

EXHIBIT C

Daniel A. Smith, Ph.D., does hereby declare:

1. I am over the age of 18 years and have personal knowledge of all facts stated herein.
2. I am Dr. Daniel A. Smith, Professor of Political Science and University of Florida Research Professor (2010-2012). Since August, 2003, I have served as a tenured member of the Graduate Faculty at the University of Florida. I received my Ph.D. in Political Science from the University of Wisconsin-Madison in 1994, and my B.A. in History from Penn State University in 1988 (*cum laude; Phi Beta Kappa*). For five years (2007-2011), I served as the Director of the University of Florida's Political Campaigning Program, and I am currently the Coordinator of the Political Science Department's Internship Program. I am also the President of ElectionSmith, Inc., which specializes in empirical research on voting and elections in the American states.
3. At the University of Florida, I have taught a range of graduate and undergraduate courses, including but not limited to State and Local Government, Political Parties & Interest Group Politics, The Politics of Direct Democracy, The Politics of Campaign Finance, and The Politics of Reform. My courses on State and Local Government and The Politics of Reform both include sections on electoral laws and voter participation in the American states.
4. For nearly two decades, I have conducted empirical research on electoral politics in the American states, focusing on the disparate effect of political institutions on political behavior. My scholarly research focuses broadly on voting and elections in the American states, with a particular interest in how political institutions shape political behavior. I have written extensively on voting and elections in the American states, and have published two academic books and over 50 articles and book chapters on the topic. Among my scholarly writings are several articles that examine Florida politics, including a coauthored article examining the impact of changes in the state's electoral laws on early voting. My research has been published in the discipline's foremost academic journals (including the *American Political Science Review*, *Journal of Politics*, *Political Research Quarterly*, *American Politics Review*, *State Politics and Policy Quarterly*, and *Election Law Journal*). I have also contributed numerous essays in edited volumes on the topic of voting and elections. I am a former Senior Fulbright Scholar, and I have received

numerous grants and awards for my work on campaigns and elections, including from the U.S. Department of State and the American Political Science Association. I have served on the governing board as well as the editorial board of *State Politics and Policy Quarterly*, the official journal of the State Politics and Policy Section of the American Political Science Association, and I have served as an external reviewer for more than a dozen scholarly journals and publishers. Furthermore, I am coauthor of a leading undergraduate textbook, *State and Local Politics: Institutions and Reform*, now in its 3rd edition, which includes a section on how state-level electoral laws affect political participation, as well as numerous examples drawn from Florida.

5. As a consultant, I have submitted expert work in numerous state and federal courts, including an affidavit for the Defendant (the Florida Secretary of State) in the case *Worley v. Detzner*, successfully defending the state's disclosure laws; the case is currently being appealed before the U.S. Court of Appeals, 11th Circuit. During my time in Florida, I have testified on election-related matters before the Florida state House and Senate. Last January, I testified before the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights on the impact of Florida's omnibus voting and election law, House Bill 1355 (H.B. 1355). This past spring, I served as an expert for the Plaintiffs (The League of Women Voters of Florida, the National Council of La Raza, and Common Cause Florida) in *Romo v. Scott*, the federal redistricting case heard in Florida Circuit Court (Leon County). In 2010, I was the lead author of an *amicus* brief that was mentioned during oral argument before the Supreme Court of the United States in the public disclosure case, *Doe v. Reed*.

6. Over the years, I have been quoted hundreds of times by news media worldwide on issues related to voting and elections in Florida. More specifically, in the past year, my research on H.B. 1355 in Florida has been mentioned (among others) in the *Wall Street Journal*, the *New York Times*, *The Economist*, *USA Today*, *The Los Angeles Times*, the *Miami Herald*, the *Tampa Bay Times*, the *Florida Times-Union*, the *Orlando Sentinel*, *Florida Sun Sentinel*, the *Gainesville Sun*,

the *Dallas Morning News*, *The Nation*, *ABC News*, *Fox News*, *National Public Radio*, and Jacksonville's *WOKV*.

7. I have been hired by the Plaintiffs to assess the possible impact that the reduction of early voting days in Duval County, Florida, will have on African Americans who are legally registered to vote. I am being retained for a rate of \$300 per hour, plus expenses. I have appended my abbreviated c.v.

8. I have read the plaintiffs' "Complaint for Declaratory and Injunctive Relief." In addition, I have read the text of Chapter 2011-40, Laws of Florida, which is commonly referred to as House Bill 1355 (H.B. 1355), which was signed into law by Governor Rick Scott on May 19, 2011. I have also examined publicly available early voting data files and have tabulated early voting figures for previous elections in Duval County elections. In my opinion, the implementation of H.B. 1355 and the reduction of early voting days may restrict the ability of African Americans to exercise their franchise in the upcoming 2012 August primary and November general elections.

9. There is considerable empirical evidence supporting the scholarly literature documenting the historically low turnout rates of African Americans (and other minorities).¹ In an effort to enhance voter participation in the state broadly, the Republican-controlled Florida legislature in 2004 expanded and standardized across the state's 67 counties the timeframe for early voting, when it amended § 101.657 Florida Statutes. Republican Governor Jeb Bush signed the bill into law, and it went into effect on July 1, 2004. The law, which was on the books for seven years until the July 1, 2011 implementation of H.B. 1355, allowed "a Florida elector to vote early at the main office of the supervisor of elections or at a branch office if the supervisor's branch office has been a full-service facility for at least one year prior to the election. A Florida elector may also vote early at a public library or city hall that has been designated as an early voting site

¹ For a comprehensive overview of the history of the barriers to voting by minorities in the American states, see Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States*. New York: Basic Books, 2001. See also, Steven Rosenstone and John Mark Hansen, *Mobilization, Participation, and Democracy in America*. New York: Macmillan Publishing Company, 1993; Sidney Verba, Kay Schlozman, and Henry E. Brady, *Voice and Equality: Civic Voluntarism in American Politics*. Cambridge, MA: Harvard University Press, 1995.

by the supervisor.”² The statewide expansion and standardization of early voting had immediate, demonstrable effects. In the 2004 general election, over 18% of all votes were cast by early voters, up from an estimated 6% in the 2002 general election.³

10. Due to the legislature’s expansion of early voting in 2004, which included allowing early voting on the final Sunday before the election, the number of Floridians who came to rely on the two-week early voting period grew dramatically. In the 2006 midterm general election, over 16% of the votes cast were done so by electors who voted early, more than twice the percentage in the 2002 midterm election four years earlier.⁴ In the 2008 general election, early voting hit record numbers. Roughly one-third of all votes cast were cast during the two-week early voting period, nearly double the rate in the 2004 general election. As an October 2010 Interim Report by the Florida Senate’s Committee on Ethics and Elections stated, “early voting has increased in popularity among electors since it was first introduced in 2004.”⁵

11. A statewide public opinion survey of 800 Florida voters conducted immediately following the 2004 general election reported that 16% of African Americans voted early in Florida. The motivations of those surveyed who reported voting early were clear: more than a quarter said “convenience” was the primary reason they cast an early ballot; nearly a third said they wanted to “avoid the rush on Election Day.” As the 2010 Interim Report issued by the Florida Senate’s Ethics and Elections Committee states, “Early voting gives busy people or those with special needs a more convenient opportunity to vote.”⁶

12. In my opinion, African American registered voters, more than any other racial or ethnic group in Florida, have come to rely on voting early in the Sunshine State, especially on the

² The Florida Senate. 2010. “The Effect of Early Voting on Voter Turnout in Florida Elections; 2010 Update.” Interim Report 2011-118, Committee on Ethics and Elections, p2, available at:

<<http://www.flSenate.gov/Committees/InterimReports/2011/2011-118ee.pdf>>. (Site accessed on 24 July, 2012).

³ Mark S. Pritchett and Susan A. MacManus, *Florida Voters Rate the 2004 Election*, Florida Department of State, Division of Elections, PowerPoint Presentation, slide 14, Jan. 13, 2005, available at:

<<http://election.dos.state.fl.us/reports/VotersRateElection04.asp>> (Site accessed on 24 July, 2012), p2.

⁴ The Florida Senate. 2010. “The Effect of Early Voting on Voter Turnout in Florida Elections; 2010 Update.”

⁵ *Ibid.*, p.3

⁶ *Ibid.*, pp.1-2

final Sunday of the early voting period. In the 2008 general election, calculations I conducted with Professor Michael Herron at Dartmouth College reveal that African Americans cast 22% percent of the total early vote over the two-week period, even though African Americans comprised just 13% of the state's total registered voters.⁷ Furthermore, more African Americans in Florida in the 2008 general election cast ballots during the early voting period than cast ballots on election day or via an absentee ballot, combined. Perhaps most strikingly, that year African Americans accounted for roughly 34% of the total early votes cast on the final Sunday of early voting (November 2, 2008).⁸ In the 2010 general election, the number of African Americans who cast early ballots on the final Sunday of voting continued to be disproportionately high. Although African Americans represented roughly 12% of the total voters in the 2010 midterm election, they cast 23% of the votes on the final Sunday.⁹ It should go without mention, that if H.B. 1355 remains in force, African Americans residing in Duval county and the 61 other counties not covered by Section 5 of the 1965 Voting Rights Act (that is, all but Collier, Hardee, Hendry, Hillsborough, and Monroe counties), will be prohibited from voting on the final Sunday of early voting in the 2012 primary and general elections.

13. Consistent with the statewide trends among African Americans, in my opinion it is clear that a significant number of African Americans residing in Duval County—who have chosen to exercise their right of franchise—have become *habituated* to vote early.¹⁰ Facing an array of obstacles limiting their ability to cast a vote on a Tuesday—the traditional election day—or even

⁷ Michael C. Herron and Daniel A. Smith, "Souls to the Polls: Early Voting in Florida in the Shadow of House Bill 1355," *Election Law Journal* 11 (2012): (forthcoming). To determine the race and ethnicity of early voters in the 2008 general election, we retrieved the individual early voting information from county Early Voting Reports, available at <https://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAAvailableFiles.aspx>, and matched voters' unique registration numbers to the registration records in the state Voter File, which lists self-reported race and ethnicity. The same methodology was used to determine the race and ethnicity of early voters in 2010, for both statewide and Duval County voters.

⁸ *Ibid.*

⁹ See Justin Levitt, "Election Reform: The Pursuit of Unwarranted Electoral Regulation," *Election Law Journal* 11(2012): 97–117, p. 101, available at <<http://electionlawblog.org/archives/019579.html>> (last accessed April 13, 2012).

¹⁰ Eric Plutzer, "Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood," *American Political Science Review* 96 (2002): 41-56; Mark N. Franklin, *Voter Turnout and the Dynamics of Electoral Competition in Established Democracies Since 1945*. New York: Cambridge University Press, 2004.

voting an absentee ballot, thousands of African Americans in Duval County have found it much more convenient to vote early, especially on the final Sunday before election day, just as the state legislature had intended when it voted to expand early voting in 2004.

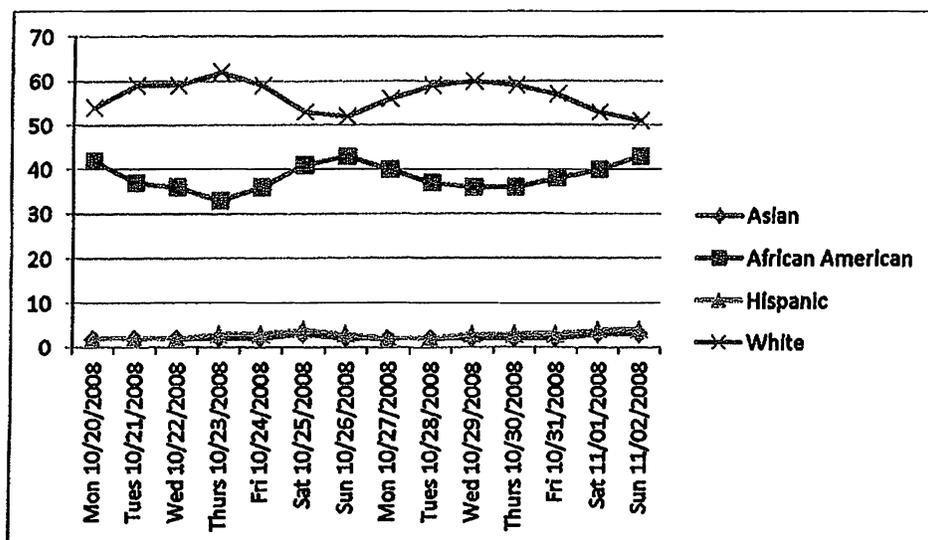
14. In order to assess the potential differential impact of H.B. 1355 on the ability of African Americans to vote early in Duval County, I first merged data files obtained from the Florida Secretary of State, Division of Elections, as well as the Duval County Supervisor of Elections in order to determine the racial and ethnic composition of early voters in the 2008 and 2010 general elections.¹¹ The percentage of African Americans in the Duval County voter file has remained remarkably consistent over the years. In December, 2008, as in April 2012, African Americans made up 28% of the registered voters in Duval County. In both years, the percentage of white registered voters also remained roughly the same, comprising 62% of the county's voter rolls.

15. When it comes to early voting, however, African Americans in Duval County are disproportionately more likely to go to the polls to early vote than other racial or ethnic groups in the county. In my opinion, based on the data analysis below, there is a strong likelihood that the enforcement of H.B. 1355—particularly truncating the early voting period from two weeks to eight days, including the elimination of the final Sunday before the election—will negatively affect the ability of African Americans to turn out to vote. For example, in the lead up to the 2008 general election, roughly 44% of the more than 418,000 votes cast in Duval County were cast during the two-week early voting period. However, compared with other racial and ethnic groups, a much higher percentage of African Americans in Duval County voted early. Approximately 58% of the more than 116,000 African Americans who cast a ballot in Duval County did so during the two-week early voting period. By comparison, only 38% of the more than 266,000 whites in Duval County who cast a ballot did so during the early voting period.

¹¹ All the data analysis herein comes from files obtained through various public records requests from the Florida Secretary of State, Division of Elections, and the Duval County Supervisor of Elections. Data were merged and analyzed in Stata/IC 10.1 and MS Excel.

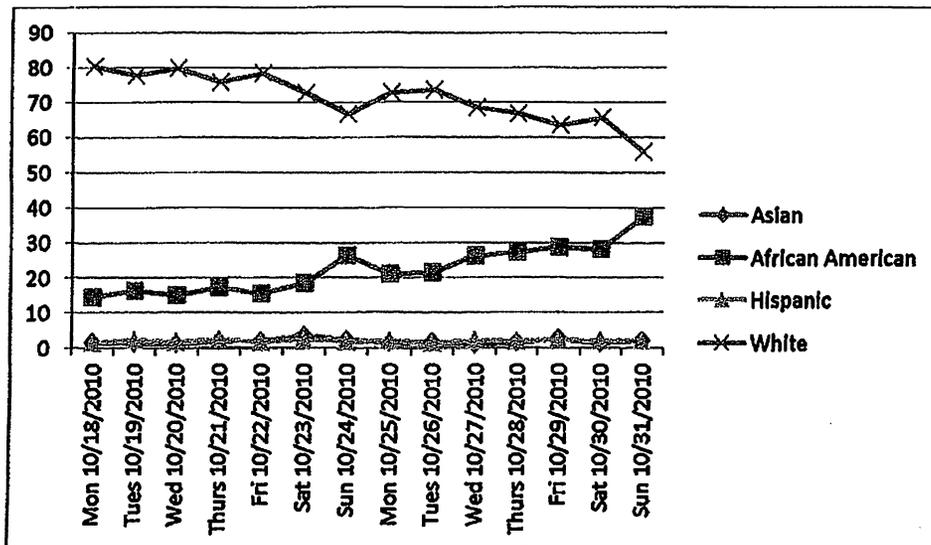
16. To assess the differential effect on African Americans from the enforcement of H.B. 1355—which among other changes, eliminates voting on the final Sunday prior to election day—it is illuminating to look graphically at the racial and ethnic patterns of early voting in previous elections. Figure 1 plots the daily composition (that is, the fraction of early voters on a day that is of a particular race/ethnicity) of the early voting electorate in Duval County in the 2008 general election, from Monday, October 20, 2008, through Sunday, November 2, 2008. On any given day, the fraction of the four primary racial/ethnic groups (whites, African Americans, Hispanics, Asian Americans) sums to 100 (percent). There are two items of note. First, in absolute terms, even though African Americans in 2008 comprised just 28% of the registered voters (and 28% of those who turned out to vote) in the county, a much higher percentage of African American voters voted early on any given day over the two-week period. Most dramatically, African Americans were disproportionately more likely to cast an early ballot on the final Sunday of early voting, which was eliminated by H.B. 1355. In Duval County, African Americans accounted for 43% of the votes cast on Sunday, November 2, 2008, even though they comprised only 28% of the county’s total electorate in the presidential election.

Figure 1: Racial and Ethnic Composition (Percentage) of Early Voters in Duval County, 2008 General Election



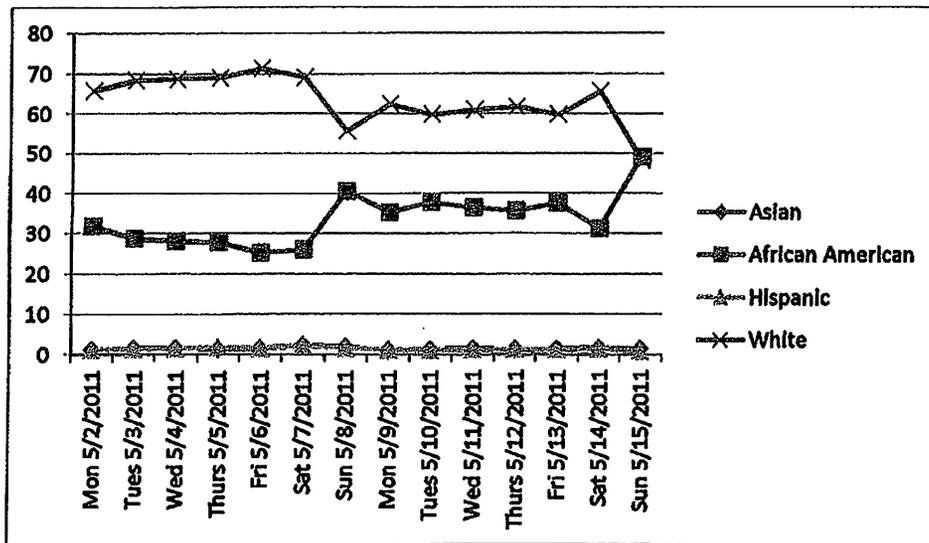
17. The pattern in Duval County of African Americans disproportionately casting early ballots—and typically waiting until the final Sunday of early voting—is not isolated to the historic 2008 general election. Figure 2 plots the daily composition of the early voting electorate in Duval County in the 2010 midterm general election, from Monday, October 18, 2010, through Sunday, October 31, 2010. Overall, across all racial and ethnic groups, slightly less than 20% of the more than 266,000 total votes in the election were cast during the two-week early voting period, a much smaller percentage than in the 2008 general election. As with the first figure, Figure 2 shows the fraction of the four primary racial and ethnic groups (whites, African Americans, Hispanics, Asian Americans) on any given day, which sum to 100 (percent). Although African Americans in the 2010 general election comprised just 24% of the Duval County electorate, African Americans cast over 37% of the votes on the final Sunday of early voting (October 31, 2010), by far the highest percentage of any day over the two-week period. In my opinion, because African Americans are disproportionately more likely to cast an early ballot on the final Sunday of early voting, they will be adversely affected by H.B. 1355, because it eliminates early voting on the Sunday immediately prior to election day.

Figure 2: Racial and Ethnic Composition (Percentage) of Early Voters in Duval County, 2010 General Election



18. Finally, an examination the 2011 Jacksonville mayoral contest reveals that African Americans rely heavily on early voting, particularly the final Sunday of early voting, even in low-turnout, municipal elections. Figure 3, like the previous figures, shows the fraction of the four primary racial and ethnic groups (whites, African Americans, Hispanics, Asian Americans) on any given day, which sum to 100 (percent). Of the approximately 38,000 registered voters in Duval County who voted early over the two-week early voting period prior to the May 17, 2011 mayoral runoff, African Americans cast roughly 34% of the early votes, even though they comprised less than 30% of the electorate. What is most notable, though, is the huge spike in early votes by African Americans on the final day of early voting, Sunday, May 15, 2011. In fact, on that final Sunday of early voting, even though they comprise a minority of registered voters in Duval County, more African Americans came to the polls to vote in the runoff election than did whites.

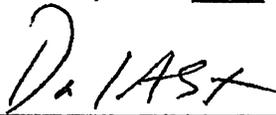
Figure 3: Racial and Ethnic Composition (Percentage) of Early Voters in Duval County, May 2011 Mayoral Runoff Election



19. In conclusion, it is my opinion that by eliminating the final Sunday of early voting, that H.B. 1355 likely will have a negative impact on the likelihood of African Americans turning out to vote in Duval County, as well as in the other counties in Florida that allowed early voting the final Sunday before election day, thereby depressing African American turnout in future elections. Furthermore, thousands of African Americans are registered to vote in Duval County, and substantial numbers of African Americans have become habituated to voting on the Sunday immediately prior to election day, ever since the Republican state legislature expanded early voting in 2004. It is my opinion, therefore, that the enforcement of H.B. 1355's changes to early voting laws will have the effect of depressing African American voter turnout in future elections.

20. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in Lee, Massachusetts, on this 26 day of July, 2012.



DANIEL A. SMITH, PH.D.

FURTHER AFFIANT SAYETH NOT.

D. A. SMITH
DANIEL A. SMITH, PH.D.

STATE OF MASSACHUSETTS)
)
COUNTY OF Berkshire) ss
)

I, Daniel A. Smith, Ph.D., being first duly sworn upon my oath, depose and say that I have read the above and foregoing Affidavit and that the facts stated therein are true and correct. Subscribed and sworn to before me this 26 day of July, 2012.

Notary: Rebecca A. Martin

My commission expires July 4, 2014



Rebecca A. Martin
Notary Public
Commonwealth Of Massachusetts
My Commission Expires
July 4, 2014