a run-off and replaced Kenneth Williams on the Winston-Salem board of aldermen, and Dr. W.P. Devane was re-elected to the Fayetteville city council. Later in 1951, Hampton and Crawford were the first black city officials to attend meetings of the North Carolina League of Municipalities.

⁸⁵ "Negro Candidates Seek Offices in Twenty North Carolina Cities," *The Chicago Defender*, May 2, 1953. Despite the title, only 19 cities are listed in this article. For clarification of the number of city council candidates in Concord, see "Candidates Win Three North Carolina Races," *Atlanta Daily World*, May 7, 1953, and "Primary Vote at Concord Slated Tuesday," *Charlotte Observer*, April 13, 1953. For the successful candidates, see "They Scored," *The Chicago Defender*, May 23, 1953. William Crawford and William Hampton won re-election in Winston-Salem and Greensboro, respectively; Rencher N. Harris claimed a seat on the Durham city council; Hubert J. Robinson was elected to the Chapel Hill town council; Nathaniel Barber took a seat on the city council in Gastonia; and Dr. George K. Butterfield Sr. was elected to the city council in Wilson.

to the city council. Harris also had the backing of a short-lived interracial alliance of progressive whites and unionized textile and tobacco workers.⁸⁶

More surprising, and ultimately more threatening to white rule, was the fact that seven black candidates had the courage to seek office in eastern North Carolina, where Jim Crow was most deeply entrenched, and that in Wilson, a small tobacco market town located in that section of the state, George K. Butterfield Sr. won election to the board of commissioners. Through the end of the decade, this spread of civil rights activism beyond the cities of the Piedmont tested white politicians' ability to deflect black claims on equal citizenship.

The story of George Butterfield's political career in Wilson epitomized the contest between white men in power and their black challengers in the east. Butterfield was a dentist and a veteran of World War I, born in Bermuda and educated at Meharry Dental College in Nashville, Tennessee. He moved to Wilson in 1928 and quickly established himself as a leader in the city's black community. George K. Butterfield Jr., who currently represents North Carolina's First Congressional District, remembers that his father "was always a thorn in the side of the white establishment." In the 1940s, the elder Butterfield and his brother-in-law, Fred Davis Jr., directed a number of voter registration drives. They recruited brave volunteers and "sat up the night with them" to memorize and "rehearse the Constitution." When those aspiring voters took the literacy test, "some would pass and some would not," because the outcome was "just the whim of the registrar." Progress was slow, but over time, the effort paid off. By 1953, more than 500 of Wilson's black citizens had qualified to vote.⁸⁷

That figure was large enough to convince Butterfield to stand for election as a town commissioner representing Wilson's third ward. Although blacks constituted a majority in the ward, whites outnumbered them among registered voters. Butterfield's supporters overcame that disadvantage by turning out at a much higher rate than their white neighbors. When ballots were counted, Butterfield and his opponent each received 382 votes. As stipulated in Wilson's town charter, election officials decided the winner by drawing lots. A blindfolded child pulled Butterfield's name from a hat.⁸⁸

Butterfield used his political office to press for improved municipal services in Wilson's black neighborhoods, additional funds for black schools, and the desegregation of recreational facilities, including the town's minor-league baseball stadium. After he won re-election in 1955, Wilson's white commissioners moved to be rid of him. Shortly before the 1957 election, they approved a surprise resolution to change from a ward system to an at-large form of municipal government in which a full slate of commissioners would be elected in a single, multi-candidate contest. Under that arrangement, a black candidate would face not one but many white opponents.⁸⁹

The state legislature quickly approved the change and added a provision to Wilson's charter that prohibited single-shot, or as it was sometimes called, bullet voting. That was the practice of marking a ballot for only one candidate in multi-candidate contests in which the top vote getters

⁸⁶ Gershenhorn, *Louis Austin*, 114, and "They Scored," *The Chicago Defender*, May 23, 1953.

⁸⁷ McKinney, *Greater Freedom*, 21-22 and 54, and Interview with George K. Butterfield Jr.

⁸⁸ McKinney, *Greater Freedom*, 58-59, and Interview with George K. Butterfield Jr.

⁸⁹ McKinney, *Greater Freedom*, 91-96, and Interview with George K. Butterfield Jr.

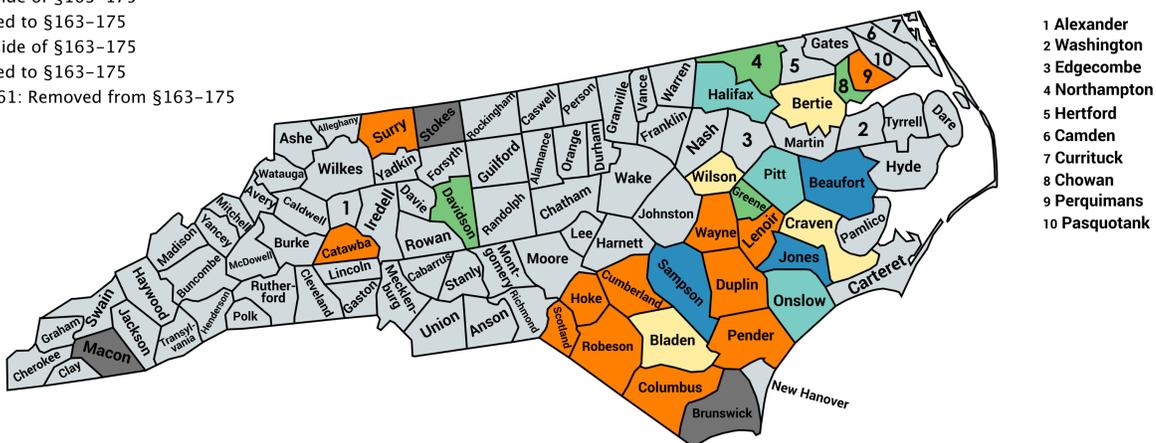
won election to a set number of open seats. In simple mathematical terms, single-shot voting offered black voters – always a minority – their best chance at electing representatives from their communities. The new prohibition undercut that prospect by requiring that election officials discard single-shot ballots.⁹⁰

These changes in Wilson's town government denied Butterfield a third term. In the 1957 election, he placed eighth in a field of sixteen candidates who vied for six seats on the town commission. Four years later, Reverend Talmadge A. Watkins, Butterfield's pastor and political ally, ran for a place on the town commission and, after losing, challenged the anti-single-shot rule in a lawsuit. North Carolina's Supreme Court ultimately decided the case, *Watkins v. City of Wilson*, in favor of the defendants. The justices wrote: "It is an established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained, or is immediately in danger of sustaining, a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public." Watkins did not meet that standard, because "even if credited with all rejected ballots, he would not have enough votes to change the [election] result." In 1962, the U.S. Supreme Court declined to review the case on appeal.⁹¹

Watkin's defeat in court validated the work of white politicians who had been busy restructuring local government across eastern North Carolina. Between 1955 and 1961, the state legislature approved a flurry of new laws that mandated at-large voting in a shifting mix of elections for county boards of commissioners and town councils in twenty-three eastern counties. In each of those places, lawmakers also prohibited single-shot voting.

1955, 1957, 1959 & 1961 Anti-Single-Shot Counties & Municipalities

- 1955: Added to §163-175
- 1957: Outside of §163-175
- 1957: Added to §163-175
- 1959: Outside of §163-175
- 1959: Added to §163-175
- 1959 & 1961: Removed from §163-175



Anti-single shot counties and municipalities, 1955-1961

⁹⁰ *Session Laws and Resolutions, State of North Carolina, Extra Session of 1956, and Regular Session, 1957*, chapt. 13.

⁹¹ McKinney, *Greater Freedom*, 96 and 139-44; Interview with George K. Butterfield Jr.; *Watkins v. City of Wilson*, 255 N.C. 510, 121 S.E.2d 861 (1961); and *Watkins v. Wilson*, 370 U.S. 46 (1962).

With no sense of irony, white politicians defended these measures as protection against the corrupting influence of "bloc" interests, particularly those defined by race. That was a well-worn rationale. For instance, a group of Willis Smith's supporters had charged in 1950 that "bloc voting by any group is a menace to democracy." In an advertisement published in the *News and Observer*, they turned to Charles Aycock – one of the original architects of white supremacy – as their authority on the matter. Looking back on his election as governor in 1900, Aycock had justified his party's use of political violence by pointing to heavily black counties in the east, where, he claimed, "120,000 Negro votes cast as the vote of one man" threatened the "security of life, liberty, and property."⁹²

(Political Advertisement)

Bloc Voting By ANY Group Is A MENACE to DEMOCRACY

Governor Charles B. Aycock said in his Inaugural Address, January, 1901:

"When we came to power (1898), we desired merely the security of life, liberty and prosperity. We had seen all these menaced by 120,000 Negro votes cast as the vote of one man."

Here is what happened on May 27th, 1950—

BLOC VOTING BY NEGROES IN NORTH CAROLINA: (OFFICIAL RETURNS)			
	Precinct	GRAHAM	SMITH
RALEIGH	No. 10	493	9
	No. 16	518	18
DURHAM	Hillside	1514	7
	Pearson School	1187	8
GREENSBORO	No. 5	1231	12
CHARLOTTE	No. 2	512	11
		5455	65

THESE ARE RETURNS FROM ONLY SIX NEGRO PRECINCTS

WILLIS SMITH Represents ALL The People

Guilford Committee for Willis Smith
John E. Foster, Chairman

Advertisement published by Guilford County for Willis Smith,
News and Observer, June 20, 1950

⁹² Raleigh *News and Observer*, June 20, 1950.

The hypocrisy of such historical claims infuriated *Carolina Times* editor Louis Austin. He noted that since the end of slavery, blacks had found the "biggest 'bloc' of . . . all . . . arrayed against them." It included "leaders of the Ku Klux Klan," politicians who "continuously fanned the flames of race hatred," and the "mass of white voters" who elected them. Together, these enemies of democracy barred blacks from political office and denied them both "equal education [and] equal employment opportunities." Such actions left blacks no alternative but to vote their group interests, or as Austin put it, to "look principally to [their] own tents for whatever advancements" might be made.⁹³

B. Challenging Jim Crow in Court

The guardians of white rule were shrewd adversaries who displayed their resourcefulness not only at polling places but also in courts of law. That was perhaps nowhere more apparent than in the adjudication of a series of lawsuits brought by James R. Walker Jr., a young black attorney from eastern North Carolina. Walker grew up in Hertford County, located in the historic Second Congressional District, where black political strength had been concentrated in the decades after Emancipation. His parents, James and Ethel, were teachers who instilled in their son a determination to "fight social injustice." After serving in the U.S. Army during World War II, the younger Walker set out to become a civil rights lawyer.⁹⁴

In 1949, Walker applied for admission to the school of law at the University of North Carolina in Chapel Hill but was rejected on account of his race. With no other option, he enrolled at the North Carolina College for Negroes (now North Carolina Central University), where state lawmakers had established a separate and decidedly unequal law school to protect the white university from desegregation. But within a year, the U.S. Supreme Court changed the game. The court ruled in a Texas case, *Sweatt v. Painter*, that racially segregated programs of graduate and professional education were acceptable only if they exhibited "substantive equality." On the basis of that judgment, Walker and four other black plaintiffs – Harvey Beech, James Lassiter, J. Kenneth Lee, and Floyd McKissick – sued in federal court and won admission to the law school in Chapel Hill. They began their studies during the summer of 1951. Lee and Walker took their degrees a year later and became the University of North Carolina's first black graduates.⁹⁵

In 1955, black community leaders in Halifax County persuaded Walker to return to eastern North Carolina and join their struggle for political rights. When he opened his law office in Weldon, he was the only black attorney in a six-county area where sharecropping still bound black families to the land and racial violence was a fearsome fact of life. Walker was unafraid. "I was an Army man," he remembered. "Had been to the front. . . . I wasn't scared of nothing."⁹⁶

Walker drew financial and professional support from a small community of black lawyers in North Carolina's Piedmont cities. He also built a loose network of black preachers, teachers, businessmen, and club women from twenty-five eastern counties. He called the group the Eastern

⁹³ "The 'Negro Bloc' and the 'Single Shot,'" *Carolina Times*, May 22, 1965.

⁹⁴ Wertheimer, *Law and Society in the South*, 131-32.

⁹⁵ *Ibid.*, chapt. 7, and Nixon, "Integration of UNC-Chapel Hill – Law School First." For the following account of Walker's career and legal challenges to Jim Crow election law, we draw broadly on Wertheimer (above) and Barksdale, "Indigenous Civil Rights Movement."

⁹⁶ Wertheimer, *Law and Society in the South*, 142, and 150.

Council on Community Affairs. Its members gathered news of voter infringement, mobilized to confront hostile white election officials, and helped Walker identify plaintiffs who were prepared to challenge Jim Crow in court.⁹⁷

Walker began filing lawsuits in 1956. In one of his first cases, he sued on his own behalf to challenge the prohibition of single-shot voting in an at-large election for seats on the Halifax County Board of Education. Officials had discarded his ballot because he cast a single vote for the one black candidate rather than comply with instructions to choose seven of eight contenders.

The case eventually made its way to the North Carolina Supreme Court, where Walker ran afoul of state lawmakers' efforts to stall school desegregation. In 1955, quick on the heels of the U.S. Supreme Court's *Brown* decision, they extended their influence over policy at the local level by making seats on county school boards appointed rather than elected positions. Under the new arrangement, political parties continued to hold primary elections, but the results were no longer binding. County boards of elections reported the winners to the State Superintendent of Public Instruction, who in turn sent their names to the legislature in the form of nominations. Lawmakers then appointed school board members as they saw fit. By time the high court heard Walker's appeal, lawmakers had already exercised their authority to appoint members of the Halifax County Board of Education. In light of that fact, the court ruled that "questions raised by plaintiff are now moot" and dismissed Walker's case.⁹⁸

While litigating his personal complaint in Halifax County, Walker filed another lawsuit on behalf of Louise Lassiter, a resident of nearby Northampton County who had been denied the right to register after failing to prove that she was literate. At the time, registrars enjoyed broad authority to administer literacy tests in whatever form they imagined. They often framed the tests as civics exams that reached well beyond a simple assessment of an applicant's ability to read and write. Observers documented a "bewildering variety" of questions. Can you "name the signers of the Declaration of Independence?" a registrar might ask. "What is *habeas corpus*?" "If the NAACP attacked the U.S. government, on which side would you fight?" "Explain how a person [can] be imprisoned for debt in North Carolina, who created the world, and what 'create' mean[s]." Louise Lassiter failed her test because she mispronounced words from the state constitution, including the term 'indictment.'⁹⁹

Lassiter's case set off alarm bells in Raleigh, where state officials worried that she might prevail in federal court. Her complaint coincided with passage of the Civil Rights Act of 1957, the first national legislation of its kind since Reconstruction. That law established the U.S. Civil Rights Commission to investigate allegations of voter suppression and authorized the Department of

⁹⁷ Ibid., 146 and 148.

⁹⁸ Eure, "Public School Laws of North Carolina," 13-14; *Session Laws and Resolutions, State of North Carolina, Extra Session of 1956, and Regular Session, 1957*, chapt. 137; and *Walker v. Moss*, 97 S. E.2d 836 (1957) 246 N.C. 196.

⁹⁹ North Carolina Advisory Committee to the United States Commission on Civil Rights, *Equal Protection of the Laws in North Carolina*, 28 and 33, and Wertheimer, *Law and Society*, 141 and 151.

Justice to institute civil action against any person who interfered with the right of another "to vote or to vote as he may choose."¹⁰⁰

Just days before Lassiter's case was scheduled to be heard in U.S. district court, legislators revised state election law to make the literacy test less arbitrary. They struck the requirement that literacy be proven "to the satisfaction" of registrars and created an appeals process for citizens who failed the test – though complaints would be heard only if filed "by 5:00 p.m. on the day following denial." These changes were enough to satisfy the federal court, which declined to proceed with Lassiter's case until she had petitioned for a local remedy.¹⁰¹

Soon after the court's decision, Lassiter made another attempt to register. But this time, at Walker's instruction, she refused examination on grounds that the literacy test violated her right to vote. That focused Lassiter's legal complaint on the constitutionality of the test itself rather than the method of its administration. When the case reached the North Carolina Supreme Court, lawyers for the Northampton County Board of Elections argued in circles. They denied that the literacy test was discriminatory on account of race and then defended it as a political necessity adopted to correct the "outrages perpetrated upon the people of this State during the Tragic Era of Reconstruction," when the ballot was "placed in the hands of illiterate people . . . supported by the armed might of the Federal Government." Convinced by such reasoning, the court rejected Lassiter's constitutional claims. It found no evidence of "discrimination in favor, or against any [person] by reason of race, creed, or color."¹⁰²

On appeal in 1959, the U.S. Supreme Court unanimously affirmed that ruling. Writing for the court, Justice William O. Douglas acknowledged that when arbitrary authority was vested in registrars, a literacy requirement could "make racial discrimination easy." But he found no evidence of that intent in North Carolina's election law as amended in 1957. He instead read literacy tests as an expression of the state's desire "to raise the standards for people of all races who cast the ballot." Ignoring the effects of a century of school discrimination in the South and the core reasoning of the 1954 *Brown* decision, Douglas insisted that "literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show."¹⁰³

Black North Carolinians certainly had no natural inclination to illiteracy, but the connection between illiteracy and race as a social category and lived experience was undeniable. Had Justice Douglas examined conditions in Northampton County, that harsh reality would have been readily apparent. In 1950, black adults in the county had completed, on average, 5 years of schooling. That compared to 5.6 years for black adults and 8.6 years for white adults statewide. These figures meant that a considerable portion of voting-age blacks, in Northampton County and across the

¹⁰⁰ Public Law 85-315: An Act to Provide Means of Further Securing and Protecting the Civil Rights of Persons Within the Jurisdiction of the United States, 637, <<http://bit.ly/2UGEvGA>>, September 5, 2019, and Winquist, "Civil Rights: Legislation: The Civil Rights Act of 1957."

¹⁰¹ *Session Laws and Resolutions, State of North Carolina, Extra Session of 1956, and Regular Session, 1957*, chapt. 287; and *Lassiter v. Taylor*, 152 F. Supp. 295 (E.D.N.C. 1957).

¹⁰² Wertheimer, *Law and Society in the South*, 155; and *Lassiter v. Northampton Board of Elections*, Supreme Court of North Carolina, fall term 1957, no. 172, Sixth District, and *Lassiter v. Northampton County Board of Elections*, 102 S.E.2d 853 (1958) 248 N.C. 102.

¹⁰³ *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45 (1959).

state, had completed fewer than the three years of education that demographers assumed was required to develop basic literacy skills. Jim Crow's shadow remained long and deep.¹⁰⁴

In 1960, Walker returned to court with a new client. Having failed to win a judgment that the literacy test was unconstitutional per se, he revisited the question of how it was administered. His client, Bertie County resident Nancy Bazemore, had been denied by a registrar who required that she write down passages from the state constitution as he read them aloud. Bazemore failed because of spelling errors. When the case reached the state supreme court, the justices ruled in Bazemore's favor and issued guidelines that sharply limited registrars' discretion in determining the form and content of the literacy test. They instructed those officials to evaluate "nothing more" than applicants' ability to "utter aloud" a section of the state constitution and to write it out "in a reasonably legible hand." Furthermore, the test was to be based on a printed copy of the constitution – not dictation – and there were to be no penalties for "the occasional misspelling and mispronouncing of more difficult words."¹⁰⁵

The *Bazemore* decision represented what many observers came to view as the North Carolina way in managing black demands for equal rights. It rejected naked discrimination and insisted on "fair and impartial" enforcement of the law, but also left room for sorting citizens into racial categories.¹⁰⁶

Across North Carolina, most whites registered and voted without a literacy test. They "took it for granted" that they were entitled to do so because of the color of their skin. In Nancy Bazemore's home county, one registrar was forthright. When asked if any whites had failed the literacy test, he replied, "No. I mean I didn't have any to try it." Though the state supreme court did not address this issue directly, it validated the underlying assumption by ruling that there was no legal requirement that every registrant be examined. "It would be unrealistic to say that the test *must* be administered to all applicants," the justices wrote. "The statute only requires that the applicant *have* the ability" to read and write (emphasis in original). "If the registrar in good faith knows that [the] applicant has the requisite ability, no test is necessary."¹⁰⁷

This reading of state election law suggested that registrars still possessed the authority to group citizens into two classes: whites who were assumed to be literate and blacks who had to prove it. The law did not require that the literacy test be administered to all citizens on an equal basis, but only that it "be administered, where uncertainty of ability exists, to all alike." That was a notably pernicious doctrine in a white man's society long habituated to the idea that blacks, by their very nature, lacked the intellectual and moral capacity to function as citizens.¹⁰⁸

North Carolina's response to black demands for political rights was adaptive, not reactionary. It stood apart from what became known as "massive resistance" elsewhere in the

¹⁰⁴ North Carolina Advisory Committee to the United States Commission on Civil Rights, *Equal Protection of the Laws in North Carolina*, 144, and Collins and Margo, "Historical Perspectives on Racial Differences in Schooling," <<http://bit.ly/2UMbN7e>>, September 5, 2019, 4.

¹⁰⁵ *Bazemore v. Bertie County Board of Elections*, 119 S.E.2d 637 (1961) 254 N.C. 398

¹⁰⁶ *Ibid.*

¹⁰⁷ Wertheimer, *Law and Society*, 161; North Carolina Advisory Committee to the U.S. Commission on Civil Rights, "Voting and Voter Registration in North Carolina, 1960," 22; and *Bazemore v. Bertie County Board of Elections*, 119 S.E.2d 637 (1961) 254 N.C. 398.

¹⁰⁸ *Bazemore v. Bertie County Board of Elections*, 119 S.E.2d 637 (1961) 254 N.C. 398.

South. As one contemporary observed, it was a "subtle strategy" for preventing "the black vote from being effective." White political leaders were willing to tolerate the registration of a limited number of black voters and even the occasional election of a black officeholder, but they conceded nothing on the foundational principles of Jim Crow: black inferiority and second-class citizenship. This was their way of maintaining what Charles Aycock had called "good order" and of warding off federal intervention, an existential threat since the days of slavery.¹⁰⁹

C. Challenging Jim Crow at School

A willingness to concede change at the margins shaped not only the battle over the ballot box but also the racial contest at the schoolhouse door. In the early 1930s, black educators, organized through the North Carolina Teachers Association (NCTA), collaborated with the NAACP in a campaign to equalize black and white teachers' pay. They were emboldened by the New Deal's support for organized labor and the minimum wage standards set by the National Recovery Administration. In October 1933, more than 2,500 teachers filled the streets in Raleigh to press their demands. Weeks later, their representatives issued a bold indictment of Jim Crow:

We are disfranchised and told to acquire learning and fitness for citizenship. We undertake the preparation in our inadequate, wretchedly equipped schools. Our children drag through the mud while others ride in busses, we pass the courses required by the state and in most places when we present ourselves for registration we are denied that right and lose our votes. Our teachers, disadvantaged by disfranchisement, by lack of the means to prepare themselves, nevertheless do meet the high and exacting standards of the best white institutions of the country, and then armed with the state's highest certificate go into the employment of a commonwealth which reduces their wages to the level of janitors and hod carriers.

The NCTA urged its members to register to vote and "unite their forces at the polls." "We are informed that it is best for us if we stay out of politics," the black educators declared, but "we have stayed out and this is what we have."¹¹⁰

That effort at political mobilization produced one of the South's earliest lawsuits to challenge the constitutionality of the literacy test. In 1934, two Iredell County teachers, T. E. Allison and Robert W. Dockery, appeared before a white registrar who instructed them to read and write passages from the state constitution. When they were done, he declared his judgment: "You do not satisfy me." Allison and Dockery subsequently sued the registrar and the county and state boards of election.¹¹¹

The North Carolina Supreme Court heard their case on appeal in 1936 and ruled for the defendants. Associate Justice R. Heriot Clarkson – a Confederate veteran and leader of the white supremacy campaigns of 1898-1900 – wrote for the court. He affirmed the constitutionality of the literacy test and said of the plaintiffs, they "just do not like the law of their State." Clarkson closed with a history lesson: "It would not be amiss to say that [the] constitutional amendment providing for an educational test . . . brought light out of darkness as to education for all the people of the

¹⁰⁹ Towe, "Barriers to Black Political Participation in North Carolina," 11-12.

¹¹⁰ Thuesen, *Greater Than Equal*, 142-48.

¹¹¹ *Ibid.*, 147.

State. Religious, educational, and material uplift went forward by leaps and bounds. . . . The rich and poor, the white and colored, alike have an equal opportunity for an elementary and high school education."¹¹²

Given the difficulties of voter registration, the NCTA had limited ability to bring direct pressure to bear on state and local politicians, but its continued agitation of the salary equalization issue, the ongoing involvement of the NAACP, and a growing number of lawsuits filed elsewhere across the South convinced the state legislature in 1939 to allocate \$250,000 to raise black teachers' pay. Still, the average black teacher earned only three-quarters of what the average white teacher was paid.¹¹³

The U.S. Court of Appeals for the Fourth Circuit put southern lawmakers on notice in 1940, when it ruled in a Norfolk, Virginia case that racial disparities in teacher pay violated the equal protection clause of the Fourteenth Amendment. A three-judge panel affirmed black teachers' "civil right . . . to pursue their profession without being subjected to discriminatory legislation on account of race or color." America's entry into World War II then provided the final impetus to close the gap. In 1942, James W. Seabrook, president of both the NCTA and Fayetteville State Teachers College, appealed to white politicians' sense of fair play and their not-so-secret fears for black loyalty in the war effort. He urged them to "give the Negro confidence that the principles of democracy for which he is being called upon to fight in the four corners of the earth will be applied to him here at home." Two years later, the General Assembly appropriated the funds to equalize black and white teachers' salaries.¹¹⁴

During the war years, black educators' demand for equal pay expanded into a call for equal facilities. Children led the way. In October 1946, more than four hundred students, organized in a local NAACP Youth Council, filled the streets in Lumberton, a small town in southeastern North Carolina. They carried placards that cheered the triumph of democracy in World War II and set that achievement against the wretched condition of black schools: "inadequate and unhealthy . . . overcrowded . . . and dilapidated." "D-Day," and "V for Victory," the signs exclaimed. "How Can I Learn When I'm Cold?" "It Rains on Me." "Down with Our Schools."¹¹⁵

Protests spread across eastern and central North Carolina, accompanied by lawsuits that challenged the constitutionality of unequal school funding. In 1950, plaintiffs in Durham won a breakthrough case in the U.S. District Court for the Middle District of North Carolina. Judge Johnson Jay Hayes ruled that city school officials had a legal obligation to provide "negro [sic] school children substantially equal facilities to those furnished white children." He found no "excuse or justification" for failing to meet that standard and ordered an end to discriminatory school spending.¹¹⁶

¹¹² *Allison v. Sharp*, 209 N.C. 477 (N.C. 1936). On Justice Clarkson, see *Prominent People of North Carolina*, 16-17. In 1896, Clarkson organized one of the state's first "White Supremacy" clubs. Governor Charles Aycock rewarded his political loyalty with an appointment as solicitor of the state's Twelfth Judicial District.

¹¹³ Thuesen, *Greater Than Equal*, 152

¹¹⁴ *Alston v. School Board of City of Norfolk*, 112 F.2d 992 (4th Cir. 1940); Douglas, *Reading, Writing, and Race*, 20; and Thuesen, *Greater Than Equal*, 153-55.

¹¹⁵ Thuesen, *Greater Than Equal*, 169-70.

¹¹⁶ *Blue v. Durham Public School District*, 95 F. Supp. 441 (M.D.N.C. 1951).

Anyone who read judge Hayes's ruling closely would have spotted a single sentence that was even more ominous in its implications. "The burdens inherent in segregation," he wrote, "must be met by the state which maintains them." Had Hayes pronounced a death sentence for Jim Crow? In 1951, a group of fifty-five black parents filed suit in Pamlico County to test that question. They demanded that their children be assigned to white schools unless adequate black facilities were provided. As historian Sarah Thuesen has noted, this was "the first lawsuit filed in the federal courts from North Carolina – and only the second in the South – to raise the possibility of integration." The plaintiffs dropped their complaint when county officials agreed to build a new black high school, but they had made their point. As the editor of the *Kinston Free Press* noted, "If we want to keep segregation, we must bend over backward to see that facilities are equal."¹¹⁷

To that end, state leaders put a \$50 million school bond on the ballot in late 1953, as the U.S. Supreme Court prepared to hear final arguments in *Brown v. Board*. One observer noted that many white voters supported the measure in hope that it "might tend to influence" a judgment favorable to the South. They could not have been more mistaken. On May 17, 1954, the court ruled that "in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that . . . segregation is a denial of the equal protection of the laws." In the aftermath of that decision, state and local officials scrambled once more to invent means of defending the substance, if not the letter, of Jim Crow.¹¹⁸

D. *Brown v. Board* and the Pearsall Committees

Two gubernatorial advisory committees, popularly known by the name of their chairman, wealthy eastern landowner and Democratic power-broker Thomas J. Pearsall, set the course for opposition to *Brown*. They worked from the principle "that members of each race prefer to associate with other members of their race *and that they will do so naturally unless they are prodded and inflamed and controlled by outside pressure* (emphasis in original)." To that end, the committees proposed "the building of a new school system on a new foundation – a foundation of no racial segregation by law, but assignment according to natural racial preferences and the administrative determination of what is best for the child."¹¹⁹

The first Pearsall committee recommended that the state cede authority over school assignments to local districts. That proposal informed the Pupil Assignment Act of 1955, passed in the same legislative session as the prohibition of single-shot voting. Lawmakers removed references to race from state school assignment policy and gave parents "freedom of choice" in selecting the schools their children would attend. But there was a catch. The law required that black parents petition individually to have their children assigned to white schools. Doing so demanded great courage. Parents faced the prospect of retribution by angry employers and landlords, and they had to accept the risk that their children might stand alone to face white resistance. The law also gave local school boards broad discretionary authority in ruling on parents' requests. They could reject an application if they believed that it did not serve a child's "best

¹¹⁷ Thuesen, *Greater Than Equal*, 191.

¹¹⁸ Thuesen, *Greater Than Equal*, 200, and *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954)

¹¹⁹ *Report of the North Carolina Advisory Committee on Education, April 5, 1956*, 7 and 9, <<http://bit.ly/2LTNQXw>>, September 5, 2019.

interests," or that it would compromise "proper administration," "proper instruction," or "health and safety" in a target school.¹²⁰

A year later, the second Pearsall committee proposed an amendment to the state constitution that would authorize the legislature to provide private school vouchers for "any child assigned against the wishes of his parents to a school in which the races are mixed." Local school boards would also be permitted to call for public referenda to close schools in case of "enforced mixing of the races." The committee presented the amendment as a balm for racial conflict stirred up by outsiders, most notably the NAACP and the federal courts. They looked forward to a day "when sanity returns," and to re-establishment of "the harmonious relations which the races have enjoyed in North Carolina for more than fifty years" – that is, from the time of white redemption and black disenfranchisement. In September 1956, voters approved the amendment by a margin of more than four to one. Though no schools were ever closed and only one private school voucher was issued, the amendment effectively undermined any notion that desegregation might be achieved with more deliberate speed.¹²¹

These policies won North Carolina praise as a "moderate" southern state but produced one of the lowest desegregation rates in the region. At the beginning of the 1958-59 school year, only 10 of the state's roughly 322,000 black students were enrolled in formerly white schools. That result impressed school officials in Little Rock, Arkansas, where in 1957 white resistance to desegregation had prompted President Dwight Eisenhower to use federal troops to restore order. They complimented their North Carolina colleagues: "You . . . have devised one of the cleverest techniques of perpetuating segregation that we have seen. . . . If we could be half as successful as you have been, we could keep this thing to a minimum for the next fifty years."¹²²

The Little Rock admirer put his finger on a lesson that is as true today as it was in the 1950s. White supremacy, often violent and inflexible, can also be subtle and adaptive. A tobacco worker from eastern North Carolina said it best: "My experience . . . is that if you beat the white man at one trick, he will try another."¹²³

E. Stalled Revolution

When most Americans think about the history of civil rights, they tend to view the past through a rearview mirror. They see a series of struggles that led inevitably to the demise of Jim Crow in the mid-1960s. But for an observer on the ground at the beginning of that decade, the future seemed far less certain. The U.S. Supreme Court had effectively embraced the North Carolina way. In *Lassiter v. Northampton County Board of Elections*, the court affirmed the constitutionality of the literacy test, and in *Brown II*, its ruling on the enforcement of school desegregation, the court embraced the go-slow approach proposed in an *amicus curiae* brief filed by North Carolina's attorney general.

North Carolina State Assistant Attorney General I. Beverly Lake Sr. drafted the brief and presented it along with oral arguments in April 1955. He urged the court to "allow the greatest

¹²⁰ *Session Laws and Resolutions, 1955*, chapt. 366, 310.

¹²¹ *Report of the North Carolina Advisory Committee on Education, April 6, 1956*, "8-10; Wettach, "North Carolina School Legislation, 1956," 7; Batchelor, *Race and Education in North Carolina*, 108-9. The U.S. District Court for the Western District of North Carolina struck down the voucher plan in 1966. See Batchelor, 110.

¹²² Batchelor, *Race and Education in North Carolina*, 73, and Chafe, *Civilities and Civil Rights*, 97 and 106.

¹²³ Korstad, *Civil Rights Unionism*, 384.

possible latitude to . . . District Judges in drafting final [desegregation] decrees." It stood to reason, he explained, that "only a court conversant with local conditions and granted wide discretion [could] tailor [a] decree to fit the local variations." Lake also offered a dire warning against any "attempt to compel the intermixture of the races." Such action would result in "violent opposition" and place the public schools in "grave danger of destruction." In its ruling in *Brown II*, the high court heeded Lake's advice. The Justices left it to lower courts to determine the pace and process of desegregation, guided by "their proximity to local conditions" and understanding of the need for "practical flexibility in shaping remedies." That was the essence of *Brown II*'s vague directive that desegregation proceed "with all deliberate speed."¹²⁴

Congress was even less inclined to effect sweeping change, thanks in significant measure to the outsized influence wielded by southern lawmakers. In the decades after black disenfranchisement, national leaders ignored Section 2 of the Fourteenth Amendment, which requires a reduction in representation for states that deny voting rights on the basis of race. Political scientist Richard Valelly estimates that had Section 2 been enforced, the Jim Crow South would have lost as many as twenty-five seats in the U.S. House of Representatives between 1903 and 1953. But the disenfranchisers never paid that penalty; instead, they expanded their influence in national politics. "That itself," Valelly writes, "was a major if silent constitutional change, a tacit, extraconstitutional [revision] of the Fourteenth Amendment."¹²⁵

The denial of black voting rights and the systematic suppression of two-party politics in the South also limited dissent and ensured that Democratic incumbents in Congress would be re-elected term after term. Over time, southern politicians accrued seniority and gained control of key committees in both the House of Representatives and the Senate. Their power was obvious in contests over civil rights issues, but much of it was otherwise out of view. As the chairmen of committees charged with administrative oversight, they permitted unchecked racial discrimination by government agencies, from the Federal Housing Administration's use of red-lining to enforce racial segregation in America's cities and suburbs to the Veterans Administration's biased allocation of resources under the G.I. Bill and the U.S. Department of Agriculture's denial of subsidized loans and other resources to black farmers. Examples abound. In every instance, willful neglect helped to entrench Jim Crow not only in the life of the South, but in that of the nation as well.¹²⁶

X. Civil Rights at Last

A. Sit-Ins and Direct Action

By the late 1950s, most white southerners understood that the world they had built over the last half century would not last forever, but they were determined to preserve it as long as they could. They had reason to be confident and optimistic. The *Brown* decision had done little to integrate public schools, Martin Luther King Jr.'s Montgomery movement had accomplished little more than the desegregation of city buses, and despite increases in voter registration, black

¹²⁴ "Brief of Harry McMullen, Attorney General of North Carolina, Amicus Curiae," 3 and 6, and *Brown v. Board of Education*, 349 U.S. 294.

¹²⁵ Valelly, *Two Reconstructions*, 146-47.

¹²⁶ *Ibid.* See also Katznelson, *When Affirmative Action Was White*, and Daniel, *Dispossession*.

political power was still negligible. On top of that, most whites outside the South were content with the racial status quo.

Then a civil insurrection broke out. The uprising drew strength from black moral anger and frustration with white recalcitrance, and it was given form and direction by years of preparation and social learning in black communities across the South. Clear in hindsight, but less so at the time, the signal event took place on February 1, 1960, when four students at the Agricultural and Technical College of North Carolina – Ezell Blair Jr., David Richmond, Franklin McCain, and Joseph McNeil – demanded service at a Woolworth's lunch counter in Greensboro. Sit-ins quickly spread across the state and throughout the South. Two months later, college students, black and white, gathered at Shaw University in Raleigh – North Carolina's oldest black institution of higher learning – to organize the Student Nonviolent Coordinating Committee (SNCC).¹²⁷

Inspired by North Carolina native and Shaw graduate Ella Baker, SNCC embraced a grassroots strategy for mobilizing ordinary citizens as leaders in the struggle for civil rights. Volunteers from every corner of the nation fanned out across the South to register voters, to build alternative schools for black children, and to press for the desegregation of public facilities. Other civil rights organizations – including King's Southern Christian Leadership Conference, the Congress on Racial Equality (CORE), and the NAACP – adopted similar strategies of direct action. What these groups set in motion was not so much a Second Reconstruction as a second *Radical Reconstruction*, in which black people reached up not to receive but to seize their freedom.¹²⁸

In the years between 1960 and 1965, black protests forced issues of race and democracy to the center of national attention. As in the first Reconstruction, whites responded with state-sanctioned and extra-legal violence, which were not always distinguishable. The stories that filled columns of newsprint and the images that flooded television screens have become iconic: the firebombing and brutal beating of Freedom Riders; the assassination of Medgar Evers; the death of four little girls in the Klan bombing of the Sixteenth Street Baptist Church in Birmingham; the exhumation of the bodies of James Chaney, Andrew Goodman, and Michael Schwerner, CORE organizers murdered by Klansmen and law officers in Neshoba County, Mississippi; and the police attack on protestors attempting to cross Selma's Edmund Pettis Bridge. These and other outrages ultimately swayed public opinion and shamed majorities in Congress to pass the landmark Civil Rights Act of 1964 and the Voting Rights Act of 1965.

B. A Second Emancipation

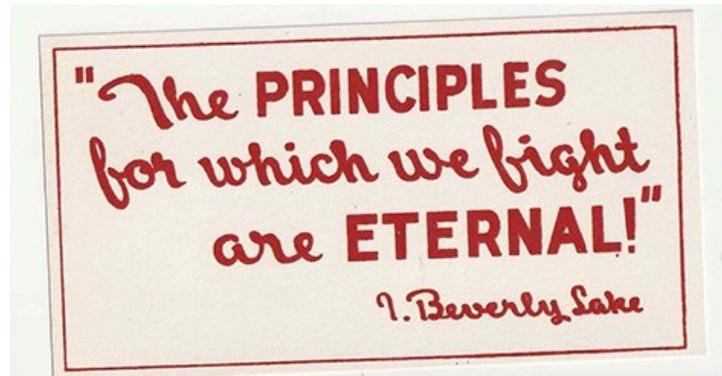
Each state has its own history of dealing with the moral and civic crisis brought on by the mass mobilization for democratic rights and equal citizenship. Though it had the largest Klan organization of any southern state, North Carolina did not experience the widespread violence that beset the Deep South. In large part, that was because of a critical gubernatorial election in 1960, won by moderate Democrat Terry Sanford. Throughout his administration, Sanford, a protégé of Frank Graham, preached a message of opportunity for all and used the police power of the state to surveil and restrain the Klan.¹²⁹

¹²⁷ Chafe, *Civilities and Civil Rights*, 98-141.

¹²⁸ Hogan, *Many Minds One Heart*.

¹²⁹ Covington, *Terry Sanford*, 342-43. Klan membership in North Carolina exceeded that of Alabama and Mississippi combined. See Cunningham, *Klansville, U.S.A.*

Sanford won the Democratic gubernatorial nomination in a bitter primary contest with former Assistant Attorney General I. Beverly Lake Sr., a respected jurist who had taught law at Wake Forest College and was widely admired for his defense of Jim Crow. After his appearance before the U.S. Supreme Court in *Brown II*, Lake had proposed an amendment to the state constitution that would have made desegregation a moot issue by removing the Reconstruction-era mandate for publicly funded schools. In his campaign for governor, Lake assured supporters that "The PRINCIPLES for which we fight are ETERNAL!"¹³⁰



I. Beverly Lake campaign card
North Carolina Collection, The Wilson Library,
University of North Carolina at Chapel Hill

¹³⁰ "N.C. Bar Association Award Carries Legacy of Explicit Racism," *Raleigh News and Observer*, June 28, 2016.

IF YOU REALLY KNOW ...
Dr. BEVERLY LAKE
YOU'LL VOTE FOR HIM ON MAY 28



**This Is The Man
North Carolina
Needs As Her
Governor**

He Is "The Man Who Lets You Know
Where HE Stands"

AGRICULTURE BASIC TO ECONOMY

Dr. Lake supports the work of our Federal, State and Local agricultural leaders.

"I shall seek the advice of farm organizations and the Department of Agriculture."

"The problem of the small farmer is the most crucial issue facing North Carolina agriculture and we must work to help the small farmer because he is the backbone of our economy."

I. BEVERLY LAKE

BALANCED BUDGET NECESSARY—

Dr. Lake favors a balanced State budget; he is opposed to deficit State spending; and is strongly against raising our already burdensome taxes for desirable but non-essential improvements.

Dr. Lake proposes a "Policy of spending for current operating expenses no more than can be produced by fair tax laws not unduly burdensome".

SCHOOL INTEGRATION OPPOSED—

Dr. Lake is opposed to the mixing of white and Negro children in the schools in North Carolina.

"The mixing of our two great races in the classroom and then in the home is not inevitable and is not to be tolerated."

**COURT AND HIGHWAY
CHANGES NEEDED—**

Dr. Lake favors certain reforms in our court system directed toward a uniform, more efficient, and less costly system of justice for our people.

"Dr. Lake favors election of all judges, Recorders and Justice of Peace, by the people and is against proposals which would eliminate this plan."

"I favor a highway commission of fourteen members, one appointed from each of the 14 engineering divisions."

Political Adv Paid for by Perquimans Lake For Governor Committee.

"The mixing of our two great races in the classroom and then in the home is not inevitable and is not to be tolerated."

I. Beverly Lake campaign ad,
Perquimans Weekly, May 27, 1960

Sanford was a different breed of politician. He belonged to the generation who had fought in World War II and had seen horrifying reflections of American racism in German concentration camps and in the concepts of common blood and ethnic nationalism that shaped Japan's imperial project in Asia. Veterans like Sanford came home full of confidence in their ability to make the world a better place, and they were convinced that the South had to change – as a matter of what was just and right, and as an economic imperative if the region was to lift itself out of the misery that had long defined it as the most impoverished section of the nation.¹³¹

When Lake challenged his allegiance to Jim Crow, Sanford refused to be race baited. He pivoted to the "bright look of the future" and invited voters to join him in building for a "New Day" in North Carolina. That required improving public schools, not excising them from the state constitution. "We are going to continue to go forward," Sanford declared, "to give our children a

¹³¹ See Covington, *Terry Sanford*, chapt. 5.

better chance, to build a better state through better schools." That appeal was persuasive and reassuring. Sanford bested Lake and went on to win the general election.¹³²

Soon after taking office, Sanford embarked on a tour of schools across the state. When he visited students – particularly at black schools – he began to question his faith in education as a corrective for the damage wrought by Jim Crow. "I had a sickening feeling," he later recalled, "that I was talking about opportunities that I knew, and I feared [the children] knew, didn't exist, no matter how hard they might work in school." The "improvement of schools wasn't enough," he concluded. "Not nearly enough."¹³³

By his own account, the governor was learning hard lessons – from school-aged children and from their older siblings who filled the streets with urgent demands for equal rights. He began to comprehend the connections between poverty and racial injustice that tobacco workers in Winston-Salem had exposed in the 1940s, that the biracial Fusion alliance had grasped during the 1890s, and that black and white Republicans had identified as a central concern of Reconstruction. "We must move forward as one people or we will not move forward at all," Sanford told black college students in Greensboro. "We cannot move forward as whites or Negroes . . . We can only move forward as North Carolinians."¹³⁴

Sanford's words were a direct refutation of the foundational principle of Jim Crow, which Charles Aycock had explained in 1901 to an audience at the Negro State Fair in Raleigh. "It is absolutely necessary that each race should remain distinct," he said, "and have a society of its own. . . . The law which separates you from the white people of the State . . . always has been and always will be inexorable."¹³⁵

In the winter of 1962-63, as the nation marked the centenary of Abraham Lincoln's Emancipation Proclamation, Sanford shared a "bold dream for the future." He startled white educators at a meeting in Dallas, Texas when he declared, "We need our own . . . emancipation proclamation which will set us free to grow and build, set us free . . . from hate, from demagoguery." Back home, he urged members of the North Carolina Press Association to join him in a campaign to make good on the unfulfilled promise of freedom and equality. "We can do this," Sanford declared. "We should do this. We will do it because we are concerned with the problems and the welfare of our neighbors. We will do it because our economy cannot afford to have so many people fully and partially unproductive. We will do it because it is honest and fair for us to give all men and women their best chance in life."¹³⁶

As he spoke to the journalists, and through them the citizens of North Carolina, Sanford must have been mindful of another southern governor who had been in the headlines just days before. In his inaugural address, delivered from the steps of the state capitol in Montgomery,

¹³² Drescher, *Triumph of Good Will*, 67, 171, and 175.

¹³³ Manuscript containing notes for an abandoned book on Terry Sanford's term as governor, subseries 3.1, box 174, Records and Papers of Terry Sanford.

¹³⁴ "Fraternity's Award Goes to Sanford," *Greensboro Daily News*, April 28, 1963.

¹³⁵ "A Message to the Negro," Connor and Poe, eds., *Life and Speeches of Charles Brantley Aycock*, 249-50.

¹³⁶ Address to the Commission on Secondary Schools of the Southern Association of Colleges and Schools, Dallas, Texas, November 28, 1962, Mitchell, ed., *Messages, Addresses, and Public Papers of Terry Sanford*, 302; "Observations for a Second Century," subseries 3.1, box 174, Records and Papers of Terry Sanford; and film of Sanford's address to the North Carolina Press Association, series 6.2, VT3531/1a, Terry Sanford Papers.

Alabama, George C. Wallace exclaimed, "Segregation today, segregation tomorrow, segregation forever."¹³⁷

C. Lifting the Economic Burden of Jim Crow

Six months later, Sanford called on his friends in the press once again, this time to publicize the launch the North Carolina Fund, a non-governmental organization that would use private philanthropy to attack the state's "poverty-segregation complex." That plan was audacious. Nearly 40 percent of North Carolinians lived below the poverty line, and in eastern counties where slavery and later sharecropping dominated the economy, black poverty was so deep and pervasive that outsiders referred to the region as "North Carolina's 'little Mississippi.'" As the Fund took on this challenge, it became a model for the national War on Poverty, which President Lyndon Johnson and Congress launched with the Economic Opportunity Act of 1964, the establishment of Medicare and Medicaid in 1965, and the expansion of multiple programs that sought to educate, feed, clothe, and house the poor. In subsequent years, the Fund was an important conduit for millions of dollars in federal aid that flowed into North Carolina.¹³⁸

From the beginning, the Fund modeled a future built on equal citizenship. Its staff and board of directors were remarkable for the number of women and blacks who served in leadership roles, and its headquarters was located in Durham's black business district, an intentional sign of the organization's guiding principles. The Fund also adopted the direct-action techniques of the civil rights movement. Its community partners led boycotts of businesses that refused to hire black workers, staged rent strikes to demand that landlords repair sub-standard housing, registered voters, and taught poor people how to pressure politicians and government officials for a fair share of social provision: more and better public housing; job training; paved streets, clean water, and sewer lines for neighborhoods that had been denied those services on account of race; and low-interest mortgages and community development grants from the U.S. Department of Agriculture and other federal agencies.¹³⁹

Through these efforts, the Fund attempted to create an interracial movement of the poor, but it had only limited success. By time the organization closed its doors in 1968, national politics had begun to take a sharp conservative turn. For many whites, civil rights victories amplified Jim Crow dogma, which insisted that blacks could advance only at white expense.

Fund staff often pointed to the resurgence of the Ku Klux Klan in North Carolina as evidence of that tragic worldview. For more than half a century, Jim Crow had all but quashed the possibility of interracial cooperation and one-party government had denied poor and working-class whites a political voice. Similarly, fierce antiunionism, defended by lawmakers and employers as a means of protecting white jobs, left working-class whites without a collective voice. Throughout the 20th century, North Carolina was one of the least unionized states in the nation and ranked

¹³⁷ On Wallace's gubernatorial inauguration, see Carter, *Politics of Rage*, 104-109.

¹³⁸ Untitled document on the Choanoke Area Development Association, series 4.11, folder 4825, North Carolina Fund Papers, and John Salter to Jim Dombrowski, April 28, 1964, folder 22, Gray (Salter) Papers. On conditions of poverty in North Carolina and the North Carolina Fund's relationship to the national war on poverty, see Korstad and Leloudis, *To Right These Wrongs*, 57-59, and 115-19.

¹³⁹ For a detailed account of the North Carolina Fund's antipoverty work, see Korstad and Leloudis, *To Right These Wrongs*, chaps. 3-5.

near the bottom for manufacturing wages. These circumstances, in ways that echoed the past, made it easy for firebrands to channel economic grievances into racial animosity.¹⁴⁰

D. Rise of a New Republican Party

The North Carolina Fund – and more particularly, the challenge it posed to the economic and political structures of Jim Crow – became the social irritant around which a new conservative movement took shape. Republican Congressman James C. Gardner, who represented eastern North Carolina's Fourth District, pointed the way. His election in 1966 marked the beginning of a party realignment that over the next two decades profoundly altered the state's political landscape.

In the summer of 1967, Gardner launched a public assault on the North Carolina Fund. He charged that it had become "a political action machine" and called for an investigation of its "meddling in the affairs of local communities." Gardner also played on racial fears that dated back to the era of Reconstruction and the white supremacy politics of the late 1890s. In a press release, he shared reports from eastern North Carolina that Fund staff were promoting "'revolutionary . . . attitudes'" by speaking openly of the need for a "coalition . . . between poor whites and Negroes to give political power to the disadvantaged."¹⁴¹

A subsequent audit by federal authorities cleared the Fund of any wrongdoing, but Gardner had achieved his purpose. He positioned himself on the national stage as a leading critic of social welfare programs, and he made the war on poverty and its connections to black political participation a wedge issue that could draw disaffected white Democrats into an insurgent Republican movement.

Republican Party elders in North Carolina recognized the promise of Gardner's leadership and the shrewdness of his strategy. They had named him party chairman a year before his congressional bid. Sim A. DeLapp, the party's general counsel and himself a former chairman, wrote to encourage Gardner. "From the standpoint of voter sentiment," he advised, "we are in the best shape that we have ever been [in] during my lifetime. People are permanently angry at the so-called Democratic Party. . . . They are mad because [Lyndon] Johnson has become the President of the negro [sic] race and of all the left wingers." I. Beverly Lake Sr., who was now a Justice on the North Carolina Supreme Court, expressed the depth of white anger. "The apostles of appeasement . . . must be removed from positions of public trust," he advised Gardner. "We must clean up the whole foul mess and fumigate the premises."¹⁴²

In 1968, Republican presidential candidate Richard Nixon tapped this racial animosity to flip the once solidly Democratic South. He secured an endorsement from South Carolina Senator Strom Thurmond, who had led the 1948 Dixiecrat revolt in defense of states' rights and had left the Democratic Party in 1964 to become a Republican. Nixon also cast his campaign in racially coded language. He offered himself as a spokesman for the "great majority of Americans, the forgotten Americans, the non-shouters, the non-demonstrators" who played by the rules, worked

¹⁴⁰ See Salter, "The Economically Deprived Southern White," box 2, folder 7, Gray (Salter) Papers. David Cunningham makes a similar argument in *Klansville, U.S.A.*

¹⁴¹ Gardner press release, July 25, 1967, series 1.2.2, folder 318, North Carolina Fund Records. For more on Gardner's criticisms of the Fund, see Korstad and Leloudis, *To Right These Wrongs*, 290-306.

¹⁴² DeLapp to James Gardner, September 1, 1965, box 9, DeLapp Papers, and Lake to Gardner, August 5, 1967, box 23, Gardner Papers.

hard, saved, and paid their taxes. This strategy won Nixon the keys to the White House and marked the beginning of the Republican Party's new reliance on the white South as a base of support.¹⁴³

Four years later, Nixon made a clean sweep of the region by winning the states that third-party segregationist candidate George Wallace carried in 1968: Alabama, Arkansas, Georgia, Louisiana, and Mississippi. This was the "white uprising" predicted by one of Congressman Gardner's constituents. Like her, most of the white voters who turned out for Nixon in North Carolina were still registered as Democrats, but they elected James E. Holshouser Jr. governor – the first Republican to win the office since Daniel Russell in 1896 – and sent Jesse Helms to the U.S. Senate. Helms, who served for six terms, quickly rose to prominence as a national leader of what came to be called the New Right.¹⁴⁴

E. Conservative Democrats Hold the Line on Black Voting Rights

Conservatives in the state Democratic Party held on through the 1970s and fought a rearguard battle against civil rights advocates who used the courts to challenge suppression of the black vote. In late 1965, the U.S. District Court for the Middle District of North Carolina ruled that the system for apportioning seats in both houses of the state legislature on the basis of geography rather than population violated the principle of "one man, one vote." That standard, derived from the Fourteenth Amendment's equal protection clause, holds that all votes cast in an election should carry roughly equal weight.¹⁴⁵

The state constitution guaranteed each of North Carolina's one hundred counties a seat in the state House of Representatives. That privileged small rural counties, where whites were most firmly in control, and diluted black votes in urban areas. The largest legislative district had nearly twenty times more residents than the smallest. That meant that a majority in the House "could be assembled from members who represented only 27.09 percent of the state's population." The state Senate was apportioned more evenly. The constitution required that Senate districts contain equal populations, though a separate provision that no county was to be divided created some imbalance. The largest Senate districts had nearly three times more residents than the smallest. The court ordered that both chambers be redistricted immediately, and that the populations of the largest new districts not exceed those of the smallest by more than a factor of 1.3.¹⁴⁶

Lawmakers convened in special session in 1966 to draw new district maps. They reduced population ratios as directed by the court, but did so by creating a large number of multi-member districts – fifteen of thirty-three in the Senate, which previously had no multi-member districts, and forty-one of forty-nine in the House, which previously had one hundred districts, twelve of which were multi-member. That arrangement created a new disadvantage for black candidates who would now face multiple white opponents and whose supporters were legally prohibited from maximizing their voting strength by casting single-shot ballots.¹⁴⁷

A year later, lawmakers created additional hurdles for black candidates. They approved a constitutional amendment, subsequently ratified by voters, that required that counties be kept

¹⁴³ Perlstein, *Nixonland*, 283-85; and Richard Nixon, "Nomination Acceptance Address," August 8, 1968, Presidential Rhetoric, <<http://bit.ly/2HPCoel>>, September 5, 2019.

¹⁴⁴ Quotation from Doris Overman to Gardner, undated, box 14, Gardner Papers.

¹⁴⁵ *Drum v. Seawell*, 249 F. Supp. 877 (1965).

¹⁴⁶ *Ibid.*, and O'Connor, "Reapportionment and Redistricting," 32-33.

¹⁴⁷ *Session Laws, Extra Session, 1966*, chaps. 1 and 5.

whole in the creation of House as well as Senate districts. That effectively made multi-member districts a permanent feature of legislative apportionment, since it was mathematically difficult to base House and Senate seats on equal measures of population without resorting to such a solution. Lawmakers also added a numbered-seat plan in twenty-eight multi-member House districts and twenty-one multi-member districts in the Senate, which together included nearly all of the heavily black counties in the eastern section of the state. The law stipulated:

In each Senatorial and Representative District entitled to elect more than one State Senator or member of the State House of Representatives the positions shall bear identifying numbers as follows: 'Senate Seat 1,' 'Senate Seat 2,' etc., or 'House Seat 1,' 'House Seat 2,' etc. Each seat shall be considered a separate office. . . . Votes cast for any candidate in a general election shall be effective only for the seat for which he has been nominated by a political party or for which he has filed his independent candidacy.

This plan made it possible for election officials to put black candidates in direct, head-to-head competition with the strongest white contenders, and in that way increase the likelihood of black losses. This tactic was so effective that in 1971 there were only two black members of the 170-member legislature.¹⁴⁸

When lawmakers renewed the numbered-seat plan in that same year and attempted to apply it to all districts with populations that were more than 30 percent black, the U.S. Department of Justice blocked the move. It did so under authority of Section 5 of the Voting Rights Act, which required that voting changes in affected jurisdictions be "precleared" by the U.S. Attorney General or the U.S. District Court for the District of Columbia to ensure that they would not discriminate against protected minorities. The U.S. District Court for the Middle District of North Carolina affirmed that judgment in 1972, ruling that both the numbered-seat plan and the 1955 anti-single-shot law that strengthened its effectiveness violated the Fourteenth Amendment's equal protection clause.¹⁴⁹

XI. Judicial Intervention and a More Inclusive Democracy

A. *Gingles v. Edmisten* and Black Electoral Gains

In 1981, a dozen black voters filed suit in *Gingles v. Edmisten* to challenge the legislative redistricting plan that the General Assembly had crafted after the 1980 Census and the 1968 constitutional provision that counties not be divided when apportioning state House and Senate seats. Lawmakers had not submitted the plan or the amendment for preclearance by the U.S. Department of Justice; when they did so after the plaintiffs' filing, both were denied approval.¹⁵⁰

Lawmakers reacted quickly by drafting a new plan that included five majority-black House districts and one majority-black Senate district. The creation of those districts aided the election of eight new black members of the House, raising the total from three to eleven. As the court later

¹⁴⁸ *Session Laws and Resolutions, 1967*, chaps. 640 and 1063, and Towe, "Barriers to Black Political Participation," 28

¹⁴⁹ Towe, "Barriers to Black Political Participation," 61-62; Manderson "Review of the Patterns and Practices of Racial Discrimination," 31; Watson, "North Carolina Redistricting Process, 1965-1966," 8; and *Dunston v. Scott*, 336 F., Supp. 206 (1972).

¹⁵⁰ Keech and Sistrom, "Implementation of the Voting Rights Act in North Carolina," 14.

noted, however, the legislature's change of heart was in some measure cynical. "The pendency of this very legislation," the court observed, "worked a one-time advantage for black candidates in the form of unusual organized political support by white leaders concerned to forestall single-member districting." The U.S. District Court for the Eastern District of North Carolina ruled for the plaintiffs in April 1984.¹⁵¹

Acting in an extra session, the General Assembly subsequently divided a number of multi-member districts into new single-member districts that improved the prospects of black candidates. In November balloting, two additional black lawmakers were elected to the General Assembly, bringing the total to thirteen.¹⁵²

By 1989, nineteen blacks served in the General Assembly, more than were elected during either Reconstruction or the Fusion era. Two years later, state Representative Dan Blue was elected Speaker of the House, the highest legislative office held by a black politician in North Carolina's history. Under Blue's leadership, congressional reapportionment created two majority-minority districts in which voters elected the first blacks to represent the state since George White at the end of the 19th century. Eva M. Clayton represented the 1st Congressional District, which included counties from White's 19th-century district, the "Black Second," and Mel Watt represented the 12th district, which comprised the urban corridor from Charlotte to Winston-Salem.¹⁵³

During the late 1980s, blacks also made substantial gains at the local level, largely as a result of legal challenges to at-large elections and multi-member districts that followed in the wake of the *Gingles* decision. By 1990, more than four hundred blacks had been elected to county and municipal offices across the state.¹⁵⁴

B. Jesse Helms and Racial Polarization

Along with those gains, assertions of white privilege continued to be injected into North Carolina politics and racial appeals to voters persisted. The 1990 senatorial campaign pitted three-term incumbent Jesse Helms against Harvey Gantt, a black Democrat and former mayor of Charlotte. Gantt's very presence in the race testified to the gains that black North Carolinians had made in access to the ballot box and political influence.

The contest was tight until shortly before Election Day, when the Helms campaign aired a television advertisement that focused on two white hands crumpling a lay-off notice. The voice-over added commentary that echoed the racial rhetoric of the 1950 Graham-Smith contest and the *News and Observer* cartoons of 1898 and 1900: "You needed that job and you were the best qualified. But they had to give it to a minority because of a racial quota. Is that really fair? Harvey Gantt says it is. . . . You'll vote on this issue next Tuesday. For racial quotas, Harvey Gantt. Against racial quotas, Jesse Helms."¹⁵⁵

¹⁵¹ *Ibid.*, and *Gingles v. Edmisten*, 590 F. Supp. 345 (1984).

¹⁵² Keech and Sstrom, "Implementation of the Voting Rights Act in North Carolina," 13-14.

¹⁵³ *Ibid.*, 14-15; Earls, Wynes, and Quattrucci, "Voting Rights in North Carolina," 581; and "Two Blacks Join N.C.'s U.S. House Delegation," *Raleigh News and Observer*, November 4, 1992.

¹⁵⁴ Keech and Sstrom, "Implementation of the Voting Rights Act in North Carolina," 15-17.

¹⁵⁵ The hands ad is available online: <<http://bit.ly/2Q5zJnr>>, September 5, 2019.

On the eve of the election, the Republican Party also mailed postcards to 125,000 voters in heavily black precincts, warning recipients incorrectly that they would not be allowed to cast a ballot if they had moved within thirty days, and that if they attempted to vote, they would be subject to prosecution. Helms subsequently won the election with 65 percent of the white vote and 54 percent of the vote overall.¹⁵⁶

The Helms-Gantt contest pointed to a political realignment that had been in the making since the mid 1960's. Conservative whites – particularly white men – were moving in ever-greater numbers into the Republican Party, and in the Democratic Party blacks and liberal whites advanced a progressive social agenda.

C. Jim Hunt, Progressive Democrats, and Expansion of the Franchise

In the 1990s, during James B. (Jim) Hunt's third and fourth terms as governor, that Democratic alliance made major investments to improve the welfare of all North Carolinians. During his first eight years in office – 1977 to 1985 – Hunt had established a reputation as one of the South's most progressive governors by persuading lawmakers to appropriate \$281 million in new spending on public schools and by appointing blacks to his cabinet and the State Supreme Court. When he returned to office in 1993, he pushed an even broader agenda focused on education and human services. Hunt established Smart Start, a program that pumped \$240 million into local communities to provide preschool education and improved health care to young children; raised teacher salaries by a third and increased state spending on public education from 76 to 86 percent of the national average; launched Health Choice, a state program for uninsured children who were ineligible for Medicare, Medicaid, or other forms of federal assistance; and created a new Department of Juvenile Justice to address the underlying causes of youth crime. Hunt also continued to champion inclusive governance. When he left office in 2001, 22 percent of his appointees to state agencies and commissions were minorities, a figure that matched the state's demography.¹⁵⁷

In Raleigh and Washington, Democratic lawmakers worked to sustain these achievements by expanding minority citizens' access to the franchise. Many of their reforms echoed the Fusion election law of 1895. Key legislation included the following:

- **1992** – N.C.G.S.A. § 163-82.25 required the State Board of Elections to initiate a statewide voter registration drive and adopt rules under which county boards of elections were to conduct the drive (HB 1776).

N.C.G.S.A. § 163-227.2 created one-stop, in-person absentee voting (early voting) and removed the excuse requirement from absentee voting for general elections (SB 568).

- **2002** – N.C.G.S.A. § 163-227.2 allowed voting not earlier than the third Thursday before an election.

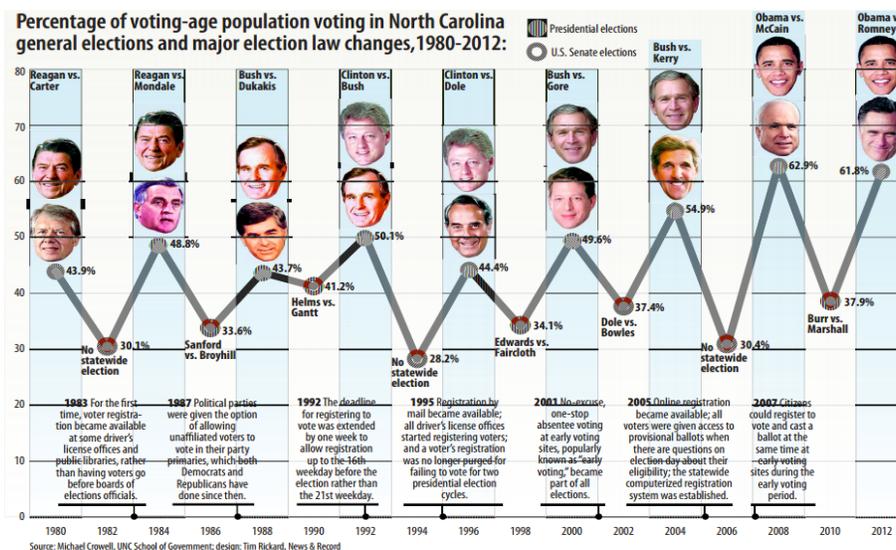
¹⁵⁶ Earls, Wynes, and Quattrucci, "Voting Rights in North Carolina," 589, and "Big Turnout Gives Helms Victory; Senator Gets 65% of White Vote," *Raleigh News and Observer*, November 4, 1990.

¹⁵⁷ Pearce, *Jim Hunt*, 145-46, and 263-266. In 1977, Hunt appointed Howard Lee, former mayor of Chapel Hill, to serve as Secretary of the Department of Natural Resources and Community Development. Seven years later, he named Henry E. Frye to the State Supreme Court, and in 1999 elevated Frye to chief justice.

N.C.G.S.A. § 163-166.11 allowed voters who went to the wrong precinct on election day to vote a provisional ballot (HB 842).

- **2005** – In response to a North Carolina Supreme Court ruling that out-of-precinct voting was not permitted under state election law, Senate Bill 133 reaffirmed the General Assembly's intent that out-of-precinct provisional ballots were to be counted. The bill specifically referred to black citizens' disproportionate use of out-of-precinct voting: "The General Assembly takes note of the fact that of those registered voters who happened to vote provisional ballots outside their resident precincts on the day of the November 2004 General Election, a disproportionately high percentage were African-American."
- **2007** – N.C.G.S.A. § 163-82.6 allowed for same-day registration during early voting (HB 91).
- **2009** – N.C.G.S.A. § 163-82.1 allowed 16- and 17-year-olds to pre-register to vote so their names would be placed on the voter rolls automatically when they turned 18 (HB 908).

As illustrated in the graphic below, the net effect of these reforms was a steady increase in voter participation. In 1996, North Carolina had ranked forty-third among the states for voter turnout; it rose to thirty-seventh place by 2000 and to eleventh place in 2012.¹⁵⁸



Greensboro News and Record, March 23, 2014

Most of the increase was driven by higher rates of black political participation. Between 2000 and 2012, black voter registration surged by 51.1 percent, as compared to 15.8 percent among whites. Black turnout followed apace. Between 2000 and 2008, it jumped from 41.9 to 71.5 percent. In the 2008 and 2012 elections, blacks registered and voted at higher rates than whites for the first time in North Carolina's history. That level of participation was critically important in the 2008 presidential contest, when Barack Obama won North Carolina with a slim margin of 14,171

¹⁵⁸ Berman, *Give Us the Ballot*, 290-91.

votes out of 4,271,125 ballots cast. He was the first Democrat running for President to carry the state since Jimmy Carter in 1976.¹⁵⁹

D. Emergence of a New Multiracial Majority

The history of North Carolina and the South has been marked so profoundly by race that it is tempting to read the politics of the early 21st century solely in terms of black and white. But there is, in fact, a new multiracial majority emerging. It bears resemblance to the biracial alliances of the Reconstruction and Fusion eras but has been shaped by the arrival of a new, rapidly expanding population of Hispanic citizens and immigrants.

North Carolina's Hispanic population grew more than tenfold, from just over 75,000 to roughly 800,000, between 1990 and 2010. By 2018, that number exceeded 996,000, just shy of 10 percent of the state's total population. The growth was driven primarily by the economic boom of the 1990s and early 2000s, when immigrants poured into the state to work jobs in pork and poultry processing, construction, maintenance, and hospitality.¹⁶⁰

Efforts to organize this growing Hispanic population and mobilize Hispanics politically have achieved considerable success. For example, on April 20, 2006, Hispanic workers stepped away from their jobs and joined a nationwide protest that served as a "wake-up call to demographic change." "Across the state," wrote anthropologist Hannah Gill, "restaurants closed down, their kitchens empty of dishwashers, cooks, and cleaners. Hotels operated on reduced staff and trash accumulated uncollected at office buildings. On construction sites, machinery lay silent . . . agricultural labor vanished on farms . . . and factories lost staff. [Hispanics], the backbone of North Carolina's economy, had stopped working for the day." In small towns and big cities, bystanders looked on as the protesters made direct connections to the black civil rights movement and to the labor struggles of Hispanic farm workers in California during the 1960s and 1970s. Thousands marched to county courthouses and carried placards that read "We Shall Overcome" and "Si, se puede" ("Yes, We Can," the motto of the United Farm Workers union).¹⁶¹

Hispanics have sought to translate their growing presence into an influential political voice. Between 2004 and 2010, the number of registered North Carolina voters who identified as Hispanic grew from 10,000 to 79,000, and between 2010 and 2016, the number jumped again to 164,000. Those figures represented 0.2 percent of all registered voters in 2004, 1.3 percent in 2010, and 2.4 percent in 2016. In 2016, the rate of registration among Hispanics (51 percent) still lagged behind rates for whites (79 percent) and blacks (80 percent), primarily because a majority of voting-age Hispanic residents were not citizens. But the figure is likely to rise dramatically in the years ahead, as a large population of Hispanic children born as U.S. citizens reaches maturity.¹⁶²

¹⁵⁹ For increases in black voter registration and turnout, see *N.C. State Conference v. McCrory*, No. 16-1468 (4th Cir. 2016), 13, and Berman, *Give Us the Ballot*, 291.

¹⁶⁰ "The Hispanic/Latino Community in North Carolina," Carolina Demography, <<http://bit.ly/2Lu8yNl>>, September 5, 2019.

¹⁶¹ Gill, "Latinos in North Carolina," 2-3, <<http://bit.ly/2UFkqAb>>, September 5, 2019.

¹⁶² "Latinos in the 2016 Election: North Carolina," Pew Research Center, <<https://pewrsr.ch/2HOyFNV>>, September 5, 2019, and "The North Carolina Electorate: Asian and Hispanic Voters," Carolina Demography, <<http://bit.ly/2HNNS1T>>, September 5, 2019.

Even at today's levels, Hispanics' increased political activity means that, together with blacks, they constitute 24.6 percent of the North Carolina electorate. That opens the door to coalition politics of a sort that is familiar from the state's past. Black, Hispanic, and progressive white voters – when allied – have the capacity to win elections, even though the margins are razor-thin. The 2008 presidential contest is a case in point. As observers noted, Hispanic votes were "indispensable" to Barack Obama's victory in North Carolina.¹⁶³

XII. Retrenchment

A. Polarized Politics of Race and Ethnicity

By 2012, North Carolina voters had become as sharply polarized as they were in the 1860s, 1890s, and 1960s. By a wide majority, whites associated with the party that favored a restricted franchise, limited government, tax cuts, and reduced spending on education and social services. For their part, the majority of blacks and Hispanics gave their allegiance to the party that advocated for enlarged access to the franchise, education, and healthcare; equal job opportunities; and a broad social safety net that offers protection from poverty and misfortune. National polling data on registered voters' party affiliation, collected by Gallup in 2012, tell the story:

	White	Black	Hispanic	Asian	Other	Undesignated
Republicans	89%	2%	6%	1%	1%	1%
Democrats	60%	22%	13%	2%	1%	2%

In tight elections, this polarization heightened the importance of two related factors: newly enfranchised voters' access to the ballot box and the effectiveness of racial strategies for limiting turnout.¹⁶⁴

As black and Hispanic voters in North Carolina exerted their growing electoral strength, political antagonists relied on familiar tropes to stir up white fear and animosity. For example, mocking images of President Obama as an ape or buffoon flew across the internet from the time of his first campaign in 2008 through the end of his second term. In 2009, a member of the Charlotte-Mecklenburg Board of Education argued against increases in school spending on grounds that costs had been inflated by what he called "Obama Bucks" – a pejorative term initially applied to food stamps but soon attached to a wide variety of federal social welfare programs.¹⁶⁵

¹⁶³ North Carolina State Board of Elections, Voter Registration Statistics, <<http://bit.ly/34Opmrd>>, September 5, 2019, and Ross, "Number of Latino Registered Voters Doubles in North Carolina Creating Potential Long-Term Swing State," Huffington Post – Latino Voices, May 25, 2012, <<http://bit.ly/2I3IGID>>, September 5, 2019.

¹⁶⁴ Newport, "Democrats Racially Diverse; Republicans Mostly White," Gallup, <<http://bit.ly/2HOkDvH>>, September 5, 2019.

¹⁶⁵ Charlotte-Mecklenburg Board of Education, meeting minutes, September 8, 2009, <<http://bit.ly/2LQCjYX>>, September 5, 2019, and "GOP Mailing Depicts Obama On Food Stamps, Not Dollar Bill, NPR, October 16, 2008, <<https://n.pr/34GHrHT>>, September 5, 2019.



Obama Bucks meme, created by a Republican women's group in California and circulated widely on social media

Three years later, when Charlotte hosted the Democratic National Convention, V.R. Phipps, a self-styled "patriot" from eastern North Carolina, captured headlines when he parked his truck and a trailer near delegates' downtown hotels. The trailer contained effigies of the President and state political figures, each strung up lynching-style in a hangman's noose. Phipps later took his display on tour in the Midwest and up and down the East Coast.¹⁶⁶

Such appeals to racial animosity also found voice in more established political circles in North Carolina. In March 2012, Tara Servatius, a conservative radio talk show host from Charlotte and regular contributor to the John Locke Foundation's Meck Deck blog, posted criticism of the President for supporting same-sex marriage. Servatius had stirred controversy earlier when she complained about growing "African-American political control" in her city. Now, she lit a media bonfire by including in her posting a photoshopped picture of President Obama, dressed in green fetish leather with a bucket of Kentucky Fried Chicken between his legs.¹⁶⁷

The developments that followed revealed that the incident involved more than a partisan attack. Servatius's caricature of the President was a textbook example of what legal scholar Ian López has described as "dog whistle politics," a contemporary formula for "getting away with racism":

- 1) Punch racism into the conversation through references to culture, behavior, and class; 2) parry claims of race-baiting by insisting that absent a direct reference to biology or the use of a racial epithet, there can be no racism; 3) kick up the racial attack by calling any critics the *real* racists for mentioning race and thereby "playing the race card."

After several days of silence in response to mounting complaints, the Locke Foundation removed the offending photograph – but not the post – and Servatius offered an apology, of sorts: "[The photo] was meant to illustrate Obama's southern political strategy, nothing more. . . . I didn't think

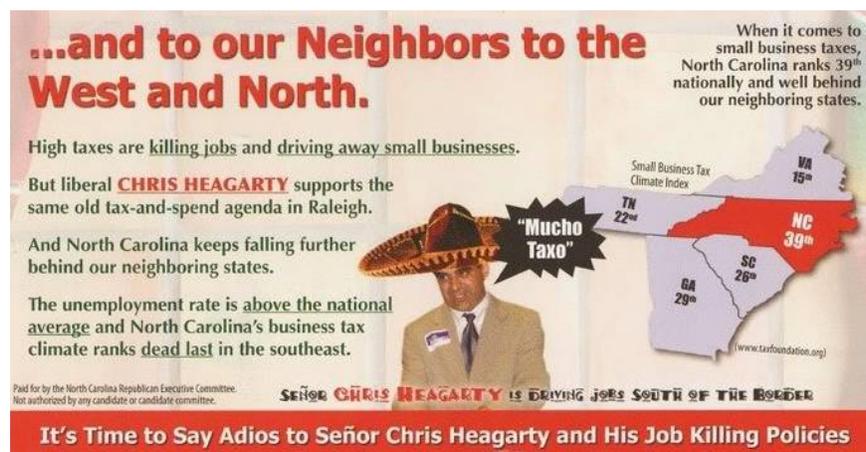
¹⁶⁶ "Hanging Obama' Truck Makes Way into Charlotte," September 6, 2012, WBTV, <<http://bit.ly/32sZJu4>>, September 5, 2019.

¹⁶⁷ Servatius, "Obama Goes Pro Gay Marriage to Get NC On Election Day," The Locker Room, John Locke Foundation, March 19, 2012, <<http://bit.ly/2HPW95n>>, September 5, 2019, and "Just Like Atlanta," November 9, 2011, <<http://goo.gl/HPqRpx>>, January 20, 2014. The URL for this web site is no longer active.

about the racial implications of the picture when I posted it. I simply don't think in those terms. Unfortunately, some people do. To me, fried chicken is simply a Southern Cuisine."¹⁶⁸

Conservative activists disparaged North Carolina's growing Hispanic population in similar ways. In 2009, Jeff Mixon, legislative director in the Raleigh office of Americans for Prosperity, attacked Hispanic immigrants as deadbeats and thugs. He described North Carolina as a "magnet for illegals" who came to America to "take advantage [of a] vast array of benefits . . . from food stamps and free medical care to in-state tuition at our community colleges." He also played on historically familiar prejudices that associate dark skin with criminality. "Poor illegal aliens" deserved no sympathy, he argued, because they provided cover for "wolves among the sheep" – members of Mexican "narco gangs" who threatened to "ruin our communities."¹⁶⁹

A year later, the North Carolina Republican Party's Executive Committee played on anti-immigrant feeling in a mailer it distributed to support candidate Thomas O. Murray, who was running against sitting Democrat John Christopher Heagarty for the District 41 House seat in the General Assembly. With a sombrero atop his head and his skin darkened by clever photo editing, "Señor" Heagarty exclaims, "Mucho taxo" – a reference to policies that Republicans charged were driving away jobs. On Election Day, Murray defeated Heagarty with 54 percent of the vote.¹⁷⁰



IndyWeek, November 1, 2010

More than half a century after the civil rights movement, appeals to racial animus still animated American politics. In the afterglow of President Obama's election in 2008, pundits across the political spectrum were quick to declare that America had entered a long-awaited post-racial era. But there was countervailing evidence that among some whites, anti-black views had hardened

¹⁶⁸ López, *Dog Whistle Politics*, 139; "Conservative Blogger Sorry for Controversy," WRAL, <<http://bit.ly/2HPFXkB>>, September 5, 2019; and "Charlotte Blogger Tara Servatius Resigns Over Obama Portrayal," *Charlotte Observer*, March 23, 2012.

¹⁶⁹ Mixon, "Just Look at the Results," *Red Clay Citizen*, March 27, 2009, <<http://bit.ly/32tZmj1>>, September 5, 2019; "Narco Gangs in North Carolina," *Civitas Review Online*, April 1, 2009, <<http://bit.ly/2HNMpnq>>, September 5, 2019; and "Who Benefits from Illegal Immigration?" *Civitas Review Online*, <<http://bit.ly/2I3fLTV>>, September 5, 2019.

¹⁷⁰ North Carolina House of Representatives elections, 2010, *Ballotpedia*, <<http://bit.ly/2LpTksK>>, September 5, 2019.

and become more partisan. Researchers at the University of Michigan, Stanford University, and the University of Chicago reported that in 2008 the "proportion of people expressing anti-black attitudes was 31 percent among Democrats, 49 percent among independents, and 71 percent among Republicans." Four years later, things were worse. Figures for Democrats and independents showed little change, but among those identifying politically as Republicans, the proportion expressing anti-black sentiments increased to 79 percent.¹⁷¹

Racial appeals resonated in a society that from the time of slavery had privileged race as a defining principle of economic and political organization. They stoked white anger, divided the electorate along color lines, and bred resentment among voters who might otherwise have made common cause. In 2011, Ron Unz, publisher of *The American Conservative*, an influential online political forum, described that racial logic in approving terms:

As whites become a smaller and smaller portion of the local population in more and more regions, they will naturally become ripe for political polarization based on appeals to their interests as whites. And if Republicans focus their campaigning on racially charged issues such as immigration and affirmative action, they will promote this polarization, gradually transforming the two national political parties into crude proxies for direct racial interests, effectively becoming the "white party" and the "non-white party."

Unz predicted that "since white voters are still close to 80 percent of the national electorate, the 'white party' – the Republicans will end up controlling almost all political power and could enact whatever policies they desired, on both racial and non-racial issues."¹⁷²

B. Conservative Electoral Victory, 2010

That assessment read like a script for the polarization that would come to define North Carolina politics. In 2010, Republicans won control of both houses of the state legislature – the first time they had done so since 1896. A number of factors fed voter discontent. The first was the Great Recession of 2008, which hit North Carolina hard. By 2010, the state's unemployment rate had soared to 10.9 percent. That caused pain in every corner of the labor market, but the situation in manufacturing and construction became particularly grim. Between 2007 and 2012, those sectors experienced job losses of 18 and 32 percent, respectively.¹⁷³

As the Democrats who controlled state government struggled to manage the crisis, scandal broke within their ranks. Soon after governor Michael F. Easley left office in 2009, state and federal officials opened investigations into alleged violations of campaign finance laws. Just days before the 2010 election, Easley's tortured testimony before the State Board of Elections was broadcast live. Shortly after that spectacle, he entered a plea agreement on one felony charge.¹⁷⁴

¹⁷¹ Pasek, Krosnick, and Tompson, "Impact of Anti-Black Racism on Approval of Barack Obama's Job Performance and on Voting in the 2012 Presidential Election," 13. On Obama and a post-racial America, see "Persistence of Racial Resentment," *The New York Times*, February 6, 2012,"

¹⁷² Unz, "Immigration, the Republicans, and the End of White America."

¹⁷³ Gitterman, Coclanis, and Quinterno, "Recession and Recovery in North Carolina," August 12, 2012, Global Research Institute, University of North Carolina at Chapel Hill, 7, <<https://unc.live/2HSb8vw>>, September 5, 2019.

¹⁷⁴ Easley Testifies to State Board of Elections (video), WRAL, October 29, 2009, <<http://bit.ly/2UAWq1h>>, September 5, 2019.

Many voters who were shaken by the economic downturn and angered by political corruption found an outlet in the Tea Party movement, which helped to sweep Democrats from office in Congress and in state legislatures across the country. The movement was overwhelmingly white, and its supporters voiced a range of grievances that reflected fears of powerlessness and displacement. Tea Partiers objected to the federal government's bailout of large banks and corporations during the financial crisis; they criticized social welfare programs, and most especially passage of the Affordable Care Act, popularly known as Obamacare; they swore strict allegiance to the Second Amendment right to bear arms; and they opposed the forces of globalization that had destroyed traditional manufacturing jobs and were steering ever-larger numbers of immigrants to the United States.

Across the nation, but in the South in particular, Tea Partiers also expressed resentment of the nation's new black president. Political scientists dubbed that animus "old fashioned racism." It tapped into "both the classic symbolic racism theme that blacks have too much influence in politics [and] concerns about the leadership of a president from a racial group" that many whites still considered "to be intellectually and socially inferior."¹⁷⁵

The timing of Republican gains in North Carolina was strategic and fortuitous. The nation's decennial census was complete, and lawmakers would now take up the job of redistricting the state. In 2011, Republicans redrew North Carolina's Congressional and legislative district lines in ways that favored their partisan interests and would ultimately be overturned by a series of court decisions. But for the time being, gerrymandering worked. In the 2012 election Republicans secured a super-majority in the General Assembly for the first time in the 20th century. Voters also sent Republican Patrick L. (Pat) McCrory to the governor's office. Over the next six years, Republicans enjoyed unassailable control of both the legislative and executive branches of state government.

C. Shelby County v. Holder and House Bill 589

In 2013, the U.S. Supreme Court's ruling in *Shelby County v. Holder* gave North Carolina Republicans an opportunity to further secure their political dominance by making sweeping changes to state election law. The court struck down Section 5 of the Voting Rights, which required that the U.S. Department of Justice preclear changes in voting procedures in North Carolina and other affected jurisdictions to ensure that they would not disadvantage protected minorities. Within hours of the ruling, Republican leaders announced that they planned to introduce a bill that would modify the ways North Carolinians registered to vote and cast their ballots.¹⁷⁶

Lawmakers had been working on the bill for some time. As early as January 2012, a member of the legislative staff had asked the State Board of Elections, "Is there any way to get a breakdown of the 2008 voter turnout, by race (white and black) and type of vote (early and Election Day)?" A year later, a Republican lawmaker wondered, "Is there no category for 'Hispanic' voter?" Another asked officials at the University of North Carolina "about the number of Student ID cards that are created and the percentage of those who are African American," and in April 2013, an aide for the Speaker of the House requested "a breakdown, by race, of those registered voters [who] do

¹⁷⁵ Tesler, "The Return of Old-Fashioned Racism to White Americans' Partisan Preferences," 121.

¹⁷⁶ "Inside the Republican Creation of the Norther Carolina Voting Bill Dubbed the 'Monster' Law," *The Washington Post*, September 2, 2016.

not have a driver's license number." What eventually emerged was House Bill 589, legislation that targeted the electoral clout of North Carolina's multiracial new majority.¹⁷⁷

Like the Act to Regulate Elections that opponents of Fusion crafted in 1899, House Bill 589 made no explicit reference to race or ethnicity – but it nevertheless threatened to limit political participation by nonwhite minorities. The law included a number of provisions that would have made voting harder for black and Hispanic electors.¹⁷⁸

- The law required that in-person voters provide one of eight approved forms of photo identification in order to cast a ballot. Blacks constituted 22 percent of North Carolina's population, but according to an analysis of State Board of Elections data by political science and election scholars Michael Herron and Daniel Smith, they represented more than a third of the registered voters who at the time did not possess the two most common forms of photo identification: a valid driver's license or a state-issued nonoperators ID card.¹⁷⁹
- The law eliminated the first week of early voting, same-day registration, and straight-ticket voting. Statistics from the 2008 election in North Carolina suggested that these changes would have a disproportionately negative effect on black voter participation. In the run-up to Election Day, 71 percent of black voters cast their ballots early, including 23 percent who did so within the first week of the early voting period. That compared, respectively, to 51 and 14 percent of whites. Thirty-five percent of same-day voter registrants were black, a figure 50 percent higher than what might have been predicted on the basis of population statistics, and Democrats voted straight-ticket by a two-to-one ratio over Republicans.¹⁸⁰
- The law ended a program that permitted 16- and 17-year-olds to pre-register at their high schools and other public sites. That opportunity had been particularly popular among black teenagers. Blacks constituted 27 percent of the pool of pre-registered youth, once again a figure that was significantly higher than black representation in the general population.¹⁸¹

Many observers at the time noted this potentially disproportionate effect on black electors, but most missed something equally important. The elimination of pre-registration for 16- and 17-year-olds was remarkably forward looking: it stood to diminish the impact of rapid growth in the number of Hispanic voters – growth that observers identified as the "future of Progressive strength in America."¹⁸²

¹⁷⁷ Ibid.

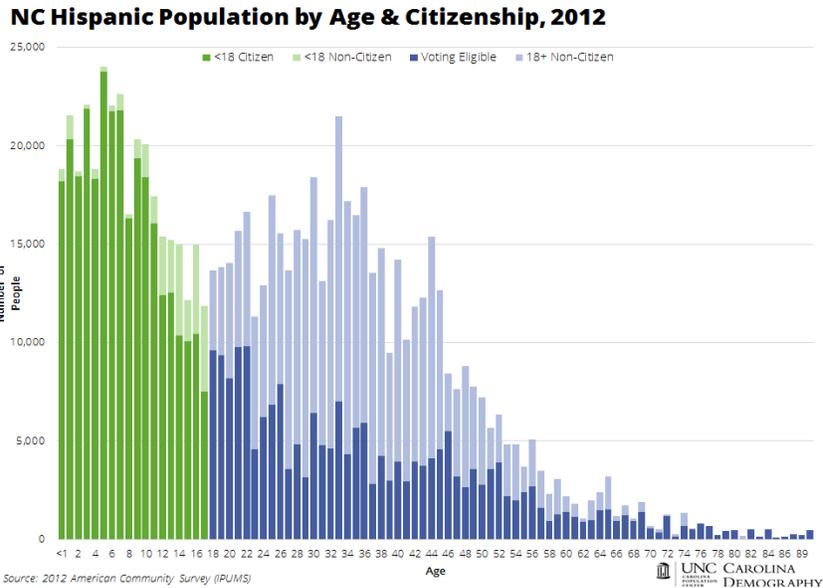
¹⁷⁸ See Expert Report of Allan Lichtman, *North Carolina State Conference of the NAACP v. McCrory*, Civ No. 1:13-cv-658, 12 Feb. 2014.

¹⁷⁹ Herron and Smith, "Race, *Shelby County*, and the Voter Information Verification Act in North Carolina," 34.

¹⁸⁰ *United States v. North Carolina*, 1:13CV861 (M.D.N.C. Feb. 6, 2014), and Heberling and Greene, "Conditional Party Teams," 117.

¹⁸¹ Herron and Smith, "Race, *Shelby County*, and the Voter Information Verification Act in North Carolina," 43.

¹⁸² Broockman and Roeder, "Hispanics Are the Future of Progressive Strength in America, New Organizing Institute, <<http://bit.ly/2HPJ3Fn>>, September 5, 2019; "Republicans Have a Major Demographic Problem, And It's Only Going to Get Worse," *Washington Post*, April 22, 2014; "The South is Solidly Republican Right Now; It Might Not Be that Way in 10 Years," *Washington Post*, April 29, 2014; and "Immigration is Changing the Political Landscape in Key States.," Center for American Progress, <<https://ampr.gs/32wwPsW>>, September 5, 2019.



Blue bars represent voting-age Hispanics, with dark shading for citizens and light shading for non-citizens. Green bars represent Hispanics under age 18, again with dark shading for citizens and light shading for non-citizens.

A report from the University of North Carolina's Population Center explained the details. In 2012, as illustrated in the graph above, most of the state's Hispanic residents were non-citizens and only one if four was eligible to vote, but just over the horizon, Republicans faced a large population of young Hispanics who had been born in the United States, who would soon cast a ballot, and data showed were inclined to support Democrats. Of the Hispanics who had or would turn 18 between 2012 and 2015, 72 percent were citizens (see graph below). That figure rose to 84 percent of those who would turn 18 between 2015 and 2010, and to 98 percent of those who would do so between 2020 and 2030. For Republicans politically, there was little to be gained and much to be risked by pre-registering these future voters.¹⁸³

- The law allowed for increased levels of voter challenge and, if history is any guide, heightened the potential for intimidation. Three revisions were important in this regard. First, residents throughout the state were now allowed to inspect and challenge registration records in any of North Carolina's 100 counties. In the past, challengers were permitted to act only in the counties in which they resided. Second, residents of a county were permitted to challenge voters' eligibility to cast a ballot at polling sites countywide, not just in the precincts where they themselves were registered. Third, the chair of each political party in a county were permitted to appoint ten at-large observers to monitor voting at any polling place they believed warranted close supervision. These poll watchers would be appointed in addition to the election judges assigned to specific voting sites.

Worry that these provisions would encourage frivolous challenges and voter intimidation was based on more than speculation. During the 2012 election, a loose confederation of

¹⁸³ Gill, "North Carolina Hispanics and the Electorate," <<http://bit.ly/2UDvIVC>>, September 5, 2019.

conservative activists mobilized by True the Vote, state-level Voter Integrity Projects, and the Madison Project launched a campaign they called Code Red USA. Their aim was to marshal a "cavalry" of volunteer poll watchers to police alleged voter fraud in battleground states, including North Carolina. In one incident, self-appointed watchdogs in Wake County petitioned to have more than 500 voters, most of them people of color, removed from the registration rolls.

Though the attempt failed, it echoed in disturbing ways a similar episode during Reconstruction, when a group of whites in the same county challenged 150 newly freed black voters on grounds that they had registered fraudulently. As a researcher from the Brennan Center for Justice at the New York University School of Law observed, the 1872 challenge was "one of the first organized attempts by private citizens . . . to systematically undermine black political participation in North Carolina – a practice that would continue throughout the Jim Crow era." The mechanism to allow and facilitate this practice was reintroduced by the enactment of House Bill 589.¹⁸⁴

When pressed on these issues, Republican lawmakers insisted that the new election law was not meant to infringe on voting rights. Instead, former Speaker of the House Tom Tillis advised the public to think of it as a means of "restoring confidence in government."¹⁸⁵

D. Race, Poverty, and Impediments to Voting

Had House Bill 589 been implemented, it would have made political participation more difficult for minority voters who already shouldered a heavy burden of disadvantage. In North Carolina, financial insecurity in the form of poverty and near-poverty disproportionately affects minority populations. Today, the poverty rate for blacks is 24.89 percent, and for Hispanics, 30.06 percent – figures well above the 11.09 percent rate among whites. For many blacks, economic hardship is a product of inherited inequality derived from a variety of sources: discriminatory public policies and banking practices that have impeded home ownership and the accumulation of wealth, lack of access to quality education and health care, and systemic exclusion from ladders of upward mobility.¹⁸⁶

A report from the Brookings Institution reveals just how bleak the situation is. Researchers found that "half the black children born into the bottom [income] quintile remain there in adulthood, compared to just one in four whites. Only 3 percent join the top income quintile, implying that a real-life 'rags to riches' story is unlikely for black children." In addition, many black children are at high risk for downward mobility. The researchers found that "unlike white children and the population as a whole," black children born into middle-class families are "more likely to fall than to rise." Fourteen percent experience upward mobility, 37 maintain their middle-class status, and 49 percent move down the economic ladder.¹⁸⁷

¹⁸⁴ "Looking, Very Closely, for Voter Fraud," *The New York Times*, September 17, 2012; "The Madison Project Launches the Code Red USA Project"; and Riley, "A Lesson from North Carolina on Challenges," Brennan Center for Justice, July 2, 2012, <<http://bit.ly/32uhGbN>>, September 5, 2019.

¹⁸⁵ Berman, *Give Us the Ballot*, 290.

¹⁸⁶ World Population Review, North Carolina, <<http://bit.ly/34F5Ygp>>, September 5, 2019.

¹⁸⁷ Reeves and Sawhill, "Equality of Opportunity," conference paper, Federal Reserve Bank of Boston, October 2014, <<http://bit.ly/2HLYcri>>, September 5, 2019.

There is broad agreement among political scientists that economic insecurity is a drag on voter participation. Reasons include difficulties with transportation, a higher likelihood of being sick or disabled, an inability to take time off from work to register and go to the polls, unfamiliarity with the administrative apparatus of the electoral system, and associated psychological effects – "loss of self-esteem, pride, and self-confidence."¹⁸⁸

The effects of these circumstances are reflected in national statistics from 2008 on income, voter registration, and turnout at the polls. In households that earned \$20,000-24,599, only 57.2 percent of eligible voters registered, and 48 percent cast a ballot. By comparison, 80.2 percent of eligible voters in households with an income of \$100,000-150,000 registered, and 74.9 percent voted. A recent report from the Pew Research Center notes that financially insecure Americans are also less likely than their more affluent neighbors to be politically engaged in other ways:

Just 14 percent say they have contacted an elected official in the last two years; by comparison 42 percent of the most secure have done this. And when it comes to overall awareness of the political landscape, about six-in-ten of the most financially secure Americans could correctly identify the parties in control of both the House and Senate, compared with just 26 percent of the least financially secure.

Marginalization and disengagement of this sort produces what scholars have described as "impoverished democracy," a political system that "neglect[s] the concerns of entire communities" and "perpetuate[s] a vicious cycle of economic inequality, segregation, and loss of political voice."¹⁸⁹

E. Rolling Back Social Provision

That connection between diminished political participation and public policies that are unresponsive to black citizens was readily apparent in the broad legislative agenda that birthed House Bill 589. Soon after the 2012 election, the Civitas Institute, a conservative thinktank and policy advocacy organization based in Raleigh, noted that "the time was right to begin unraveling generations of big-government, liberal policies that had become the norm in the Tar Heel State."¹⁹⁰

Many of the policies that the Civitas Institute opposed, and the Republican majority sought to unravel, were linked directly to black and Hispanic voters' interests and political influence. In its 2013 session, the General Assembly repealed the 2009 Racial Justice Act, which had given inmates the right to challenge imposition of the death penalty by using statistical evidence to prove that race was a factor in their sentencing. Lawmakers also reduced or rejected funding for the forms of social investment that blacks and their allies championed. They cut benefits for North

¹⁸⁸ Leighley and Nagler, *Who Votes Now?*, and Rosenstone, "Economic Adversity and Voter Turnout," 42; and Expert Report of Barry Burden, *North Carolina State Conference of the NAACP v. McCrory*, Civ No. 1:13-cv-658, 12 Feb. 2014.

¹⁸⁹ U.S. Census Bureau, "Reported Voting and Registration of Family Members, by Age and Family Income: November 2008," <<http://bit.ly/2ZyyOAc>>, September 5, 2019; "Politics of Financial Insecurity," Pew Research Center – U.S. Politics & Policy, January 8, 2015, <<https://pewrsr.ch/2HQQJXI>>, September 5, 2019; and Widstrom, "Impoverished Democracy," American Political Science Association, August 31- September 4, 2006, <<http://bit.ly/2HODy9J>>, September 5, 2019.

¹⁹⁰ "North Carolina's 2013 Legislative Session Recap: Landmark Gains for Conservatism," Civitas Institute, July 30, 2013, <<http://bit.ly/32rgVA6>>, September 5, 2019.

Carolínians who were chronically unemployed; declined federal money that would have given 500,000 poor citizens access to health care through the expansion of Medicaid; abolished a state earned income tax credit that provided tax benefits to the working poor; and made reductions in public school funding that had been particularly beneficial to black North Carolínians.¹⁹¹

House Bill 589, An election law that a federal court later described as "the most restrictive . . . North Carolina has seen since the era of Jim Crow," was both a product of this retrenchment and a vital means of securing it for years to come.¹⁹²

F. House Bill 589 in Court

In 2014, the North Carolina NAACP, League of Women Voters, and U.S. Department of Justice mounted an unsuccessful challenge to House Bill 589 in the U.S. District Court for the Middle District of North Carolina. Two years later, the U.S. Court of Appeals for the Fourth Circuit ruled for the plaintiffs and reversed the district court's decision on grounds that the court had "fundamentally erred" in its evaluation of the case. A three-judge panel found compelling evidence of discriminatory intent in the Republican election law. Among other considerations, the court pointed to "the inextricable link between race and politics in North Carolina," Republican lawmakers' consideration and use of race-specific data on voting practices, and the bill's timing. In addition to following closely on the heels of the *Shelby County* decision, House Bill 589 was also situated at a critical juncture in North Carolina politics. The appellate court judges noted that "after years of preclearance and expansion of voting access, by 2013 African American registration and turnout rates had finally reached near-parity with white registration and turnout rates. African Americans were poised to act as a major electoral force." Republican lawmakers "'took away that opportunity because [blacks] were about to exercise it.'" And they did so, the judges added, "with almost surgical precision."¹⁹³

From this and other evidence, the Fourth Circuit panel concluded "that, because of race, the legislature enacted one of the largest restrictions of the franchise in modern North Carolina." They did not directly cite to North Carolina's 1900 disenfranchisement amendment to the state constitution, but that was the obvious historical reference point: no other change to election law had been so sweeping in its effect. The judges remanded the House Bill 589 case to the district court, with instructions to enjoin the voter ID requirement and changes made to early voting, same-day registration, out-of-precinct voting, and teen preregistration.¹⁹⁴

While the state prepared to appeal the Fourth Circuit ruling to the U.S. Supreme Court, Republicans attempted to salvage some of the advantage that House Bill 589 might have given them in the upcoming 2016 election. In mid-August, Governor Pat McCrory tried unsuccessfully to convince Chief Justice John Roberts to reinstate the voter ID requirement, which had been implemented in earlier primaries. At the same time, Dallas Woodhouse, executive director of the state Republican Party, urged county boards of elections to reduce the number of early-voting polling places and to cut the number of hours they would be open. His message was direct. "Our

¹⁹¹ "NC GOP Rolls Back Era of Democratic Laws," *Raleigh News and Observer*, June 16, 2013.

¹⁹² *N.C. State Conference v. McCrory*, No. 16-1468 (4th Cir. 2016), 46.

¹⁹³ *N.C. State Conference v. McCrory*, No. 16-1468 (4th Cir. 2016), 9-11.

¹⁹⁴ *Ibid.*, 77-78.

Republican Board members should feel empowered to make legal changes to early voting plans," he wrote. "Republicans can and should make party line changes to early voting."¹⁹⁵

Seventeen county boards, mostly in the east, did just that. Had Section 5 of the Voting Rights Act still been in place, the changes would have required preclearance from the U.S. Department of Justice, but that was no longer a hurdle. In the affected counties, black voter turnout sagged significantly through much of the early voting period and caught up to 2012 levels only after a Herculean get-out-the-vote effort.¹⁹⁶

Tellingly, state Republican Party officials reported that news in explicitly *racial* terms. The "North Carolina Obama coalition" was "crumbling," they reported in a news release. "As a share of Early Voters, African Americans are down 6.0%, (2012: 28.9%, 2016: 22.9%) and Caucasians are up 4.2%, (2012: 65.8%, 2016: 70.0%)."¹⁹⁷

On appeal in 2017, the U.S. Supreme Court declined to review the Fourth Circuit ruling on House Bill 589.¹⁹⁸

G. Constitutional Amendment – A New Old Strategy

Following this defeat, Republican leaders – including state party chairman Robin Hayes, Senate President Pro Tempore Philip E. (Phil) Berger, and Speaker of the House Timothy K. (Tim) Moore – vowed that they would "continue to fight" for electoral reform. Dallas Woodhouse offered a preview of the battle ahead and the reasoning that would drive it. "Millions of North Carolinians believe that there is voter fraud," he declared, "they believe it. Now, somebody can disagree with them, but they believe it. So, adding confidence into the system is a very important thing. It is good for everybody." Whether significant voter fraud actually occurred was beside the point, as was the question of what had convinced so many North Carolinians that fraud was widespread. According to Woodhouse, the belief itself was sufficient to warrant new restrictions on access to the ballot box.¹⁹⁹

In 2018, having failed in its omnibus rework election law, Republican lawmakers narrowed their focus to voter ID and moved the fight to the state constitution, where similar battles over voting rights, race, and democracy had been waged in 1868 and again in 1900. Knowing the rulings of the Fourth Circuit, they drafted a constitutional amendment that would require photographic identification of all electors "offering to vote in person," and they placed it on the ballot for the upcoming November election. The obvious appeal of that path to reform was that it positioned new restrictions on voting as the will of the people rather than a partisan imposition. As Gerry

¹⁹⁵ "McCroy Asks Supreme Court to Restore Voter ID Law," *Raleigh News and Observer*, August 16, 2016, and "N.C. Republican Party Seeks 'Party Line Changes' to Limit Early Voting Hours," *Raleigh News and Observer*, August 18, 2016.

¹⁹⁶ Newkirk, "What Early Voting in North Carolina Actually Reveals," *The Atlantic*, November 8, 2016, <<http://bit.ly/2ULBchm>>, September 5, 2019.

¹⁹⁷ North Carolina Republican Party, "NCGOP Sees Encouraging Early Voting, Obama/Clinton Coalition Tired/Fail to Resonate in North Carolina," November 7, 2017, <<http://bit.ly/2HS9B8J>>, September 5, 2019.

¹⁹⁸ *North Carolina v. North Carolina State Conference of the NAACP*, 137 S. Ct. 27.

¹⁹⁹ "Supreme Court Won't Rescue N.C. Voter ID Law; GOP Leaders Say They Will Try Again with New Law," *Raleigh News and Observer*, May 15, 2017. Woodhouse's comments are transcribed from a video recording of a press conference he held on July 29, 2016. See "N.C. Voter ID Law Overturned," *Raleigh News and Observer*, February 9, 2018, <<http://bit.ly/32oS3cm>>, September 5, 2019.

Cohen, retired special counsel to the General Assembly observed, that tactic was also directed at staving off court challenge by attempting to "immunize voter ID, specifically photo voter ID, from any challenge under state constitutional grounds." A future legislature controlled by Democrats would also find it much harder to change a constitutional amendment than to repeal an election law. These were all live concerns for Republicans who faced a Democratic majority on the North Carolina Supreme Court and, if polls had any predictive power, were at risk for losing their super-majority in the state House of Representatives on Election Day.²⁰⁰

Republicans' defense of the amendment echoed arguments for the literacy test made more than a century ago. Photographic identification, they said, was the least the state might demand of someone who sought to exercise the most sacred right of citizenship. Moreover, the state had made adequate provision for its citizens to acquire a photo ID, and for that reason, failure to present the credential was neutral on matters of race and ethnicity, wealth and poverty.

As in 1900, such claims masked the realities of many people's lives. Nationally, blacks are disproportionately likely to lack a government-issued photo ID. The same has been true in North Carolina, where in 2012 blacks made up 23 percent of registered voters but accounted for 34 percent of voters without photo ID. The elderly and disabled also find it difficult to acquire a photo ID, as do poor people who do not own a car or have easy access to public transportation, cannot afford documents such as birth certificates that may be required to obtain an ID, and do not enjoy the luxury of time off from work to visit a government agency that issues approved forms of identification. In rural areas, these difficulties are compounded by the fact that state driver license offices are often few and far between. Research on states that have passed voter ID laws also suggests that election officials – like registrars in the Jim Crow era – enforce regulations selectively and in ways that discriminate against minority voters.²⁰¹

Advocates of photo ID also relied on inflammatory charges of voter fraud that echoed the explicit warnings against "Negro Rule" in the late 1890s. During the 2018 national campaign, Republican President Donald Trump railed against Hispanic immigrants who, he said, were pouring in "to infest our country" and, by the millions, were voting illegally. The Heritage Foundation, speaking in only moderately softer terms, has warned that activists "on the left" imperil "our very liberty" and the "great experiment that is America" by opposing voter ID laws and pushing "to get noncitizens . . . to vote." Such claims are hard to square with an audit of the 2016 election conducted by the North Carolina State Board of Elections. The board found that fraudulent ballots accounted for just 0.01 percent of the 4,769,640 total votes cast. Of the 508 cases

²⁰⁰ An Act to Amend the North Carolina Constitution to Require Photo Identification to Vote in Person, S.L. 2018-128, house Bill 1092, <<http://bit.ly/2LRAE5p>>, September 5, 2019; "Voter ID to Go on N.C. Ballots," Tribune Papers, July 12, 2018, <<http://bit.ly/2LVTh8c>>, September 5, 2019; and Cohen interview, N.C. Policy Watch, August 19, 2018, <<http://bit.ly/34VsjXc>>, September 5, 2019. In June 2018, National Research Inc. conducted a poll for the conservative Civitas Institute, headquartered in Raleigh. When asked which party they would support if the "election for North [the] Carolina State Legislature were held today," 42 percent of respondents favored Democrats and only 34 percent supported Republicans. That was a dramatic change from February and May, when Democrats and Republicans were locked in a tie. The poll, labeled Generic Ballot, General Assembly, was made public on the Longleaf Politics web site, <<http://bit.ly/34Gp8CB>>, September 5, 2019.

²⁰¹ Brennan Center for Justice, "Citizens Without Proof," <<http://bit.ly/34QpHtJ>>, 3, September 5, 2019; Schofield, "County-by-County Data Reveal Dramatic Impact of Proposed Election Changes on Voters," NC Policy Watch, July 22, 2013, <<http://bit.ly/2LTDM0t>>, September 5, 2019; Atkeson, et. al., "New Barriers to Participation," Caltech/MIT Voting Technology Project, <<http://bit.ly/2LSocT6>>, September 5, 2019.

of possible fraud that the board identified, only one involved the kind of in-person deception that voter ID might have prevented. In that case, a voter impersonated her recently deceased mother, whom she described to election board officials as "a tremendous Donald Trump fan."²⁰²

More often than not, Republican lawmakers brushed off that sort of inconvenient evidence by insisting ever-more emphatically that voter ID was simply a "common sense measure to secure the integrity of our elections system." After all, House Majority Leader John Bell noted, "you already need an ID to board an airplane, see an R-rated movie, cash a check, or use a credit card." Why not show a photo ID to vote?²⁰³



Voter ID campaign card, Republican John Bell, *Raleigh News and Observer*, November 1, 2018

Simple enough, but Bell's reasoning does not stand up to scrutiny. None of the activities in his list is a constitutionally protected right and his claims about most are wrong. There is no legal requirement that theater owners check moviegoers' photo IDs; the Transportation Safety Administration routinely allows passengers to board planes without a photo ID, so long as they can present other forms of identification; the American Express merchant guide imposes no photo ID requirement on authorized users; and VISA and Mastercard require photo ID only for face-to-face cash disbursements, not purchases. Bell's case for electoral reform was neither as sensible nor as self-evident as he claimed.²⁰⁴

²⁰² "Trump Ramps Up Rhetoric: Dems Want 'Illegal Immigrants' to 'Infest Our Country,'" CNN Politics, June 19, 2018, <<https://cnn.it/34NBcly>>, September 5, 2019; "Fact Check: Trump Repeats Voter Fraud Claim About California," NPR, April 5, 2018, <<https://n.pr/34HHL9j>>, September 5, 2019; "Safeguarding the Electoral Process," The Heritage Foundation, <<https://herit.ag/32wqfTg>>, September 5, 2019; and North Carolina State Board of Elections, "Post-Election Audit Report: General Election 2016," April 21, 2017, <<http://bit.ly/2LQ3TFP>>, September 5, 2019. Details of the impersonation case are laid out in Appendix 4.2, Admission Letter (case 2).

²⁰³ "Voter ID Is Back in North Carolina, and the Justifications Are as Lame as Ever," *The Charlotte Observer*, June 7, 2018, and "North Carolina Voter ID Amendment Debate Features Misleading Claims," Politifact, <<http://bit.ly/32A2tpJ>>, September 5, 2019.

²⁰⁴ "North Carolina Voter ID Amendment Debate Features Misleading Claims," Politifact, <<http://bit.ly/32A2tpJ>>, September 5, 2019; American Express Merchant Reference Guide – U.S., <<https://amex.co/2HKPqtq>>, September 5, 2019; Visa Core Rules and Visa Product and Services Rules, <<https://vi.sa/2HKJGzJ 336>>, September 5, 2019; and Mastercard Transaction Processing Rules, <<https://vi.sa/2HKJGzJ>>, 75, September 5, 2019.

Counterarguments aside, voters approved the constitutional amendment in November 2018 by a margin of 55.49 to 44.51 percent.²⁰⁵ A number of factors may help to explain that outcome. Voter approval of the photo ID amendment owed much to effective tactical decisions. Proponents cast their arguments as a patriotic call to defend liberty and the sacredness of the ballot. Public opinion research suggests that conservative voters generally find such appeals to be more persuasive than pleas for fairness, which was the language used by opponents of constitutional reform.²⁰⁶

Republican leaders also broke with the General Assembly's well-established practice of appointing study commissions to evaluate the impact of constitutional changes and of drafting legislation to make the details of implementation public and transparent. The bill that authorized the photo ID amendment stipulated that it would be presented as a single declarative sentence on which voters were to decide 'yes' or 'no.' Under pressure from critics, the North Carolina Constitutional Amendments Publication Commission, provided a lengthier explanation:

This amendment requires you to show photographic identification to a poll-worker before you can vote in person. It does not apply to absentee voting.

The Legislature would make laws providing the details of acceptable and unacceptable forms of photographic identification after passage of the proposed amendment. 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.

There are no further details at this time on how voters could acquire valid photographic identification for the purposes of voting. There is no official estimate of how much this proposal would cost if it is approved.

Even though it still lacked specifics, and did not change what voters saw on the ballot itself, this description weakened voter support for photo ID. An Elon University poll found that "based upon that language," voter approval dropped from 63 to 59 percent. Had the General Assembly followed past practice and offered a draft of enabling legislation, support might have eroded further.²⁰⁷

Shortly after Thanksgiving, Republican leaders convened a special session of the General Assembly to pass Senate Bill 824, legislation crafted to implement the photo ID amendment. They were in a hurry, because – as polls predicted – they had lost their super majority in the state House of Representatives and would soon be unable to counter Democratic Governor Roy Cooper's

²⁰⁵ North Carolina Voter ID Amendment (2018), Ballotopedia, < <http://bit.ly/32tAI1Z>>, September 5, 2019.

²⁰⁶ Feinberg and Willer, "From Gulf to Bridge."

²⁰⁷ Schofield, "Former Legislative Counsel Gerry Cohen on N.C.'s Six Proposed Constitutional Amendments," N.C. Policy Watch, August 8, 2018, <<http://bit.ly/34NR8Ea>>, September 5, 2019; "North Carolina Voter ID Amendment (2018)," Ballotopedia, <<http://bit.ly/32tAI1Z>>, September 5, 2019; North Carolina Constitutional Amendments Publication Commission, Official Explanation of the Proposed Constitutional Amendment to Require Photographic Identification to Vote, S.L. 2018-128, <<http://bit.ly/34PG5KX>>, September 5, 2019; and "N.C. Voters Know Little About Proposed Constitutional Amendments," Elon University Poll, September 6, 2018, <<http://bit.ly/34VCenM>>, September 5, 2019.

opposition to the law. When Cooper vetoed the bill, the lame duck legislature quickly overrode him.

XIII. Conclusion

The contest over the photo ID amendment is the latest chapter in North Carolina's long and cyclical history of struggle over minority voting rights. Governor Cooper and others have described the modern campaign for voter ID as a "solution in search of a problem." That is a reasonable enough characterization, but it may prevent us from comprehending important historical lessons. Modern Republican lawmakers are, in fact, seeking to solve a problem that has vexed conservatives – regardless of political party – for generations. As Corey Robin suggests, they are not so much opposed to democracy as to its extension downward.²⁰⁸ Republican leaders today understand the ramifications of expanded minority political participation. Throughout North Carolina's history, when minority voters secured access to the ballot box, they supported candidates who built new structures for broadening opportunities and enlarging prosperity for all of the state's people.

It was no coincidence that recent campaigns in North Carolina for election security erupted in a historical moment marked by record levels of black political participation, the election of the nation's first black president, and growth in Hispanic and immigrant populations that within our lifetimes will make the United States a minority-majority nation. The anxiety produced by these developments is palpable in the politics and civic life of our nation and state.

Recent comments by Amy Wax, a distinguished professor of law at the University of Pennsylvania, offer one example of how acceptable thinly veiled racism has become. Her ideas have been widely covered in the mainstream press and are representative of a strain of academic validation relied upon by re-emerging white nationalist groups. Wax warns that "a shared American identity is essential to maintaining a common sense of purpose, trust, and community. A large influx of immigrants, especially from nations that do not share our cultural values and understandings, will undermine citizen morale, unity, and solidarity as well as the integrity of our institutions." Wax disparages black and brown people, whom she characterizes as irrational, uncivilized, loud, and ill-behaved. They lack, in her appraisal, a "cultural practice of attention to evidence, rigor, analysis, facts." It may already be too late to save America's soul, Wax argues. We are already on a downward slide into "Third-Worldism," and "our legacy [European] population is demoralized, beleaguered, and disorganized."²⁰⁹

Dallas Woodhouse, who recently stepped down from his position as executive director of the North Carolina Republican Party, has recycled similar appeals that echo the past. In March 2018 he used his Twitter account to target Anita Earls, a black Democratic candidate for a seat on the North Carolina Supreme Court. Woodhouse tweeted photographs of black people convicted of felony offenses and accused Earls of being directly involved in securing their release from death row:

²⁰⁸ Robin, *Reactionary Mind*, 8-9".

²⁰⁹ Chotiner, "A Penn Law Professor Wants to Make America White Again," *The New Yorker*, August 23, 2019, and "Amy Wax, 'National Conservatism,' and the Dream of a Whiter America," *Vox*, June 23, 2019, <<http://bit.ly/32t2Nq4>>, September 5, 2019.



The tweets relied on purposeful misinformation to fuel racialized fears. Earls did not represent any of the defendants. But she was a civil rights attorney who had supported the Racial Justice Act, which prior to its repeal in 2013 had allowed death row inmates to challenge their sentences – but not their convictions – if they could demonstrate that racial prejudice had affected the outcome of their trials.²¹⁰

In summary, throughout the period covered in this declaration, political campaigns in North Carolina have been characterized by racial appeals, both overt and subtle. Over the last century and a half, North Carolina leaders have employed a variety of measures to limit the rights of racial and ethnic minorities to register, to vote, and to participate in the democratic process. Those measures have included vigilante violence, a literacy test and poll tax, multi-member legislative districts, numbered-seat plans, the prohibition of single-shot voting, and a host of other regulations regarding the preparation of ballots, procedures for challenging electors' right to register and to vote, and the monitoring of polling sites by observers.

Historically, when minority voting rights have been constrained, the North Carolina state government has been decidedly unresponsive to minority concerns and interests related to social and economic policy. That lack of responsiveness to blacks and, in recent years, a rapidly growing population of Hispanics, has perpetuated to this day minority disadvantages in employment and education, further hindering the ability of minority populations to participate fully and freely in

²¹⁰ Race in Our Politics: A Catalog of Campaign Materials, Campaign Legal Center, <<http://bit.ly/32FDYYj>>, September 5, 2019.

the political process. SB824, like its predecessor HB589, represents part of the latest chapter in the long struggle over minority voting rights in North Carolina, and in its origins and provisions, recapitulates and is informed by the history of racial discrimination in earlier eras.

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