

2020 WL 11763675 (S.D.Tex.) (Expert Report and Affidavit)
United States District Court, S.D. Texas,
Laredo Division.

TEXAS ALLIANCE FOR RETIRED AMERICANS, Sylvia Bruni, DSCC, and DCCC, Plaintiffs,

v.

Ruth HUGHS, in her official capacity as the Texas Secretary of State, Defendant.

No. 5:20-cv-128.

August 4, 2020.

Expert Declaration of Maxwell Palmer, Ph.D.

Name of Expert: Maxwell B. Palmer, Ph.D.

Area of Expertise: Employment & Vocational >> Teachers, Instructors & Educators

Area of Expertise: Social Sciences & Government >> Political Science

Representing: Plaintiff

Jurisdiction: S.D.Tex.



I, Dr. Maxwell Palmer, am over the age of 18, have personal knowledge of the facts stated in this declaration, and can competently testify to their truth.

1. My name is Maxwell Palmer. I am currently an Assistant Professor of Political Science at Boston University. I joined the faculty at Boston University in 2014, after completing my Ph.D. in Political Science at Harvard University. I teach and conduct research on American politics and political methodology.

2. I have published academic work in leading peer-reviewed academic journals, including the *American Political Science Review*, *Journal of Politics*, *Journal of Empirical Legal Studies*, and *Perspectives on Politics*, and my book, *Neighborhood Defenders: Participatory Politics and America's Housing Crisis* was published by Cambridge University Press in 2019. I have also published academic work in the *Ohio State University Law Review*. My curriculum vitae is attached to this report. Exhibit A. My published research uses a variety of analytical approaches, including statistics, geographic analysis, and simulations, and data sources including academic surveys, precinct-level election results, voter registration and vote history files, and census data.

3. I have served as a testifying expert witness on numerous cases involving voting restrictions. I testified in *Bethune Hill v. Virginia* before the U.S. District Court for the Eastern District of Virginia (No. 3:14-cv-00852-REP-AWA-BMK); in *Thomas v. Bryant* before the U.S. District Court for the Southern District of Mississippi (No. 3:18-CV-00441-CWR-FKB); in *Chestnut v. Merrill* before the U.S. District Court for the Northern District of Alabama (No. 2:18-cv-00907-KOB); in *Dwight v. Raffensperger* before the U.S. District Court for the Northern District of Georgia (No. 1:18-cv-2869-RWS); and in *Bruni, et al. v. Hughs* before the U.S. District Court for the Southern District of Texas (No. 5:20-cv-35). I worked as a data analyst assisting testifying experts in *Perez v. Perry* before the U.S. District Court for the Western District of Texas (No. 5:11-cv-00360-OLG); in *LULAC v. Edwards Aquifer Authority* before the U.S. District Court for the Western District of Texas (No. 5:12-cv-00620-OLG); in *Harris v. McCrory* before the U.S. District Court for the Middle District of North Carolina (No. 1:13-cv-00949-WO-JEP); in *Guy v. Miller* before the U.S. District Court for the District of Nevada (No. 11-OC-00042-1B); in *In re Senate Joint Resolution of Legislative Apportionment* before the Florida Supreme Court (Nos. 2012-CA-412, 2012-CA-490); and in *Romo v. Detzner* before the Circuit Court of the Second Judicial Circuit in Florida (No. 2012 CA 412).

4. I am being compensated at a rate of \$350/hour for my work in this case. No part of my compensation is dependent upon the conclusions that I reach or the opinions that I offer.

5. I was retained by the plaintiffs in this litigation to offer an expert opinion on racial and partisan patterns in the use of straight-ticket voting in recent Texas elections. I was also asked to offer an expert opinion on the existence of racially polarized voting in Texas.

Straight-Ticket Voting (STV)

6. Analyzing straight-ticket voting patterns requires demographic data and data on the number of straight ticket ballots cast at the same geographic level, such as by county or precinct. However, statewide straight-ticket ballot data is not available at any geographic level; this data is only available from the individual counties.¹

7. To analyze straight-ticket voting patterns, I attempted to collect data on the number of straight-ticket ballots cast in each precinct for the 30 counties with the largest number of total ballots cast in the 2018 general election.² Of these 30 counties, STV data at the precinct level was not available for four counties (Galveston, Bell, Cameron, and Parker).³ Thus, I ultimately collected data for 26 counties.⁴ Table 1 summarizes the demographics of these 26 counties, compared to the rest of the state. Overall, my dataset includes 73% of the statewide CVAP, 81% of the Black CVAP, 76% of the Hispanic CVAP, 67% of white CVAP, and 75% of the total ballots cast in 2018.⁵ I refer to this group of counties as the "Top 26 Counties."⁶

8. Additionally, for the ten counties with the largest number of ballots cast in the 2018 elections (Bexar, Collin, Dallas, Denton, El Paso, Fort Bend, Harris, Tarrant, Travis, and Williamson), I also collected VTD-level data on straight-party ballots cast for the 2014 and 2016 general elections. Together, these counties account for nearly 60% of all ballots cast in the 2018 election.⁷ I refer to this group of counties as the "Top 10 Counties."

Table 1: Demographics of Counties Included in the VTD-Level Analysis

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9. Figure 1 maps the counties including in the dataset using a cartogram, where each county is sized in proportion to its total CVAP. The cartogram illustrates the representation of a large majority of Texans in the sample. While not all counties are not included, omitted counties each have very small populations relative to the population included in this analysis.

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Figure 1: Cartogram of Counties for VTD-Level Analysis. Each county is sized in proportion to its total CVAP.

10. Examining the usage of straight-ticket voting by race requires data on race at the precinct or VTD level. This population data is only available from the decennial census. While other population surveys, such as the American Community Survey, offer more recent data, information is not provided at the census block level, which is necessary for calculating precinct populations. The Texas Legislative Council provides VTD-level population counts by race from the 2010 census for the VTDs used in each election year.⁸ I merged the population data and the STV data from each county, to create a VTD-level dataset of census population data, total ballots cast, and STV ballots cast. Using this data, I calculated the percentage of the voting age population in each VTD that was non-Hispanic White, non-Hispanic Black, Hispanic, or another racial group, including Asian Americans, Native Americans, and people of other races. I also calculated the total percentage of minority voters (including non-Hispanic Black, Hispanic, Asian, Native American, and all others who are not non-Hispanic White).

11. There is a strong relationship between the size of the non-White population in a VTD and the percentage of straight-ticket ballots cast. Figure 2, below, illustrates this relationship. The left two panels show this relationship for the 2014 and 2016 elections, using the Top 10 Counties. The right panel shows the same relationship in the 2018 elections, using data from the Top 26 Counties. VTDs with a larger share of minority voters have a significantly larger share of straight-ticket ballots. This relationship is consistent across the last three general elections.⁹

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Figure 2: Relationship Between Non-White Population and Straight-Ticket Voting

12. I use ecological regression to estimate the percentage of non-Hispanic Black, Hispanic, non-Hispanic White and Other voters casting a straight-ticket ballot in each election. Ecological regression is a commonly used statistical model in voting rights cases that estimates group-level behaviors, such as vote choice or voting method, using aggregate data (group population sizes and precinct or county-level election data). I estimate separate models for each election year, using precinct-level election results and population data.¹⁰ Table 2 and Figure 3 present the results of this analysis.¹¹

13. Table 2 and Figure 3 show that non-Hispanic Black, Hispanic, and other non-White voters were more likely than non-Hispanic White voters to cast a straight-ticket ballot in 2014, 2016, and 2018. While a majority of voters from all groups were likely to cast straight-ticket ballots, the usage rate was significantly higher among minority voters.

Table 2: Estimates of Straight-Ticket Voting Usage by Race

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Figure 3: Estimates of Straight-Ticket Voting Usage by Race

Racially Polarized Voting (RPV)

14. To analyze racially polarized voting in Texas, I examined precinct-level election results for every statewide contest in the 2014, 2016, and 2018 general elections that included candidates from both the Democratic and Republican Parties, using VTD-level data for the full state of Texas.¹² Overall, I included 33 statewide elections (12 in 2014, 8 in 2016, and 13 in 2018).¹³

15. In analyzing racially polarized voting in each election, I used a statistical procedure, ecological inference (EI), that estimates group-level preferences based on aggregate data. I analyzed the results for the four racial and ethnic groups discussed above: Non-Hispanic Black, Hispanic, non-Hispanic White, and Other, based on the 2010 Census voting age population. I excluded third party and write-in candidates, and analyzed votes for the two major-party candidates in each election. The results of this analysis are estimates of the percentage of each group that voted for each major-party candidate in each election. The results include both a mean estimate (the most likely vote share), and a 95% confidence interval.

16. Interpreting the results of the ecological inference models proceeded in two general stages. First, I examined the support for each candidate by each demographic group to determine if members of the group vote cohesively in support of candidates of a single party. If a significant majority of the group supports candidates of a single party, I can then identify that party as the group's preferred party. If the group's support is roughly evenly divided between the two parties, then the group does not cohesively support a single party and does not have a clear preference. Second, after identifying the preferred party for each group (or the lack of such a party), I then compared the preferences of White voters to the preferences of each of the minority groups. Evidence of racially polarized voting is found when minority group voters and White voters support different parties.

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Figure 4: Ecological Inferences Estimates of Votes for Democratic Candidates by Race

17. Figure 4 presents the results of the ecological inference analysis.⁵ In each plot, the estimated level of support for Democratic candidates by each group is marked with a circle. The lines to the left and right of each circle mark the bounds of the 95% confidence intervals, which reflect uncertainty in the estimate.¹⁴

18. Across all 33 elections, the same pattern is clear: large majorities of Black and Hispanic voters cohesively support the Democratic candidate, and large majorities of White voters support the Republican candidate. Across the 33 elections, an average of 92% of Black voters and 72% of Hispanic voters supported the Democratic candidate, compared to 16% of non-Hispanic White voters. These results demonstrate high levels of racially polarized voting in Texas. Black and Hispanic voters cohesively support the Democratic Party, and White voters cohesively support the Republican Party.

Conclusions

19. Overall, I find that minority use of straight ticket voting is significantly higher than white use. I also find high levels of racially polarized voting between Black and Hispanic voters and White voters.

I reserve the right to supplement this and other reports in light of additional facts, testimony, and/or materials that may come to light. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Footnotes

- ¹ The Texas Legislative Council (TLC) collects and provides voting-tabulation-district-level (VTD) data for the entire state for each election. However, the TLC does not provide the number of straight-ticket ballots cast. Collecting VTD-level data from the counties is challenging and time consuming, as the counties utilize several different systems for reporting the data, and the data is frequently provided only in PDF documents rather than spreadsheets or other data files.
- ² The Texas Legislative Council (TLC) provides statewide election data by precinct, as well as by Voting Tabulation District (VTD), which are the equivalent of precincts in the U.S. Census geography. The TLC provides geographic shape files and data after each election with election results and census data for each VTD. According to the TLC, "Election data is reported by election precincts, which frequently change and may not conform to census geographical units. Council staff worked with the counties throughout the decade to build a statewide precinct geographic database for each election...Voting Tabulation Districts (VTDs), the census geographic equivalent of county election precincts, are created for the purpose of relating 2010 Census population data to election precinct data." ftp://ftpgis1.tlc.texas.gov/2011_RedistrictingData/VTDs/ReadMe.txt
- ³ The precinct-level data published by Galveston and Bell counties did not report straight ticket votes. The precinct-level data for Cameron county was only available as a low-quality PDF, and I was not able to extract the data in the time permitted. I was not able to find precinct-level data for Parker County for the 2018 general election.

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- 4 I collected data for Bexar, Brazoria, Brazos, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Guadalupe, Harris, Hays, Hidalgo, Jefferson, Johnson, Lubbock, McLennan, Montgomery, Nueces, Randall, Smith, Tarrant, Travis, Webb, and Williamson Counties.
- 5 I rely on the American Community Survey 2014-2018 estimates for all Citizen Voting Age Population (CVAP) numbers in this report. <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.2018.html>.
- 6 An alternative approach to analyzing STV use would be to use county-level data, rather than precinct/VTD-level data. A county-level analysis is inferior to a VTD-level analysis because county-level data hides important variation in population and STV usage within each county.
- 7 The number of ballots cast was not available at the precinct level in El Paso County for 2014. El Paso is included when county totals are reported for 2014, but excluded from any precinct-level models for 2014.
- 8 ftp://ftpgisl.tlc.texas.gov/temp/VTD_Population/
- 9 The 2018 results are substantially similar, and support the same conclusion that STV use increases with minority population share, if only the Top 10 counties, rather than the Top 26, are included.
- 10 The full regression results are in Table A1. Table A1 also includes a fourth model, which provides results for 2018 using only the Top 10 Counties. The results are nearly identical to the model using the Top 26 Counties.
- 11 Another commonly used tool in these analyses is ecological inference. While I present ecological regression results here for simplicity, ecological inference analyses present nearly identical results.
- 12 The Texas Legislative Council provides VTD-level election results for the full state in each election year, and corresponding files of the 2010 census populations in each VTD in each year.
- 13 The full set of offices include Agriculture Commissioner, Attorney General, Circuit Court of Appeals (seats vary by year), Comptroller, Governor, Land Commissioner, Lieutenant Governor, Railroad Commissioner (seats vary by year), Supreme Court (seats vary by year), U.S. President, and U.S. Senator.
- 5 Appendix Tables A2, A3, and A4 present the full numerical results of this analysis. I also include the Other group in these models, but exclude them from Figure 4. This group makes up only 5% of the statewide population.
- 14 For some estimates in the figure, the confidence intervals are not visible because they are so narrow that they are covered by the point corresponding to the mean value.

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