

# **Exhibit 4**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

PATRICK HARLAN, et al.,	)	
	)	
Plaintiffs,	)	Case No. 1:16-cv-7832
	)	
v.	)	Hon. Samuel Der-Yeghiayan
	)	
CHARLES W. SCHOLZ, Chairman, Illinois	)	
State Board of Elections, et al.,	)	
	)	
Defendants,	)	
	)	
DAVID ORR, Cook County Clerk,	)	
	)	
Intervenor-Defendant.	)	

**SUPPLEMENTAL DECLARATION OF M.V. HOOD III**

I, M.V. Hood III, affirm the conclusions I express in this report are provided to a reasonable degree of professional certainty. In addition, I do hereby declare the following:

## **I. RESPONSE TO DEFENDANT BRIEFS**

In this supplemental declaration I respond to a number of assertions made by Intervenor-Defendant Cook County Clerk David Orr (“Clerk Orr”) in his response to Plaintiffs’ motion for preliminary injunction in this matter.<sup>1</sup> I respond as well to an amicus brief filed by the ACLU of Illinois, et al. (hereafter collectively “ACLU”) and another amicus brief filed by Action Now Institute, et al. (hereafter collectively “Action Now”) on behalf of Defendants.<sup>2</sup>

### *Affected Subgroups*

The ACLU brief makes a number of unverifiable claims. For example, it asserts that enjoining EDR in Illinois could produce a *disproportionate racial impact*.<sup>3</sup> Although no direct evidence or analysis is provided on this point (in particular for Illinois), the ACLU does cite a recent Fourth Circuit opinion from North Carolina. This brief, however, conflates same-day and election-day registration, which are not equivalent. Same-day registration (SDR) refers to the ability of an elector to register and vote during an early in-person voting period. As the name implies, election-day registration (EDR) refers to the ability of a citizen to register and vote on election day itself. North Carolina has allowed SDR during its early in-person voting period, but has never made use of EDR. While SDR was at issue in the Fourth Circuit case then, EDR was not. Another recent circuit court decision originating from Ohio concluded that elimination of SDR (known as Golden Week in the state) did not disproportionately affect minority voters. As with North Carolina, Ohio does not have EDR.<sup>4</sup> Having surveyed the academic literature on this topic, I am unaware of any study that specifically tests the relationship between minority political participation and EDR. I should note that the absence of academic evidence cannot be construed as an indication that minority voters would be likely to take advantage of EDR.

The amicus brief filed by Action Now suggests that *plaintiffs’ proposed remedy would also have a disproportionately negative impact on eligible minority voters*.<sup>5</sup> Action Now makes this claim based on the fact that 22,910 election-day voters cast ballots in majority-minority wards in the City of Chicago (see Table 1). This would equal 65.1% of the total election-day votes cast in the City of Chicago. Based on demographic data of the population, 36 of 50 Chicago wards are majority-minority.<sup>6</sup> This equates to 72% of the total. So, using this very crude rendering of race, minority use of election-day registration is less than the share of majority-minority wards. Action Now also states that 13,015 (36.9%) of election-day votes were cast in one of 19 majority-black

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<sup>1</sup>Cook County Clerk David Orr’s Response to Plaintiff’s Motion for Preliminary Injunction. *Harlan v. Scholz* (1:16-cv-7832). August 30, 2016.

<sup>2</sup>Brief of *Amici Curiae* American Civil Liberties Union of Illinois and Other Voting Rights Organizations in Opposition to Plaintiffs’ Motion for Preliminary Injunction. *Harlan v. Scholz* (1:16-cv-7832). August 30, 2016 and Brief of *Amici Curiae* Action Now Institute and Other Voting Rights Organizations in Opposition to Plaintiffs’ Motion for Preliminary Injunction. *Harlan v. Scholz* (1:16-cv-7832). August 30, 2016.

<sup>3</sup>Brief of *Amici Curiae* American Civil Liberties Union of Illinois and Other Voting Rights Organizations in Opposition to Plaintiffs’ Motion for Preliminary Injunction. *Harlan v. Scholz* (1:16-cv-7832). August 30, 2016. Page 6.

<sup>4</sup>See *Ohio Democratic Party v. Husted*, \_\_\_ F.3d \_\_\_, 2016 U.S. App. LEXIS 15433, \*11-12 (6th Cir. Aug. 23, 2016).

<sup>5</sup>Brief of *Amici Curiae* Action Now Institute and Other Voting Rights Organizations in Opposition to Plaintiffs’ Motion for Preliminary Injunction. *Harlan v. Scholz* (1:16-cv-7832). August 30, 2016. Page 13 n.32.

<sup>6</sup>“City Council-Approved Chicago Ward Map.” WBEZ Chicago Website. <https://www.wbez.org/shows/wbez-news/interactive-city-councilapproved-chicago-ward-map/52630c78-06ad-4e98-8aab-05bd3ca72e24>.

wards. Majority-black wards account for 38% of the fifty wards in the City of Chicago. Again, using this extremely rudimentary metric, black use of election-day registration almost exactly comports with the share of majority-black wards in Chicago.

Table 1. EDR Usage in the 2016 March Primary

Jurisdiction	EDR Voters	Percent of Chicago EDR Votes	Percent of Chicago Wards
Statewide	110,000	----	----
Cook County	58,357	----	----
Suburban Cook County	23,123	----	----
City of Chicago	35,234	----	----
Majority-Minority Wards	22,970	<b>65.2%</b>	<b>72.0%</b>
Majority-Black Wards	13,015	<b>36.9%</b>	<b>38.0%</b>

The fact that minorities are making use of EDR in Chicago is beyond dispute given the overall demographic breakdown of the City. With 68.3% of the population composed of minority residents, Chicago is a majority-minority city. The real question in a voting rights matter involves the extent to which a racial/ethnic minority group might be utilizing EDR at rates higher than White voters. In Illinois we do not know the race of registrants. This quantity, therefore, must be estimated using aggregate level data, preferably at the smallest geographic level possible (e.g. a voting precinct). In order to draw valid inferences about the rates of EDR by race/ethnicity for Illinois as a whole, one would also need to perform an analysis of such estimates across the entire state, not just for the City of Chicago.

While not optimal (see discussion in preceding paragraph), I did estimate EDR use by race for the City of Chicago at the ward-level. I received data on EDR votes cast by Chicago ward through counsel. I was able to combine these data with figures from the Chicago Board of Election Commissioners website to calculate EDR votes as a percentage of total votes cast.<sup>7</sup> Using the racial data referenced earlier I was able to also calculate, by ward, the percentage of the voting age population that is non-Hispanic White (hereafter labeled White), Black, and Hispanic. Non-Whites who are not Black or Hispanic are placed in a third category labeled Other Minority. I then used ecological regression to estimate EDR usage by race/ethnicity.

In Table 2 below the model estimates indicate that 4.3% of Hispanics were EDR voters, compared with 2.3% of Blacks, 5.4% of other minorities, and 3.1% of Whites. From these estimates it would appear that Hispanics and other minorities utilized EDR at a higher rate than Whites and, conversely, that black usage was lower than that for Whites. One must view these estimates, however, along with their corresponding confidence intervals. As an example, the 95% confidence interval for Hispanics indicates that the true value for Hispanic EDR use is estimated to lie between 3.6% and 5.0%. Comparing confidence intervals between the three

<sup>7</sup>Source: <http://www.chicagoelections.com/en/election3.asp>.

minority categories with the confidence interval calculated for Whites, it is evident the ranges for these estimates overlap. This information, along with the model coefficients, tells us that the estimates for EDR use between these three minority groups and Whites are statistically indistinguishable from one another (see Table A in Appendix for detailed model output).

Table 2. Estimates of EDR Use for the City of Chicago in the 2016 March Primary

	Estimate of EDR Usage	95% Confidence Interval	Statistically Different from White Estimate
Hispanic	4.3%	3.6%-5.0%	No
Black	2.3%	2.0%-2.6%	No
Other Minority	5.4%	1.5%-9.2%	No
White	3.1%	1.8%-4.4%	----

Source: Estimates derived from statistical model produced by author.

In summary, these results indicate that minority voters did not use EDR at higher rates than White voters in the City of Chicago during the 2016 March Primary election.

The ACLU brief also argues that an injunction would disproportionately affect *those with moderate levels of income and education*.<sup>8</sup> To the extent to which EDR may benefit certain subgroups in society, the academic literature does provide support for this contention (as referenced in my first declaration in this matter). In order to shed some light on this possibility I collected income and education data by county from the U.S. Census Bureau.

Table 3 below displays income and education statistics for Illinois' counties categorized by population size. The first column presents the average median household income level based on county population size.<sup>9</sup> Average median household income for counties over 100,000 population is \$59,718, compared to \$47,338 for smaller counties. The difference, \$12,380, is statistically significant.<sup>10</sup> Seventy-five of the eighty-two smaller population counties (91.5%) have median household income levels below the statewide figure of \$57,166. Conversely, only 65.0% of larger population counties fall below this threshold.

The second column examines the average percentage of residents 25 and older who have a high school degree or some college education (but not a bachelor's degree).<sup>11</sup> In smaller population counties, 70.1% of the population falls into this category, compared with 62.3% in larger

<sup>8</sup>Brief of *Amici Curiae* American Civil Liberties Union of Illinois and Other Voting Rights Organizations in Opposition to Plaintiffs' Motion for Preliminary Injunction. *Harlan v. Scholz* (1:16-cv-7832). August 30, 2016. Page 6.

<sup>9</sup>Source: U.S. Census. 2010-2014 American Community Survey. Table B19013: Median Household Income in the Past 12 Months.

<sup>10</sup>Difference of means T-Test:  $t=-5.66$ ;  $p=.001$ .

<sup>11</sup>Source: U.S. Census. 2010-2014 American Community Survey. B15003: Educational Attainment for the Population 25 Years and Over.

population counties. The difference between these two means, at 7.8%, is statistically significant.<sup>12</sup>

Smaller population counties have a higher proportion of residents with moderate levels of education and lower household income levels compared to larger counties. To the extent to which EDR may benefit citizens with moderate income and education levels, therefore, it would be more beneficial to citizens in the 82 counties in Illinois with population levels below 100,000. Ironically, under the present statute citizens in these counties have less access to EDR compared to larger counties.

Table 3. Mean Income and Education Statistics for Illinois' Counties

	Median Household Income	Percent High School or Some College	Number of Counties
Counties under 100,000	\$47,338	70.1%	82
Counties over 100,000	\$59,718	62.3%	20
Difference	\$12,380*	7.8%*	

Notes: \*Difference is statistically significant ( $p < .01$ ); Source: U.S. Census Bureau.

Clerk Orr claims that urban and rural voters face different election environments and that I failed to take this fact into account.<sup>13</sup> The reality is that urban electors, as in Cook County, seeking to register on Election Day, will face lower transaction costs compared to rural voters. Why? In urban counties electors can utilize EDR at their local precinct. In the 2016 general Cook County will operate 1,036 voting precincts.<sup>14</sup> Given the greater density of polling places in urban areas, these voters will face shorter travel distances to their precinct compared to rural voters. Many urban voters will be able to walk to their precinct or take advantage of mass transit, options which are not available to voters in rural counties. Conversely, residents of rural counties will be forced to travel to a specific location outside their residential precinct in order to register and cast a ballot on Election Day. For most, this would entail an automotive trip to the county seat to visit the county clerk's office.

<sup>12</sup>Difference of means T-Test:  $t = -5.51$ ;  $p = .001$ .

<sup>13</sup>Cook County Clerk David Orr's Response to Plaintiff's Motion for Preliminary Injunction. *Harlan v. Scholz* (1:16-cv-7832). August 30, 2016. Page 12.

<sup>14</sup>See <http://www.cookcountyclerk.com/elections/pollinglocations/Pages/default.aspx>.

### *Partisan Effects*

Clerk Orr also questions the assumption that EDR registrants *will vote the same way as their neighbors*.<sup>15</sup> In suburban Cook County in the March 15<sup>th</sup> Primary there were a total of 23,123 election-day registrants. Of this number, 81.3% voted in the Democratic Primary versus 18.5% in the Republican Primary. In the primary contest overall, 68% of voters in suburban Cook County cast a ballot in the Democratic Primary as compared to 32% voting in the GOP Primary.<sup>16</sup> Given the well-known Democratic advantage in Cook County these statistics come as no surprise and are some indication that EDR registrants will reflect the partisan complexion of their county.

Outside of this specific example, however, there is good reason to believe that voters residing in geographic proximity will vote in a similar manner. This is due to the well-documented process of geographic partisan sorting that characterizes much of the contemporary United States.<sup>17</sup> Stated succinctly, Democrats tend to live in spatial proximity with one another while Republicans reside in areas with other Republicans. In my previous declaration I demonstrated that the 82 smaller population counties exhibit different partisan tendencies as compared to the twenty largest counties. This fact, in conjunction with academic evidence of partisan spatial concentration, lends some weight to the idea that EDR voters will behave much like non-EDR voters living in the same geographic area.

### *Conclusion*

Nothing in the briefs filed on behalf of the defendants in this matter undermines the conclusions I offered in my original declaration. Ironically, in arguing against a preliminary injunction on the basis of the positive effects of polling place EDR in large urban counties like Cook, the defendants actually corroborate the argument I made in my initial declaration. If polling place EDR is thought to be in the interests of voters in twenty counties, then why would this same logic not extend to residents in Illinois' remaining 82 counties?

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<sup>15</sup>Cook County Clerk David Orr's Response to Plaintiff's Motion for Preliminary Injunction. *Harlan v. Scholz* (1:16-cv-7832). August 30, 2016. Page 12.

<sup>16</sup>See [http://www.cookcountyclerk.com/elections/electiondata/Documents/PostElectionReport\\_031516.pdf](http://www.cookcountyclerk.com/elections/electiondata/Documents/PostElectionReport_031516.pdf).

<sup>17</sup>For example see: Corey Lang and Shanna Pearson-Merkowitz. 2014. "Partisan Sorting in the United States, 1972–2012: New Evidence from a Dynamic Analysis." *Political Geography* 48: 119–129; Wendy K. Tam Cho, James G. Gimpel, and Iris S. Hui. 2013. "Voter Migration and the Geographic Sorting of the American Electorate." *Annals of the Association of American Geographers* 103(4): 856-870; Ian McDonald. 2011. "Migration and Sorting in the American Electorate: Evidence from the 2006 Cooperative Congressional Election Study." *American Politics Research* 39(3): 512-533; Matt Motyl, Ravi Iyer, Shigehiro Oishi, Sophie Trawaltera, and Brian A. Nosek. 2014. "How Ideological Migration Geographically Segregates Groups." *Journal of Experimental Social Psychology* 51(1): 1-14; and Jesse Sussell. 2013. "New Support for the Big Sort Hypothesis: An Assessment of Partisan Geographic Sorting in California, 1992-2010." *PS: Political Science and Politics* 46(4): 768-773.

**II. DECLARATION**

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed on September 13, 2016

*M.V. Hood III*

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### Appendix

Table A. Ecological Regression Estimates of EDR Use by Race

	Coefficient	Standard Error
Hispanic	.0118	.0091
Black	-.0079	.0067
Other Minority	.0228	.0251
Constant	.0310 <sup>***</sup>	.0066
<i>N</i>	50	
<i>R</i> <sup>2</sup>	.31	

Notes: Entries are OLS coefficients and corresponding robust standard errors.

Cases are weighted by total votes cast.

\**p*<.05; \*\**p*<.01; \*\*\**p*<.001