

# BACKGROUND

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## Election Reform in North Carolina and the Myth of Voter Suppression

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### Abstract

*In 2013, North Carolina passed omnibus electoral reform legislation that, among other provisions, eliminated same-day registration, required that qualified persons who desire to vote in an election must register to vote no later than 25 days before Election Day, reduced the number of early voting days from 17 to 10, and created a voter ID requirement. Although opponents of this bill predicted that such reforms would disenfranchise minority voters and significantly suppress voter turnout, turnout actually increased. African-American voter turnout increased by almost 30 percent and Caucasian voter turnout increased by approximately 15 percent. Clearly, these changes did not suppress voter turnout.*

In July 2013, the North Carolina General Assembly passed an omnibus election reform bill, House Bill 589.<sup>1</sup> The bill made a number of changes in election procedures that went into effect in the May 2014 primary election, including:

- Eliminating same-day registration, which allowed voters to register and then vote at the same time during the early voting period,<sup>2</sup> and requiring “qualified persons who wish to vote in an election ... [to] register to vote no later than 25 days before Election day;”<sup>3</sup>
- Reducing the number of days of early voting from 17 to 10, although the numbers of hours the polls remain open stayed the same;

### KEY POINTS

- In July 2013, the North Carolina General Assembly passed an omnibus election reform bill, H.B. 589.
- This bill included several reforms, including the elimination of same-day registration and a new voter ID requirement.
- Predictions that the North Carolina election law would “suppress” minority turnout were wrong; in North Carolina, turnout of voters in general, and of minority voters in particular, increased.
- The percentage of age-eligible, black North Carolinians who voted in the 2014 election was 41.1 percent, compared to 38.5 percent in November 2010; the number of registered black voters who voted increased from 40.3 percent in 2010 to 42.2 percent in 2014; and the share of the total number of votes cast by black voters increased to 21.4 percent from 20.1 percent.
- It is clear that the claims made against the state’s election reform law are unwarranted and that the pending court challenge to North Carolina’s election reform bill should be rejected.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3044>

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- Prohibiting the counting of provisional ballots cast outside of a voter’s assigned precinct;
- Expanding the number of allowable poll watchers and voter challenges; and
- Eliminating “pre-registration” of 16- and 17-year-olds who will not be 18 by the time of the next general election.<sup>4</sup>

The bill also included a voter ID requirement,<sup>5</sup> although the state implemented a “soft rollout” of this requirement, “whereby voters [were] advised at the polls in 2014 and 2015 of the law’s requirement that they will need a qualifying picture ID to vote beginning in 2016.”<sup>6</sup> The forms of acceptable identification range from a driver’s license or nonoperator’s ID card to federal IDs such as military or veterans IDs and passports to tribal enrollment cards.

The North Carolina law requires that a free ID must be provided to anyone who cannot afford one and provides for certain exemptions such as exemptions for individuals who have a “sincerely held religious objection to being photographed.”<sup>7</sup> In 2015, the photo ID requirement was significantly weakened when the state legislature passed an amendment allowing an individual to vote upon completion of a declaration that the voter had a “reasonable impediment” to obtaining a free ID.<sup>8</sup>

Opponents of the 2013 bill predicted that these reforms would disenfranchise minority voters and significantly suppress voter turnout. One source referred to the bill as “the worst voter suppression law in the country” and a “monster law.”<sup>9</sup> In September 2013, then-U.S. Attorney General Eric Holder claimed that “the clear and intended effects of these changes would contract the electorate and result in unequal access to participation in the political process on account of race.”<sup>10</sup>

These claims have turned out to be completely wrong. There has been no “suppression” of the turnout of North Carolina voters by any of these reform measures; in fact, turnout increased in the 2014 election—a sharp contrast to the rest of the country, which experienced a significant downturn in election turnout when compared to the previous midterm congressional election.

### Lawsuits Challenging Reform

In three separate lawsuits in federal district court, more than a dozen organizations, including the North Carolina NAACP, the League of Women Voters, and the U.S. Department of Justice, sued North Carolina. Ultimately, the cases were combined into one proceeding. The plaintiffs challenged provisions of H.B. 589 under the non-discrimination requirements of Section 2 of the Voting Rights Act,<sup>11</sup>

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1. General Assembly of North Carolina, Session Law 2013-381, <http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H589v9.pdf> (accessed July 21, 2015).
2. Early voting is a term used to describe in-person absentee voting at designated locations before Election Day.
3. North Carolina State Board of Elections, “Summary of Recent Election Law Changes,” <http://www.ncsbe.gov/ncsbe/Voting/voter-guide/recent-election-law-changes> (accessed July 21, 2015).
4. General Assembly of North Carolina, Session Law 2013-381.
5. See Hans A. von Spakovsky, “Requiring Photographic Identification by Voters in North Carolina,” Heritage Foundation Lecture No. 1234, July 18, 2013, <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina>.
6. *NAACP v. McCrory*, 997 F. Supp.2d 322, 337 (M.D.N.C. 2014).
7. General Assembly of North Carolina, Session Law 2013-381. In contrast to claims that hundreds of thousands of North Carolinians will be unable to vote because they do not have a photo ID, North Carolina has issued only 1,019 free ID cards since the issuance process began on January 1, 2014. News release, “NCDMV Issues More Than 1,000 No-Fee Voter ID Cards in Preparation for 2016 Election,” North Carolina Department of Transportation, June 23, 2015, <https://apps.ncdot.gov/newsreleases/details.aspx?r=11316> (accessed July 21, 2015).
8. General Assembly of North Carolina, Session Law 2015-103, House Bill 836; <http://www.ncleg.net/Sessions/2015/Bills/House/PDF/H836v6.pdf> (accessed July 21, 2015).
9. Advancement Project, “Who’s Affected by North Carolina’s Voter Suppression Law?” <http://www.advancementproject.org/pages/whos-affected-by-north-carolinas-voter-suppression-law> (accessed July 24, 2015).
10. Attorney General Eric Holder, remarks on the lawsuit against the State of North Carolina, September 30, 2013, <http://www.justice.gov/opa/speech/remarks-prepared-delivery-attorney-general-eric-holder-lawsuit-against-state-north> (accessed July 21, 2015).
11. News release, “Justice Department to File Lawsuit Against the State of North Carolina to Stop Discriminatory Changes to Voting Law,” U.S. Department of Justice, September 30, 2013, <http://www.justice.gov/opa/pr/justice-department-file-lawsuit-against-state-north-carolina-stop-discriminatory-changes> (accessed July 24, 2015).

which prohibits the implementation of voting standards, practices, or procedures that deny citizens the right to vote on account of their race.<sup>12</sup> The plaintiffs also asserted claims under the Fourteenth and Fifteenth Amendments to the Constitution of the United States.<sup>13</sup>

The opponents of the election reform bill in the state legislature “characterized the measure variously as voter suppression, partisan, and disproportionately affecting” minority voters, according to the district court judge.<sup>14</sup> They asked the federal judge to grant a preliminary injunction to prevent the law from going into effect. After a four-day evidentiary hearing and the presentation of an “extensive” record, the judge denied the preliminary injunction. He concluded that the plaintiffs had “not made a clear showing they are likely to succeed on the merits” and had not “demonstrated they are likely to suffer *irreparable* harm” during the November 2014 general election.<sup>15</sup>

The plaintiffs had not shown that black voters lacked an equal opportunity “to easily register to vote.”<sup>16</sup> In fact, the plaintiffs’ bizarre claim that not having same-day registration (which only a little over a dozen states have) violated the Voting Rights Act would “have rendered North Carolina in violation of the VRA before adoption of [same-day registration] simply for not having adopted it.”<sup>17</sup> The “next logical step” would be to say that the many states that do not have any form of early voting, which is a relatively recent phenomenon, are also in violation of the Voting Rights Act for never having implemented this new form of voting.

Experts hired by the plaintiffs, including the Justice Department, made the patronizing and borderline-racist claim that African-American voters would be affected negatively by these changes

because they are “less sophisticated voters” and “it’s less likely to imagine that these voters would—can figure out or would avail themselves of other forms of registering and voting.”<sup>18</sup> In fact, in North Carolina, blacks happen to be registered at a higher rate than whites by 7.5 percentage points.<sup>19</sup>

The plaintiffs’ equally odd claim that not counting ballots cast *outside* of a voter’s assigned precinct violated the Voting Rights Act also was dismissed by the court, since such a conclusion “could place in jeopardy the laws of the majority of the States, which have made the decision not to count such ballots.”<sup>20</sup>

The plaintiffs appealed the district court’s decision to deny an injunction to the U.S. Court of Appeals for the Fourth Circuit, which affirmed the district court’s refusal to issue an injunction against any of the election reform provisions except for two: the elimination of same-day registration and the requirement that a ballot be cast in a voter’s assigned precinct.<sup>21</sup> The Fourth Circuit instructed the district court to enter a preliminary injunction against those two provisions of H.B. 589.

Less than a month before the November election, however, the U.S. Supreme Court granted a stay of the Fourth Circuit’s decision, putting on hold the partial preliminary injunction. With the injunction stayed, all of the provisions of North Carolina’s election reform law were in place for the 2014 midterm election. Trial of the district court case is scheduled to begin in July 2015.<sup>22</sup>

## Results of 2014 Midterm Election

The results of the 2014 midterm primary and general election demonstrate that predictions that the North Carolina election law would “suppress” minority turnout were wrong; in North Carolina,

12. 42 U.S.C. § 1973.

13. *NAACP v. McCrory*, 997 F.Supp.2d at 338.

14. *Ibid.*

15. *Ibid.* at 334.

16. *Ibid.* at 351.

17. *Ibid.*

18. Hans von Spakovsky, “Shades of Jim Crow at the Justice Department,” National Review Online, October 22, 2014, <http://www.nationalreview.com/article/390904/shades-jim-crow-justice-department-hans-von-spakovsky> (accessed July 24, 2015).

19. *NAACP v. McCrory*, 997 F. Supp.2d at 351.

20. *Ibid.* at 367.

21. *League of Women Voters of North Carolina v. North Carolina*, 769 F.3d 224, 248–249 (4th Cir. 2014).

22. *North Carolina v. League of Women Voters of North Carolina*, 135 S.Ct. 6 (2014). North Carolina filed a petition for certiorari that was denied on April 6, 2015. *North Carolina v. League of Women Voters of North Carolina*, 135 S.Ct. 1735 (2015).

turnout of voters in general, and of minority voters in particular, increased.

The primary election in May 2014 was the first North Carolina election after H.B. 589's enactment. Thus, comparing the 2014 and 2010 primary elections provided a natural experiment on the effect of these election law changes because of similarities between these two elections: Both were held in May of a non-presidential election year. An analysis of the turnout of black voters by Dr. Steven Camarota, Director of Research at the Center for Immigration Studies, found that the number of blacks voting increased by 45,000 individuals from the 2010 primary election to the 2014 primary election, an increase of 29.5 percent.<sup>23</sup> The turnout of whites also increased, but only by 13.7 percent, less than half the increase in turnout of black North Carolinians.

Camarota determined that blacks also "increased their share of those who voted from 17.2% of the total in the 2010 election to 19% in the 2014 election." In contrast, the share of voters who were white declined.<sup>24</sup> Additionally, the percentage of "blacks registered in May 2014 relative to their population size was virtually unchanged from the May 2010 election."<sup>25</sup> He concluded that the official turnout data from the North Carolina State Board of Elections "for the May 4, 2010 and May 6, 2014 elections show no evidence that H.B. 589 adversely impacted black participation."<sup>26</sup>

The turnout data from the 2014 general election show the same result, which "tell[s] a different story" than the one opponents of the law had

hypothesized.<sup>27</sup> Though opponents accused lawmakers of discriminating against minorities and predicted a drastic decline in turnout among African-American voters, "[b]lack turnout and registration for the November 2014 election increased by every relevant measure compared with November 2010, the last non-presidential general election."<sup>28</sup>

Examining turnout as a whole, more than 2.7 million votes were cast in the November 2014 general election in North Carolina, "setting a record for a midterm election, according to the State Board of Elections."<sup>29</sup> The Board of Elections data showed that:

- The percentage of age-eligible, black North Carolinians who voted in the 2014 election was 41.1 percent, compared to 38.5 percent in November 2010.
- At the same time, the number of registered black voters who voted increased from 40.3 percent in 2010 to 42.2 percent in 2014.<sup>30</sup>
- The percentage of the total number of votes cast by black voters increased to 21.4 percent from 20.1 percent.<sup>31</sup>
- In fact, "voters who self-identified as multiracial, Asian, or American Indian/Alaska Native participated at a rate 47% higher than in 2010."<sup>32</sup>

According to the United States Elections Project, 40.9 percent of the "Voting-Eligible Population"

23. Declaration of Steven Camarota, "Estimating the Impact of HB 589: Black Turnout Before and After HB 589 Was Implemented," Amicus Curiae Brief in Support of Defendants and in Opposition to Plaintiffs' Motion for Preliminary Injunction of Judicial Watch, *U.S. v. North Carolina*, Case No. 1:13-cv-861 (M.D.N.C. June 18, 2014), p. 2.

24. *Ibid.*

25. *Ibid.* at 3.

26. *Ibid.*

27. Robert D. Popper, "The Voter Suppression Myth Takes Another Hit," *The Wall Street Journal*, December 28, 2014.

28. *Ibid.*

29. Matthew Burns, "NC Voter Turnout Sets Midterm Record," WRAL.com, November 5, 2014, <http://www.wral.com/nc-voter-turnout-sets-midterm-record/14149506/> (accessed July 21, 2015).

30. Popper, "The Voter Suppression Myth Takes Another Hit."

31. News release, "Data Shows High Participation Across Voting Demographics," North Carolina State Board of Elections, December 16, 2014, [http://www.ncsbe.gov/ncsbe/press-releases?udt\\_2226\\_param\\_detail=21](http://www.ncsbe.gov/ncsbe/press-releases?udt_2226_param_detail=21) (accessed July 21, 2015).

32. *Ibid.*

turned out in the 2014 general election in North Carolina.<sup>33</sup> In the United States as a whole, turnout was only 35.9 percent.<sup>34</sup> Four years earlier, in the 2010 general election, turnout in North Carolina was 39.2 percent, while turnout was 40.9 percent in the nation as a whole.<sup>35</sup>

As these numbers indicate, from 2010 to 2014, turnout increased in North Carolina by 1.7 percentage points, while turnout dropped nationwide by 5 percentage points. In fact, North Carolina was one of only 13 states that saw an increase in turnout between 2010 and 2014.<sup>36</sup>

### Conclusion

As a result of North Carolina's changes in its election laws, including the elimination of same-day registration and the reduction in early voting, not only did turnout not decrease as opponents, including the U.S. Department of Justice, had predicted it would, but turnout actually went up. There was no "voter suppression." In fact, the increase in turnout

of minority voters was higher than the increase in turnout of white voters. It is clear that the claims made against North Carolina's election reform law are unwarranted and that the pending court challenge to the state's election reform bill should be rejected.

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33. Using turnout rates calculated from "Highest Office," which "in a non-presidential election may be the vote for the highest statewide office (typically governor) or if no statewide election was held, the sum of the congressional elections," and the "voting-eligible population," which "represents an estimate of persons eligible to vote regardless of voter registration status in an election." United States Elections Project, "2014 November General Election Turnout Rates," last updated December 30, 2014, <http://www.electproject.org/2014g> (accessed July 24, 2015).

34. Ibid.

35. United States Elections Project, "2010 November General Election Turnout Rates," last updated February 4, 2012, <http://www.electproject.org/2010g> (accessed July 24, 2015).

36. It should be noted that a number of studies have concluded that early voting actually *hurts* turnout: "the most popular reform—early voting—is actually associated with lower turnout" because it is responsible for "reducing the civic significance of elections for individuals and altering the incentives for political campaigns to invest in mobilization." Barry C. Burden et al., "Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform," *American Journal of Political Science*, Vol. 58, No.1 (January 2014), p. 95.