

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**OHIO STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE, et al.,**

Plaintiffs,

v.

JON HUSTED, et al.,

Defendants.

:
:
: Case No. 2:14-CV-404
:
: Judge Peter C. Economus
:
: Magistrate Judge
: Norah McCann King
:
:
:

DECLARATION OF SEAN P. TRENDE

Sean Patrick Trende, first being sworn, deposes and says as follows:

1. I am over 18 years of age and am competent to testify regarding the matters discussed in this declaration.

2. I am a recognized expert in the fields of psephology, voter behavior, voter turnout, polling, and United States demographic trends and political history.

3. I have been retained in this matter to provide expert testimony. I am compensated at a rate of \$300 per hour, excluding travel time.

4. My *curriculum vitae* is attached to this declaration as **Exhibit 1.**

5. A list of materials upon which I relied in the preparation of this declaration are attached as **Exhibit 2.**

EXECUTIVE SUMMARY

6. This Declaration examines three basic questions: (1) How do the changes in Ohio's early voting and same day registration laws fit into the national context; (2) Should we expect the changes to Ohio's early voting and same day registration laws to decrease turnout among minorities; and (3) Should we expect the apparent disparate usage of early voting by African Americans in the 2008 and 2012 elections to continue?

7. This report draws the following conclusions:

- Ohio maintains one of the most expansive systems of early voting in the country.

Only eight states offer a longer early voting period, and only eight states offer more days of early voting. Ohio's early voting period will be twice the national median. Ohio will also remain with the minority of states that offer weekend early voting hours, and the dozen or so states that offer some Sunday early voting

hours. Ohio also joins a large majority of United States jurisdictions by not offering same day registration.

- Even accepting, *arguendo*, that African-Americans disproportionately use early voting in Ohio, there is little evidence that these voters would fail to adjust their behavior in response to new laws and regulations, and vote during the 22 days of early voting remaining (or on Election Day). Indeed, the data suggest that this is exactly what occurred in states that did not have these sorts of laws in place.
- Much, if not all, of the increase in African-American participation, as well as the increased use of early voting by African-Americans vis-à-vis non-Hispanic Whites, is a function of exogenous forces converging upon the state. To draw firm conclusions about African-American voting patterns in Ohio, one must at least attempt to take into account the vast sums of money poured into the state, the historic nature of the Obama candidacy, and the changing strategies of the parties, which plaintiffs have not done.
- When a proper cross-state comparison is done, we find that African-American participation was up more-or-less across-the-board in 2008 and 2012, regardless of the amount of early voting a state offered.
- Moreover, the fact that African-American participation in early voting in 2010 was down substantially, and was statistically indistinguishable from non-Hispanic white participation makes it difficult to draw any firm conclusions about whether the apparent racial disparity in usage of early voting in presidential elections is permanent or transitory.

- When scholars first contemplated early voting, rational choice theory surrounding the costs of voting led them to believe that early voting would increase participation. For decades they were disappointed. While the experience of the 2008 and 2012 elections has led some scholars to be hopeful that early voting increases turnout, these beliefs are tentative and not universally accepted. One of the most recent studies of early voting concludes that early voting has not produced the results for which scholars had hoped because early voting does not actually make voting easier: A voter still has to make a trip to the voting booth either way. Moreover, by diluting the effect of mobilization efforts and the social experience of Election Day, early voting might even reduce turnout on balance.

EXPERT CREDENTIALS

8. I have studied and followed United States elections on both a fulltime and part-time basis for almost twenty years.

9. I received a B.A. from Yale University in 1995, with a double major in history and political science.

10. I received a J.D. from Duke University in 2001.

11. I also received an M.A. from Duke University in 2001, in political science.

12. I joined RealClearPolitics in January of 2009 as their Senior Elections Analyst. I assumed a fulltime position with RealClearPolitics in March of 2010.

13. RealClearPolitics is one of the most heavily trafficked political websites in the world. It serves as a one-stop shop for political analysis from all sides of the political spectrum and is recognized as a pioneer in the field of poll aggregation. It is routinely cited by the most influential voices in politics, including David Brooks of *The New York Times*, Brit Hume of *Fox*

News, Michael Barone of *The Almanac of American Politics*, Paul Gigot of *The Wall Street Journal*, and Peter Beinart of *The New Republic*.

14. My main responsibilities with RealClearPolitics consist of tracking, analyzing, and writing about elections. I also am in charge of rating the competitiveness of House of Representatives races, and collaborate in rating the competitiveness of Presidential, Senate and gubernatorial races. As a part of carrying out these responsibilities, I have studied and written extensively about demographic trends in the country, exit poll data at the state and federal level, public opinion polling, and voter turnout and voting behavior.

15. I am also a Senior Columnist for Dr. Larry Sabato's "Crystal Ball." I began writing for the Crystal Ball in January of this year.

16. The overarching purpose of my writings, both at RealClearPolitics and the Crystal Ball, is to try to convey more rigorous statistical understandings of elections than is typically found in journalistic coverage of elections to a lay audience.

17. I am the author of *The Lost Majority: Why the Future of Government is up For Grabs and Who Will Take It*. The book offers a revisionist take on realignment theory. It argues that realignments are a poor concept that should be abandoned. As part of this analysis, it conducts a thorough analysis of demographic and political trends beginning around 1920 and continuing through the present.

18. I also authored a chapter in Larry Sabato's *Barack Obama and the New America: The 2012 Election and the Changing Face of Politics*, which discussed the demographic shifts accompanying the 2012 elections.

19. I co-authored the 2014 *Almanac of American Politics*. The Almanac is considered the foundational text for understanding congressional districts and the representatives of those

districts, as well as the dynamics in play behind those elections. PBS's Judy Woodruff described the book as "the oxygen of the political world," while NBC's Chuck Todd noted that "[r]eal political junkies get two *Almanacs*: one for the home and one for the office." My focus was researching the history of and writing descriptions for many of the newly-drawn districts, including those in Ohio.

20. I have spoken on these subjects before audiences from across the political spectrum, including the American Enterprise Institute, the CATO Institute, the Bipartisan Policy Center, and the Brookings Institution. I have appeared on both Fox News and MSNBC to discuss electoral and demographic trends, and have spoken on a diverse array of radio shows such as First Edition with Sean Yoes, the Diane Rehm Show, the Brian Lehrer Show, the John Batchelor Show, and Fox News Radio.

21. I previously authored an expert report in *Dickson v. Rucho*, No. 11-CVS-16896 (N.C. Super Ct., Wake County), which involved North Carolina's 2012 General Assembly and Senate maps. Although I was not called to testify, it is my understanding that my expert report was accepted without objection.

22. I also previously authored an expert report in *NAACP v. McCrory*, No. 1:13CV658 (M.D.N.C.), which involved a challenge to multiple changes to North Carolina's voter laws, including a reduction in early voting days and elimination of same-day registration.

23. I am personally agnostic on the wisdom and utility of these particular laws and regulations, which raise a host of normative issues that go beyond the realm of objective expert testimony. With that said, the likelihood that these laws will have a significant impact on actual voting, and specifically on minority voting, is certainly overstated by plaintiffs.

**OPINION 1: OHIO'S EARLY VOTING AND REGISTRATION PROCEDURES ARE
WELL WITHIN THE MAINSTREAM OF AMERICAN POLITICS**

24. Dr. Paul Gronke, an expert in voting and turnout, once described voting systems in the United States as a “bewildering array of different electoral systems.” Paul Gronke, *Early Voting Reforms and American Elections*, 17 Wm. & Mary Bill Rts. J. 423, 425 (2008). This is certainly the truth. But while no two states are exactly alike in their approach to election procedure—and in several states, procedures are ultimately set at the county level, setting up an even wider variety of approaches—we can nevertheless draw some broad, useful conclusions about state early voting and registration practices. In this opinion, I attempt to summarize, in useable form, these exceedingly diverse systems into a few basic sorts of early voting and same day/election day registration laws that are employed by different states. I then place the changes to Ohio’s election laws into this national context.

25. In support of this opinion, I reviewed the relevant sections of the legal codes for all fifty states and the District of Columbia, reports published by various websites such as the National Conference of State Legislatures, and the relevant elections websites of the fifty states and the District of Columbia. On certain occasions, where the laws were ambiguous, I contacted the Secretary of State’s office directly. If voting was administered at the county level in a state, I contacted the boards of elections for some of the most populous counties.

26. Because I am evaluating legal systems here, for purposes of this opinion, states are coded with respect to present law. So while, for example, Minnesota will not actually implement a system of early voting until 2014, an early voting law is still on the books in Minnesota. I sought to reflect the government’s intent to utilize early voting and coded the state as having early voting. Similarly, California has yet to implement its same-day registration laws, though they were passed in 2012. Nevertheless, it is coded as having same-day registration laws,

because such a law is on the books, reflecting the government's intent is to utilize same-day registration laws.

27. For the sake of convenience and readability, rather than repeatedly referencing "states and the District of Columbia," I will simply reference "voting jurisdictions" or "jurisdictions" when I am referring to a group that includes both states and the District of Columbia.

Evaluation of early voting laws

28. For purposes of this report, I included under the rubric of "early voting" both states that have traditional early voting, as well as states that allow persons to apply for an absentee ballot without an excuse and cast that ballot at the same time. Although there are frequently some differences in administration, these distinctions are not enough to warrant separating the two systems.

29. For the sake of convenience and readability, I use the term "early voting" as shorthand for no-excuse in-person early voting, regardless of the format, even though traditional absentee voting could technically be considered "early voting."

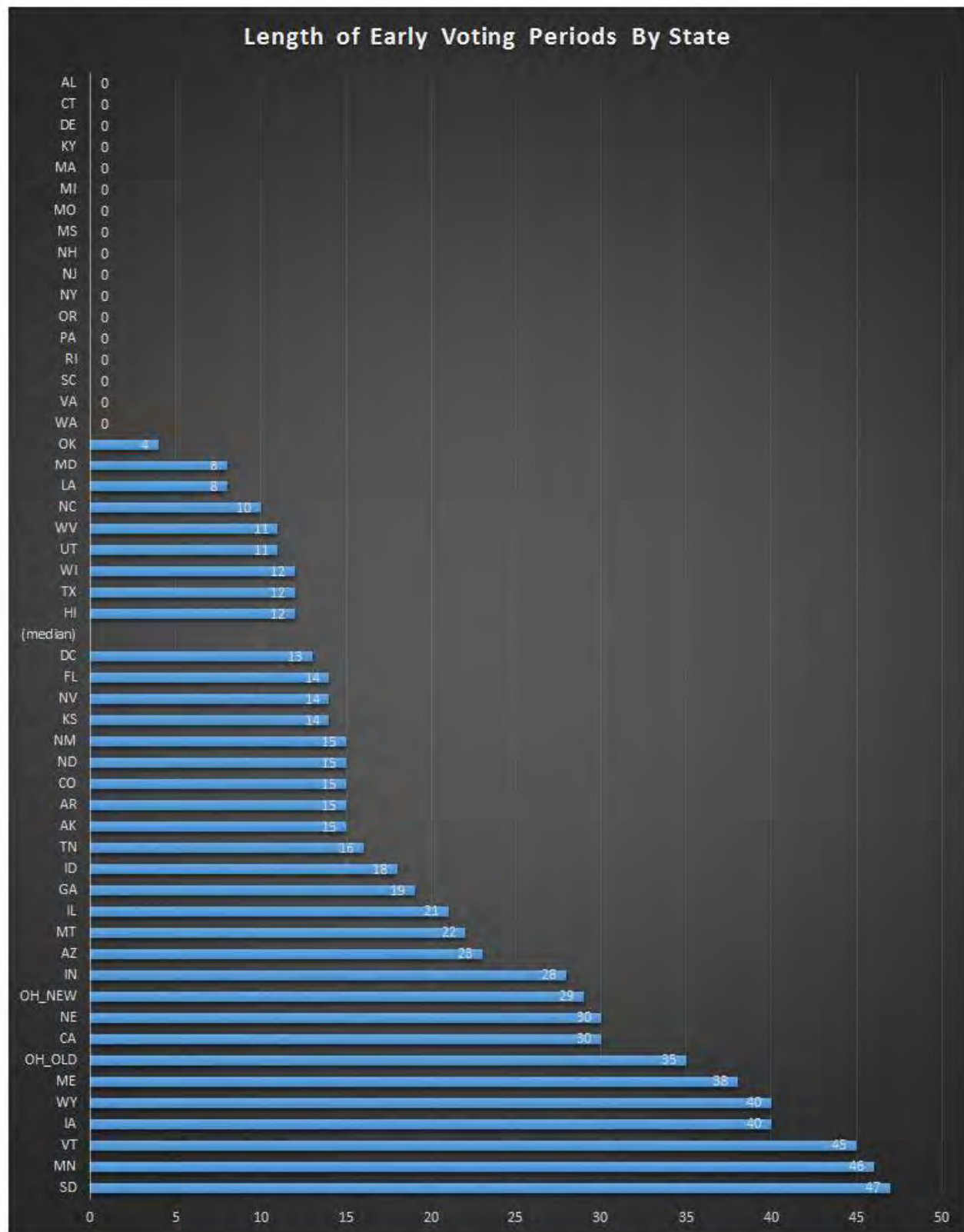
30. Certain judgment calls had to be made in the coding of state early voting laws. Some states do not have a defined time period for early voting. In these instances, a call to the secretary of state or board of elections often helped to clarify things. For example, a call to the Idaho Secretary of State's office suggested that most counties begin their in-person early voting between two and three weeks before the election. I use 18 days for early voting, representing an average of two and three weeks (rounded up).

31. A call to the Kansas Secretary of State's office suggested that most counties begin their in-person early voting around two weeks before the election. I use 14 days because, per a

clerk at the Johnson County Election Office, that is the number of days employed by Johnson County (Johnson County cast 23.7 percent of the votes in the state of Kansas in 2012, see uselectionatlas.org/Results).

32. Maine allows for no-excuse, in-person absentee voting, beginning 30 to 45 days before an election. See <http://maine.gov/sos/cec/elec/absenteeguide.html>. I use 38 days for early voting, representing an average of 30 and 45 days (rounded up).

33. **Figure 1** summarizes the length of early voting periods in United States jurisdictions.



34. The median jurisdiction in America allows for an early voting period of between 12 and 13 days.

35. Seventeen states do not allow for early voting.

36. Two of these states, Oregon and Washington, conduct their elections almost entirely by mail. How to classify these states is a judgment call. On the one hand, these states do not offer *any* in-person voting, which necessarily would preclude them from offering any in-person early voting as well. On the other hand, the fact remains that a voter in Oregon and Washington cannot go to a voting center and cast an early ballot, complicating the sort of “Souls to the Polls” drives that plaintiffs describe here. Because a voter cannot go to a center to vote in-person, and because the standard sought by Plaintiffs here is to require that such days be made available, these states are not counted as offering early voting. The coding difference is largely academic, as none of the conclusions would change were Oregon and Washington dropped from the dataset (the median voting period would increase from 12.5 days to 13 days). *See also* Jan Leighly and Jonathan Nagler, *Who Votes Now? Demographics, Issues, Inequality and Turnout in the United States* 119-20 (2014) (explaining the dilemma, but ultimately coding Oregon as a no-early voting state. Washington State is not discussed).

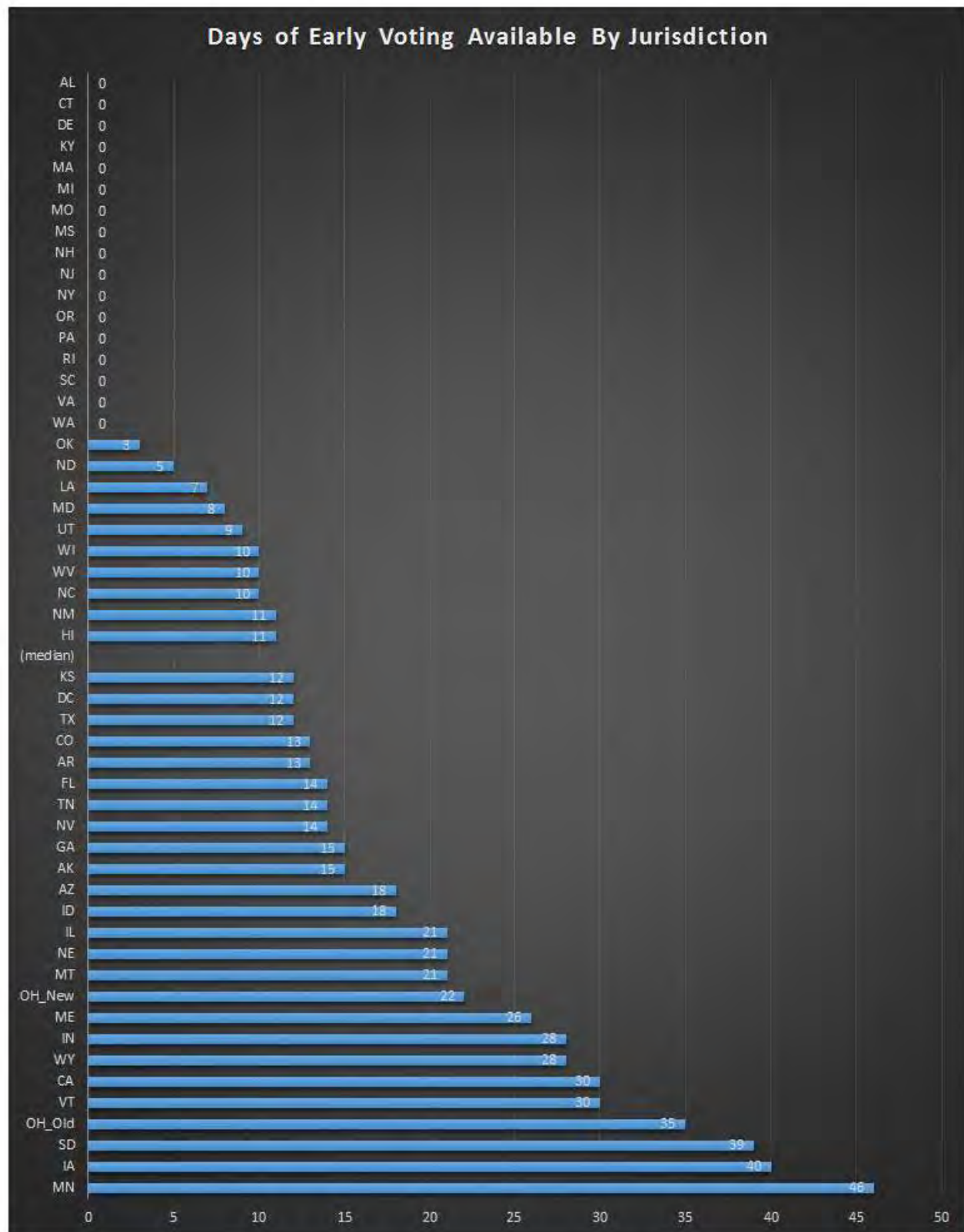
37. One state, Colorado, has adopted “vote-by-mail” for upcoming elections. It will, however, maintain traditional polling places as well, although they will function at the county level, rather than the precinct level. It is therefore counted as allowing for early voting.

38. Only six states provide for early voting periods in excess of 35 days, equaling or exceeding the early voting period plaintiffs ask this Court to require Ohio to provide. They are Maine, Wyoming, Iowa, Vermont, Minnesota, and South Dakota.

39. Two states – California, and Nebraska – allow for an in-person early voting period that is shorter than the 35-day period that Ohio initially offered, but longer than the 29-day period of early voting that Ohio offers under present law. In other words, the changes to the early voting law shifted Ohio from offering the 7th-longest early voting period to offering the 9th-longest early voting period. Ohio’s early voting period is still twice that of the median jurisdiction.

40. Of course, it is not merely the length of Ohio’s early voting period that is at issue in this litigation. Like the vast majority of states that offer early voting, Ohio does not make early voting available on every day during the time period. Many states exclude intervening days on the weekends, either by statute, state regulation, or county regulation. States with longer early voting periods, like Ohio, frequently will not be open on Columbus Day.

41. **Figure 2** summarizes the actual number of early voting days available in U.S. voting jurisdictions in 2014:



42. These calculations do involve some judgment calls. In many states, early voting availability changes from election-to-election, and is set at the county level, rather than the state level.

43. For an example of how these issues present themselves, and how I approached them, consider the following: In Florida, eight days of early voting are required, including one weekend. But the statute allows for as many as 14 days of early voting, at the discretion of the county. Further complicating things, this is a recent change to the law, so we do not yet know how every county government plans on implementing the law. I assumed that at least some large jurisdictions would attempt to maximize early voting, and set Florida as having 14 days of early voting.

44. Similarly, in Minnesota, an early voting period of 46 days is allowed. The law requires only one Saturday of early voting. *See* <http://www.sos.state.mn.us/index.aspx?page=1787>. In other words, jurisdictions can offer as few as 33 days of early voting. But this is a new law, so we do not yet know how it will be implemented fully, especially in a presidential year. I assumed that at least some jurisdictions will attempt to maximize early voting, and coded Minnesota as having 46 days of early voting.

45. On the other hand, North Dakota allows for 15 days of early voting, while Texas offers 12 days. Early voting decisions, however, are made at the county level. It was not practical to contact all 53 counties in North Dakota, to say nothing of all 254 counties in Texas, to determine how many days of early voting they would actually offer.

46. Instead, for North Dakota, I visited the County Auditors' websites for some of the most populous counties in the state: Cass (Fargo), Ward (Minot) and Grand Forks (Grand Forks). I also spoke with persons in the County Auditor's offices, and learned that the most days of actual

early voting offered was five, with two of the three offering only four days. North Dakota is nevertheless coded as allowing for five days of early voting, since there is evidence that a significant portion of the population can vote for at least five days.

47. For Texas, the Elections Division confirmed that while many smaller counties do not allow for early weekend voting, many of the larger counties do. A call to Harris (Houston) and Dallas (Dallas) County election officials confirmed that these large jurisdictions did, in fact, offer early voting on weekends. I therefore coded the state as allowing for early voting for the full twelve days.

48. In general, I tended to err on the side of inclusivity – that is, if there was evidence that a substantial portion of the state’s population was allowed the full early voting time period, I coded the state as allowing for the full early voting time period. Likewise, in the absence of evidence that a substantial portion of the state’s population was *not* allowed the full early voting time period, I coded the state as allowing for the full early voting time period.

49. The median jurisdiction allows for 11 actual days of early voting.

50. Only three states provide for more than 35 actual days of early voting, equaling or exceeding the number of early voting days Ohio made available in 2008. They are Iowa, Minnesota, and South Dakota.

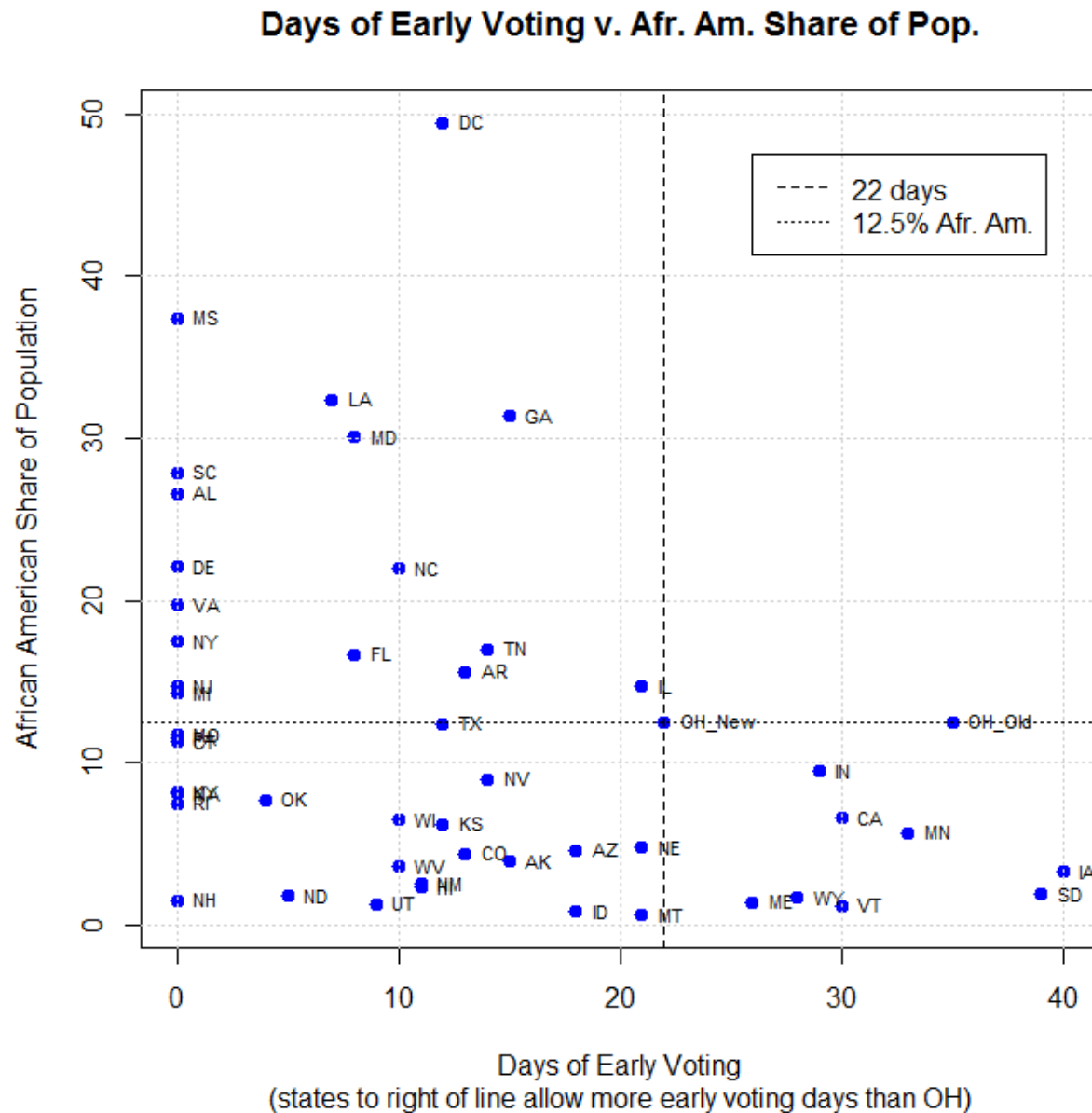
51. Five states – Maine, Indiana, Wyoming, California and Vermont – allow for fewer than 35 days of early voting, but more than the 22 days available under current Ohio policy. In other words, under current policy, Ohio shifted from offering the 4th-largest number of early voting days to offering the 9th-largest number of early voting days of any jurisdiction. Ohio will still offer twice the number of early voting days as the median jurisdiction.

52. In addition to the seventeen jurisdictions that offer no early voting days, another eleven jurisdictions – Montana, Oklahoma, Utah, Wisconsin, North Dakota, Idaho, Georgia, Arizona, Maine, Wyoming, and Vermont – do not offer any early voting on the weekends, either by statute, statewide regulation, or county regulation.

53. In addition to the 28 jurisdictions that either offer no early voting days, or that fail to offer any early voting days on the weekends, Louisiana, West Virginia, Hawaii, the District of Columbia, Kansas, Arkansas, Colorado, New Mexico, Tennessee, Nebraska, and South Dakota do not offer early voting on Sundays.

54. In addition to Ohio, only eight states – Maryland, Florida, Texas, Nevada, Alaska, Illinois, Indiana, and Iowa offer early voting on Sundays. I did not find proof of Sunday voting in California or Minnesota, but did not find any reason to doubt that Sunday voting was offered (or would be offered) either.

55. **Figure 3** is a scatterplot that graphs the 51 United States jurisdictions according to the number of early voting days offered and the African-American share of the population.



56. There are no states in the upper right quadrant of the chart. That is to say, all of the states with a larger African-American population share than Ohio offer fewer days of early voting; Illinois and Indiana are the only jurisdictions with African-American populations that approach Ohio's that offer more than twenty early voting days.

Evaluation of same-day registration laws

57. For purposes of this opinion, it is useful to distinguish between same-day registration and Election Day registration. See Barry Burden, et al, *Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform*, 58 Am. J. Poli. Sci., 95, 96-97 (Winter 2014).

58. Election Day registration allows for voters to register to vote on the actual Election Day. That is to say, in 2014, in a state with Election Day registration, a voter will be able to register to vote on November 4.

59. Same-day registration, by contrast, allows for voters to register to vote during the early voting period.

60. Complicating matters further, states employ a variety of approaches here. There are states that have Election Day registration without same-day registration, states that have both Election Day registration and same-day registration, and states that have same-day registration without Election Day registration.

61. Even within categories, states employ differing approaches. For example, Alaska allows for both same-day and Election Day registration, but only for President. Similarly, Rhode Island allows for Election Day registration for President. Because this is a stricter standard than the one plaintiffs would have this Court adopt for Ohio, they are not counted as offering Election Day or same-day registration.

62. To provide another example of the variety of approaches utilized by states with Election Day and/or same-day registration, Montana allows for what it calls late registration, but voters cannot register at the polling place – in other words, it does not provide for the “one-stop shopping” that plaintiffs hope to preserve here.

63. These variations can be difficult to resolve. In fact, political scientists disagree on whether to even count *Ohio* as a same-day registration state. Burden, et al., do count it as an early voting state, but Larocca and Klemenski do not. Compare *id.* at 99, with Roger Larocca and John S. Klemenski, *Election Reform and Turnout in Presidential Elections*, 11 State Pols. & Policy Q., 76 (Mar. 2011) (“Although Ohio offered simultaneous registration and early in-person voting in 2008, we have not included Ohio residents in this interaction because Ohio permitted same-day registration only within a more limited and remote window of thirty to thirty-five days before Election Day.”).

64. North Dakota does not technically have Election Day or same-day registration, but that is a function of the fact that it has no registration law at all. It is counted having same-day registration and Election Day registration.

65. Vermont does not specifically have a same-day registration law, and is not coded as having same-day registration by Larocca and Klemenski. But like Ohio, Vermont’s voter registration period overlaps with early voting. Vermont is therefore coded as having same day registration.

66. The following table summarizes the basic approaches to same-day registration in various jurisdictions:

67.

Election Day Registration	Same Day Registration	Both	Neither	
CT	VT	CA (pending)	AL	NV
NH		CO	AK	NJ
ID		DC	AZ	NM
		IA	AR	NY
		IL	DE	NC
		ME	FL	OH
		MN	GA	OK
		MT	HI	OR
		ND	IN	PA
		WI	KS	RI
		WY	KY	SC
			LA	SD
			MD	TN
			MA	TX
			MI	UT
			MS	VA
			MO	WA
			NE	WV

68. Thirty-five jurisdictions, not including Ohio, fail to offer Election Day registration or same-day registration for all offices.

69. Only Iowa and Minnesota offer both same-day registration and/or Election Day registration along with 35 days of early voting. Only Maine, Iowa, Vermont and Minnesota offer both same-day registration and/or Election Day registration along with an early voting period of 35 days.

**OPINION 2: THE DATA DO NOT SUPPORT PLAINTIFFS' CONCLUSIONS
REGARDING THE EFFECTS OF EARLY VOTING ON MINORITY VOTING**

70. Since early voting was implemented in Ohio, minority turnout appears to have increased. It might be tempting, then, to conclude that the early voting law itself played a role in the increase in turnout. Similarly, we might be tempted to conclude that eliminating these laws would suppress African-American turnout.

71. We might also be tempted to conclude that the increased use of early voting by African-Americans in presidential elections represents a permanent shift in voting preferences.

72. But it would be a mistake to draw such definitive conclusions here, at least without considering additional questions. The problem with the theory that shortening early voting would adversely impact African-American turnout is that it assumes largely stagnant responses to changing incentives. Even accepting, *arguendo*, that African-Americans disproportionately use early voting in Ohio, there is little evidence that these voters would fail to adjust their behavior in response to new laws and regulations, and vote during the 22 days of early voting remaining (or on Election Day). Indeed, the data suggest that this is exactly what occurred in states that did not have these sorts of laws in place.

73. Much, if not all, of the increase in African-American participation, as well as the increased use of early voting by African-Americans vis-à-vis non-Hispanic Whites, appears to be a function of exogenous forces converging upon the state. To draw firm conclusions about African-American voting patterns in Ohio, one must at least attempt to take into account the vast sums of money poured into the state, the historic nature of the Obama candidacy, and the changing strategies of the parties. In my opinion, it is impossible to do a proper analysis without at least attempting to take these factors into account.

74. A failure to take account of these factors hopelessly complicates any attempt to conclude that the increase in minority turnout is a function of Ohio's early voting laws, or that the increased usage of early voting among African-Americans represents a revealed preference that will continue to manifest in future elections. It may well be that these effects are mostly derivative of the fact that African-American voters were uniquely enthusiastic about the Obama candidacy; that the Obama campaign funneled unprecedented resources into Ohio and other states in an attempt to convince African-American voters (and Democratic voters more generally) to turn out to vote, and to vote early in particular; and that they were successful in doing so.

75. This opinion functions in two fashions, both of which are important to understand and to distinguish between. It first operates in a defensive sense against attempts to draw conclusions regarding how African-American voting patterns in Ohio might be tied to the availability of early voting laws. It does so by offering theories of alternate causation. In other words, it argues that such conclusions cannot be drawn until one at least attempts to deal with the countervailing theories presented. It functions in this sense as a critique of plaintiffs' theories. In the absence of attempts by plaintiffs to rule out these countervailing theories, their claims become substantially weaker.

76. Second, it goes a step further and presents evidence that these theories of alternate causation might well be correct. In particular, it points out that the apparent African-American preference, relative to non-Hispanic Whites, for early voting that manifested in 2008 and 2012 has not manifested as strongly when Barack Obama was not on the ballot, suggesting that any preference from 2008 and 2012 was in large part a function of that campaign's strategy. Second, it points out that the increase in African-American turnout witnessed in Ohio was replicated nationally, yet does not seem to correlate nationally with the availability of early voting in a state.

This lends further credence to the notion that what we seem to see in Ohio in 2008 and 2012 is mostly a “campaign effect.”

77. It is worth noting, however, that the second function is in many ways gratuitous, and is not necessary for rebutting plaintiff’s claims. Almost every study of the interaction between legal regimes and voting habits, from Raymond Wolfinger and Steven Rosenstone’s seminal *Who Votes?* onward, includes at least some attempt to control for campaign effects and to examine the effects of the law in a national context. Without this, plaintiffs effectively offer a case study of Ohio voting in 2008 and 2012 (or in the case of 2010, of five counties in Ohio), which is an insufficient basis from which to draw firm conclusions about voting in Ohio.

The Current Population Survey

78. Before going further, we must understand the Current Population Survey, or CPS. This is the data upon which I will mostly rely. The CPS is a monthly survey, conducted by the United States Census Bureau, which is typically utilized to calculate the unemployment rate.

79. But every even-numbered year, a few weeks after the general election, the Census Bureau also asks respondents about their participation in those elections. The results are published in a document with the title “Voting and Registration in the Election of [year].” These results are available online at <https://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html>. To access other years, a researcher can change the year in the URL. In other words, if “2012” in the URL is changed to “2008,” the 2008 results will be brought up.

80. The CPS has an enormous sample size, which allows for significantly more granular analysis than researchers can obtain from other surveys, such as the exit polls or the American National Election Study.

81. The CPS is admittedly imperfect, both because some respondents return the survey but fail to answer the questions about voting, and because respondents tend to overstate the rate at which they participate in elections. *See, e.g.,* http://www.huffingtonpost.com/michael-p-mcdonald/2012-turnout-race-ethnict_b_3240179.html. But because only a handful of states track voting directly by race, it is the best data we have for comparing voting habits across states.

82. Although the Census Bureau publishes official “topline” numbers at the above-referenced link, a researcher can also download the “raw” survey response data from the census “Dataferret” website. This provides each individual respondent’s information. This dataset contains, if you will, the “building blocks” for the “topline” numbers published at the census website. So, for example, a researcher could learn that respondent 1 in household number 2309099331444390 is an 85-year-old non-Hispanic black citizen who voted in Ohio and who voted in-person on Election Day in 2012. Respondent 2 in that household shares these demographic characteristics, but is 80 years old. Researchers can choose from among hundreds of demographic variables, and build their own tabulations of the data.

83. When the Census Bureau asks a respondent whether she voted, she can offer responses beyond “yes” or “no,” such as “don’t know.” The Census Bureau also produces a separate code if a respondent leaves the survey question blank.

84. For complex reasons, when generating the “topline” numbers that the Census Bureau publishes on voting, it counts all individuals who respond other than “yes” as “no.” It also counts non-respondents as “no.”

85. Scholars have increasingly criticized this approach, especially after the Census Bureau published an anomalous finding that turnout declined from 2004 to 2008, when actual vote totals demonstrated that it had increased. A few different solutions have been offered to the

problem. One of the more recent approaches, which has been well-received, urges researchers simply to exclude all categories of non-response (i.e., those who cannot recall, refuse to answer, or do not respond). Researchers would then reweight the remaining sample to conform to actual turnout numbers in a state, by weighting down “no” respondents and weighting up “yes” respondents in such a way that the total voting numbers correspond with validated national numbers. See Aram Hur & Christopher H. Achen, *Coding Voter Turnout Responses to the Current Population Survey*, 77 Pub. Op. Q. 985:991-92 (Winter 2012).

86. I am hesitant to use this approach for three reasons. First, much of the preceding political science work has used data that have not been reweighted. Yet the studies are still considered mostly reliable. *E.g.*, Robert S. Erikson & Lorraine C. Minnite, *Modeling Problems in the Voter Identification-Voter Turnout Debate*, 8 Elec. L.J. 85: 99 (2009). Second, dropping non-respondents in effect assumes that they voted proportionally to the respondent population, which may or may not be a good assumption. Finally, the “topline” CPS numbers, whatever their flaws, nevertheless represent official numbers published by a government agency, and may be more appropriate to use in a legal setting. Unless otherwise indicated, I have used the numbers provided by the Census Bureau.

Ohio’s Status As a Target State and the Obama Campaign’s Efforts to Increase Early Voting

87. With an understanding of the basic data that will be used in this report in place, it is now appropriate to turn to the findings of the report.

88. Despite the changes to Ohio’s election laws, it has remained very much a swing state over the course of the past thirty years. In fact, it moved slightly toward Republicans in the wake of the passage of the state’s early voting/same day registration law.

89. This can be best analyzed by examining the state's Partisan Index. By Partisan Index, I mean how Democratic or Republican the state is, when compared to the country as a whole.

90. A state's Partisan Index is computed by subtracting the share of the state that voted for the Republican presidential candidate from the share of the nation that voted for Republican presidential candidate. For purposes of these calculations, third parties and independent candidates are excluded (what political scientists call the "two-party vote").

91. To illustrate the utility of the Partisan Index, consider the following example. In 1984, Ronald Reagan won 51.4 percent of the two-party vote in Massachusetts. In absolute terms, one could consider Massachusetts a swing state. But no one would have considered Massachusetts a swing state, because it had two Democratic senators, a Democratic governor, and an overwhelmingly Democratic legislature. Ten of the state's eleven congressional districts elected Democrats, and the one Republican, Silvio Conte, was very liberal Republican.

92. Moreover, one would conclude that, using absolute terms, the state has swung wildly toward Democrats in the interim, since Barack Obama won 61.8 percent of the two-party vote in the state in 2012.

93. But Reagan's 51.4 percent win in Massachusetts has to be viewed in the context of his winning 59.2 percent of the two-party vote nationally. Compared to the country as a whole, Massachusetts actually had a Democratic lean of 7.8 points in 1984.

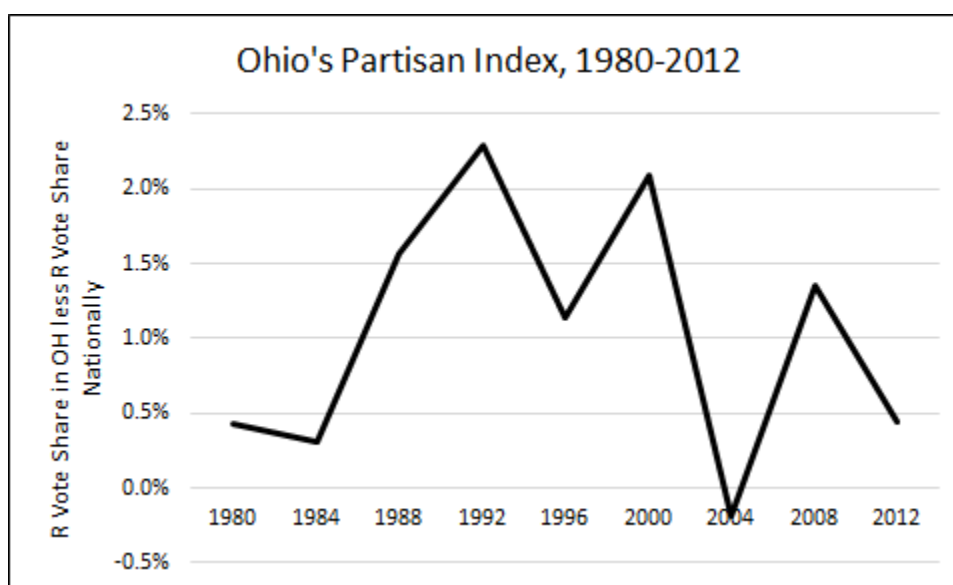
94. Likewise, Obama's 61.7 percent win in Massachusetts has to be viewed in the context of his winning 52 percent of the two-party vote nationally. Compared to the country as a whole, Massachusetts actually had a Democratic lean of 9.8 points in 2012. Viewed in this light,

Massachusetts has actually had relatively stable politics since 1984, with only a slight shift toward Democrats.

95. Likewise, since 1980, in absolute terms, Ohio has swung between a state that Republicans have won by 19 points (1984) and a state that Democrats have won by six (1996).

96. But when we account for national forces, we see something quite different.

Figure 3 shows the Partisan Index for Ohio from 1980 through 2012:



97. Ohio's basic partisanship has remained remarkably stable over the past three decades: slightly to the right of the nation as a whole (with the exception of 2004, when it was barely to the left of the country as a whole).

98. Because Ohio is consistently in the middle of American politics, political parties always make it the center of their electioneering efforts. Winning Ohio is almost always seen as a central part of any strategy for securing the 270 votes needed to win the presidency.

99. In 2008, the massive enthusiasm that Barack Obama generated and his decision to forego federal matching funds – and to thereby avoid caps on campaign spending – enabled his campaign to raise historic amounts of money. Much of this was brought to bear in Ohio.

100. In 2004, according to data compiled by John Sides and Eric McGhee, the Republicans spent roughly \$12,500,000 on the state in 2004, while Democrats spent \$8,354,000.

101. In 2008, however, the Obama campaign blanketed the state with spending, spending over \$28 million, while Republican groups spent \$24 million.

<http://www.cnn.com/ELECTION/2008/map/ad.spending/>.

102. In 2012, both sides poured huge amounts of money into the state. Democratic groups spent \$72 million on advertising, while Republican groups spent \$78 million.

<http://www.washingtonpost.com/wp-srv/special/politics/track-presidential-campaign-ads-2012/>.

103. It is unsurprising that participation among core Democratic groups increased, as campaign activity, such as advertising spending, has been linked to voter mobilization. *See* Eric McGhee and John Sides, *What Drives Partisan Turnout?*, 33 *Political Behavior* 313 (2011).

104. But the Obama campaign did not simply invest in advertisements. Across the country, the Obama campaign invested heavily in on-the-ground voter mobilization efforts. In 2008, it established nearly twice as many field offices as the McCain campaign. Seth E. Masket, *Did Obama's Ground Game Matter? The Influence of Local Field Offices During The 2008 Presidential Election*, 73 *Pub. Op. Q.*, 1026 (2009). These offices ultimately had a statistically significant effect on Democratic turnout. *Id.* at 1032.

105. These offices focused on local registration drives and on early voting in particular, in an attempt to “bank” votes for Election Day. Jim Messina, Obama’s then-chief of state, in a discussion about the campaign’s concerns about holding big rallies in the wake of John

McCain's "Britney Spears" commercial, commented "[f]inally, at the end of September we got back to saying, 'Look, we're gonna do this again because we need to push early voting,' and if you're gonna push early voting and voter registration you've gotta do big events."

http://www.newyorker.com/reporting/2008/11/17/081117fa_fact_lizza?currentPage=all.

106. This was part of what national field director Jon Carson called the "Starbucks strategy." As he explained "[w]e wanted offices everywhere because, despite all the focus on the online network, the truth of the matter was where we had offices and volunteers were working together with staff, we got work done." Kathleen Hall Jamieson, *Electing the President 2008*, 43 (2009).

107. Carson continued, "Our Get out the Vote (GOTV) efforts were the culmination of this empowerment strategy. We went after weak voting Democrats wherever they were. In southeast Ohio, we were knocking on doors in precincts that had never seen it before. Our organization allowed us to do that." *Id.* 45.

108. Carson went on, "[t]raditionally, Democrats have two or three hundred giant labor union parking lots full of canvassers the final weekend. We wanted 1,400 across a state like Ohio. Living rooms, garages, and backyards were going to be our staging areas." *Id.*

109. Early voting in particular was a target of the Obama campaign. Carson stated "[i]f you're a fired up 64-year-old grandmother, and we told you how to vote early, you're going to make sure your sporadic voting kids and grand kids are doing it too. So that was the strategy." *Id.* at 46.

110. At the time the consensus view was that early voting was a tool mostly for wealthier, whiter voters – George W. Bush had won 60 percent of early voters in 2000 and 2004. Kate Kenski, et al., *The Obama Victory: How Media, Money, and Message Shaped the 2008*

Election (2009). As David Plouffe, Obama's 2008 campaign manager, explained, the reason behind the early voting push wasn't demographic, but rather was mostly to ensure that voters couldn't later change their minds: "One of my concerns was there's 20 days between the last debate and the election. Now, in the early voting states, that's less of an issue. In North Carolina, Nevada, not an issue. But in the other states, and I think that's probably one of the reasons [the McCain campaign] wanted Pennsylvania, there wasn't going to be much early voting there. So, if things broke late, there weren't a lot of votes in the bank for us [in Pennsylvania]."

111. But the Obama campaign didn't simply give up on enhancing core Democratic turnout in states that did not have early voting laws. It employed traditional strategies there, such as advertising and registration drives. E.g., <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/27/AR2008042702272.html>, http://usatoday30.usatoday.com/news/politics/election2008/2008-11-02-vote_N.htm?csp=34.

112. Given this, it is unsurprising that Ohio saw increased early voting use among African-Americans in 2008 and 2012. There was a presidential campaign funneling tens of millions of dollars into the state, in an attempt to convince core Democratic groups to vote early. This obviously included African-American voters, who cast their ballots for the president by a 97 percent to 2 percent margin in 2008, *see* <http://www.cnn.com/ELECTION/2008/results/polls/#OHP00p1>, and by a 96 percent to three percent margin in 2012, *see* <http://www.cnn.com/election/2012/results/state/OH/president>.

113. Whether this trend will continue into the future is unknowable. It is significant, however, that Democratic efforts to replicate the Obama campaign's success with early voters have been problematic.

114. Consider the 2010 midterms in Ohio – of particular importance for the Court given that the upcoming elections are midterm elections. While Dr. Smith provides the CPS data for early voting in Ohio by race for 2012 and 2008, he does not provide them for the 2010 elections. His ecological inference analysis for 2010 is incomplete, examining only five counties that do not cover a majority of the state's population. In other words, this Court is left without any complete data regarding the most important elections before it right now.

115. In 2010, the state saw a highly competitive race for governor, and a race for Senate that Democrats desperately wanted to see become more competitive. I identified eight House races of varying degrees of competitiveness in the state of Ohio; nearly half the state's total. http://www.realclearpolitics.com/epolls/2010/house/2010_elections_house_map.html.

Democrats worked diligently to promote early voting. *E.g.*,

<http://www2.cincinnati.com/blogs/politics/2010/09/22/strickland-bus-rolls-into-town-to-pump-up-early-voting/>; <http://oh.aflcio.org/329/index.cfm?action=event&eventid=86c2897d-bb3c-48bf-820f-2354a3cab364>.

116. Against this background, I calculated the rates of early voting by race for 2010 from the raw CPS data.

117. I concluded that, notwithstanding the number of competitive races in the state in 2010, the rate of early voting among African-Americans who voted plummeted from around twenty percent in 2012 to 3.3 percent in 2010. That figure comes with an error margin of +/- 2.1%. Early voting among non-Hispanic Whites declined to 2.8 percent, with an error margin of +/- .65%. These results are well within the error margins.

118. In other words, to date, the racially disparate use of early voting has not appeared in Ohio, except in the 2008 and 2012 elections, when an historic presidential campaign was

directing massive amounts of resources toward the state in an attempt to convince voters to vote early. It appears it was successful. But other campaigns have been less successful in doing so. The 2010 midterms in Ohio serve as a cautionary tale against drawing a firm conclusion that the racial disparities that we saw in early voting in 2008 and 2012 are a permanent fixture in American politics.

Cross-State Comparison

119. Case studies are not unheard of in the political science literature on early voting, *e.g.*, William Lyons and John M. Scheb, III, *Early Voting and the Timing of the Vote: Unanticipated Consequences of Electoral Reform*, 31 State & Local Gov't Rev. 147((1999) (studying one county in Tennessee and finding that early voting increased turnout, though mostly among older voters); Grant Neeley & Lilliard Richardson, *Who is Early Voting: An Individual-Level Examination*, 38 Soc. Sci. Jnl. 381 (2001) (studying Tennessee). Nevertheless the preferred method for examining the effects of early voting laws has been to look at how they affect turnout in all states, and to do so in multiple years.

120. The reason for this is simple: to avoid drawing false conclusions regarding causation. As noted above, one might look at the modest improvement in African-American participation in Ohio post-2004 and conclude that early voting has played a role in this improvement.

121. But, in fact, overall African-American turnout has been up in the United States as a whole since 2004, notwithstanding the fact that many states do not have early voting laws, and notwithstanding the fact that very few states have early voting laws that are as expansive as Ohio's. While black participation improved from 66.9% in Ohio in 2004 to 71.7% in 2012 according to CPS data, in fact this is consistent with the overall improvement in African-

American participation nationally during this timeframe, from 60% to 66.2%. In fact, it lags the improvement in turnout witnessed in a state like Mississippi, which has no early voting whatsoever, and where African American participation improved from 66.7% in 2004 to 82.4% in 2012. Likewise, in Virginia, African-American participation improved fifteen points from 2004 to 2012, despite the fact that the state has no early voting.

122. This raises the question of whether the number of days of early voting made available in Ohio really played a substantial role in the increased African-American participation. After all, we saw similar increases nationally, even though Ohio has a longer early voting period than almost every other state. We saw greater increases in Mississippi and Virginia, which have no early voting whatsoever. We also have a reasonable alternative explanation: that the historic Obama candidacy mobilized core Democratic constituencies, particularly African-Americans, but did so on a national basis. *See also* Seth C. McKee, M.V. Hood, III, and David Hill, “Achieving Validation: Barack Obama and Black Turnout in 2008,” *State Politics & Policy Quarterly* (12:1), 16 (“The 13% increase in black turnout (see Table 2) essentially closed the racial gap in voting, and these high rates of mobilization speak to the significance of the opportunity to elect the first African American president.”). In states with early voting, that campaign focused on getting its supporters to vote early, because, as described above, it locked their votes in. In states without early voters, it employed traditional “get-out-the-vote” efforts. It was successful with both approaches.

123. But we certainly would not want to rely on the anecdotal approach described in the preceding paragraphs, which is included solely to illustrate the potential problems with drawing conclusions about early voting without examining what has occurred in other states.

Instead, we would want to perform a regression analysis, which allows us to hold a variety of variables constant and isolate their effects on turnout.

Regression Analysis Description

124. The following analysis seeks to evaluate the effects of the number of days of early voting on African-American voter participation – that is to say, the percentage of African-American adult citizens who opt to vote in a given election.

125. All turnout data are taken from the census data described above.

126. One limitation of the census data is that in some states, there are not enough African-American participants to allow us to draw firm conclusions about turnout. For example, in 2012, the CPS found only eight African-American respondents in Vermont, eight in Idaho, and five in Montana. In the latter state, only two were old enough to vote, and neither were citizens, so we have zero observations about African-American voting in Montana for 2012. Of the eight African-American individuals identified by the CPS in Idaho, four were citizens old enough to vote, but none actually voted. The number of African-American individuals identified in these states is simply not large enough to allow us to draw reasonable conclusions about voter participation in these states; the error margins are massive. Rather than impose my ad hoc judgments about what a reasonable number of African-American participants would be, I instead followed the Census Bureau. If it did not publish error margins for African-American participants in all years during the time I studied, then I did not include the state in my dataset. This left me with a sample of 34 jurisdictions.

127. In the North Carolina litigation, described in ¶ 22, I looked at the change in African-American participation in jurisdictions, from the election before the state implemented the first of the election reforms at issue in that state through the most recent election (2012 for

general elections, 2010 for midterm elections). This elicited a number of criticisms from plaintiffs and their attorneys, some of whom are involved in the present litigation. While there is nothing wrong with the methodologies I employed in North Carolina, for the sake of argument, I have run the regression analyses multiple ways, to take their criticisms into account.

128. As I indicated in that litigation, many of the criticisms reflected judgment calls: whether or not to use reweighted data or the official government publication, whether to examine the change over the full time period or to break it up into smaller segments, and so forth. These decisions can reasonably be argued either way.

129. An explanation of the different variable measurements follows:

130. Time Period: Plaintiffs argued that it was inappropriate to examine change over the entire time period – *i.e.*, they argued that rather than look at the change in voting from 2000 to 2012 (or in this case, from 2004 to 2012), that I should have looked at effects one election at a time. While I do not believe that it is inappropriate to look at change from the endpoints when using this sort of model, I have also broken up the model into segments.

131. Reweight v. not. As described above, there are arguments for and against using reweighted census numbers. Rather than make that judgment call here, I have run the regressions both with the reweighted numbers and with the official census publication.

132. Change in African-American participation v. change in ratio of African-American participation vis-à-vis non-Hispanic White participation. In the previous litigation, I looked at the change in African-American participation. Plaintiffs suggested that the proper measurement was instead the change in African-American participation as compared to non-Hispanic White participation. My view remains that if one does not find an effect among African-Americans, then one has not found an effect among African-Americans, period. But rather than make that

judgment call here, I have run the regressions both with respect to change among African-Americans as well as change among the ratio of African-Americans voting to non-Hispanic Whites voting.

133. However measured, change in African-American participation is the outcome we are studying (or dependent variable). We also will want to study various “inputs” (independent variables) – either because we are interested in how those inputs affect the output, or because we want to control for the effects of certain other inputs. This involves a few judgment calls as well.

134. Number of days of early voting available v. number of newly available days of early voting. The main input in which we are interested is the number of days of early voting that are made available to voters in the state. How to measure this was also a subject of some controversy in the previous litigation. I used the number of days voters had available to vote early as my input. Plaintiffs suggested that this is a flawed measurement when you are looking at change in participation: Texas’s early voting law, enacted in the 1980s, should not be increasing African-American participation in 2008, at least not to the same extent that a newly enacted law like Ohio’s would.

135. This latter view reflects the sentiment that one cannot explain change with a constant. But my view, as described above, is that early voting itself has not been a constant, given the unprecedented extent to which the Obama campaign sought to urge its supporters to vote early. So early voting in Texas, which had previously been used primarily by non-Hispanic White voters, *see* Robert M. Stein, *Early Voting*, 62 Pub. Op. Q. 57 (1998), was used in a different way in 2008 and 2012. In other words, the fact that North Carolina enacted no excuse early voting in 1999 (and extended it from 10 days to 17 days in 2001) could still be consequential in 2008 given the tactics of the Obama campaign.

136. Both views have merit, and rather than making a firm judgment call here, I ran the regression utilizing both measurements.

137. Early Voting Period versus days of early voting. As described above, there is often a distinction to be drawn between the number of days of early voting a state makes available and the length of the early voting period. I have run the regression using both measurements.

138. In addition to our “input” that we are most interested in (amount of early voting available), we would want to add controls, although some models have been run without using controls, *e.g.*, Erickson & Minnite, *supra*; Leighley & Nagler, *supra*. I employ two additional controls here. A state that had 40 percent African-American participation in 2004 might expect to see a larger increase in African-American participation from 2004 to 2008 than a state that had 80 percent participation in 2004, simply by virtue of the fact that the first state had more room to grow. Therefore, I included the African-American participation rate in the first year being measured as an input.

139. In addition, as described above, campaign inputs can affect early voting. Turnout is up generally in states where candidates invest money, see *McGhee & Sides, supra*, and Democrats have increasingly attempted to utilize early voting in an attempt to enhance turnout.

140. Measuring the competitiveness of elections is a tricky business, which is difficult to operationalize. In determining whether the state had a competitive election or not, I utilized the approach that would typically be employed by other experts in psephology, such as Charlie Cook and Stuart Rothenberg. I examined spending data, candidate quality, and polling data to determine whether or not a state had a competitive election. In addition, I consulted prior race

ratings from the Cook Political Report and RealClearPolitics. I also considered presidential visits to the state.

141. After determining whether a state had a competitive presidential, gubernatorial or senate race, I composed an index from 1 to 3 by adding up the number of competitive races the state had. I then subtracted this index for each relative time period. In other words, a state that had three competitive races in 2004 but no competitive races in 2008 would be coded as a negative three, reflecting the decreased competitiveness of the state. A state that had three competitive races in 2008 but none in 2004 would be coded as a three, reflecting the increased competitiveness of the state.

Results

142. Running the various iterations of this regression analysis results in 96 variants of the regression analysis. The results are displayed in the following two tables. An explanation of the charts follows:

143. The first column, labeled “version,” is simply shorthand to describe the version of the regression analysis I computed.

144. The second column, labeled “weight” is filled with a “yes” if the regression uses weighted variables, and “no” if the regression uses unweighted variables.

145. The third column, labeled “Bl or Bl/W” is filled with “Bl” if the regression measures change in African-American voting participation, and “Bl/W” if it measures change in the ratio of African-American voting participation versus non-Hispanic White voting participation.

146. The fourth column, labeled “Years” is filled with the years tested by the regression analysis.

147. The fifth column, labeled “New Only” is filled with a “yes” if the analysis tests only days of early voting that are newly available in a state, and is filled with a “no” if the analysis tests days of early voting that are available in a state, regardless of when they were implemented.

148. The sixth column, labeled “Days or Period” is filled with “Days” if the time period measured is the number of days of early voting that was available, or “Period” if the time period measured is the overall length of the early voting period.

149. The seventh column, labeled “Pos or Neg?” reports the direction of the coefficient from the regression analysis. A positive relationship suggests that early voting days increase African-American turnout. A negative relationship suggests that early voting days decrease African-American turnout.

150. The eighth column, labeled “coeff,” reports the coefficient from the regression analysis. A coefficient of .01 would suggest that every day of early voting increases African-American participation by a percentage point.

151. The ninth column, labeled “t-stat,” reports the t-stat, which tells us how confident we are that any effect suggested by the regression is not due to random chance. It functions in many ways like an error margin in polling.

152. A t-stat of 1.96 or greater (or -1.96 or less) suggests a statistically significant relationship at the traditional 95 percent confidence. As shorthand, a relationship is statistically significant if the t-stat is larger than two (or less than negative two).

153. The following table reports the results of the regression analyses for presidential elections since Ohio’s early voting law went into effect.

Fig. 4: Regression Analysis Results, Presidential Elections

Version	Weighted	BI or BI/W	Years	New only?	Days or Period	Pos or Neg?	coeff.	t-stat
Regression(a)	No	BI	'04-'08	Yes	Days	Neg	-0.00011	-0.058
Regression(b)	No	BI	'04-'08	Yes	Period	Neg	-0.00011	-0.057
Regression(c)	No	BI	'04-'08	No	Days	Neg	-0.00032	-0.278
Regression(d)	No	BI	'04-'08	No	Period	Neg	-0.00045	-0.397
Regression(e)	No	BI	'08-'12	Yes	Days	Neg	-0.00163	-0.433
Regression(f)	No	BI	'08-'12	Yes	Period	Neg	-0.00022	-0.055
Regression(g)	No	BI	'08-'12	No	Days	Pos	0.000333	0.258
Regression(h)	No	BI	'08-'12	No	Period	Pos	0.000153	0.132
Regression(i)	No	BI	'04-'12	Yes	Days	Pos	0.001978	0.862
Regression(j)	No	BI	'04-'12	Yes	Period	Pos	0.001437	0.764
Regression(k)	No	BI	'04-'12	No	Days	Pos	1.97E-05	0.013
Regression(l)	No	BI	'04-'12	No	Period	Neg	-0.00026	-0.194
Regression(m)	No	BI/W	'04-'08	Yes	Days	Neg	-0.00041	-0.139
Regression(n)	No	BI/W	'04-'08	Yes	Period	Neg	-0.00047	-0.163
Regression(o)	No	BI/W	'04-'08	No	Days	Pos	0.000454	0.25
Regression(p)	No	BI/W	'04-'08	No	Period	Pos	0.000293	0.168
Regression(q)	No	BI/W	'08-'12	Yes	Days	Neg	-0.00469	-0.798
Regression(r)	No	BI/W	'08-'12	Yes	Period	Neg	-0.00152	-0.243
Regression(s)	No	BI/W	'08-'12	No	Days	Pos	0.001681	0.838
Regression(t)	No	BI/W	'08-'12	No	Period	Pos	0.001324	0.735
Regression(u)	No	BI/W	'04-'12	Yes	Days	Pos	0.003115	1.051
Regression(v)	No	BI/W	'04-'12	Yes	Period	Pos	0.002352	0.968
Regression(w)	No	BI/W	'04-'12	No	Days	Pos	0.001223	0.639
Regression(x)	No	BI/W	'04-'12	No	Period	Pos	0.000751	0.436
Regression(y)	Yes	BI	'04-'08	Yes	Days	Neg	-0.0024	-1.069
Regression(z)	Yes	BI	'04-'08	Yes	Period	Neg	-0.00251	-1.124
Regression(aa)	Yes	BI	'04-'08	No	Days	Pos	0.000481	0.357
Regression(bb)	Yes	BI	'04-'08	No	Period	Pos	0.000312	0.24
Regression(cc)	Yes	BI	'08-'12	Yes	Days	Neg	-0.00202	-0.505
Regression(dd)	Yes	BI	'08-'12	Yes	Period	Pos	0.001525	0.36
Regression(ee)	Yes	BI	'08-'12	No	Days	Neg	-0.00106	-0.78
Regression(ff)	Yes	BI	'08-'12	No	Period	Neg	-0.00086	-0.711
Regression(gg)	Yes	BI	'04-'12	Yes	Days	Pos	0.002415	1.104
Regression(hh)	Yes	BI	'04-'12	Yes	Period	Pos	0.001701	0.943
Regression(ii)	Yes	BI	'04-'12	No	Days	Neg	-0.00098	-0.702
Regression(jj)	Yes	BI	'04-'12	No	Period	Neg	-0.00114	-0.916
Regression(kk)	Yes	BI/W	'04-'08	Yes	Days	Neg	-0.00428	-1.152
Regression(ll)	Yes	BI/W	'04-'08	Yes	Period	Neg	-0.00449	-1.213
Regression(mm)	Yes	BI/W	'04-'08	No	Days	Pos	0.001177	0.517
Regression(nn)	Yes	BI/W	'04-'08	No	Period	Pos	0.000931	0.424
Regression(oo)	Yes	BI/W	'08-'12	Yes	Days	Neg	-0.00167	-0.213
Regression(pp)	Yes	BI/W	'08-'12	Yes	Period	Pos	0.004222	0.51
Regression(qq)	Yes	BI/W	'08-'12	No	Days	Neg	-0.00158	-0.59
Regression(rr)	Yes	BI/W	'08-'12	No	Period	Neg	-0.00119	-0.495
Regression(ss)	Yes	BI/W	'04-'12	Yes	Days	Pos	0.004638	1.112
Regression(tt)	Yes	BI/W	'04-'12	Yes	Period	Pos	0.003232	0.942
Regression(uu)	Yes	BI/W	'04-'12	No	Days	Neg	-0.00088	-0.328
Regression(vv)	Yes	BI/W	'04-'12	No	Period	Neg	-0.00114	-0.471

154. Based upon the results above, it is difficult to conclude that early voting enhances African-American turnout, however measured.

155. The key findings are found in those three columns to the right. In 25 of the 48 tests, the relationship is actually negative, which would suggest that early voting decreases African-American turnout under those codings. But more importantly, the t-stat is never larger than two (or less than negative two), suggesting that we cannot reject the null hypothesis that early voting laws do not increase African-American turnout.

156. I performed similar analyses for midterm elections. Those are reported below:

Fig. 5: Regression Analysis Results, Midterm Elections

Version	Weighted	BI or BI/W	Years	New only?	Days or Period	Pos or Neg?	coeff.	t-stat
Regression(a)	No	BI	'02-'06	Yes	Days	Pos	0.000836	0.482
Regression(b)	No	BI	'02-'06	Yes	Period	Pos	0.000787	0.466
Regression(c)	No	BI	'02-'06	No	Days	Neg	-0.00177	-1.266
Regression(d)	No	BI	'02-'06	No	Period	Neg	-0.00201	-1.502
Regression(e)	No	BI	'06-'10	Yes	Days	Pos	0.006022	0.768
Regression(f)	No	BI	'06-'10	Yes	Period	Pos	0.006022	0.768
Regression(g)	No	BI	'06-'10	No	Days	Neg	-6.17E-05	0.947
Regression(h)	No	BI	'06-'10	No	Period	Neg	-6.48E-05	-0.072
Regression(i)	No	BI	'02-'10	Yes	Days	Pos	0.001479	1.355
Regression(j)	No	BI	'02-'10	Yes	Period	Pos	0.001495	1.413
Regression(k)	No	BI	'02-'10	No	Days	Neg	-3.84E-04	-0.424
Regression(l)	No	BI	'02-'10	No	Period	Neg	-0.00047	-0.536
Regression(m)	No	BI/W	'02-'06	Yes	Days	Pos	0.000384	0.1
Regression(n)	No	BI/W	'02-'06	Yes	Period	Pos	0.000468	0.125
Regression(o)	No	BI/W	'02-'06	No	Days	Neg	-0.00457	-1.596
Regression(p)	No	BI/W	'02-'06	No	Period	Neg	-0.00487	-1.782
Regression(q)	No	BI/W	'06-'10	Yes	Days	Pos	0.009222	0.541
Regression(r)	No	BI/W	'06-'10	Yes	Period	Pos	0.009222	0.541
Regression(s)	No	BI/W	'06-'10	No	Days	Pos	0.002015	1.027
Regression(t)	No	BI/W	'06-'10	No	Period	Pos	0.002041	1.075
Regression(u)	No	BI/W	'02-'10	Yes	Days	Pos	0.004035	1.55
Regression(v)	No	BI/W	'02-'10	Yes	Period	Pos	0.004117	1.633
Regression(w)	No	BI/W	'02-'10	No	Days	Neg	-0.00082	-0.395
Regression(x)	No	BI/W	'02-'10	No	Period	Neg	-0.00092	-0.462
Regression(y)	Yes	BI	'02-'06	Yes	Days	Neg	-8.33E-05	-0.045
Regression(z)	Yes	BI	'02-'06	Yes	Period	Neg	-0.0001	-0.056
Regression(aa)	Yes	BI	'02-'06	No	Days	Neg	-0.00192	-1.327
Regression(bb)	Yes	BI	'02-'06	No	Period	Neg	-0.00211	-1.522
Regression(cc)	Yes	BI	'06-'10	Yes	Days	Pos	0.014487	1.615
Regression(dd)	Yes	BI	'06-'10	Yes	Period	Pos	0.014487	1.615
Regression(ee)	Yes	BI	'06-'10	No	Days	Pos	0.001151	1.081
Regression(ff)	Yes	BI	'06-'10	No	Period	Pos	0.000943	0.908
Regression(gg)	Yes	BI	'02-'10	Yes	Days	Pos	0.002092	1.608
Regression(hh)	Yes	BI	'02-'10	Yes	Period	Pos	0.002042	1.618
Regression(ii)	Yes	BI	'02-'10	No	Days	Pos	0.000359	0.331
Regression(jj)	Yes	BI	'02-'10	No	Period	Pos	0.000121	0.115
Regression(kk)	Yes	BI/W	'02-'06	Yes	Days	Neg	-0.00122	-0.265
Regression(ll)	Yes	BI/W	'02-'06	Yes	Period	Neg	-0.00088	-0.198
Regression(mm)	Yes	BI/W	'02-'06	No	Days	Neg	-0.0072	-2.144
Regression(nn)	Yes	BI/W	'02-'06	No	Period	Neg	-0.00728	-2.274
Regression(oo)	Yes	BI/W	'06-'10	Yes	Days	Pos	0.00977	0.477
Regression(pp)	Yes	BI/W	'06-'10	Yes	Period	Pos	0.00977	0.477
Regression(qq)	Yes	BI/W	'06-'10	No	Days	Pos	0.003509	1.501
Regression(rr)	Yes	BI/W	'06-'10	No	Period	Pos	0.003169	1.391
Regression(ss)	Yes	BI/W	'02-'10	Yes	Days	Pos	0.00377	1.137
Regression(tt)	Yes	BI/W	'02-'10	Yes	Period	Pos	0.003881	1.213
Regression(uu)	Yes	BI/W	'02-'10	No	Days	Neg	-0.00172	-0.658
Regression(vv)	Yes	BI/W	'02-'10	No	Period	Neg	-0.002	-0.796

157. Once again, it is difficult to conclude that early voting enhances African-American turnout. The strength of the relationship tested depends on the judgment call that is made about the different variables.

158. The key findings are again found in those three columns to the right. In twenty of the 48 tests, the relationship is actually negative, which would suggest that early voting decreases African-American turnout under those operationalizations.

159. In two instances, the t-stats are less than negative two, suggesting a statistically significant negative relationship – i.e., that additional early voting days suppress African-American turnout (both iterations tested change in African-American participation rates with respect to non-Hispanic White participation rates from 2002 to 2006, looking at the total number of days of early voting available). But in this context, it would be a mistake to read too much into this finding. We would expect such results by random chance over the course of 100 tests, even if there is no actual relationship. Regardless, we cannot reject the null hypothesis that early voting laws do not increase African-American turnout.

160. This is all consistent with the state of scholarly literature, which has had difficulty finding any consistent correlation between vote reform and turnout, even among minority groups. Given the conflicting nature of the peer-reviewed scholarly literature regarding the effects of these laws on turnout, it is difficult to conclude that we should expect a decline in participation in Ohio.

161. For example, Roger LaRocca and John S. Klemanski, examining the 2000, 2004 and 2008 returns, find that early in person voting has a negative correlation with turnout. Roger LaRocca and John S. Klemanski, “U.S. State Election Reform and Turnout in Presidential Elections,” 11 *State Politics and Policy Quarterly* 76 (2011). It describes the failure of political science models to find that early voting has a positive impact on turnout, and the view that parties

effectively “cannibalize” their Election Day vote. *Id.* at 79-80 (“Empirical research on the effect of early in-person voting has produced what Gronke calls a ‘scholarly consensus’ that early in-person voting benefits those who would have voted anyway and has little significant effect on overall voter turnout.”). They conclude that the Downsian model of voter participation needs to be re-evaluated in this particular context. *Id.* at 81, 83 (“We therefore theorize that although early in-person voting may be more convenient for some voters, overall this reform will not substantially reduce costs to voters compared to traditional polling-place voting.”). While some political scientists – including Dr. Gronke – are hopeful that the 2008 and 2012 elections represent a turning point, others continue to reject this view, and it remains entirely possible that the effects we viewed in those elections are merely a function of the efforts and unique appeal of the Obama campaign. *See* Barry C. Burden, David T. Cannon, Kenneth R. Mayer and Donald P. Moynihan, *Election Laws, Mobilization and Turnout: The Unanticipated Consequences of Election Reform*, 58 Am. J. of Pol. Sci, 95, 95 (Jan. 2014) (“We challenge this notion and show that the most popular reform—early voting—actually decreases turnout when implemented by itself.”), *id.* at 97 (“Early voting provides convenience to regular voters, particularly those already registered, and thus is better at retention than stimulation.”).

162. By eliminating the social event surrounding a “civic day of election,” the impact of mobilization efforts are diluted, hurting turnout efforts, especially among weak voters. *Id.* at 97 (“When these activities are diluted, or at least redistributed over time, so is the stimulating effect, particularly for the peripheral voter.”). Of course, a major success of the Obama campaign was to take marginal voters and turn them into actual voters, something which may or may not be replicable by another candidate. But in a downballot race, where candidate resources are much more limited, a diluted impact of mobilization efforts could have a substantial effect.

163. As Dr. Burden explains: “Rather than building up to a frenzied Election Day in which media coverage and interpersonal conversations revolve around politics, early voting makes voting a more private and less intense process. Social pressure is less evident, guidance on how and where to vote is less handy, and the prospect of positive social interactions at the polls is decreased. These reductions in stimulation—both strategic and nonstrategic mobilization—are greater than the modest positive benefits of additional convenience that accrue largely to those who would vote in any case.” *Id.* at 98

164. Almost no scholarly literature has studied the effect of same-day registration laws. Even then, Ohio did not utilize the typical Election Day registration law. Rather, same-day registration was only allowed during the first week of the lengthy early voting period.

165. When Drs. Burden, et al., examined the effect of same-day registration laws (as well as early voting) on turnout, they concluded that early voting “reduces turnout by robbing Election Day of its stimulating effects. This depressant effect is only partially offset if SDR is present or if EDR offers a vehicle for the last-minute mobilization of marginal voters.” *Id.* at 108.

166. Of course, this research – and this is true of the genre generally – examines turnout in general, rather than focusing on minority turnout. It is hard to conduct a regression analysis of the sort conducted for early voting days, because of the uniqueness of Ohio’s regime. Regardless, the overall finding is that same day registration only partially offsets the depressive effect of early voting.

Conclusions

167. When Ohio modified its early voting program, it maintained one of the most permissive early voting programs in the country. It still offers one of the longest periods of early

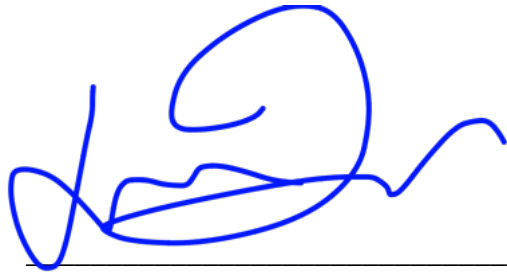
voting, among the most days of early voting, and is one of the few states to make any Sundays available.

168. The claim that shortening the early voting period will disproportionately burden African American voters is almost entirely based on the 2008 and 2012 elections. But there are reasons to suspect that those elections may be a result of the unique efforts of the Obama campaign to enhance early voting among African-Americans. In particular, the effects have not been replicated when the President's campaign is not in full swing.

169. Finally, the claim that early voting enhances African-American participation does not hold up to scrutiny. African-American participation is up both in states with early voting laws and in those without early voting laws. Despite testing the variables in almost 100 different ways, a significant, positive relationship remains elusive.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

This the 22nd day of July, 2014.

A handwritten signature in blue ink, appearing to read 'Sean P. Trende', is written over a horizontal line.

Sean P. Trende

Exhibit 1: Curriculum Vitae

SEAN P. TRENDE
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Westerville, OH 43082
strende@realclearpolitics.com

EDUCATION

B.A., Yale University, with distinction, History and Political Science, 1995.

M.A., Duke University, *cum laude*, Political Science, 2001. Thesis titled *The Making of an Ideological Court: Application of Non-parametric Scaling Techniques to Explain Supreme Court Voting Patterns from 1900-1941*, June 2001.

J.D., Duke University School of Law, *cum laude*, 2001; Duke Law Journal, Research Editor; Moot Court Board.

PROFESSIONAL EXPERIENCE

Law Clerk, Hon. Deanell R. Tacha, U.S. Court of Appeals for the Tenth Circuit, 2001-02.

Associate, Kirkland & Ellis, LLP, Washington, DC, 2002-05.

Associate, Hunton & Williams, LLP, Richmond, Virginia, 2005-09.

Associate, David, Kamp & Frank, P.C., Newport News, Virginia, 2009-10.

Senior Elections Analyst, RealClearPolitics, 2009-2012.

BOOKS

Larry J. Sabato, ed., *Barack Obama and the New America*, ch. 12 (2013).

Barone, Kraushaar, McCutcheon & Trende, *The Almanac of American Politics 2014* (2013).

The Lost Majority: Why the Future of Government is up for Grabs – And Who Will Take It (2012).

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Full archives available at http://www.realclearpolitics.com/authors/sean_trende/

“Is Obama the Worst President? Poll Setup Clouds the Issue” – July 3, 2014

“Did Crossover Democrats Doom Eric Cantor?” – June 13, 2014

“What Cantor’s Loss and Graham’s Win Mean” – June 11, 2014

“Could Democrats Gain Senate Seats This Fall?” - April 17, 2014

“It’s Time to Increase the Size of the House” - March 6, 2014

“Will Demographics Really Destroy GOP?” - February 11, 2014

“2020 Reapportionment and Voting Rights Act” - January 30, 2014

“Why the 2014 Senate Races Matter So Much” - January 23, 2014

“Population Data Show More Movement South and West” - December 30, 2013

“Democrats’ 2013 Drop-Off Problem” - December 4, 2013

“How Much Did Demographics Matter in Va. Race?” - November 12, 2013

“Projecting Obamacare’s Early Enrollment Numbers” - November 1, 2013

“How Much Does Voter Ignorance Matter?” - October 16, 2013

“How Mich. Rebuts Redistricting/Polarization Claims” - October 15, 2013

“Gerrymandering Isn’t to Blame for D.C. Impasse” - October 11, 2013

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“Are Republicans Really Out of Step?” - August 14, 2013

“Are Elections Decided by Chance?” - August 13, 2013

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“Yes, the Missing Whites Matter” - July 12, 2013

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“The GOP and Hispanics What the Future Holds” - June 28, 2013

“The Case of the Missing White Voters, Revisited” - June 21, 2013

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“An Immigration "Bonanza" for Democrats?” - April 24, 2013

“Fault Lines Loom for "Dominant" Dem Majority - April 19, 2013

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“Minority Turnout & the Racial Breakdown of Polls” - August 29, 2012

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“How Romney Might Rate the VP Contenders” - July 17, 2012

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“Romney Faces a ‘Blue Wall’ -- But Is It Solid?” - May 18, 2012

“What Has Made Congress More Polarized?” - May 11, 2012

“Romney’s Path Is Not Necessarily Narrow” - May 8, 2012

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“Three Takeaways From South Carolina” - January 22, 2012

“Supreme Court Tosses Texas Court’s Congressional Map” - January 20, 2012

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“Why Obama’s Florida Numbers Should Worry Him” - January 12, 2012

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“Misunderstanding the Southern Realignment” - September 9, 2010

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“Dems’ Edge With Minorities Falls” - July 31, 2010

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“Watch What the Parties Do, Not What They Say” - July 23, 2010

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“A Close Brown-Coakley Finish Would Be a Big Deal” - January 13, 2010

“Can Republicans Win Ted Kennedy’s Senate Seat” – December 31, 2009

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“The GOP and the Latino Vote,” *National Review*, June 15, 2012.

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“It’s 1974 All Over Again,” *The Weekly Standard*, Apr. 26, 2010.

“Defamation, Anti-SLAPP Legislation, and the Blogosphere: New Solutions for an Old Problem,” 44 Duq. L. Rev. 607 (2006).

(with Christian C. Burden), “The Economic Loss Rule and Franchise Attorneys,” 27 Franchise L.J., 192 (2008)

SELECTED PRESENTATIONS AND APPEARANCES

Panelist, “Independent Experts on Republican Candidates” (with Michael Barone and Josh Kraushaar), American University, Washington, DC, November 2011.

Panelist, “2011 Mortimer Caplin Conference on the World Economy” (with Bill Schneider, John Sides, and Sarah Binder), The National Press Club, Washington, DC, December 2011.

“The State of the Presidential Nominating Process: A Debate” (with Jay Cost), Berry College, December 2011.

“The Lost Majorities: 2008, 2010 and America's Political Future,” Bradley Lecture, American Enterprise Institute, January 2012.

Panelist, “Collective Bargaining, Public Pensions and Voters: The Policy and Politics of Public-Sector Employees in the 2012 Elections,” (with Karlyn Bowman, Ruy Teixeira, and Henry Olson), American Enterprise Institute, January 2012.

“The People’s Money: How Voters Will Balance the Budget and Eliminate the Federal Debt.,” (with Michael Barone and Scott Rasmussen), CATO Institute, March 2012.

Panelist, “Republican Primaries: Explaining the Results and Assessing What they Mean for the Future of the GOP,” (with Dante Scala and Kate Zernike), Chaire Raoul-Dandurand en Etudes Strategiques et Diplomatiques, Montreal, March 2012

“Obama’s Vanished Coalition,” (with Lance Tarrance and Emily Ekins), CATO Institute, April 2012.

Panelist, “The Future of Red and Blue,” (with Ruy Teixeira), Bipartisan Policy Center, Washington, DC, April 2012.

“The 2012 Elections: Trends, Prognostications and What’s at Stake,” 3rd Annual Family Office Wealth Management Forum, Greensboro, Georgia, May 2012.

“2012 U.S. Elections Series,” with Bruce Stokes and Alexandra de Hoop Scheffer, German Marshall Fund, Brussels, Belgium, Oct. 4, 2012.

Panelist, “The Power of Pundits,” (with John Sides, Linda Vavreck, and Melissa Harris-Perry), American Political Science Ass’n, Aug. 29, 2013.

Appeared in countless radio and television appearances including appearances on Fox News, ABC News Australia, Fox News Radio, Beijing Radio, CNN Radio, NPR, and other outlets.

Exhibit 2: Sources

All documents, statutes, and websites mentioned in the Declaration of Sean P. Trende, including but not limited to:

1. Plaintiffs' Expert Reports and Declarations.
2. Declaration of Charles Stewart III, PhD., in *United States v. North Carolina*, (No. 1:13-CV-861, M.D.N.C.).
3. Sur-Rebuttal Report of Charles Stewart III, PhD, in *United States v. North Carolina*, (No. 1:13-CV-861, M.D.N.C.).
4. Expert Report & Declaration of Paul Gronke, PhD, in *League of Women Voters v. North Carolina* (No. 1:13-CV-660, M.D.N.C.).
5. Sur-Rebuttal Report of Paul Gronke, PhD, in *League of Women Voters v. North Carolina* (No. 1:13-CV-660, M.D.N.C.).
6. Statutes:
 - a. Those cited in the Trende Declaration.
7. Online datasets:
 - a. Current Population Survey, Voting and Registration Supplements, available at <https://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html>. Different years can be accessed by changing the "2012" to the desired election.
 - b. Dave Leip, *Atlas of United States Elections*, <http://uselectionatlas.org/Results>, (last visited April 24, 2014).
 - c. <http://edition.cnn.com/ELECTION/2004/special/president/campaign.ads/>.
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- e. <http://www.cnn.com/ELECTION/2008/results/polls/#OHP00p1>.
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- h. <http://www.washingtonpost.com/wp-srv/special/politics/2012-presidential-campaign-visits/>
- i. Secretary of State websites, as referenced in the Trende Declaration.
- j. National Conference of State Legislatures – Same Day Voter Registration.
<http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>.
- k. National Conference of State Legislatures – Absentee and Early Voting.
<http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.
- l. http://www.realclearpolitics.com/epolls/2010/house/2010_elections_house_map.html.
- m. <http://quickfacts.census.gov/qfd/states/01000.html>.
- n. <http://votesmart.org/elections/voter-registration/MI#.U8abSLFKJOI>.
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- p. <https://files.oakland.edu/users/larocca/web/index.htm>
- q. <http://reed.edu/earlyvoting/calendar/>
- r. <http://www.unc.edu/~beyle/guber.html>
- s. <http://cookpolitical.com/archive/charts/governor/race-ratings/2012>
- t. <http://cookpolitical.com/archive/charts/senate/race-ratings/2012>

- u. <http://cookpolitical.com/archive/charts/governor/race-ratings/2010>
 - v. <http://cookpolitical.com/archive/charts/senate/race-ratings/2010>
 - w. <http://cookpolitical.com/archive/charts/governor/race-ratings/2008>
 - x. <http://cookpolitical.com/archive/charts/senate/race-ratings/2008>
8. Books:
- a. Kathleen Hall Jamieson, *Electing the President 2008* (2009).
 - b. Kate Kenski, et al., *The Obama Victory: How Media, Money, and Message Shaped the 2008 Election* (2009).
 - c. David B. Magleby, ed., *Financing the 2000 Election* (2002).
9. Newspapers/Websites:
- a. Ryan Lizza, *Battle Plans: How Obama Won*, *The New Yorker* (Nov. 17, 2008), http://www.newyorker.com/reporting/2008/11/17/081117fa_fact_lizza?currentPage=all.
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 - c. James Nord, *Most States Have Both Early and No-Excuse Absentee Balloting, but not Minnesota*, *MinnPost*, June 17, 2013 available at <http://www.minnpost.com/effective-democracy/2013/06/most-states-have-both-early-and-no-excuse-absentee-balloting-not-minneso>
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