

Race, *Shelby County*, and the Voter Information Verification Act in North Carolina*

***** DRAFT — Version 2 *****

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February 12, 2014

Abstract

Shortly after the Supreme Court in *Shelby County v. Holder* struck down Section 4 of the Voting Rights Act (VRA), the state of North Carolina enacted an omnibus piece of election-reform legislation known as the Voter Information Verification Act (VIVA). Prior to *Shelby* portions of North Carolina were covered jurisdictions per the VRA's Sections 4 and 5—meaning that they had to seek federal preclearance for changes to their election procedures—and this motivates our assessment of whether VIVA's many alterations to North Carolina's election procedures are race-neutral. We show that black early voters in North Carolina have in presidential elections cast their ballots disproportionately in the first week of early voting, an early voting week that VIVA has eliminated; that blacks in the state disproportionately have registered to vote during early voting and in the immediate run-up to Election Day, something that VIVA prohibits; that North Carolina registered voters who lack two VIVA-acceptable forms of voter identification, drivers licenses and nonoperator identification cards, are disproportionately black; that VIVA's identification dispensation for voters at least 70 years is a disproportionate benefit to whites; and, that preregistered 16 and 17-year old voters in North Carolina, a category of registrants that VIVA prohibits, are disproportionately black. These results illustrate how VIVA will have a disparate effect on black voters in North Carolina.

*The authors thank Michael McDonald for providing two North Carolina voter files.

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Introduction

In the final week of its 2012-13 term, the United States Supreme Court in *Shelby County v. Holder* struck down as unconstitutional Section 4 of the Voting Rights Act (VRA). Historically a key objective of the VRA has been preventing retrogression in racial and language minority voting rights (e.g., Grofman and Davidson, 1992; Issacharoff, 2013), and the now-defunct Section 4 contributed to this goal by defining a coverage formula that identified jurisdictions in the United States requiring federal preclearance before changing their election laws and procedures. By jettisoning the VRA's Section 4, the Supreme Court undermined Section 5 of the Act, which specifies preclearance procedures and heretofore required all or parts of 15 states to receive preclearance before making any changes to their election procedures.

Shelby was issued on June 25, 2013, and shortly thereafter the North Carolina state legislature passed an omnibus elections bill, House Bill 589, which was signed into law by Governor Pat McCrory on August 12, 2013.¹ This legislation is known colloquially as the Voter Information Verification Act (VIVA), and among its many alterations to the electoral environment in North Carolina VIVA shortened from 17 to ten days the state's early voting period; eliminated same-day voter registration during early voting; created a photo identification requirement for casting a ballot in-person but with special dispensation for voters over the age of 70; and, limited the preregistration of 16 and 17-year olds to those turning 18 by Election Day.² Because 40 of North Carolina's 100 counties had been covered by Section 5 of the VRA, pre-*Shelby* these election law changes would have necessitated preclearance with the federal government so as to ensure that they did not lead to "retrogression in the position of racial minorities with respect to their effective

¹The text of House Bill 589 is available at <http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H589v9.pdf> (last accessed September 27, 2013), its legislative history is described in <http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?BillID=H589&Session=2013> (last accessed November 26, 2013).

²VIVA's photo identification requirement is not slated to go into effect until 2016. In addition to the special dispensation made for registered voters over the age of 70, VIVA also makes exceptions to its identification requirements for those with religious objections to photographic identification and to those who prior to an election were victims of a natural disaster.

exercise of the electoral franchise.”³ Post-*Shelby*, however, no such preclearance requirement for North Carolina exists.

VIVA has been lauded by supporters for its focus on protecting the integrity of voting processes in North Carolina and criticized by others who view it as a piece of legislation designed to suppress votes, in particular votes of eligible black residents of North Carolina. Viewed in this light, VIVA exemplifies the contemporary debate in the United States over voting rights and the sometimes caustic struggle between those advocating for relatively liberal ballot access laws and those who urge vigilance in the face of allegations of election fraud. The issue of race is intertwined in this struggle, and in light of this what follows is an analysis of North Carolina’s electoral environment, one that focuses on the intersection of VIVA and race. Our attention here is specifically directed at race—as opposed to, say, political party affiliation—because of this construct’s position in the VRA and the recent decision in *Shelby*, not to mention the legacy of racial discrimination in American electoral history (Kousser, 1974). Broadly speaking, our objective is assessing whether VIVA will have differential effects on the two major racial groups, blacks and whites, in North Carolina. According to 2012 estimates from the United States Census, these two groups constitute over 93 percent of North Carolina residents; in particular, the Census reports that 71.9 percent of North Carolina residents are monoracial white and 22 percent, monoracial black.⁴

The scope of this study is the past three General Elections in North Carolina—those that occurred in 2008, 2010, and 2012—in addition to the past two off-year elections—those in 2009 and 2011. In light of this paper’s stated objective of assessing whether VIVA will have differential effects across racial groups in North Carolina, our analysis of these five elections considers whether black and white early voters in North Carolina have traditionally cast their ballots on sim-

³This quote is from the opinion in *Beer et al. v. United States et al.*, 425 U.S. 130 (1976). See <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=425&invol=130> (last accessed December 12, 2013). See http://www.justice.gov/crt/about/vot/sec_5/covered.php (last accessed September 30, 2013) for a list of the 40 North Carolina counties subject to preclearance prior to *Shelby*.

⁴2012 Racial demographics for North Carolina are available at <http://quickfacts.census.gov/qfd/states/37000.html> (last accessed December 9, 2013).

ilar days during North Carolina's early voting period; whether blacks and whites in North Carolina tend to differ in their propensities to register to vote immediately prior to voting early; whether registered voters in North Carolina over the age of 70 are disproportionately black or white; and, whether black and white voters will be differentially affected by VIVA's rules regarding voter identification. As will be made clear when we discuss VIVA in greater detail, we study these race-based matters because of the specific changes that VIVA has wrought on North Carolina election procedures.

The evidence we offer implies that VIVA will have a disparate effect on black voters in North Carolina and is thus not race-neutral. We show, for example, that blacks in the state often vote relatively early in the first week of what historically was an approximately 17 day early voting period, a week that VIVA eliminated when it reduced North Carolina's early voting period to ten days; that in two of the three most recent General Elections in North Carolina blacks disproportionately registered on early voting days that VIVA has eliminated; that blacks are disproportionately represented among registered voters in North Carolina who lack two of the seemingly standard forms of photo identification that VIVA deems acceptable; that a special dispensation regarding photo identification requirements for older voters is a greater benefit to whites than to blacks; and, that prior to VIVA's eliminating preregistration in North Carolina for all 16 year old and some 17 year olds, preregistered voters were disproportionately black.

In the next section of the paper we describe VIVA's political context by situating this law in the post-*Shelby County v. Holder* landscape. Then, after discussing the legislative history of VIVA and some of its particulars, we turn to the data used in our analysis of five recent North Carolina elections. Next we present results on the role of race in North Carolina early voting, registration timing, access to voter identification, and preregistration, and we end the paper with concluding thoughts.

Electoral reform in the shadow of *Shelby County v. Holder*

The origins of VIVA predate by several months the Supreme Court’s decision in *Shelby County v. Holder*. Nonetheless, the context surrounding this relatively recent North Carolina state law is now part of the aftermath of what appears to be one of the most momentous Supreme Court decisions in the area of voting rights since the 1960s.

The Voting Rights Act and origins of *Shelby*

The VRA was originally passed by Congress in 1965 and signed into law by then-President Lyndon B. Johnson. The objective of this act was elimination of voting discrimination, and the VRA established extensive federal oversight of election administration. The VRA has many facets, and the aspects of this law that concern us here are its sections dealing with preclearance. In the introduction we noted that Section 4 of the VRA provides a coverage formula that specifies the jurisdictions in the United States subject prior to *Shelby* to federal preclearance, i.e., that needed permission to modify their election procedures prior to implementing them. Section 4’s formula includes indicators as to whether a given voting jurisdiction mandated a literacy “test or device” as a requirement for registering to vote as of November 1, 1964, or had registration or turnout rates of less than 50 percent of voting age population in 1964.⁵ Section 5 of the VRA describes how preclearance is implemented and thus leans heavily on Section 4. Beyond Sections 4 and 5, Section 2 of the VRA prohibits everywhere in the United States the dilution or denial of voting rights on the basis of race and language minority status. In contrast to Sections 4 and 5 and their emphasis on preclearing changes to election laws *before* they are promulgated, the VRA’s Section 2 places the burden of proof on those affected by ostensibly problematic election protocol changes.

Pre-*Shelby*, all election law and protocol changes that affected covered jurisdictions—i.e., those characterized as such by the VRA’s Section 4—were reviewed by the United States Department of

⁵See, for example, the United States Department of Justice’s discussion of Section 4 of the VRA at http://www.justice.gov/crt/about/vot/misc/sec_4.php (last accessed October 2, 2013).

Justice or the federal courts in order to determine if they had retrogressive effects on racial, ethnic, or language minorities. Between 2006, when Congress last reauthorized the VRA, and the spring of 2013, the Department of Justice used its preclearance authority to block many election law alterations that it determined would have discriminatory effects. Prior to the 2012 General Election, for example, the Department of Justice challenged and prevented restrictive photo identification laws from being implemented in Alabama, Mississippi, South Carolina, and Texas, and it successfully forced Florida to modify a mid-2011 law that placed new restrictions on voter registration drives by third party organizations (Herron and Smith, 2013).⁶

Shelby struck down the VRA's Section 4 on account of ostensible problems with the preclearance coverage formula, thus rendering Section 5 of the VRA effectively toothless. As a result of this case, changes to voter registration procedures, new requirements for voter identification, and altered early voting hours, *inter alia*, in previously covered or partially covered states no longer must be vetted by the federal government before taking effect. According to Chief Justice Roberts's majority opinion, the VRA's antiquated preclearance formula was "based on 40-year-old facts having no logical relationship to the present day."⁷ Some scholars who historically have been critical of preclearance were pleased with *Shelby*, with vice-chair of the United States Commission on Civil Rights, Abigail Thernstrom, arguing that, "The court's ruling Tuesday will benefit black America."⁸ Similarly, former United States Department of Justice official, Hans von Spakovsky, stated that the court "effectively threw out the preclearance requirements because they were based

⁶See "If Section 5 Falls: New Voting Implications," a report written by Myrna Pérez and Vishal Agraharkar, published by Brennan Center for Justice Analysis, and available at http://www.brennancenter.org/sites/default/files/publications/Section_5_New_Voting_Implications.pdf (last accessed December 10, 2013) and "Voter Identification Requirements," a report authored by National Conference of State Legislatures, available at <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> (last accessed February 5, 2013).

⁷The opinions in *Shelby County v. Holder* are available at http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf (last accessed December 18, 2013).

⁸See "A Vindication of the Voting Rights Act," *The Wall Street Journal*, June 26, 2013, available at http://www.aei.org/article/politics-and-public-opinion/judicial/a-vindication-of-the-voting-rights-act/?utm_source=new+on+aei&utm_medium=web&utm_campaign=062813 (last accessed December 11, 2013).

on 40-year old data,” and in so doing, “foreclosed what seems to be one of the favorite pastimes of [Department of Justice] Voting Section lawyers—pretending it is still 1965.”⁹

Others, even some who have historically been generally sympathetic with the goals of the VRA, concurred with Roberts’s opinion that Congress had neglected its duty—most recently in 2006, when it reauthorized the VRA—to modernize the Act’s coverage criteria. Noting that “[T]he [VRA] was pivotal in bringing black Americans to the broad currents of political life,” Issacharoff (2013) nonetheless concedes that the Court’s “unromantic constitutional ruling” in *Shelby* reveals that “the race discrimination structure of Section 5 could not be justified in light of the increasing distance between the prohibitions and the distinct practices of racial exclusion that lie at the heart of the Voting Rights Act” (pp. 95-96, 117). Grofman (2013) writes similarly, arguing that, “[T]he data used for the [Section 4 trigger of Section 5] were not just stale, they were incredibly stale” (p. 332). Still, as Kimball (2013) points out, recent literature on ballot access shows that voting discrimination in the United States is hardly a thing of the past notwithstanding the raw voter turnout figures cited in the *Shelby* majority opinion as evidence of a lack thereof.

Reactions from the voting rights community to the *Shelby* decision were predictably harsh. Congressional Representative John Lewis (D-GA), who was alongside President Johnson in 1965 when he signed the VRA into law, excoriated the Supreme Court’s decision: “When the Supreme Court made the decision, I almost cried. I almost shed some tears. . . I kept saying to myself, ‘I wish somehow the members of the Supreme Court—especially the five that voted to put a dagger in the heart and soul of the Voting Rights Act—could walk in our shoes.’”¹⁰ Voting rights groups quickly took aim at the decision, with Advancement Project, for example, issuing a statement expressing

⁹See “Texas Residents Who Support Voter ID Denied Intervention in DOJ Lawsuit—Will the Same Thing Happen in North Carolina?,” *National Review Online*, available at <http://www.nationalreview.com/corner/366590/texas-residents-who-support-voter-id-denied-intervention-doj-lawsuit-will-same-thing> (last accessed January 14, 2014).

¹⁰See NPR.ORG, “The Voting Rights Act: Hard-Won Gains, An Uncertain Future,” July 21, 2013, available at <http://www.npr.org/2013/07/21/204284355/whats-next-for-the-voting-rights-act> (last accessed December 11, 2013).

“disappoint[ment] that the Supreme Court has taken the extreme act of at least temporarily suspending the nation’s strongest civil rights protection,” and arguing that “[a]mple evidence shows that prior Section 4 formula—which enabled Section 5 to block more than 1,500 discriminatory voting laws from going into effect since its inception, including five last year—is still a critical necessity, and that the formula for those covered states was clearly appropriate.”¹¹ The Campaign Legal Center, a nonpartisan public advocacy group specializing in elections, also decried *Shelby*, saying “[t]he Roberts Court proved again that it will not be deterred by Supreme Court precedent, the realities on the ground in our nation; nor will it defer to Congress even when the legislative branch is granted clear authority by the Constitution to remedy our nation’s long history of discrimination against racial and language minorities.”¹² The NAACP Legal Defense and Educational Fund, which defended the VRA in *Shelby*, called the Court’s decision “extraordinary judicial overreach,” which has “left millions of minority voters without the mechanism that has allowed them to stop voting discrimination before it occurs.”¹³ Elisabeth MacNamara, President of the League of Women Voters, said the Court “erased fundamental protections against racial discrimination in voting that have been effective for more than 40 years.”¹⁴

¹¹See Advancement Project press release, “SUPREME COURT REMOVES CRITICAL PROTECTION FOR VOTERS OF COLOR, CIVIL RIGHTS GROUP PLEDGES TO KEEP FIGHTING STATES THAT DISCRIMINATE,” June 25, 2013, available at <http://www.advancementproject.org/news/entry/scotus-removes-critical-protection-for-voters-of-color#sthash> (last accessed September 27, 2013).

¹²Ryan Reilly, “Voting Rights Act Section 4 Struck Down By Supreme Court,” Huffington Post, July 25, 2013, available: http://www.huffingtonpost.com/2013/06/25/voting-rights-act-supreme-court_n_3429810.html

¹³See the statement “Court Rejects Congress’ Determination of Where the Voting Rights Act Should Apply, Leaving Voters Unprotected,” June 25, 2013, available at <http://www.naacpldf.org/update/supreme-court-ruling-voting-rights-opens-door-wave-minority-voter-suppression> (last accessed December 11, 2013).

¹⁴See the press released titled, “SUPREME COURT ERASES PROTECTIONS AGAINST RACIAL DISCRIMINATION IN VOTING,” June 25, 2013, available at <http://www.lwv.org/press-releases/lwv-reacts-supreme-court-decision-voting-rights-act> (last accessed December 11, 2013).

The aftermath of *Shelby*

In the wake of *Shelby* a debate among voting rights and election law scholars has started over the future of the VRA's Sections 4 and 5. Some legal scholars have argued that race-based criteria for preclearance remain defensible. Daniels (2013), for example, asserts that Congress should expand Section 5's preemptive preclearance power "to protect citizens from discriminatory voting laws" (p. 1934). Others, though, have proposed new, arguably race-neutral criteria for preclearance. El-mendorf and Spencer (2013) suggest that an alternative requirement for federal preclearance turn on the fraction of residents in a state who hold negative stereotypes of minorities; drawing on the history of litigation under Section 2 of the VRA, Grofman (2013) suggests a new trigger mechanism for federal preclearance, namely targeting jurisdictions that have had "multiple Section 2 cases brought against them" or those that "have repeatedly been found in violation" of retrogressive changes under Section 5 (p. 334); and, Cain (2013) and Overton (2013) suggest a greater use of the VRA's Section 3 "bail-in provision" in light of the concern that Congress in the near future is unlikely to craft more extensive franchise protections. Nelson (2013) argues that the courts should adhere to a more narrow construction of disparate impact claims under Section 2 (as amended by Congress in 1982), specifically that statistical analyses of vote dilution should look not only at the racial impact, "but also [at] the racial context in which this evidence is situated," or what she dubs the "causal context" that defines disparate vote denial (p. 586). Finally, Hasen (2013) takes a broader view and argues that, since race and party are tightly intertwined, federal courts should ensure that the rights of voters remain protected from maneuvers that could be interpreted as having harmful effects on the grounds of either party or race. Bagenstos (2013) labels this approach "universalist" since it seeks to "provide uniform protections to everyone" (p. 1) as opposed to, say, a particular racial group.

Concomitant with the post-*Shelby* debate over the future of preclearance and possible trigger mechanisms for federal oversight of state-level and local election procedures, election law changes across many states are underway in various forms. Mississippi, Texas, and Virginia, for example,

have begun implementing voter identification requirements that prior to *Shelby* could have faced extensive federal scrutiny. In response to the Texas voter identification law, the federal Department of Justice has under Section 2 of the VRA filed suit against the voter identification law known as Senate Bill 14, requesting that federal courts enjoin key sections of this bill and additionally make Texas subject to the type of preclearance that it faced pre-*Shelby*.¹⁵ Other states—Arizona and Kansas, the former previously a Section 4 jurisdiction—have embarked on dual-registration systems, requiring proof-of-citizenship for voters wishing to cast their ballots in state elections. Note that the Supreme Court ruled in *Arizona v. The Inter Tribal Council of Arizona, Inc.* that states cannot require proof of citizenship to vote in federal elections. Dale Ho, Director of the ACLU’s Voting Rights Project, notes that “[Dual registration systems] were set up after Reconstruction alongside poll taxes, literacy tests and all the other devices that were used to disenfranchise African-American voters.” In Ohio, legislative efforts are currently underway as of the writing of this paper not only to eliminate a week from early voting, but also, as in North Carolina, to eliminate the so-called “Golden Week” that has permitted eligible citizens of Ohio to register and vote on the same day.¹⁶ Even before *Shelby* many states in the past several years have created new voter identification rules and passed restrictions on absentee and early voting, and Bentele and O’Brien (2013) argue that this behavior follows a well-worn tradition in the United States of using ballot access laws for partisan purposes. See also Keyssar (2000).¹⁷

¹⁵The complaint in *United States v. Texas* is available at <http://www.justice.gov/iso/opa/resources/7472013822155117860058.pdf> (last accessed December 11, 2013).

¹⁶On Arizona and Kansas and the Ho quote, see “Separate and Unequal Voting in Arizona and Kansas,” *The Nation*, October 15, 2013, available at <http://www.thenation.com/blog/176650/separate-and-unequal-voting-arizona-and-kansas> (last accessed December 19, 2013). And on Ohio, see “Ohio GOP Resurrects Voter Suppression Efforts,” *The Nation*, December 3, 2013, available at <http://www.thenation.com/blog/177454/ohio-gop-resurrects-voter-suppression-efforts> (last accessed December 11, 2013).

¹⁷For a map-based display of changing voting rights since *Shelby*, see, “Everything That’s Happened Since Supreme Court Ruled on Voting Rights Act,” ProPublica, available at <http://www.propublica.org/article/voting-rights-by-state-map> (last accessed December 14, 2013).

North Carolina's Voter Information and Verification Act

The original version of VIVA—called House Bill 589—was filed in the North Carolina House on April 4, 2013, and at that time this proposed legislation was essentially a bill aimed at establishing a photo identification requirement for in-person voting in North Carolina. The early 2013 version of House Bill 589, for example, did not alter the length of the state's early voting period.¹⁸ The North Carolina House passed (81 votes in favor, 36 opposed) House Bill 589 on April 24, 2013, the legislation was received by the North Carolina Senate on the subsequent April 25, and following that date legislative action on this bill ceased until late July, 2013.

On July 23, 2013, a committee substitute for House Bill 589 was adopted in the North Carolina Senate, and with respect to the original bill this substitute narrowed the types of permitted forms of voter photo identification, cut the number of early voting days in North Carolina by a week, eliminated same day registration and voting during early voting, and made other changes to the North Carolina electoral law. Regarding narrowing the acceptable forms of voter photo identification, for example, an employee identification card was acceptable under the original House Bill 589 but not under the substitute; moreover, expired forms of photo identification were acceptable under the former as long as date of expiry was fewer than ten years in the past. Notwithstanding the additional restrictions called for in the substitute House Bill 589, this piece of legislation passed (33 in favor, 14 opposed) the North Carolina Senate on July 25, 2013 at 5:24pm, was sent immediately thereafter to the House, passing the lower chamber several hours later (73 in favor, 41 opposed), at 10:39pm. House Bill 589 was signed into law by North Carolina Governor Pat McCrory, thus producing what is now known as VIVA.

The passage of VIVA has engendered an acrimonious dispute between the Act's supporters, who describe the new legislation as protecting the integrity of North Carolina's election procedures, and its critics, who see VIVA as a bill designed to suppress votes. Particularly notable about the

¹⁸The text of the original House Bill 589 is available at <http://www.ncleg.net/Applications/BillLookup/LoadBillDocument.aspx?SessionCode=2013&DocNum=3118&SeqNum=0> (last accessed December 9, 2013).

current dispute in North Carolina is the question of whether the absence of Section 4 of the VRA—and the concomitant elimination of Section 5 federal preclearance—is a harbinger of new attempts to insert race into debates about voting rights and ballot access.

Indeed, critics of VIVA have alleged that the Act’s cut in North Carolina’s early voting period might have differential effects on black voters in the state.¹⁹ North Carolina Attorney General, Democrat Roy Cooper, whose job responsibilities include enforcing VIVA, claims the new law “threaten[s] fifty years of progress” in the state and has said as well that “[a] lot of bad public policy was lumped into this bill at the last minute.”²⁰ And upon passage of VIVA, nine-term Democratic state Senator Ellie Kinnaird resigned in protest, saying that the law was designed “to deny people their right to vote.”²¹ Nonetheless, supporters of VIVA argue that the bill protects the right to vote for all eligible North Carolinians and in addition brings North Carolina into alignment with a majority of other states that do not allow voters to register to vote and then vote on the same day. Upon signing it into law, Governor McCrory said, “I am proud to sign [VIVA] into law. Common practices like boarding an airplane and purchasing Sudafed require photo ID and we should expect nothing less for the protection of our right to vote.”²² North Carolina Senate

¹⁹For example, see Richard L. Hasen, “Supreme Error,” *Slate*, August 19, 2013, available at http://www.slate.com/articles/news_and_politics/jurisprudence/2013/08/north_carolina_s_speedy_vote_suppression_tactics_show_exactly_why_the_voting.html (last accessed December 3, 2013) and “North Carolina Prosecutor Takes Shots at the Laws He’s Obligated to Enforce,” *The New York Times*, October 24, 2013, available at http://www.nytimes.com/2013/10/25/us/north-carolina-prosecutor-takes-shots-at-the-laws-hes-obliged-to-enforce.html?_r=0 (last accessed December 3, 2013).

²⁰See “North Carolina: Threatening Fifty Years of Progress in Ten Months,” *Huffington Post*, October 15, 2013, available at http://www.huffingtonpost.com/roy-cooper/north-carolina-republicans_b_4100573.html and “Roy Cooper is right to object to laws that ill-serve the public,” *Raleigh News & Observer*, November 9, 2013, available at <http://www.newsobserver.com/2013/11/09/3355846/roy-cooper-is-right-to-object.html> (last accessed December 3, 2013).

²¹Former state Senator Kinnaird’s comments were made on August 19, 2013, and are available at <https://www.facebook.com/notes/ellie-kinnaird-for-nc-senate/aug-19-2013/579959468714730> (last accessed December 11, 2013).

²²This quote is drawn from a North Carolina state press release. See <http://www.governor.state.nc.us/newsroom/press-releases/20130812/governor-mccrory-signs-popular-voter-id-law#sthash.7csy6IqI.dpuf> (last accessed September 30, 2013). The release also notes that 37 states do not allow same day registration followed immediately by voting.

President Pro Tem Phil Berger argued similarly, saying that “[VIVA] is a common sense measure to address concerns that a lot of people have about voting, about making sure that when people vote, they are who they say they are.”²³

As of this paper’s writing VIVA is facing multiple legal challenges. On September 30, 2013, the federal Department of Justice filed a lawsuit in federal district court alleging that parts of VIVA violate Section 2 of the VRA insofar as they “would have the result of denying or abridging the right to vote on account of race, color, or membership in a language minority group.” The lawsuit specifically comments on VIVA’s decrease in early voting hours and its elimination of same-day voter registration as well as aspects of VIVA that deal with provisional ballots and voter identification. The Department of Justice’s lawsuit came on the heels of two other federal cases, both filed on August 12, 2013. In one of these federal suits, the North Carolina State Conference of the NAACP and other plaintiffs claim VIVA violates Section 2 of the Voting Rights Act and the 4th and 15th Amendments of the Constitution. In the second, League of Women Voters and others challenge VIVA, alleging the law would result in “the denial or abridgement of the right of African Americans in North Carolina to vote in contravention of Section 2 of the Voting Rights Act.” Beyond these three federal lawsuits, the League of Women Voters of North Carolina and various other plaintiffs have challenged VIVA in state court, arguing that the law’s requirement pertaining to photo identification “imposes an unconstitutional property requirement in violation of Article I, §10 [of the North Carolina state constitution] by requiring voters to possess not only an acceptable photo ID, but also the documents necessary to obtain the photo ID and the resources necessary to procure those documents (p. 20).”²⁴

²³This quote appears in “Voter ID bill, proposed system overhaul prompts protest in Wilmington,” *Port City Daily*, July 25, 2013, available at <http://portcitydaily.com/2013/07/25/voter-id-bill-system-overhaul-prompts-protest-in-wilmington> (last accessed December 7, 2013).

²⁴The federal complaint, *United States v. North Carolina* (Case 13-CV-00861), is available at <http://www.justice.gov/iso/opa/resources/646201393013723793555.pdf> (last accessed September 30, 2013). The other two federal complaints, *North Carolina State Conference of the NAACP et al. v. Patrick Lloyd McCrory et al.* (Case 1:13-cv-658) and *League of Women Voters of North Carolina et al. v. North Carolina et al.* (Case 1:13-cv-00660) are available at <http://moritzlaw.osu.edu/>

VIVA has many facets, and our analysis here focuses on what appear to be the most significant aspects of the Act. These include the changes VIVA made to the North Carolina early voting period (shortening it from 17 days to ten); the elimination of same day voter registration; the creation of a photo identification requirement for voters albeit with a special dispensation for voters at least 70 years old; and, the elimination of preregistration of eligible 16 and 17 year olds unless they turn 18 before an upcoming election. The existence of aspects of VIVA that we do not address should not be taken as an endorsement of the claim that these aspects are race-neutral or indeed neutral in any other fashion. Indeed, as Wand et al. (2001) and Frisina et al. (2008) illustrate, seemingly minor and innocuous changes to electoral protocols can have serious consequences for elections.

As a followup to a remark we made in the introduction, we emphasize here that we are not interested in this paper in whether VIVA may or may not have partisan effects in North Carolina. Insofar as race is often correlated with political preferences (e.g., Ansolabehere, Persily and Stewart III, 2013; Hasen, 2013), any conclusions we draw about differential effects of VIVA across racial groups will almost by construction have partisan implications as well. Moreover, the partisan implications of election-reform efforts presumably weigh heavily on office-motivated politicians. Still, we avoid the matter of partisanship because this construct is not protected by the VRA, and we leave for future research the question of whether VIVA's changes to voting laws in North Carolina could alter the partisan balance in the state.

electionlaw/litigation/documents/NAACPv.MCCRORY.Complaint.pdf (last accessed December 10, 2013) and <http://moritzlaw.osu.edu/electionlaw/litigation/documents/LOWVv.Howard.Complaint.pdf> (last accessed December 10, 2013), respectively. As of this paper's writing, the federal lawsuits are not scheduled for trial until 2015. For coverage of these lawsuits, see "Judge: No quick trial on NC voting law changes," *WRAL.com*, available at <http://www.wral.com/judge-to-weigh-trial-schedule-on-nc-voting-changes/13208305/> (last accessed December 18, 2013). The state complaint attacking VIVA is *Alberta Currie et al. v. North Carolina et al.* (Case 13-CV-001419) and is <http://moritzlaw.osu.edu/electionlaw/litigation/documents/Currie-v-NC.pdf> (last accessed December 10, 2013). For an intervening motion on *League of Women Voters of North Carolina et al. v. North Carolina et al.* see <http://electionlawblog.org/wp-content/uploads/29-main.pdf> (last accessed on December 10, 2013).

North Carolina registration and voting data

Our assessment of the extent to which VIVA has differential effects across racial groups in North Carolina is based on examining historical patterns in North Carolina elections. We have noted above, for example, that VIVA altered the length of North Carolina's early voting period, and this motivates our upcoming analysis of the types of voters in North Carolina who historically have tended to vote early. Such an analysis allows us to determine the types of voters who will be most affected by VIVA's shortening of the North Carolina early voting period.

We consider here five elections, in particular those that took place in 2008, 2009, 2010, 2011, and 2012. This collection of elections provides us with variance in several ways. Of these five elections, three were general—2008, 2010, and 2012—and two were off-year—2009 and 2011. Moreover, of the general elections, two were presidential—2008 and 2012—and one, a midterm election that lacked a presidential contest—2010.

We draw on three different data sources when analyzing our five elections of interest, and one key source is the North Carolina statewide voter file. Most of our analysis relies on a version of this file downloaded from the North Carolina State Board of Elections (SBOE) on September 5, 2013. We call this file the September, 2013, voter file. To a limited extent we also use copies of the North Carolina voter file that to the best of our knowledge were created in February, 2009, and in February, 2011. We use these latter two files only when assessing the racial composition of the North Carolina registered voter pool as of February, 2009, and February, 2011, respectively, and below we make it clear when these two files are invoked.²⁵

The September, 2013, North Carolina voter file contains a list of registered voters in North Carolina.²⁶ It also contains names of previously registered voters who as of September, 2013, were no longer registered in North Carolina because, for example, they had moved out of the state or had

²⁵Michael McDonald of George Mason University provided these files to us.

²⁶To the best of our knowledge, the September, 2013, voter file lists North Carolina registered voters as of the date that the file was created.

Table 1: Voter File Coverage

Election	Official Turnout	Voter File Turnout	Coverage Percentage
2008 General	4,354,052	4,347,938	99.86
2010 General	2,700,393	2,699,143	99.95
2012 General	4,542,488	4,540,838	99.96

Note: reports general election participation counts from the September, 2013, voter file ignoring voters whose participation methods are listed as “elig-nv” and “abs-nv.” To the best of our knowledge, voters with these classifications did not cast valid ballots. Percentages are listed to four significant digits.

died. For both currently or previously registered voters in North Carolina, the September, 2013, voter file contains basic demographics (e.g., age, gender, and race), registration dates, and so forth. North Carolina voter files also include history information that describes for each registered North Carolina voter whether, and if so how, he or she participated in various elections. Such history information does not include actual vote choices, of course.²⁷

As a consistency check on our September, 2013, voter file, consider Table 1. For the General Elections of 2008, 2010, and 2012, this table lists official turnout as characterized by the North Carolina SBOE, turnout based on counts in our voter file, and associated coverage percentages.²⁸ The three percentages in Table 1 are all very close to 100, and the very small discrepancies in the table may reflect provisional ballots and minor data errors.

North Carolina voter files contain fields that describe the registration statuses of each registered voter in the state. When a registered voter moves out of North Carolina or moves across counties within the state, said voter’s record is marked as “removed.” Despite the use of this word, a re-

²⁷The term “voter file” is a generic one that applies across states, and voter files provide snapshots of electorates at given moments in time. The September, 2013, North Carolina voter file actually consists of two separate files, one which contains voter demographics and related variables and one which contains voter participation codes. These two files are available at ftp://www.app.sboe.state.nc.us/data/ncvoter_Statewide.zip and ftp://www.app.sboe.state.nc.us/data/ncvhis_Statewide.zip, respectively. Together these files constitute one instance of the North Carolina voter file.

²⁸Official statewide turnout for North Carolina elections can be found at <http://www.ncsbe.gov/contenta229.html?ID=70> (last accessed January 9, 2014). Per a phone conversation on January 8, 2014 with George McCue of the North Carolina SBOE, the overall turnout numbers on this website do not include provisional ballots that were not counted.

moved record is not eliminated from the voter file, however; rather, it is simply marked as removed. An active voter may be removed if the voter is “no longer qualified to vote or the voter chooses to be removed,” as in the cases of death, registering in another county or state, or a duplicate registration. If prior to September, 2013, for example, a North Carolina registered voter moved from one county in the state to another and in the process changed her county of registration, she has two records in the voter file, one corresponding to her initial county of registration and a second record corresponding to her destination county. In addition, a North Carolina registered voter’s status may change to “denied” if a county establishes that the voter “is not qualified to vote based on age, citizenship, residence or conviction of a felony.”²⁹ For example, our September, 2013, voter file contains 7,345,422 individual-level records, and there were 6,465,982 registered voters whose status as of the date when the file was created was neither “denied” nor “removed.” These voters constitute the registered voter pool in North Carolina as of September, 2013. Associated with the approximately 7.3 million records in the voter file are 28,422,881 participation records; each participation record describes how a given registered voter participated in an election.

Beyond voter files, the North Carolina SBOE creates for general and off-year elections what are called absentee files, and in September, 2013, we downloaded absentee files for the 2008, 2009, 2010, 2011, and 2012 elections. So-called absentee files constitute our second data source, and an absentee file for a given election lists the North Carolina voters who voted early and absentee.³⁰ In North Carolina early voting is known as “one-stop” absentee voting, and this contrasts with what in the state is called absentee voting by mail. The latter form of voting is what is traditionally known simply as absentee voting. To keep matters clear, henceforth we refer to one-stop absentee voting as early voting and absentee voting by mail as simply absentee voting.

Table 2 describes three North Carolina registered voter pools and five early voting electorates.

²⁹See the official SBOE report titled “April 2013 SBOE-DMV ID Analysis,” available at <http://www.democracy-nc.org/downloads/SBOE-DMVMatchMemoApril2013.pdf> (last accessed October 2, 2013). The voter file field called *voter_status_desc* specifies whether a registered voter’s record is denied or removed.

³⁰Absentee files are available at <ftp://www.app.sboe.state.nc.us/ENRS>.

Table 2: Basic counts from North Carolina voter files and absentee files

Voter Type	Total	Black	White	Percent Black	Percent White
Registered, February, 2009	6,154,625	1,330,188	4,509,917	21.61	73.28
Registered, February, 2011	6,107,325	1,321,338	4,460,138	21.64	73.03
Registered, September, 2013	6,465,982	1,452,855	4,589,342	22.47	70.98
Early voting, 2008	2,419,206	688,080	1,624,920	28.44	67.17
Early voting, 2009	85,496	19,103	64,270	22.34	75.17
Early voting, 2010	909,122	195,605	688,313	21.52	75.71
Early voting, 2011	82,195	23,218	56,457	28.25	68.69
Early voting, 2012	2,567,555	743,026	1,687,886	28.94	65.74

Note: registered voter counts and percentages are based on February 2009, February 2011, and September, 2013, voter files, ignoring all records flagged as removed or denied. Early voting electorates are based on North Carolina SBOE absentee files, and early voters who have dates of voting outside of official North Carolina early voting periods are ignored. Percentages are reported to four significant figures.

The registered voter pools reflect the collection of registered voters in North Carolina as of a given date, and the early voting electorates are associated with individual elections. Here we use our complete set of three voter files so that we have three snapshots of the North Carolina registered voter pool at three different times. The counts in Table 2 are disaggregated by race—in particular, using the categories of black and white—as these two racial groups are the largest two such groups in North Carolina. For example, as of February, 2009, blacks and white comprised approximately 94.89 percent of all registered voters in North Carolina.³¹

We will come back to this point shortly, but Table 2 shows that early voters in North Carolina tend to be disproportionately black compared to the overall pool of registered voters in the state. One can readily see this in the table by comparing percent black of the five early voting electorates with the various black percentages across the table’s three registered voter pools. An exception to this occurred in 2010 insofar as the black early voting percentage during the 2010 General Election was slightly lower than the black percentage of the February, 2011, registered voter pool.

³¹Our five absentee files, one per each election in 2008 through 2012, contain a small number of voters whose recorded dates of early voting lie outside of official North Carolina statewide early voting periods. These voters do not appear in Table 2, and they are not part of the analysis in this paper.

Another implication of Table 2 is that early voting in North Carolina is a frequently used method of electoral participation. For example, over 2.5 million North Carolina residents voted early in the 2012 General Election. The magnitude of this number in conjunction with the magnitudes of early voting counts for the other elections in Table 2 bring into relief one reason that VIVA's changes to North Carolina's early voting period have been so controversial.

Our third and final data source consists of two lists of registered voters who lack drivers licenses and a form of identification called a nonoperator identification card. These two forms of identification are managed by the North Carolina Department of Motor Vehicles (DMV) and are permissible forms of voter identification as specified by VIVA. Our lists of registered voters who lack these two types of identification were created by the North Carolina SBOE and are described in two public reports, the first of which was released on January 7, 2013, and is titled "2013 SBOE-DMV ID Analysis" and the second of which was released on April 17, 2013, and is titled "April 2013 SBOE-DMV ID Analysis." These two reports detail how the SBOE attempted to determine which registered voters in North Carolina lack drivers licenses and nonoperator identification cards, and as described in the reports the SBOE merged a voter file with a DMV-supplied list of individuals who have these forms of identification. Voter file names that could not be matched with names in the DMV list are assumed to lack drivers licenses and nonoperator identification cards, and the implication is that these individuals face relatively higher risks of not having the types of identification necessary to vote. The January list of so-called unmatched registered voters (i.e., registered voters who appear to have neither a drivers license nor a nonoperator identification) contains 612,955 names and the April list, 318,643 names. These numbers differ roughly by an order of magnitude, and the discrepancy between them reflects the fact that the SBOE used a different merging algorithm in April, 2013, than it had originally.³²

³²The January, 2013, unmatched registered voter list is available at ftp://www.app.sboe.state.nc.us/Requests/NODL_20130101.zip (last accessed December 9, 2013) and the April, 2013, list is available at ftp://www.app.sboe.state.nc.us/Requests/Unmatched%20Voters_DMVID.xlsx (last accessed December 4, 2013). The source for the accompanying January report is ftp://www.app.sboe.state.nc.us/Requests/Materials/Report_ID_DMV%20&%20SBOE%20ID%20Analysis_2013.pdf (last ac-

Racial trends in early voting

We begin our assessment of the extent to which VIVA will have differential effects across racial groups in North Carolina with an analysis of early voting in the state in the general and off-year elections of 2008 through 2012. Prior to VIVA's enactment, the early voting period in North Carolina started three Thursdays before a Tuesday Election Day. This yielded an early voting period that could extend up to 17 days, but in some years past this period contained fewer days because of a lack of early voting on what would have been the first Sunday of early voting.

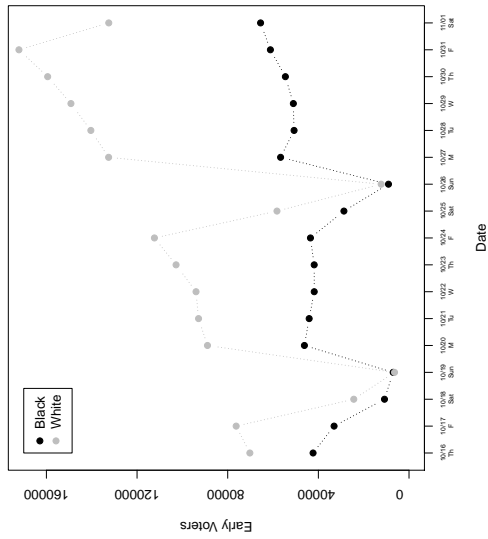
Figure 1 displays for our five elections of interest early voting counts broken down by racial group. There are five panels in the figure, and the horizontal axis in each panel list days on which early voting took place; not all horizontal axes have the same number of dates, and this reflects the occasional lack of Saturday and/or Sunday voting in an initial weekend of early voting. The arrangement of the panels in Figure 1 incorporates the fact that the elections of 2008, 2010, and 2012 were general elections whereas those in 2009 and 2011 were off-year elections. Within these two groupings the vertical axes are identical across the panels in Figure 1.

The raw numbers in Figure 1 show that early voting in North Carolina is more heavily used in general elections than in off-year elections. This reflects the fact that the number of overall voters in 2009 and 2011, 508,372 and 495,296, respectively, was low compared to, say, the 2012 General Election, in which official turnout was 4,542,488 voters. See Table 3 for these numbers. The 2010 General Election was a midterm as opposed to a presidential election, and early voting counts in this year were noticeably lower than in 2008 and 2012. This is not an artifact of early voting:

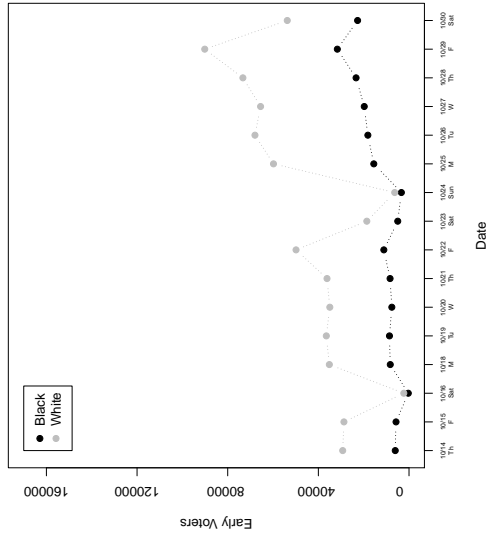
cessed December 9, 2013) and the source for the SBOE report is noted in fn. 29. We checked whether the two unmatched voter lists contain any duplicate records where duplicate records are those with common county and county-level voter identification numbers; they do not. One issue regarding dates, though, is worth noting. The registration date field in the January file (it is called *registr_dt*) contains four-digit years so that, for example, 1911 can be distinguished from 2011; we checked whether any registration dates in this file were after January 2, 2013, and none was. That is consistent with the North Carolina SBOE report that describes the January file as drawing on individuals who were registered as of January 1, 2013. The registration date field for the April, 2013, unmatched voter file contains two-digit years, and this leads to ambiguity between, say, 1950 and 2050. According to the North Carolina SBOE, the April file is based on registrants as of March 25, 2013; thus, a registrant with an ambiguous registration year, one that would lead to a registration post-March 25, 2013, is assumed to have a registration year in the 20th Century.

Figure 1: Daily early voting totals broken down by race

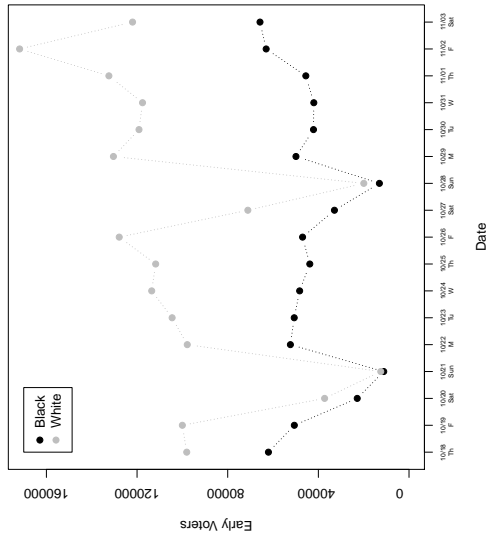
(a) 2008



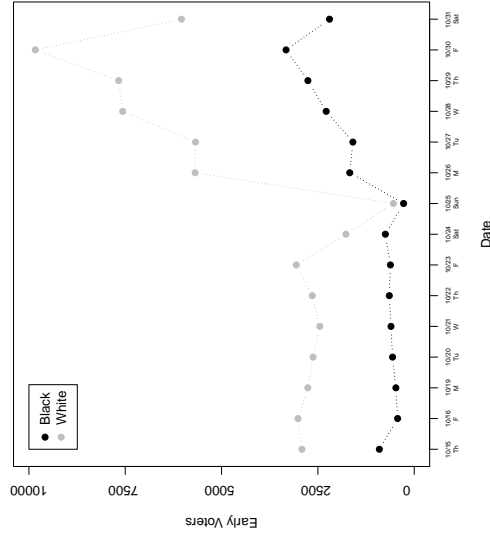
(b) 2010



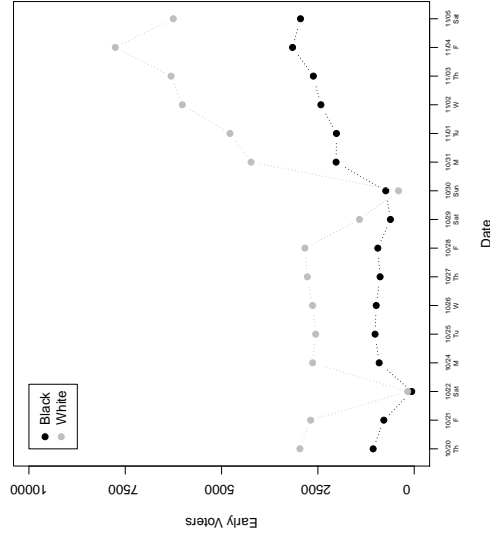
(c) 2012



(d) 2009



(e) 2011



overall turnout in midterm elections is typically much lower than in presidential elections (e.g., McDonald and Popkin, 2001), and we should not be surprised to see lower early voting turnout in 2010 than in 2008 and 2012.

Notwithstanding differences in overall turnout, the panels in Figure 1 make it clear that early voting in North Carolina is used by thousands of voters, many hundreds of thousands in high-turnout elections like those that took place in 2008 and 2012. The point of this is simply to note that early voting in North Carolina is not a fringe phenomenon and that any changes to the state's early voting laws have the potential to affect thousands of voters. We mentioned this earlier, and to get some perspective on the magnitudes of the counts in Figure 1 consider the aforementioned Table 3. This table lists overall election turnout North Carolina for our five elections of interest, and in 2008 and 2012 early voting turnout constituted more than half of overall voter turnout. In contrast, early voters were approximately one-third of all voters in 2010 and around 16 percent of all voters in 2009 and 2011.

Table 3: Overall and early voting turnout

Election	Overall turnout	Early voting turnout	Percent Early
2008	4,353,739	2,419,206	55.57
2009	508,372	85,496	16.82
2010	2,700,383	909,122	33.37
2011	495,296	82,195	16.60
2012	4,542,488	2,567,555	56.52

Note: percentages are reported to four significant figures.

The five panels in Figure 1 report daily counts of early voters, and we can use these panels to understand patterns in temporal variability of early voting in North Carolina. To this end, several patterns are evident in the figure. First, in all five elections pictured in the figure there were disproportionately fewer early voters on weekends than on weekdays; this holds for both black and white early voters. Second, within weekends themselves Sundays saw fewer early voters than Saturdays, again for both black and white voters. Third, on almost every day of early voting, more whites than

blacks voted early; this is consistent with the fact that there are more whites than blacks in North Carolina, and this was evident in the aforementioned Table 2. Fourth, Figure 1 shows that, week-ends notwithstanding, North Carolina early voters tend to vote in the second half of the state's early voting period; however, the matter of first versus second week of early voting (broadly construed insofar as North Carolina does not have exactly a two-week early voting period) is not constant across racial groups. Namely, the white-black gap in early voting turnout appears to increase as the early voting period progresses.

This latter point is particularly noteworthy in light of VIVA's elimination of the first week of early voting in North Carolina. More details on the white-black early voting gap are in Figure 2, which plots white-black differences in early voting counts from the General Elections of 2008 through 2012. To be precise, the differences in Figure 2 are computed by subtracting black early voting counts in Figure 1 from corresponding white counts. When a difference on a particular day is relatively large and positive, then many whites compared to blacks early voted on that day. A white minus black early voting difference that is negative connotes a day on which more blacks cast their ballots early compared than whites.

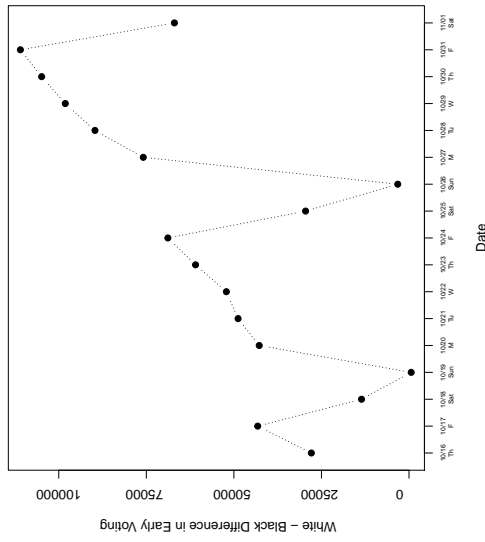
Temporarily ignoring the evident weekend effects, what is clear in Figure 2 is that the five pictured white-black difference sequences in early voting turnout increase in time. In other words, early voting blacks tend to cast their ballots earlier than do early voting whites. Why this phenomenon obtains is beyond the scope of this study, and it would difficult to address this matter with voter file data alone.³³ Regardless, Figure 2 documents that the two largest racial groups in North Carolina have historically voted at different times during past the early voting periods in the state.

Weekends break up the patterns in Figure 2, but even here we see evidence of a changing white-

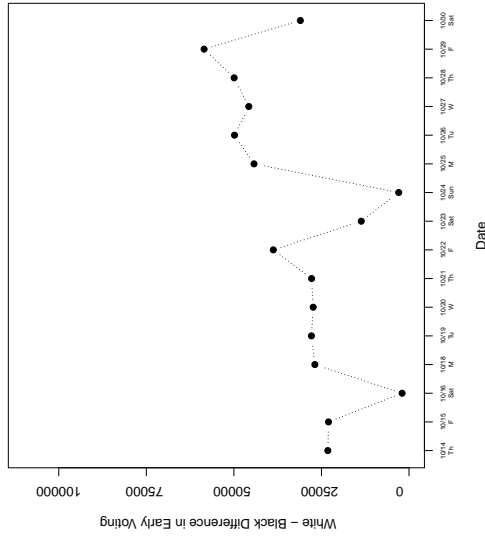
³³One explanation may lie in mobilization efforts carried out by groups such as Democracy North Carolina and the North Carolina NAACP, who have worked with African American congregations as well as the General Baptist State Convention and other churches, to get out the vote as part of an early voting "Souls to the Polls" Project. See "Souls to the Polls," available at <http://nc-democracy.org/get-involved/souls-to-the-polls> (last accessed December 15, 2013).

Figure 2: Daily white-black differences in early voting counts

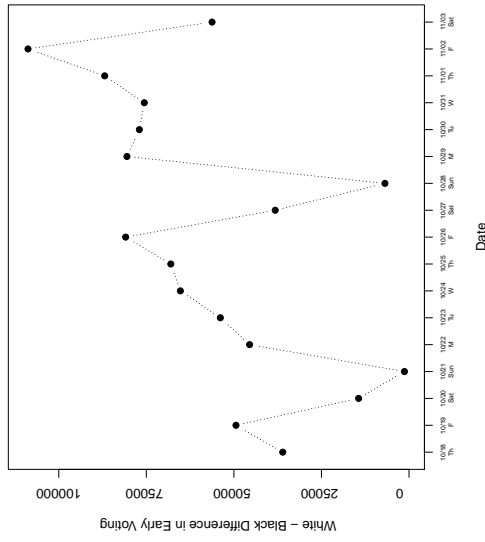
(a) 2008



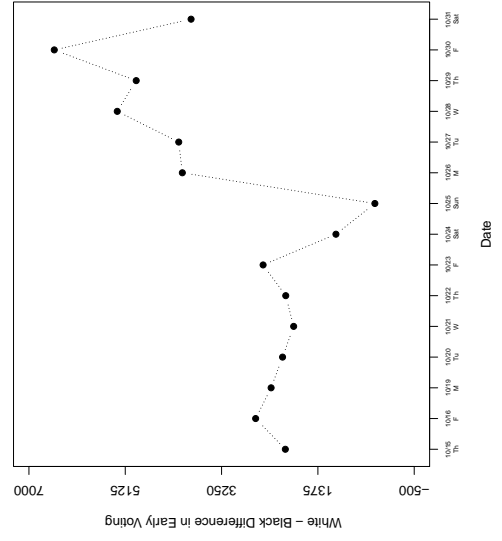
(b) 2010



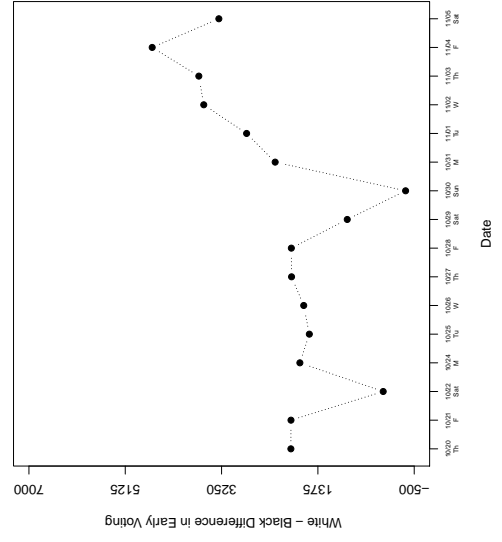
(c) 2012



(d) 2009



(e) 2011



black early voting gap. Comparing when possible the second Saturday of early voting to the first Saturday of early voting or the second Sunday of early voting to first Sunday of early voting shows that the white-black early voting gap is greater in second weekend early voting compared to first weekend early voting. This is consistent with the idea that black early voters in North Carolina tend to vote earlier in the allotted period than white early voters. Herron and Smith (2014) find evidence of similar weekend early voting effects in Florida in the 2008 and 2012 General Elections.

Another perspective on the difference between black and white early voting rates in North Carolina can be gleaned by considering the fraction of a day's early voting electorate that was black (similarly, white) and then comparing this fraction to the fraction of blacks (similarly, whites) in a corresponding registered voter pool. With this in mind, for our five elections of interest Figure 3 plots for each early voting day the composition of the early voting electorate that is black and the composition that is white. On each early voting day these compositions sum to a number close to one because there are North Carolina early voters in all five of our elections of interest who were neither black nor white. The panels in Figure 3 contain dashed horizontal lines that indicate the fraction of the North Carolina registered voter pool that was black and white based on an appropriate voter file. The dashed lines reflect the black and white registered voter percentages in Table 2.³⁴

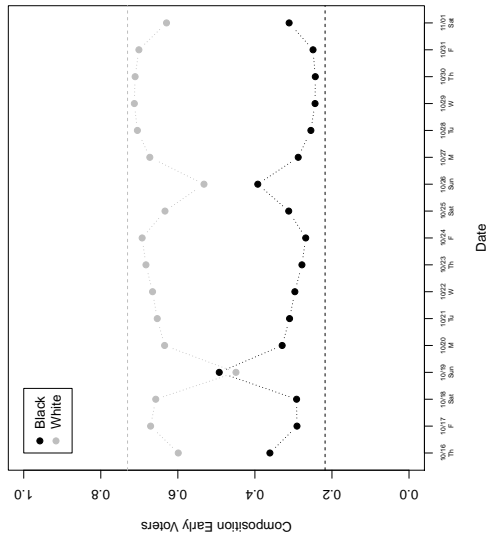
Several things are apparent in Figure 3. First, in presidential election years—2008 and 2012—the early voting electorate in North Carolina was disproportionately black on every day of early voting. In Figures 3a and 3c, that is, every black dot lies above its corresponding dashed line and every white dot below its dashed line. In the 2010 General Election, which was a general election yet did not feature a presidential contest, this pattern does not hold. In 2010, whites were disproportionately represented among early voters up until the end of the early voting period, when blacks became the disproportionately represented group.³⁵

³⁴Table 2 shows that within the North Carolina registered voter pool fraction black increased slightly in 2013. This is incorporated in the placement of the dashed line in Figure 3c although visually speaking the height of this line is very similar to the heights of the dashed lines in Figures 3a and 3b.

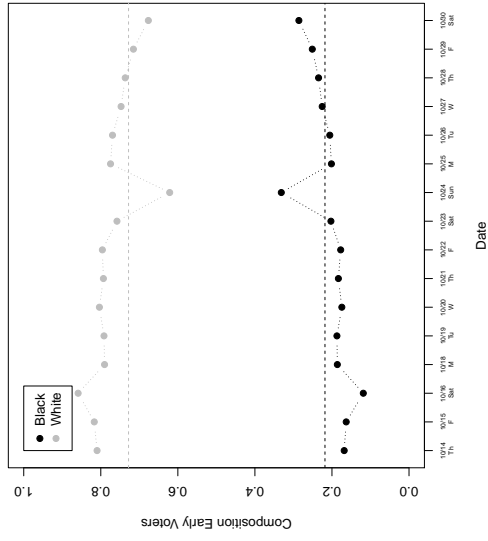
³⁵We computed difference-in-proportion z -statistics for each black percentage in Figure 4a, 4b and 4c. All the z -

Figure 3: Racial composition of early voting electorates

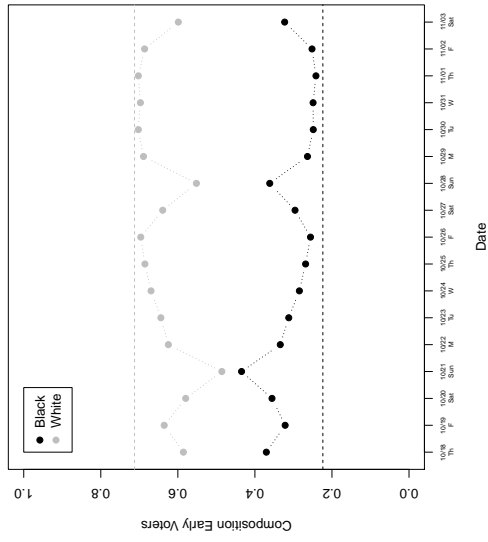
(a) 2008



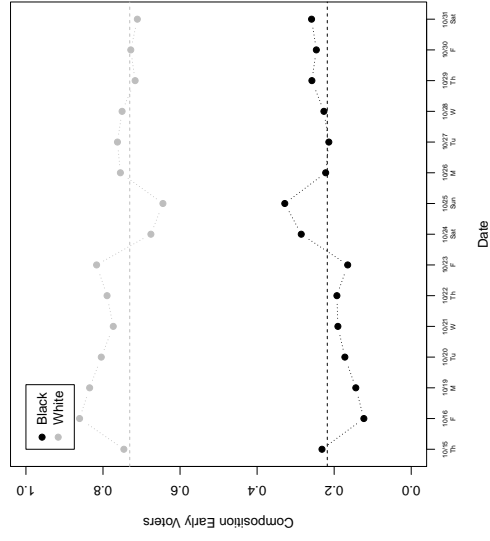
(b) 2010



(c) 2012



(d) 2009



(e) 2011

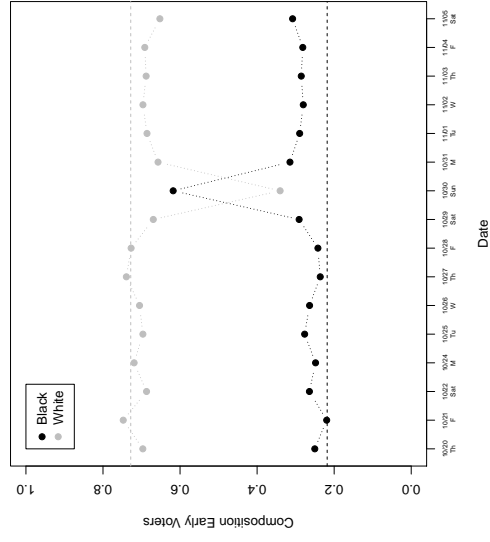


Table 4: Fraction black at beginning and end of early voting period

Election	Fraction Black		Difference	z-statistic
	first Thursday	last Friday		
2008	0.3611	0.2492	0.1120	69.83
2009	0.2316	0.2463	-0.01463	1.877
2010	0.1683	0.2510	-0.08277	32.83
2011	0.2503	0.2815	-0.03117	3.888
2012	0.3703	0.2518	0.1186	82.01

Note: results are reported to four significant figures.

Second, the presence of weekend effects in Figure 3 is evident: the early voting electorate in North Carolina is disproportionately black on weekends compared to the registered voter pool in North Carolina. Third, in the presidential election years of 2008 and 2012 the black fraction of the early voting electorate gradually decreased over the course of the early voting period. There were only 17 days in the 2008 and 2012 early voting periods, of which five days were weekends, and thus we compare in Table 4 fraction black on the first day of early voting with fraction black on the last non-weekend day of early voting. The table shows that the first weekday-last weekday drop in fraction black of the early voting electorate was statistically significant at conventional confidence levels in four of our elections studied with negative drops in 2008 and 2012 (presidential years) and the opposite in 2010 (midterm election).

Fourth and finally, the dashed lines in the five panels of Figure 3 are notable insofar as they show that black early voters in 2008 and 2012 were overrepresented compared to blacks in the North Carolina voter pool and that white early voters were underrepresented. This pattern of black and white over and under representation obtains on every early voting day in 2012 and has been found in other contexts as well (e.g., Herron and Smith, 2012). In 2008 there were some days on which the fraction of white early voters was slightly larger than the fraction of white registered voters in the state, but, as in 2012, black early voters were disproportionately overrepresented on statistics—those that are positive because the black percentage of early voters lies above a dotted line and in addition those that are negative—are significantly different than zero at conventional confidence levels.

every day of early voting.

Race and timing of voter registration

We earlier noted that VIVA altered the voter registration rules in North Carolina. Prior to this legislation's enactment, eligible North Carolina residents could register to vote during early voting and even on Election Day itself; election Day registrants were not allowed to vote on the day they registered, however. Per VIVA, however, registration and subsequent voting during the North Carolina's early voting period—what is often known as “Same Day Registration”—is no longer permitted, and eligible residents in the state who want to register to vote in a General Election must register no later than 25 days prior to Election Day.

Are VIVA's changes to voter registration protocols in North Carolina race-neutral? Our initial look at this question considers VIVA's elimination of the opportunity for eligible North Carolina residents to register to vote in the 25 days prior to and including Election Day. For the General Elections in 2008, 2010, and 2012, Table 5 describes the total number (see the “All” row in the table) of North Carolina voter registrations in the year before the election as well as the total number of registrations in the 25 day window beforehand. Table 5 also breaks down these registrations into black and white categories; for each election, it reports the percentages of a given registration pool that these two racial group constituted.

One notable implication of Table 5 is easily summarized: before the elections of 2008-2012, black voter registrations were disproportionately represented in the 25 day period before Election Day. For example, before the 2012 General Election black voters constituted approximately 28.74 percent of all registrations in the year prior to Election Day in 2012; in the 25 day period before this day, however, black registrations made up around 30.35 percent. The black-white registration gaps present in Table 5 all have the same direction, implying that blacks register more frequently in the periods immediately before elections.

Table 5: Voter Registrations before General Elections

Election	Group	Total		Percentage	
		Year Prior	25 Days Prior	Year Prior	25 Days Prior
2008	All	881,831	177,103	—	—
	Black	275,153	58,652	31.20	33.12
	White	503,150	95,398	57.06	53.87
2009	All	194,089	14,707	—	—
	Black	38,002	3,072	19.58	20.89
	White	13,7911	10,404	71.06	70.74
2010	All	263,731	46,475	—	—
	Black	52,940	11,291	20.07	24.29
	White	187,075	29,126	70.93	62.67
2011	All	242,905	21,773	—	—
	Black	54,304	5,209	22.24	23.92
	White	167,625	14,378	69.01	66.04
2012	All	811,052	173,923	—	—
	Black	233,072	52,790	28.74	30.35
	White	463,733	90,958	57.18	52.30

Note: the percentage columns in the table refer to the fraction of a registration cohort that a particular racial group comprises. Percentages are reported to four significant figures.

For all three elections in Table 5 we carried out difference-in-proportion tests between fraction black of the registration pool in the 25 days before an election and fraction black in the 340 days prior to beginning of the window that starts 25 days before an election. For example, according to our voter files in the period before the 2012 General Election there were 173,923 total registrations in North Carolina, of which fraction black was approximately 0.3035; these two numbers are in Table 5. In the 340 days prior to the 25 day window, there were 637,129 voter registrations in North Carolina, of which fraction black was approximately 0.2830. The difference between these two proportions is approximately 0.0205, and this difference has a z -statistic that is approximately 16.8, i.e., is statistically significant at conventional confidence levels. In all five elections covered in Table 5, we find statistically significant differences between black registration rates 25 days before and election and preceding 340 day window (calculations available from the authors), and we thus conclude from Table 5 that the black voter registration rate is not constant in the year prior

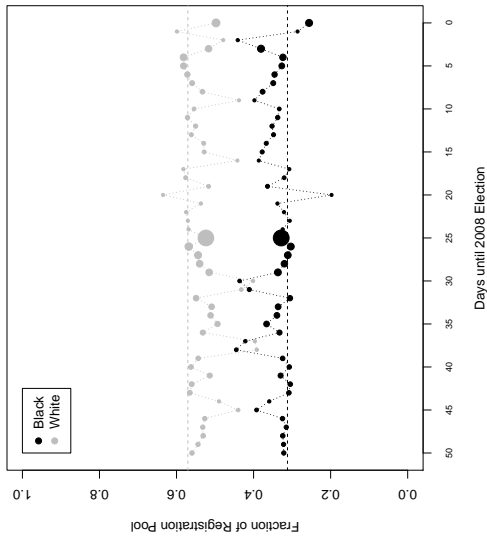
to an election and in fact increases in the 25 day window prior to Election Day.

The language of VIVA focuses attention on the 25 day period before an election, but our registration data allow us to compare daily black and white registration rates. For both blacks and whites and for each election of interest we calculate using the September, 2013, voter file the number of registrations on each day in a 51 day window up to and including Election Day itself. Then, for each day we calculate the racial composition of the day's registration pool by dividing the number of blacks who registered on that day by the number of that day's registrations; this yields a daily time series of black registration compositions. We do the same for whites, thus generating a daily series of white registration compositions. We then plot our black and white sequences in Figure 4, and this figure contains five panels, each of which is associated with an election in North Carolina. The orientation of the panels in Figure 4 is identical to that seen earlier, the various dots in the panels denote race-based registration compositions, and the sizes of the dots are proportional to the overall number of registrations. Each panel in Figure 4 also contains two dashed lines, and these lines reflect the fractions of black and white registrants who registered in North Carolina in the year before a given Election Day.

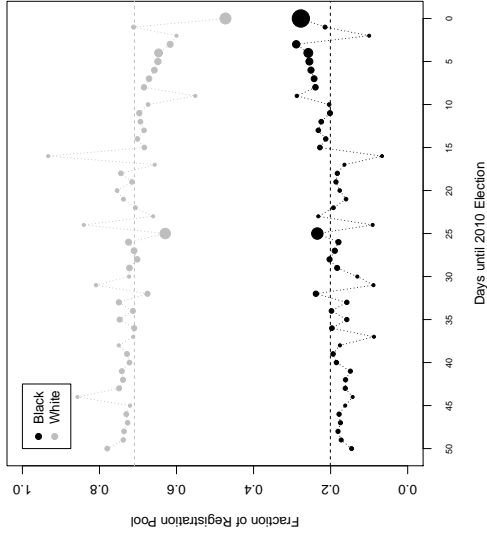
Consider Figure 4a, which describes trends in registrations that occurred before the 2008 General Election. The 2008 early voting period was 17 days long, and this period is particularly notable because, pre-VIVA, eligible North Carolina residents could register to vote during early voting and then cast a ballot. Figure 4a shows that on most early voting days in 2008, black registrations were disproportionately overrepresented and white registrations, underrepresented. This conclusion follows from the fact that the black-colored dots in Figure 4a are for the most part above the dashed black line and the grey dots, below the grey dashed line. We observe similar phenomena in the General Elections of 2010 and 2012, where the black dots in Figures 4b and 4c are above corresponding dashed black lines and grey dots, below grey lines. With respect to the off-year elections in 2009 and 2011, the patterns are more mixed, particularly in 2009, but on average as shown in Table 5 registrations close to Election Day were disproportionately black.

Figure 4: Daily race-based compositions of North Carolina registrants

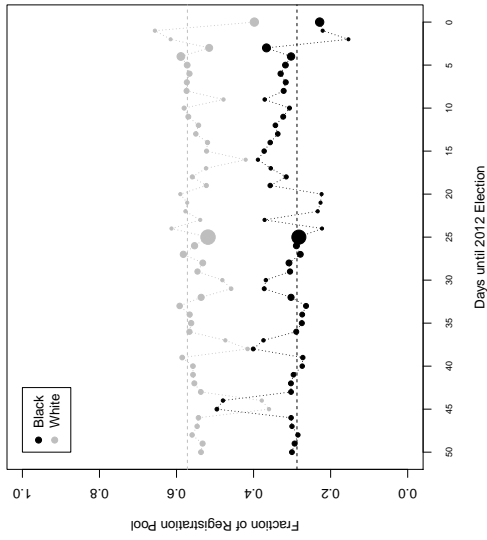
(a) 2008



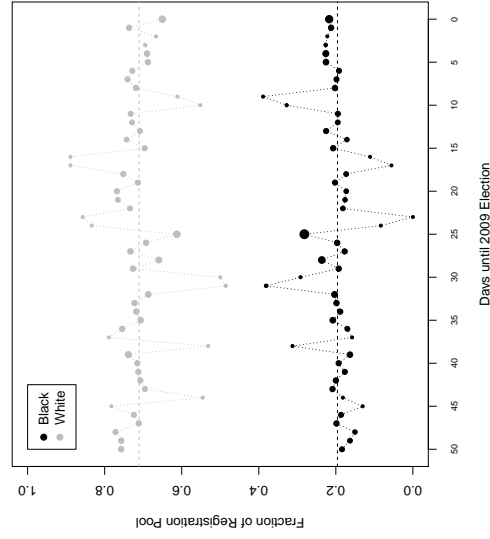
(b) 2010



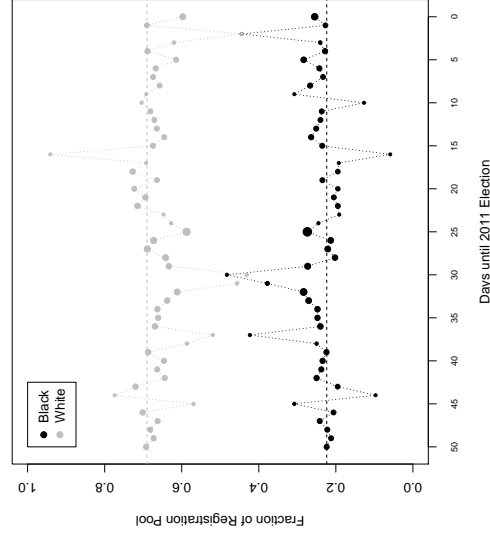
(c) 2012



(d) 2009



(e) 2011



Note: each dot represents a day's worth of voter registration for a racial group. Dot sizes are proportional to the number of registrations, and the two dots for each day in the figure do not in general sum to one because there are racial groups in North Carolina beyond black and white.

Race and availability of voter photo identification

Our next look at VIVA considers the matter of voter photo identification. This subject is the focus of a variety of existing research projects (e.g., de Alth, 2008; Barreto et al., 2009; Mycoff, Wagner and Wilson, 2009; Sobel and Smith, 2009; Dropp, 2013), and here we contribute to the literature a brief analysis of the availability of identification to currently registered North Carolina residents.

Prior to the passage of VIVA, North Carolina did not have a voter identification requirement. However, VIVA mandates that starting in 2016 all in-person voters in North Carolina show photo identification prior to casting a ballot, and VIVA contains a list of identification forms that are acceptable for this purpose. This list includes the following eight types of identification: North Carolina drivers license; nonoperator identification card; United States passport; United States military identification; Veterans Identification card; tribal enrollment card recognized by the United States; tribal enrollment card recognized by the state of North Carolina; and, drivers license or nonoperator identification card issued by Washington, D.C., or a state other than North Carolina as long as the date of a voter's registration was within 90 days of an election (see p. 2 of VIVA for complete details on these eight forms of identification). In considering our objective of assessing the extent to which VIVA is race-neutral, it is natural to examine rates of identification ownership by racial group in North Carolina.

To the best of our knowledge, there are no publicly available lists of which residents of North Carolina (not to mention which registered voters in North Carolina) have passports, military identification form, veterans identification forms, tribal enrollment forms, or drivers licenses issued by states other than North Carolina. However, the North Carolina SBOE has created lists of registered voters in the state who do not appear to have North Carolina drivers licenses or nonoperator identification cards, and we rely on these lists when analyzing rates of identification ownership among North Carolina registered voters.

We discussed earlier when introducing our data sources the SBOE's attempts to determine rates

of voter identification ownership, and here it suffices to note that during the first half of 2013 the SBOE attempted to match names on a voter file with names of North Carolina residents who hold drivers licenses or nonoperator identification cards; recall that these two forms of identification are managed by the North Carolina DMV. The SBOE carried out such matching exercises multiple times, and it published matching reports three times, once in January, 2013, once in March, 2013, and once in April, 2013. Each matching exercise produced a list of what are called unmatched registered voters. To be clear, these registered voters are individuals who are registered to vote but appear not to have a drivers license or a nonoperator identification card. The lists do not contain any voters whose status is “denied” or “removed.”

In what follows we analyze unmatched registered voter lists produced by the SBOE’s January and April matching exercises. These were the first and last (as of this paper’s writing) exercises, and the March list contains fewer names than the January list but more names than the April list. The January and April unmatched voter lists are publicly available, and they differ in the criteria used to determine whether a match exists between a given registered voter and an individual whose name appears on a list of North Carolina residents who have, say, drivers licenses. For example, consider a registered voter in North Carolina whose first name, last name, and driver’s license number on record with the SBOE exactly match the first name, last name, and license number, respectively, associated with a drivers license issued in North Carolina. The April, 2013 matching exercise would presume that said registered voter was issued a drivers license in North Carolina.

The example above is arguably not particularly complicated because it uses exact matches in ostensibly important fields (name and drivers license number) to link a registered voter in North Carolina with a drivers license. Indeed, perhaps the primary dilemma in matching records across lists of individuals is determining the tightness of criteria for asserting the existence of a match. To illustrate this point, the April matching exercise carried out by the North Carolina SBOE also assumes that a match exists between a registered voter and a given drivers license if the voter and license share exact first names, last names, and dates of birth; if they share exact first names, last

names, and zip codes; or if the two first names sound similar (this determined by an algorithm which assesses similarity in names based on sound), the last names match exactly, and dates of birth match exactly.

The January, matching exercise used criteria that were much tighter than those used in the April exercise. In its April report however, the SBOE writes as follows: “With [the] April 2013 analysis, the SBOE is (sic) expanded its matching criteria to allow for additional variation in voters names and data entry errors on driver license number, social security number or date of birth in either of the databases” (p. 5). The April report provides 29 criteria such that, if any criterion is satisfied, a match is said to exist between a registered voter in North Carolina and a drivers license or nonoperator identification card issued in the state.

The top portion of Table 6 (“Active and inactive registered voters”) contains a black-white racial breakdown for the January and April unmatched registered voter lists. Since the latter exercise had looser matching requirements, by construction it produced (weakly) fewer unmatched registered voters.

Table 6: Unmatched registered voters

List	Total	Black	White	Percent Black	Percent White
<i>Active and inactive registered voters</i>					
January	612,955	191,104	348,141	31.18	56.80
April	318,643	107,681	172,613	33.79	54.17
<i>Excluding inactive voters</i>					
January	506,763	158,118	287,093	31.20	56.65
April	255,160	87,721	137,429	34.38	53.86

Recall from Table 2 that blacks constituted approximately 22 percent of registered voters in North Carolina as of September, 2013. With this in mind, the implication of the top portion of Table 6 is straightforward: black registered voters were disproportionately represented among registered voters with neither drivers licenses nor nonoperator identifications. This conclusion holds regardless of whether one uses the relatively tight January, criteria for matching or the looser, April criteria.

Earlier we noted that the North Carolina SBOE sometimes classifies registered voters as denied or removed, indicating that such voters are not eligible to vote. Other registered voters are classified as “active,” indicating for the most part that they are regular participants in North Carolina elections, and still another category of registered voters is known as “inactive.” An inactive registrant is legally registered and can vote, but his or her status indicates that a North Carolina county elections office has concerns about a valid address for said voter. In particular, a voter who has not had contact with a county elections office for two General Elections cycles and who did not respond to a mailed contact request is placed on inactive status.³⁶ We mention the existence of active and inactive status designations because one might be concerned that the January and April lists of unmatched voters are confounded by the presence of many inactive registrants among the unmatched individuals in the top portion of Table 6; perhaps these individuals tend to participate infrequently in all parts of social and political life, i.e., voting, having a drivers license, and so forth. To see if such inactivity confounds our unmatched registered voter results, consider the lower portion of Table 6 (“Excluding inactive voters”).

If we exclude inactive voters, the fraction of black North Carolina registrants that lacks drivers licenses and nonoperator identification cards increases albeit very slightly, i.e., from approximately 33.79 percent in April, 2013, to 34.38 percent. These two percentages are qualitatively practically identical, and thus Table 6 shows that the overrepresentation of black registrants among registrants who lack drivers licenses and nonoperator identification cards is not a function of an overrepresentation of inactive registered voters among unmatched registered voters.

We now consider whether, and if so how, unmatched registered voters from the aforementioned January and April lists participated in the 2012 General Election. It is theoretically possible that all of these individuals did not vote in this election, and it is also theoretically possible that these

³⁶For a discussion of inactive status as well as issues surrounding removal from the list of registered voters in North Carolina, see “Roll Call: Answering Questions about Voter Removal,” *Raleigh Public Record*, August 21, 2012, available at <http://raleighpublicrecord.org/news/2012/08/21/roll-call-answering-questions-about-voter-removal/> (last accessed December 8, 2013).

individuals tend to vote absentee, which in principle could alleviate the concern that they lack some forms of VIVA-acceptable identification. According to VIVA, applications for absentee ballots require, “One or more of the following in the order of preference:” a North Carolina drivers license number; a nonoperator identification card number; and the last four digits of an applicant’s social security number (see p. 9 of VIVA for complete details). We cannot assess how an absentee ballot request containing *only* a social security number would be handled by a county elections official in North Carolina. But, it nonetheless appears that voters may be able to participate actively in North Carolina elections without providing photo identification if they vote absentee.³⁷

With this in mind, we merged the January and April lists of unmatched voters with our September, 2013, voter file. This file contains records of who voted in the 2012 General Election, and results for this merge are in Table 7. An unmatched voter who has a record in the September voter file but no voting method for the 2012 General Election is assumed to have abstained from voting in this election.³⁸

Table 7 addresses two questions. First, do the January and April unmatched voter lists consist predominantly of non-voters? The answer here is no. While the 2012 General Election abstention rates—approximately 47 percent and approximately 56 percent—for our two sets of unmatched voters are greater than the then North Carolina abstention rate—approximately 31 percent—in November, 2012, many tens of thousands of unmatched voters participated in the 2012 General Election.

Second, we noted that VIVA’s voter identification requirements for absentee voting may be less

³⁷For exceptions related to first-time voters, see the SBOE publication titled “Voter ID Requirements in North Carolina,” available at http://www.ncsbe.gov/ID_requirements_NC80c5.pdf?id=2614 (last accessed December 18, 2013).

³⁸To merge the September, 2013, voter file and its 2012 General Election participation codes with an unmatched voter list, we compared county voter identification numbers, county names, and North Carolina voter identification numbers. If these three fields matched across records in the September file and an unmatched voter list, then we treat an unmatched voter as having a 2012 General Election participation code. The January unmatched voter file contains 7,641 individuals who registered on or after Election Day in 2012 (November 6) and the April file, 8,916 such individuals. These individuals are not part of the 2012 General Election analysis in Table 7. Also not part of that table are one January unmatched voter and three April unmatched voters who have invalid registration fields in their respective unmatched voter files.

Table 7: Participation in the 2012 General Election by matching status

Group	Election Day		Early		Absentee		Abstain	
January	107,826	17.81	165,452	27.33	15,074	2.490	282,505	46.67
April	47,475	15.33	79,183	25.57	7,770	2.509	171,880	55.50
All	1,721,587	25.93	2,556,145	38.50	218,469	3.291	2,098,292	31.60

Note: reports counts and percentages based on the total numbers of January and April unmatched voters ignoring those who registered on or after November 6, 2012. Percentages are reported to four significant figures and do not sum to 100 because not all voting methods are listed in the table. The table is based on voters whose participation codes are listed in the September, 2013, voter file as “In-Person,” “ABS-1STOP,” and “ABS-MAIL.” The January unmatched group of registrants includes 30,683 (approximately 5% of the list) individuals whose voter registration numbers and counties do not appear in the September, 2013, voter file; the comparable April list count of unmatched voters who do not appear in the September voter file is 1,554 (approximately 0.5 percent of the list). To calculate the abstention fraction for all registered voters we use the official number of registered voters (6,639,131) in North Carolina as of the 2012 General Election.

stringent than those associated with in-person early or in-person election day voting. Regardless of one’s interpretation of VIVA’s language regarding absentee identification, Table 7 shows that unmatched voters are not heavy users of absentee voting. Rather, they are heavy users of both forms of in-person voting noted here. Thus, potential leniency in voter identification requirements as they pertain to absentee voting will not alleviate the voter identification problem that is implied by Table 7.

Our findings, that registered voters identified by the North Carolina DMV as not having drivers licenses or nonoperator identification cards are disproportionately black, are consistent with other scholars’ results that consider race and voter identification. For example, drawing on survey data from Indiana, Barreto et al. (2009) find that blacks and those of lower socio-economic status were disproportionately likely to lack valid forms of identification, and Hood III and Bullock III (2012) find that minorities registered to vote in Georgia were less likely than whites to have a required government-issued photo ID. See also Barreto, Nuño and Sanchez (2007) and Gaskins and Iyer (2012); our analysis extends these results to North Carolina, and it complements the literature’s

survey-based findings on the relationship between voter identification possession and race.

Race, Voter identification, and the 70 year special dispensation

We have thus far shown that black registrants in North Carolina are disproportionately represented among registered voters in the state who lack drivers licenses and nonoperator identification forms. VIVA, however, provides a limited age-related exemption to its identification requirements, and this exemption reads as follows: “any voter having attained the age of 70 years at the time [the voter presents a form of identification] at [a] voting place shall be permitted to present an expired form of [an acceptable type] that was unexpired on the voter’s 70th birthday.”³⁹ In addition, for registered voters at least 70 years old as well as for legally blind, homeless, and certain classes of registered voters who are unable to obtain a drivers license, VIVA waives the fee for a special voter identification card.

Might VIVA’s special treatment of older registered voters ameliorate the overrepresentation of blacks among North Carolina registrants who lack some types of VIVA-acceptable identification? Or, in contrast, does the 70 year dispensation exacerbate the racial imbalance that we have discussed above? One way to address these questions is to compare the black and white fractions of North Carolina registered voters who are at least 70 years old. Of course there are in North Carolina more white registered voters who are at least 70 years old compared to black registered voters of this age, but this is simply a reflection of the fact that there are more whites than blacks in the state. Thus, we consider here whether the composition of the 70 years plus registered voter pool is similar to the composition of the North Carolina registered voter pool in general. See Table 8, and note that this table uses all three of the voter files discussed earlier.

The top portion of Table 8 (“All registered voters”) describes the composition of three North Carolina registered voter pools, one per each voter file used here. Note that each of the three

³⁹See VIVA, Part 3, Section 3.1 of North Carolina Session Law 2013-381.

Table 8: Registered voters and registered older voters in North Carolina

Date	Total at least 70	Percent Black	Percent Black at least 70	Percent White	Percent White at least 70
<i>All registered voters</i>					
February, 2009	732,864	21.61	15.05	73.28	83.02
February, 2011	768,513	21.64	15.14	73.03	82.69
September, 2013	832,767	22.47	15.33	70.98	81.99
<i>Excluding inactive voters</i>					
February, 2009	704,340	21.61	14.95	73.28	83.11
February, 2011	730,897	21.64	15.15	73.03	82.70
September, 2013	784,289	22.47	15.26	70.98	82.11

Note: based on three voter files, each of which is associated with one of the dates in the table. The counts in the table ignore all records flagged in a voter file as removed or denied, and they also ignore records that have ages greater than 100 years. Percentages are reported to four significant figures.

registered voter pools summarized in Table 8 includes over 700,000 individuals who are at least 70 years of age. Insofar as there were approximately 6.4 million registered voters in North Carolina as of September, 2013 (see Table 2 for this number), VIVA’s exemption for older voters affects as of September, 2013, approximately 13 percent of all registered voters in North Carolina.⁴⁰

Table 8 compares the composition of the North Carolina registered voter pool with the composition of this pool restricted to registrants of at least 70 years of age. We can make three such comparisons of this nature, one for each of our voter files, and the results of the comparisons are straightforward: whites are disproportionately represented among registered voters who are at least 70 years old. For example, in February, 2009, the North Carolina registered voter pool was approximately 73.28 percent white. However, among registered voters who were at least 70 years

⁴⁰Our North Carolina voter files contain a number of voters whose recorded ages do not appear meaningful. For example, the September, 2013, includes 10,416 registered voters whose age is listed as 113 years; the explanation for this group of registrants lies in the fact that “[North Carolina] [v]oters who registered prior to the implementation of the [North Carolina] statewide voter registration database system and for whom the county board of elections had no record of their full date of birth, were given a date of birth in the [registration] system of 01/01/1900.” See p. 7 of the North Carolina SBOE report noted in fn. 29. The September, 2013, voter file also includes one registrant whose listed age is 137 and one with a reported age of 158. Since the counts in Table 8 are based on a maximum age of 100, none of these problematic ages confounds the numbers in the table.

old, the North Carolina registered voter pool was approximately 83.02 percent white.

It seems intuitively plausible that older registrants in North Carolina are more likely to have an inactive status than younger registrants, and in theory this could confound the associations described in Table 8 between age and race. Perhaps the overabundance of white registrants in the top portion of the table includes primarily inactive voters, in which case one might argue that the size of such a group is not particularly noteworthy. With this in mind, the lower portion of Table 8 (“Excluding inactive voters”) reports results about age and race, this time excluding officially inactive registered voters. The racial percentages in the lower part of the table are not identical to those in the top half, but they are nonetheless qualitatively very similar. Indeed, the implications of both sections of Table 8 are identical: whites are overrepresented, and blacks underrepresented, among registered voters in North Carolina who are at least 70 years of age.

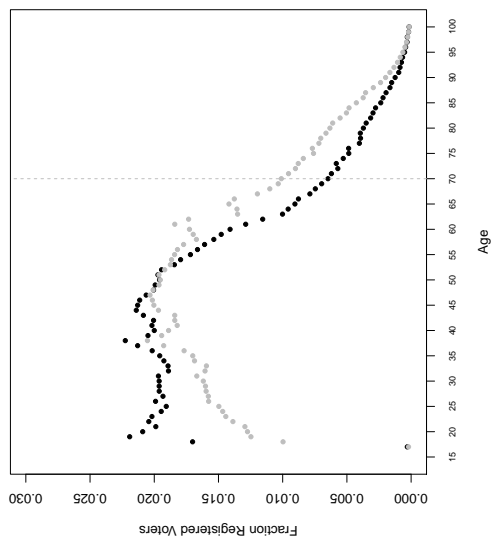
Figure 5 presents another look at the distribution of age among registered North Carolina voters. The figure contains three panels, one corresponding to each of the voter files considered here, and each panel describes the distribution of age among black and among white registrants. In particular, for ages 17 to 100 the black points in the three panels of Figure 5 describe the fraction of all black registered voters who are of a given age; the grey-colored points describe the same thing but for white registered voters. The sum of the heights of the black points (and similarly the white points) in each panel is one. Finally, each panel in Figure 5 contains a dashed vertical line at 70 years, and this reflects VIVA’s 70 year age dispensation.

The three panels in Figure 5 are not appreciably different, and this is not particularly surprising. It would be somewhat peculiar if, say, the distribution of age across North Carolina registered voters had changed dramatically between 2009 and 2013.

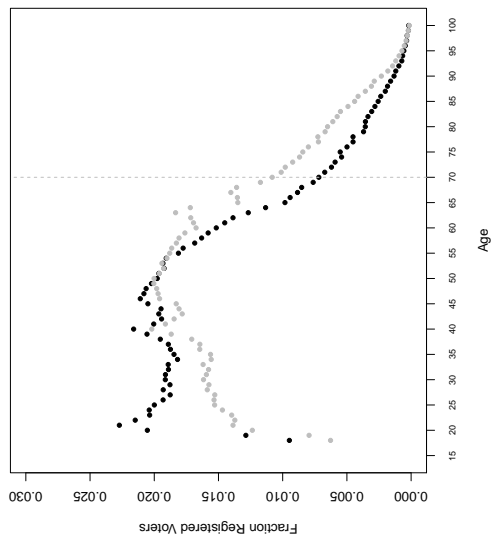
Figures 5a-5c show the following. Among black registrants, there are more relatively younger voters than older voters. This is evident in the heights of the black dots that correspond to lower ages, say, ages under 40. Among white registrants, though, one observes the opposite pattern, namely, that there are more older registrants than younger one. Average ages follow a similar

Figure 5: Racial composition of registered voter pool

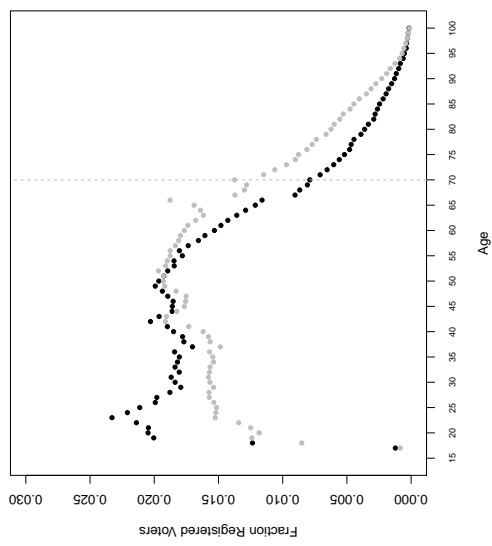
(a) February, 2009



(b) February, 2011



(c) September, 2013



pattern. In September, 2013, for example, the average age among black registrants was approximately 44.76 ($s \approx 17.26$), and the corresponding white registrant average, approximately 49.55 ($s \approx 18.03$).⁴¹ This pattern—white registrants in North Carolina being on average older than black registrants—obtained in February, 2009, and in February, 2011, as well (results available from the authors).

In sum, the composition of registered voters in North Carolina who are at least 70 years of age is disproportionately white, and there is also a greater proportion of white registered voters who are 70 years of age and older compared to black registered voters. We thus find that VIVA's photo identification dispensation for older, registered voters will likely only exacerbate the disparity across racial groups we have identified with respect to drivers licenses and nonoperator forms of identification. This dispensation is not race-neutral as it effectively lowers the cost of in-person voting for a larger proportion of white registered voters than black registered voters.

Race and Youth Preregistration

Related to the matter of registered voters age 70 and older is the question of very young registrants. Pre-VIVA, North Carolina allowed preregistration of 16 and 17 years olds, but VIVA has changed this.⁴² Namely, under this new law no one can register to vote in North Carolina who will not be 18 years old on the date of the next General Election. It is thus natural to consider whether preregistrants in North Carolina are representative of registered voters in the state, and we now turn to this issue.⁴³

North Carolina voter files do not contain birth dates. They do, however, contain an age field,

⁴¹These averages are based on registrants whose ages are reported to be between 16 and 100 years. The black and white averages are significantly different at conventional confidence levels.

⁴²VIVA was implemented in stages, and the part of the law dealing with preregistration became effective on September 1, 2013. VIVA states in Section 12.1.(j): "This section [on preregistration] becomes effective September 1, 2013. All voter preregistrations completed and received by the State Board prior to that date shall be processed and those voters registered, as appropriate."

⁴³The literature on preregistration is not large and in general does not disaggregate registration rates down by race. For an example see McDonald and Thornburg (2010).

and Table 9 contains the racial breakdown of North Carolina preregistrants who are listed as 16 or 17 years old as of September, 2013. The table ignores all preregistrants whose status is removed or denied, and it includes 6,601 total preregistrants.⁴⁴ The table does not have separate sections for active and inactive preregistrants because all preregistrations aged 16 and 17 are listed as active in the September, 2013, voter file.

Table 9: Racial composition of preregistrants 16 and 17 years of age

Group	Count	Percent
Black	1,778	26.94
White	3,880	58.79

Note: based on 6,601 preregistrants ignoring those listed as denied or removed as of September, 2013. Percentages are reported to four significant figures and do not sum to 100 because of the presence of other racial groups in North Carolina.

We saw in Table 2 that blacks constituted approximately 22 percent of the North Carolina registered voter pool as of September, 2013. In contrast Table 9 reveals that blacks constituted approximately 27 percent of all preregistrants as of September, 2013, indicating that 16 and 17 year preregistration was used prior to VIVA disproportionately by blacks. The elimination of preregistration, except for those who will be old enough to vote in an upcoming election, is thus another feature of VIVA that will have disparate affects across the two main racial groups in North Carolina.

Conclusion

With the passage in August, 2013, of the Voter Information Verification Act, popularly known as VIVA, North Carolina altered its electoral laws in many ways. Among other things, VIVA shortened the early voting period in North Carolina; eliminated the opportunity for eligible residents of North Carolina to register to vote in the days immediately prior to an election; imposed

⁴⁴The September voter file contains five individuals whose listed age is under 16. We ignore these five preregistrants.

a photo identification requirement for in-person voting; and, eliminated youth preregistration except for those who will be eligible to vote in the next election. Had these changes taken place before the Supreme Court ruled in *Shelby County v. Holder* that Section 4 of the Voting Rights Act is unconstitutional, they would have triggered federal oversight because 40 of North Carolina's 100 counties were subject pre-*Shelby* to preclearance. No such oversight occurred in late summer, 2013, though, as only a few weeks prior to VIVA's passage the United States Supreme Court struck down Section 4 of the VRA.

Our study indicates that VIVA will have disparate effects on black voters in North Carolina. Specifically, we find that in presidential elections the state's black early voters have traditionally cast their ballots disproportionately often in the first week of early voting, a week eliminated by VIVA; that blacks disproportionately have registered to vote during North Carolina's early voting period and in the run-up to Election Day, something now prohibited by VIVA; that VIVA's photo identification provision falls disproportionately on registered blacks in North Carolina; that the special identification dispensation for North Carolina voters who are at least 70 years old disproportionately benefits white voters; and, that prior to the implementation of VIVA young blacks were disproportionately more likely than whites to avail themselves of the opportunity to preregister to vote.

As of this paper's writing, the lawsuits filed against VIVA are not scheduled to go to trial until July, 2015.⁴⁵ The next major election in North Carolina takes place in November, 2014, and the United States Senate seat currently held by Kay Hagan will be at stake. Whether the various provisions in VIVA will affect voter registration and turnout remains to be seen, and election data post-2014 will be able to shed light on this important subject. Until then, our research—which draws entirely on public data from the state of North Carolina—reveals how this omnibus law will have a disparate impact on minority political participation.

⁴⁵See, for example, "Update: Challenges to N.C. voting law to go to trial in 2015," *The News & Record*, December 12, 2013, available at http://www.news-record.com/news/government/article_81c21220-6355-11e3-aa6c-0019bb30f31a.html (last accessed February 7, 2014).

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