

The Participatory Impact of Truncating Early Voting in Florida

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Abstract

Over the past 30 years, an increasing number of American states have made it more convenient for potential voters to cast early ballots. Despite the diffusion of early in-person (EIP) voting, and praise by voting rights advocates and local election administrators alike, in 2011 the Florida legislature enacted House Bill 1355, which truncated the state's early voting period from a total of 14 days to eight days, eliminated early voting on the Sunday immediately preceding Election Day, and reduced the total number of hours that EIP voting polling stations were required to be open. Critics of the legislation contend the surreptitious goal of the Republican-controlled Florida legislature in passing HB1355 was to depress African American early voting turnout in anticipation of the 2012 general election.

We draw on an original dataset to gauge the potential participatory ramifications of HB 1355 by examining patterns of EIP in the 2008 general election. By merging the state's 2008 voter file, comprised of more than 12.3 million registered voters, with the state's November 2008 early voter file comprised of some 2.6 million voters, we are able to assess the race and ethnicity, party registration, age, gender, and vote history of each registered voter across the state's 67 counties of those who cast EIP ballots. Unlike many studies of early voting in the American states which rely on aggregate-level data, we are able to pinpoint not only which voters were more likely to cast early ballots—isolating their socio-demographic and partisan characteristics—but we can also plot on which day of the two-week period in 2008 they voted. Our study finds that African Americans and Hispanics, younger, first-time, and Democratic voters were disproportionately more likely to vote EIP, and more importantly, vote on the weekends, including the final Sunday of early voting, which under HB1355 has been eliminated.

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The expansion of convenience voting in the American states, until quite recently, seemed to be a sure bet. Today, all but 15 states provide an extended window prior to Election Day during which electors may vote in person or mail in an absentee ballot, no excuses needed. According to estimates by the Associated Press, more than 44 million in-person early (EIP) and absentee ballots were tallied before the November 4, 2008, general election, accounting for 34 percent of the total votes cast. Convenience voting seemingly had taken firm root across the states.¹

Nowhere in 2008 was early voting more utilized, or more scrutinized, than in Florida.² Of the roughly 8.3 million Floridians who cast ballots in the general election, over half did so prior to Election Day. More than 1.87 million Floridians voted by no-excuse absentee ballots, but even more—some 2.62 million voters—cast EIP ballots at hundreds of non-precinct voting sites dotting Florida's 67 counties.³ As media reports indicated, African Americans seemed more inclined to cast EIP ballots, as many were driven—sometimes literally—with “getting your souls to the polls” mobilization efforts sponsored by religious organizations, nonpartisan advocacy groups, the Democratic Party, and especially the Obama for America's “Yes We Can” GOTV effort.⁴

Despite considerable praise by voting rights advocates and local election administrators for the expansion of early voting in Florida, in 2012 citizens of the Sunshine State will have fewer opportunities to cast early ballots. In May, 2011, the Republican-controlled legislature passed House Bill 1355, an omnibus election reform bill, which Governor Rick Scott swiftly signed into law.⁵ Among the many provisions designed to restrict EIP, HB1355 reduced the total number of days county Supervisors of Elections could offer early voting, from 14 to eight; altogether eliminated EIP voting on the Sunday immediately preceding Election Day; and gave election supervisors the discretion to reduce the total required number of hours EIP voting stations are required to be open, from 96 to 48 hours.⁶

¹ Paul Gronke and Daniel P. Tokaji, “The Party Line,” *Election Law Journal* 10 (2011): 71-2.

² See, for example, “Early voting suggests 2008 may see record turnout, expert says,” *CNN*, October 21, 2008. Available: http://articles.cnn.com/2008-10-21/politics/early.voting_1_early-voting-early-ballots-count-ballots?_s=PM:POLITICS; Kendrick Ward, “Absentee Ballots Front-Load Florida Elections,” *Sunshine State News*, October 6, 2008. Available: <http://www.sunshinestatenews.com/story/absentee-ballots-front-load-florida-elections>; Kate Phillips, “Florida Extends Early Voting Hours,” *New York Times*, October 28, 2008, <http://thecaucus.blogs.nytimes.com/2008/10/28/florida-extends-early-voting-hours/>.

³ In Florida, absentee ballots can be turned in early (or on Election Day). We take the term “in-person early” (EIP) voting as casting a non-absentee ballot in-person, prior to Election Day, at an early voting center.

⁴ The NAACP is credited with creating the slogan in 2000, “Get all souls to the polls.” During the final days of the presidential campaign, Democrat Al Gore exhorted to crowds in Florida, “it's time to take your souls to the polls” on Election Day, as early voting had yet to be adopted. See Rupert Cornwell, “With 48 hours to go, the candidates try to close the deal with America,” *The Independent*, November 6, 2000. Available: <http://www.independent.co.uk/news/world/americas/with-48-hours-to-go-the-candidates-try-to-close-the-deal-with-america-623223.html>.

⁵ HB 1355 amended the Florida Election Code (chapters 97-106, Florida Statutes), and became law (Chapter 2011-40, Laws of Florida) on May 19, 2011.

⁶ Early voting under HB 1355 is to commence on a Saturday, ten days prior to an Election Day, and it must end on a Saturday, three days prior to Election Day. See Justin Levitt, “New State Voting Laws: Barriers to the Ballot?” Testimony of Professor Justin Levitt, Loyola Law School, Los Angeles, Before the United States Senate Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, United States Senate, September 8, 2011. Available: <http://www.judiciary.senate.gov/pdf/11-9-8LevittTestimony.pdf>.

In this paper, we are motivated by a simple empirical question: In the 2008 general election, who voted early in-person, and on what days, in Florida, and were there any differences across various socio-demographic and partisan lines?⁷ Although the scholarly research on “convenience voting” has grown considerably in recent years, it is idiosyncratic, dated, and largely inclusive. In general, scholars know relatively little about who actually votes EIP, and even less about which day a citizen is likely to show up at early voting centers to cast a ballot. Which demographic groups are more likely to utilize EIP? Is it young or old voters, men or women, whites or racial and ethnic minorities, those living in poor or wealthy neighborhoods? Are partisans more likely to vote EIP than nonpartisans? Are regular or occasional voters more likely to cast EIP? And finally, on which days of the week are which kinds of voters more likely to cast EIP votes? Surprisingly, despite the wide use of EIP across the county, and the recent retrenchment in Florida, scholars, practitioners, elected officials, and even election administrators have few answers to these questions.

Our innovative research on EIP voting in Florida in the 2008 general election begins to provide some insight. By merging the state’s 2008 voter file, comprised of more than 12.3 million registered voters, with the state’s November 2008 early voter file, we are able to assess and study the race and ethnicity, party registration, age, gender, precinct/county registration, and vote history of each EIP voter in 2008. Although our individual-level data does not allow us to directly assess the personal motivations of those who chose to vote EIP, we are able to specify which day of the week a voter showed up to the polls. As such, we are able to gauge the potential participatory ramifications of HB1355 in Florida in anticipation of the 2012 general election.

Before turning to our empirical investigation of EIP in 2008 in Florida, we provide a brief background on the passage of Florida’s HB1355 in 2011, which triggered this study, followed by a review of the literature on EIP voting in the American states.

Early In-Person Voting in Florida

In the aftermath of the flawed 2000 election, the Florida legislature passed an elections bill that included requiring local Supervisors of Elections to offer early in-person (EIP) voting. The bipartisan legislation, signed into law by Governor Jeb Bush and taking effect on July 1, 2004, was viewed by Republican and Democratic lawmakers alike as a practical way to alleviate long queues and reduce Election Day mishaps at the polls.⁸ Under the statute, an elector could cast a vote as many as 15 days before Election Day at an early voting site designated by county Supervisors of Elections, with early voting ending on the second day prior to the scheduled election. Although the law required EIP voting centers to be open a total of 96 hours during the 15 day stretch—including eight hours each week day and a total of eight hours over both weekends—the election supervisors had flexibility to set the hours.⁹

⁷ Much of the credit for the motivation of our study goes to Justin Levitt, who on May 23, 2011, on Rick Hasen’s Election Law Blog, offered some thoughts about who the elimination of EIP voting in Florida on the Sunday prior to Election Day might affect. He concluded by noting that the “racial breakdown of Florida’s early voters isn’t publicly available—but it is tracked, and could be analyzed,” and that he’d “be surprised if African-American citizens weren’t a substantial portion of the Floridians choosing to vote in their Sunday best.” Levitt’s blog post, “A Devil in the Details of Florida’s Early Voting Law,” is available here: <http://electionlawblog.org/archives/019579.html>

⁸ Section 101.657, F.S. In 1998, the Florida legislature passed a bill allowing voters to personally deliver their absentee ballots to the office of the Supervisor of Elections.

⁹ Under the 2004 legislation, EIP voting hours could fall anytime between the hours of 7am and 7pm, but election supervisors had the option of opening centers on Saturday and/or Sunday. As such, between 2004 and 2011, the application of EIP remained uneven across the state’s 67 counties, with some election supervisors maximizing early voting days and hours (96 hours spread over all 15 days, including both Sundays), and others opting for the

In 2005, the legislature amended the law, eliminating EIP voting on the Monday preceding Election Day.¹⁰

Given the broad consensus in support of convenience voting in Florida, the efforts by the Republican-controlled legislature to curtail EIP voting took many observers by surprise. The GOP rhetoric opposing EIP voting was particularly pointed. During the floor debate on HB1355, Republican state senator Mike Bennett asserted that voting was a privilege, and that the state should not make voting too easy. Speaking in support of the bill, Bennett asked:¹¹

Do you read the stories about the people in Africa? The people in the desert, who literally walk two and three hundred miles so they can have the opportunity to do what we do, and we want to make it more convenient? How much more convenient do you want to make it? Do we want to go to their house? Take the polling booth with us? This is a hard-fought privilege. This is something people die for. You want to make it convenient? The guy who died to give you that right, it was not convenient. Why would we make it any easier? I want 'em to fight for it. I want 'em to know what it's like. I want them to go down there, and have to walk across town to go over and vote.

Senator Bennett did not specify—either during or after his comments on the floor—who “em” referred to, but many observers understood his vernacular object pronoun as directed towards African Americans who voted EIP in the 2008 general election.

In May, 2011, the legislature passed HB 1355, an omnibus elections bill that was the product of an 11th hour, *strike-all* amendment.¹² Governor Rick Scott quickly signed the bill into law.¹³ In addition to putting restrictions on voter registration drives, the casting of provisional ballots, and several other voting and elections issues, HB1355 reduced the total number of days, from 14 to eight, that county Supervisors of Elections may offer early voting. HB 1355 also completely eliminated early voting on the Sunday immediately preceding Election Day—which in 2008 was offered to voters in ten of the state's 67 most racially and ethnically diverse counties. And, HB 1355 gave county election supervisors the discretion to reduce from 96 to 48 the total required number of hours early voting polling stations are required to be open.¹⁴

minimal requirements (96 hours but no Sunday voting). See, The Florida Senate, Committee on Ethics and Elections, “THE EFFECT OF EARLY VOTING ON VOTER TURNOUT IN FLORIDA ELECTIONS; 2010 UPDATE,” Interim Report 2011-118, October 2010.

¹⁰ Levitt, “New State Voting Laws: Barriers to the Ballot?”

¹¹ Politifact Florida, “Says people in Africa ‘literally walk two and three hundred miles’ in order to vote,” *St. Petersburg Times/Miami Herald*, May 6, 2011. Available:

<http://www.politifact.com/florida/statements/2011/may/06/mike-bennett/think-we-have-it-tough-africa-people-walk-300-mile/>. Similar language to Senator Bennett's was echoed by Republican legislators in Maine, Minnesota, New Hampshire, and Wisconsin. See Ed Kilgore, “The Truth About Voter Suppression,” *Salon*. Available: <http://www.salon.com/2011/09/30/votesuppresion/>.

¹² Florida House of Representatives Staff Analysis, CS/CS/HB 1355, Elections Committee. April 18, 2001.

¹³ HB 1355 amended the Florida Election Code (chapters 97-106, Florida Statutes) and became law (Chapter 2011-40, Laws of Florida) on May 19, 2011.

¹⁴ Early voting under HB 1355 is to commence on a Saturday, ten days prior to an Election Day, and it must end on a Saturday, three days prior to Election Day. See Justin Levitt, “New State Voting Laws: Barriers to the Ballot?” Testimony of Professor Justin Levitt, Loyola Law School, Los Angeles, Before the United States Senate Committee

Despite these clear reductions, outgoing Secretary of State Kurt Browning and his staff appear to have misinformed the public about the number of total hours of early voting hours that are *required* under HB 1355. In May 2011, Secretary Browning claimed that, although the number of early voting days was shortened under the new law, the total number of early voting hours would remain the same. “The new law makes early voting more accessible now than ever before,” Secretary Browning averred, “by expanding the number of hours that election supervisors can open early voting sites—from just eight hours before, to 12 hours a day.” Without providing evidence, Secretary Browning went on to claim that the reduction in early voting days was designed “[t]o combat voter fraud,”¹⁵ as well as “[to] reduce the burden on poll workers and provide needed flexibility to local election supervisors.” Summarizing the legislation in an op-ed in a *St. Petersburg Times* op-ed, he reiterated, “Early voting remains at 96 hours, with greater flexibility for counties.”¹⁶ Subsequently, the watchdog, Politifact, took issue with Secretary Browning’s claim regarding the total number of early voting hours required under HB 1355,

on the Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, United States Senate, September 8, 2011. Available: <http://www.judiciary.senate.gov/pdf/11-9-8LevittTestimony.pdf>.

¹⁵ If preventing voter fraud were the true intent of HB 1355, then in this new law there likely would have been attention placed on cracking down on what appears to be the not-so-uncommon practice of fraudulent absentee ballots in Florida. Absentee ballot fraud is not limited to mayoral races in Florida’s metropolitan areas, which are well documented. See, for example, Dahleen Glanton, “Differences Cited in ‘98 Miami Vote Case,” *Chicago Tribune*, November 13, 2000. Available: http://articles.chicagotribune.com/2000-11-13/news/0011130119_1_absentee-ballots-miami-mayoral-election-new-election. In November, 2011, for example, several people in rural Madison County, including a candidate on the local ballot for school board, were arrested by the Florida Department of Law Enforcement and charged with obtaining absentee ballots for other people without the voters’ knowledge or consent. The school board candidate and her accomplices then provided an alternate address for the ballots to be mailed to the registered voters by the county Supervisor of Elections and allegedly then retrieved the ballots from the fraudulent locations, brought the ballots to the voters—sometimes with the ballots already filled out—and had the voters sign the absentee ballot signature envelopes. “Madison County officials arrested for voter fraud,” *WTXL*, November 1, 2011. Available: http://www.wtxl.com/content/localnews/story/Madison-County-officials-arrested-for-voter-fraud/-Nq7HTFCCU-kRpw39U_2tA.csp.

Rather than addressing absentee ballot fraud, HB 1355 actually eliminated the provision that existed in 2010 when the above fraud occurred, making future absentee ballot fraud more difficult to prosecute. In particular, prior to the passage of HB 1355 Supervisors of Elections were required to send absentee ballots to voters’ registered addresses unless said voters were absent from the county, hospitalized, or temporarily unable to occupy residences. Now, under HB 1355, instead of being required with the forgoing exceptions to send an absentee ballot “[b]y nonforwardable, return-if-undeliverable mail to the elector’s current mailing address on file with the supervisor,” Supervisors of Elections may mail an absentee ballot “to any other address the elector specifies in the request.” Chapter 101.62 “Request for absentee ballots.” Available:

http://statutes.laws.com/florida/TitleIX/chapter101/101_62.

One possible explanation for the reason that Florida state lawmakers appear to have turned a blind eye to absentee ballot fraud in the state is the partisan divide on absentee voting. Registered Republicans in Florida are likely to use this form of convenience voting much more than their Democratic counterparts, and in the 2008 General election Republicans had a 10.8% lead over Democrats voting absentee ballots through Election Day. 47 percent of those who voted absentee were Republicans and 36 percent were Democrats. See, The Florida Senate, Committee on Ethics and Elections, “The Effect of Early Voting on Voter Turnout in Florida Elections; 2010 Update,” October 2010. Available: <http://www.flsenate.gov/Committees/InterimReports/2011/2011-118ee.pdf>.

¹⁶ Kurt Browning, “Florida’s early voting remains at 96 hours,” *St. Pete Times*, May 23, 2011. Available: <http://www.tampabay.com/opinion/columns/floridas-early-voting-remains-at-96-hours/1170931>.

rating his statement as “*Mostly False*.”¹⁷ In fact, the aggregate number of early voting hours that county Supervisors of Elections *must* remain open under HB 1355 was cut in half, from 96 hours in 2008, to 48 hours.

Not surprisingly, well before the controversial legislation was signed into law by Governor Scott, Democrats widely denounced HB1355, referring to it as the “voter suppression” bill, which among other provisions, would deter minorities from voting. According to its critics, the Republican-sponsored legislation was a thinly veiled effort suppress minority voter turnout under the cover of reducing fraudulent voting. Senate Minority Leader, Nan Rich, was blunt in her criticism of the legislation, saying, “I have to wonder if the only problem that can be found with our electoral process is that some people don’t like the outcome of the last presidential election.”¹⁸ Nonpartisan advocacy groups also condemned the legislation. The Florida League of Women Voters decried the decision by the state legislature to curtail early voting, accusing the state legislature of “reverting to Jim Crow-like tactics.”¹⁹

Notwithstanding the criticisms from Democratic lawmakers and their progressive allies, as well as a flurry of lawsuits in federal courts, 62 county Supervisors of Elections, in concert with the Florida Secretary of State, have implemented all of the voting and election changes under HB1355, including the reduction of EIP voting. However, in accordance with the Voting Rights Act of 1965, five of Florida’s 67 “Section 5” counties—Collier, Hardee, Hendry, Hillsborough, and Monroe—must first receive federal preclearance from the US Department of Justice before making any changes to electoral administration or voting rights in their jurisdictions.²⁰ As such, Florida’s January 31, 2012 Presidential Preference Primary will operate under conflicting sets of electoral administration and voting rights. Howard Simon, the Executive Director of the ACLU of Florida, which unsuccessfully sued in federal court to prevent the implementation of HB1355, flagged the irony, saying, “Florida is in position yet again to turn our elections into a mockery by conducting an important, nationally significant election under two different sets of election rules depending on where you live.”²¹

¹⁷ Politifact, “Flexibility in early voting means possibly less hours to vote,” *St. Pete Times/Miami Herald*, July 27, 2011. Available: <http://www.politifact.com/florida/statements/2011/may/23/kurt-browning/flexibility-early-voting-means-possibly-less-hours/>.

¹⁸ David G. Savage, “Election laws tightening in GOP-run states,” *Los Angeles Times*, October 30, 2011. Available: <http://www.latimes.com/news/nationworld/nation/la-na-vote-florida-20111031,0,1962738.story>.

¹⁹ League of Women Voters, Press Release, “JIM CROW TACTICS RETURN TO FLORIDA: VOTER SUPPRESSION LAW MOVING QUICKLY DESPITE PROTESTS,” April 15, 2011. Available: <http://leagueorangecounty.typepad.com/blog/2011/04/jim-crow-tactics-return-to-florida-voter-suppression-law-moving-quickly-despite-protests.html>. Former President, Bill Clinton, also compared the election reform bill to Jim Crow. See Gabriella Schwarz, “Bill Clinton compares new voting laws to Jim Crow,” *CNN*, July 6, 2011. Available: <http://politicalticker.blogs.cnn.com/2011/07/06/bill-clinton-on-todays-jim-crow/>.

²⁰ At the time of this writing, the status of four provisions being challenged HB1355 for the five Section 5 counties remains uncertain. In the summer, a federal judge in Miami refused to hear a lawsuit against the implementation of HB1355 in all of Florida’s counties. Then in late October, 2011, a federal district court in Washington, DC, turned down Governor Scott’s request for an expedited review of the four major changes to the state’s electoral code being reviewed by the US Department of Justice, in accordance with Section 5 of the VRA. See Dara Kam, “In push for its new election law, Florida challenges U.S. Voting Rights Act,” *Palm Beach Post*, October 11, 2011. Available: <http://www.postonpolitics.com/2011/10/federal-court-tosses-elections-lawsuit/>; Mary Ellen Klas, “Federal judges reject Browning’s request to expedite ruling on voting law case,” *St. Petersburg Times*, October 28, 2011. Available: <http://www.tampabay.com/blogs/the-buzz-florida-politics/content/federal-judges-reject-brownings-request-expedite-ruling-voting-law-case>.

²¹ Mary Ellen Klas, “Federal judges reject Browning’s request to expedite ruling on voting law case.”

The Florida legislature's successful effort in 2011 to truncate the number of early voting days and required hours did not occur in isolation. Paralleling Florida's effort to reduce EIP voting, in June the Republican-controlled Ohio legislature enacted HB159, which reduced by half the number of early voting days and completely eliminated early voting on Saturdays and Sundays.²² In Georgia, the legislature passed HB92, which eliminated early voting on the Friday preceding the general election. Beyond reductions in EIP, there was a nationwide concerted, if not coordinated, effort among Republican-controlled legislatures to tighten voting laws and electoral codes.²³ Republican state lawmakers and the governors who signed the bills into law typically defended their efforts by claiming they were aimed at reducing voter fraud.

For many observers, however, the restrictive voting legislation smacked of partisan politics: Republican lawmakers, convinced that the expansion of convenience voting laws contributed to the victory of Barack Obama in 2008, were determined to not let it happen again in 2012. Marge Baker, executive vice president of People for the American Way, observed that "So-called anti-fraud laws are almost always thinly veiled attempts to prevent large segments of the population from making it to the ballot box... low-income voters, college students, people of color, the elderly. The people behind these laws know that there is no 'voter fraud' epidemic. They just want to make it as difficult as possible for certain types of people to vote."²⁴ According to a recent study by the Brennan Center for Justice at the New York University School of Law, in aggregate, the restrictive voting laws may have made "it significantly harder for more than 5 million eligible voters to cast ballots in 2012," with the heaviest burdens falling "most heavily on young, minority and low-income voters."²⁵

Who Votes Early In-Person?

According to a recent report issued by the Pew Charitable Trusts, EIP voting continues to increase across the states. Drawing on data from the Census Bureau's Current Population Survey, 8.4 percent of those who reported voting in 2010 said they did so casting an in-person early ballot, up from just 5.8 percent in the 2006 midterm election. In four states-- Georgia, Nevada, New Mexico and North Carolina-- reports of EIP voting increased by more than 10 percentage points.²⁶

But who is more likely to take advantage of EIP voting laws and cast a ballot in-person before Election Day? Despite the paucity of empirical studies on the topic, the conventional wisdom is, in the words of

²² Mary Wisniewski and Jo Ingles, "Referendum effort to challenge Ohio absentee voting limits," *Reuters*, November 22, 2011. Available: <http://www.reuters.com/article/2011/11/22/us-ohio-idUSTRE7AL2JU20111122>.

²³ According to the National Conference of State Legislatures, legislation curtailing voter registration drives, reducing early voting days, requiring stricter voter ID requirements, and banning voting by ex-felons was introduced in 38 state legislatures, and was adopted in a dozen states. National Conference of State Legislatures, "Absentee and Early Voting," 2011. Available: <http://www.ncsl.org/default.aspx?tabid=16604>. See also, Michael Cooper, "New State Rules Raising Hurdles at Voting Booth," *New York Times*, October 2, 2011. Available: <http://www.nytimes.com/2011/10/03/us/new-state-laws-are-limiting-access-for-voters.html>.

²⁴ Quoted in Kilgore, "The Truth About Voter Suppression." Some of the legislation appears to have designed to lay waste to voter federal protections covered by Section 5 of the Voting Rights Act of 1965. In defending their statutes, several states have gone further, expressly asking federal courts to strike down Section 5 of the VRA. See Rick Hasen, <http://electionlawblog.org/?p=23359>

²⁵ Wendy R. Weiser and Lawrence Norden, "Voting Law Changes in 2012," *Brennan Center for Justice*, at New York University, October 2011. Available: http://www.brennancenter.org/content/resource/voting_law_changes_in_2012/.

²⁶ Pew Charitable Trusts, "The Rise of Non-Precinct Place Voting," *Election Data Dispatches*, November 1, 2011. Available: http://www.pewcenteronthestates.org/initiatives_detail.aspx?initiativeID=85899364112#nonprecinct

Paul Gronke, a leading expert on early voting, “*early voting does not increase turnout by bringing new voters into the system.*”²⁷ Rather, “the perverse consequences of electoral reform,” as Adam Berinsky reasons, is that convenience voting reforms, including EIP, appear to make it easier for citizens who are already politically interested and engaged in the electoral process to cast their ballots. As Berinsky neatly summarizes, [t]hose lacking political interest remain nonvoters,” as “political engagement currently follows, rather than crosses, demographic divisions in the electorate.”²⁸ Citizens taking advantage of EIP tend to be likely voters; they merely utilize early voting laws to move ahead the timing of when they cast their ballots. These citizens, scholars argue, are already motivated to vote; early, in-person voting just makes the task that much more convenient. Unfortunately, most of these studies, many of which are now quite dated, rely on a single election, often tabulating early voting results in a single county, or rely on survey data.²⁹

In a pioneering study of in-person early voting, Robert Stein found that strong partisans were more likely than other voters to utilize the procedure.³⁰ Analyzing in-person early voting data from a single election (1994) in a single Texas county (Harris), he found that strong partisans—especially Democrats—were more likely to cast EIP ballots than other registered voters, but found little socio-demographic variance between those who reported casting an early ballot and those who reported voting on Election Day. Reasoning that if partisans tend to be more likely than nonpartisans to have already made up their minds on how to cast their ballots, Stein argued that early voting simply allowed them to express their civic (and partisan) duty sooner. Similarly, in his individual-level study of voters who submitted their mail-in ballots early to the supervisor of elections of Multnomah County, Oregon in three elections between 2002 and 2003, Paul Gronke found that partisans were significantly more likely to mail in their ballots early, as were those living in zip-code areas with longer commute times (according to the 2000 US Census).³¹

Other early voting research has drawn on self-reported survey responses to estimate the likelihood of a voter casting an early vote. In their study of EIP voting a single county in Tennessee in the 1996 presidential election, Grant Neeley and Lilliard Richardson found few differences between respondents who in a telephone survey said they voted early or voted on Election Day, concluding that “early voting merely conveniences those who would have voted anyway.”³² Similarly, in a study relying on exit poll data of early and Election Day voters in Miami Dade County, Florida, conducted between October 22 and November 2, 2004 (Election Day) found that there are few differences between early voters traditional “precinct” voters along strong partisan lines, although the authors speculated that Hispanics were more likely to utilize in-person early voting, likely due to the mobilizing efforts by the Republican

²⁷ Paul Gronke, “Early Voting Reforms and American Elections,” Paper presented at the Annual Meeting of the American Political Science Association, Chicago IL, September 2-5, 2004.

²⁸ Adam J. Berinsky, “The Perverse Consequences of Electoral Reform in the United States,” *American Politics Research* 33 (2005): 471-91.

²⁹ For a comprehensive review of the literature, see Robert M. Stein and Greg Vonnahme, “Voting at Non-Precinct Polling Places: A Review and Research Agenda,” *Election Law Journal*, 10 (2011): 307-11.

³⁰ Robert M. Stein, “Early Voting,” *Public Opinion Quarterly* Volume 62 (1998):57–69.

³¹ Paul Gronke, “Early Voting Reforms and American Elections,” *William and Mary Bill of Rights Journal* 17 (2008): 423-45.

³² Grant W. Neeley and Lilliard E. Richardson, “Who is early voting? An individual level examination,” *Social Science Journal* 38 (2001) 381–392.

Party and Mel Martinez’s US Senate campaign.³³ Another study by Gronke and his coauthors, which used early voters’ self-reports in several national polls, reported some demographic differences among early and traditional Election Day voters at the descriptive level—namely, that early voters tend to be older, better educated, and more politically engaged—but these relationships largely disappeared in multivariate models.³⁴

Of course, partisanship alone may not be enough to drive individuals to the polls to cast and early vote. As witnessed in the 2008 Florida general elections, political parties, candidates, and other voting rights activists often intervene, mobilizing citizens to the polls. Indeed, without the mobilizing efforts of candidates and political parties, early voting turnout in Texas’ 2000 gubernatorial election, Stein and his coauthors find, would likely have been marginal. The motivation to vote EIP may not be “self-actuating,” they conclude, as “the greatest substantive impact of increased early voting opportunities clearly results from partisan mobilization efforts,” especially among Democrats.³⁵

Data and Expectations

Unlike previous studies of EIP in the American states which rely on aggregate-level or survey data, our original dataset allows us to pinpoint precisely not only which Florida voters—identified by their race and ethnicity, age, party affiliation, registration date, and prior vote history—were more likely to cast early in-person ballots in the 2008 General election—but also identify on which day they cast an early ballot. In order to identify these patterns, we followed a two-step procedure.

First, we assembled from public sources the complete set of 2008 General election early voting files, one file from each of Florida’s 67 counties. Each such early voting file contains a list of voters who voted early, and to the best of our knowledge these lists are comprehensive. Each early voting file consists of records, one record per early voter, and across the combined 67 early voting files there are 2,642,724 records of individuals who voted early in the 2008 General election. Each record among the approximately 2.6 million early voting records specifies the date on which a particular early voter voted, for example, October 23, 2008 (a Thursday) or perhaps November 2, 2008, a Sunday. These dates are key to the analysis that follows.

Besides dates of early voting, each record among the 67 early voting files, as before one record per early voter, is associated with a voter identification number. The records in the 67 early voting files do not specify voter demographics, e.g., voter race, voter date of registration, voter age, voter gender, and so forth. They also do not specify voter party registration or voter history, e.g., whether a voter cast a vote in the 2004 General election.

Second, we took a state voter file, created in March, 2010, and merged this file with the aforementioned 67 early voting files. The reason we took this step is because the Florida voter file contains demographic data on voters as well as voter histories. In our Florida voter file there are a total of 12,387,165 records.

³³ Paul Gronke and Eva Galanes-Rosenbaum, “The Growth of Early and Non-Precinct Place Balloting: When, Why, and Prospects for the Future,” in Benjamin Griffith, ed. *America Votes! A Guide to Election Law and Voting Rights*. Chicago: American Bar Association, 2008.

³⁴ Paul Gronke and Daniel Toffey, “The Psychological and Institutional Determinants of Early Voting,” *Journal of Social Issues* 64 (2008): 503-24.

³⁵ Robert M. Stein, Jan Leighley, and Christopher Owens, “Who votes, who doesn’t, why and, what can be done?” A Report to the Federal Commission on Electoral Reform, June 10, 2005.

Each record is associated with one registered voter, and each record has a voter identification number. This number allows us to associate records in the Florida voter file with records in early voting files.

Given the presence of voter identification numbers in the 67 early voting files and in our overall Florida voter file, we successfully merged 2,592,061 early voting records from the 67 early voting files into the main Florida voting file. This means that approximately 98% of voters whose identification numbers appear in the early voting files were successfully merged. We suspect that the 2% of early voters who were not so merged reflect people who moved out of Florida or died between the date of the 2008 General election and the date that our voter file was created.³⁶

We also discovered a number of voters whose counties of residence in the overall Florida voting file did not match counties of residence based on the 67 early voting files. For these voters we assumed that the county of residence in the early files is correct. When our calculations require us to know the county in which a voter lives, we therefore use the latter. We suspect that differences in counties of residence between early voting files and the overall voting file reflects moving within Florida.

As for our expectations, given the fact that contemporaneous anecdotal and media reports suggested that Democrats, African Americans, younger, and first-time voters were more likely to cast EIP ballots in the 2008 general election, we are dubious of much of the conventional wisdom regarding convenience voting as it pertains to the experience in Florida. First, we do not expect EIP voting in the Florida 2008 general election to be constant across partisans; rather, we expect to find Democrats utilizing EIP voting disproportionately more than Republicans. Indeed, we suspect that the motivation to vote EIP is likely not be “self-actuating,” as Stein and his colleagues suggest, and that mobilization efforts, especially by progressive allies in conjunction with the Obama campaign, helped skew EIP voter participation to favor Democrats.³⁷ As such, we expect the daily pattern of EIP voting over the two week period to reveal differences among Democrats and Republicans, as well as between partisans and nonpartisans. Based on contemporaneous reports from 2008, there is good reason to expect that Democrats voted disproportionately on the weekends, and that nonpartisans who voted EIP elected to do so in the waning days of the early voting period.

Second, we expect there to be considerable socio-demographic differences among EIP voters in Florida over the two week EIP voting period in the 2008 general election. Not only do we expect early voters not to be reflective of the electorate as a whole; we have good reason to expect that not all socio-demographic groups do so consistently day-to-day. As such, we expect certain socio-demographic groups to utilize EIP voting on different days, and more or less frequently as Election Day approaches. Specifically, we expect racial and ethnic minorities—especially African Americans—to utilize early voting more on the weekends, especially Sundays. We also expect older voters, those who have been registered for more than a year, and regular voters to cast EIP ballots earlier during the two week

³⁶ This small unmatched population is excluded from the analysis that follows. In the process of working with the combined Florida voter file and the 67 early voting files, we discovered a small number of data errors. Among the 67 early voting files, for example, there are four records from Palm Beach County with dates of early voting from 2005. Obviously such dates are wrong, and we ignored early voting records with clearly erroneous early voting dates. We also discovered records of individuals who according to early voting files voted early in the 2008 General election but, according to the Florida voter file, did not vote early. For these records we assume that the early voting files are correct.

³⁷ Robert M. Stein, Jan Leighley, and Christopher Owens, “Who votes, who doesn’t, why and, what can be done?” *A Report to the Federal Commission on Electoral Reform*, June 10, 2005.

window, and younger, newly registered, and first-time voters to cast EIP ballots later during the two week period.

Findings

To begin with, we assess the party registration breakdown of EIP voters, relative to the statewide party registration figures immediately prior to the 2008 general election. We find that Democrats were much more likely than Republicans to cast EIP votes. Nearly twice as many registered Democrats, some 1.35 million, voted early in-person in 2008, compared to just 788,696 registered Republicans. Relatively speaking, a much higher proportion of registered Democrats voted EIP than Republicans, as Figure 1 reveals. In the 2008 general election, Democrats comprised nearly 42% of the registered voters in the state, but they accounted for nearly 52% of the EIP voters. Republicans, on the other hand, comprised slightly more than 36% of voters who were registered for the 2008 election, but accounted for only 30% of EIP voters. Perhaps surprisingly, a sizeable number of No Party Affiliation (NPA) voters cast EIP ballots—some 375,903 NPA voters—accounting for 14.5% of all EIP ballots. In 2008, NPA registered voters accounted for slightly less than 19% of all registered voters in the state. Finally, slightly more than 3% of all EIP ballots were cast by voters registered with various third parties, which was nearly identical to the percentage of voters registered with third parties in the state in 2008.

[Figure 1 about here]

We also assess whether racial and ethnic minorities—most notably African Americans—were more likely to cast EIP votes than whites, and if they were more likely to vote EIP than on the traditional Election Day. As Figure 2 reveals, not only did African Americans cast *more* early, in-person ballots than they cast on Election Day, but African Americans accounted for a much greater proportion of the early voting electorate than they did on Election Day, Tuesday, November 4, 2008.³⁸ Perhaps due to the early voting mobilization efforts by the Obama campaign and their allies which overtly targeted African Americans, Blacks ended up casting 22 percent of the total EIP votes in the 2008 general election, even though they comprised just 13 percent of the state’s total electorate.³⁹ Indeed, more African Americans cast EIP ballots than cast ballots on Election Day.

[Figure 2 about here]

Our dataset also allows us to display, precisely, when early voters actually cast ballots in the 2008 General election. Figure 3 plots over time when EIP ballots were cast. Several patterns in this figure are notable. As is evident by solid dots in the figure, there were more early voters in the second week of early voting than in the first. In addition, in the early voting period there were weekend effects. Namely, in both the first and second weeks of early voting, the number of early voters was smaller on Saturday and Sunday than on the preceding weekdays. The Friday-Saturday dropoff was larger in the

³⁸ The pie charts presenting in Figure 1 are based on county-level early voting files. Approximately 98% of all early voters from the 2008 General election are represented in the right panel of Figure 1. We do not know the racial and ethnic identities of the remaining approximately 2%, coded “Other.”

³⁹ Justin Levitt, “New State Voting Laws: Barriers to the Ballot?” Testimony of Professor Justin Levitt, Loyola Law School, Los Angeles, Before the United States Senate Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, United States Senate, September 8, 2011. Available: <http://www.judiciary.senate.gov/pdf/11-9-8LevittTestimony.pdf>

first week than in the second, relatively speaking. However, the Saturday-Sunday dropoff was greater in the second week of early voting.

[Figure 3 about here]

The drop in the number of early voters on the two Sundays of early voting is a bit deceptive because only ten counties in Florida offered early voting on Sunday during the run-up to the 2008 General election.⁴⁰ To this end, Figure 4 is analogous to Figure 3, but is based only on the counties that had early voting on Sundays. The patterns in this figure (based on ten counties) are similar to those seen for all 67 Florida counties except for the fact that, among the counties that offered early voting on Sunday, early voting counts on Saturday are not as different from Sunday counts as they are across all of Florida.

[Figure 4 about here]

Our dataset also allows us to examine the daily variation across groups of early voters. We begin by plotting EIP voting by party registration. Figure 5 describes, for each partisan (or nonpartisan) group of EIP voters, the fraction of each group that voted on a given day. For each partisan (or nonpartisan) group, the sum of the early voting fractions across the 14 days of early voting is one (or 100%).

[Figure 5 about here]

It is quite clear that in relative terms, registered Democrats were much more likely to cast EIP ballots on the first and second weekends of early voting, especially on Sundays. Registered Republicans, on the other hand, were much less likely to cast early ballots on the weekends, especially on the two Sundays. Although the fraction of early ballots cast by those registered with a third party remained constant over the two week period, NPAs voting EIP cast a disproportionate share of their ballots in the waning days of the early voting period.

[Figure 6 about here]

Figure 6 describes the composition of the early voting electorate by race and ethnicity as it varied from October 20, 2008, through November 2, 2008.⁴¹ “Composition” here means the fraction of early voters on a day that is of a particular racial/ethnic group. By construction, the four fractions on a given day sum to one (or 100%). Recall that these numbers are based on 98% of all voters who voted early in the 2008 General election.

One can see from the black squares in Figure 6 that, on all early voting days, whites made up the largest racial/ethnic group of voters. African Americans were the second largest group, again on all early voting days, followed by Hispanics and then Asians. Nonetheless, the extent to which whites comprised the largest racial or ethnic group varied by day, mostly obviously on Sundays. In particular, the greatest drop-offs in white early voting rates occur on Sundays, and on these days the fraction of African American early voters jumps. There is a slight decline in the composition of white early voters on Saturdays, but the Saturday effect is not nearly as pronounced as the Sunday effect.

⁴⁰ These counties were Bradford, Broward, Dixie, Duval, Jackson, Miami-Dade, Palm Beach, Pinellas, Sarasota, and Seminole. We determined the counties offering Sunday voting according to their official filings to the Secretary of State. See: Florida Secretary of State, Division of Elections, “Early Voting Sites by County: General election – November 4, 2008.” Available: <http://election.dos.state.fl.us/pdf/CountyEarlyVotSitesGen08.pdf>.

⁴¹ We examine the breakdown of race and ethnicity along four categories: White, Hispanic, Asian, and African-American. We ignore voters who opted not to report their race or ethnicity.

Another perspective on racial/ethnic differences can be seen in Figure 7. This figure describes, for each of the four groups race/ethnic mentioned, the fraction of each group that votes on a given day. For each group, the sum of the early voting fractions across the 14 days of early voting is one (or 100%).

[Figure 7 about here]

Here we see a different view of racial/ethnic early voting trends. As is evident in Figure 7, white early voters tend relatively speaking to vote in the first half of the early voting period and not on Sundays. This is evident in the fact that, on both Sundays of early voting, the solid black squares in Figure 7 are the lowest of the four symbols. In contrast, on the first Sunday of early voting, the racial/ethnic group with the highest participation rate was African American voters. And on the last Sunday, the group with the highest participation rate was Hispanic voters, followed by African American voters.⁴²

Of course, we cannot explain definitely why the members of a particular racial or ethnic group might have a preference for early voting on a given day of the week. However, we can say that, relatively speaking, whites choosing the convenience of voting early in person did so less frequently on Sundays compared to African American and Hispanic voters in the 2008 General election. With respect to early voting on Saturdays, whites voted less often than did African Americans. Asian early voters also appear disproportionately to prefer Saturdays.

We now turn to the issue of age. To consider whether there is a relationship between age and date of early voting, we partition all early voters into three classes: those 22 years old and younger as of November 4, 2008, those 65 years and older, and those in between. Figure 8 shows that the age-based composition of the early voting electorate varies dramatically across days. It is always true that the largest group of voters is the middle group. This is hardly surprising given the age ranges considered here; the middle age group spans over forty years in contrast to the young group, which spans only five. Even so, Figure 8 has one clear implication: compared to mid-week voting patterns, older early voters vote relatively infrequently on weekends.

[Figure 8 about here]

If we look at the fraction of each age group as it varies across the 14 days of early voting—see Figure 9—we see that older voters tend to vote in the early part of the early voting period and very infrequently on Sundays and to some extent Saturdays. Young voters, in contrast, tend to vote toward the end of the early voting period and disproportionately often on weekends.

[Figure 9 about here]

⁴² We have noted that not all Florida counties allowed for voting on Sundays in the period surrounding the 2008 General election. We also analyze early voters from the ten so-called Sunday counties. White early voters cast ballots disproportionately less often on Sundays compared to Hispanic and African American early voters. This trend holds on the Saturday before the 2008 General election and was true for African American, albeit not Hispanic, voters who cast ballots on the previous Saturday.

Related to age is date of registration. We divide our early voters into two groups: those whose year of registration was prior to 2008 and those who registered in 2008. It is apparent from Figure 10 that early voters registered prior to 2008 were relatively more likely to cast a ballot during the first week of early voting. And, we see as well that early voters who registered in 2008 were relatively more likely to vote in the final week of early voting, especially on the final four days, including the final Sunday before Election Day.

[Figure 10 about here]

Finally, with respect to General election vote histories of voters who voted early in the 2008 General election, is a clear from Figure 11 that first-time, early voters tended to wait until the end of the early voting period to cast their votes, compared to non-first-time, early voters. Note that Figure 11 includes only those early voters who were registered as of October 6, 2000. The number of "Prior Votes" (see the legend for Figure 11) is the number of General elections in which a voter voted, starting with 2000 and ending with 2006.

[Figure 11 about here]

Conclusion

Our findings show that early, in-person voting in Florida in the 2008 general election did not adhere in several respects to the conventional wisdom. They also raise important question with respect to the potential differential effects if EIP voting laws are altered. As noted, Florida's HB 1355 reduced the number of early voting days, cut in half the required number of early voting hours, and altogether eliminated early voting on the final Sunday before Election Day. The effects of these changes may have differential effects on Florida's electorate. For instance, even though African Americans comprised only 13 percent of total voters and 22 percent of early voters in Florida in the 2008 General election, they accounted for 31 percent of early voters on the final Sunday of early voting. Hispanic voters, who comprised 11 percent of total voters and 11 percent of early voters in the 2008 general election, accounted for 22 percent of the early voters on the final Sunday of early voting. While older and more regular voters enjoyed the convenience of voting early in the first week of early voting, younger, first-time, and newly registered voters disproportionately chose to vote toward the latter half of the early voting period and often on the final Sunday of early voting.

It is important to acknowledge several caveats pertaining to our findings. First, our study analyzes EIP voting in a single, even historic, presidential election, in just one state. It could very well be that the 2008 election was anomalous, and that EIP voting in Florida is not representative of the mechanism in other states.⁴³ Second, we are currently unable to assess whether EIP is habitual, with voters becoming accustomed to vote early, and even on a particular day, from one election to another. In other words, we are unable to determine using our 2008 general election dataset whether early voters in one election remain early voters in subsequent elections. Third, our dataset does not allow us to determine the motivations of those who voted EIP, or why they did so on a particular day. We would note, however, that existing EIP voting studies have similar, if not worse, limitations.

We conclude by noting that changes to convenience voting laws, including EIP, may have considerable effects in future elections. As election law scholar Richard Hasen notes, "These laws will have an effect

⁴³ Paul Gronke, James Hicks, and Daniel Krantz Toffey, "N=1? The Anomalous 2008 Election and the Lessons for Reform," paper presented at the 2009 meeting of the *American Political Science Association*.

on the margin on who votes. And in a state like Florida, a small difference matters. It could easily decide the outcome.”⁴⁴ Whether or not the Republican-controlled Florida legislature’s effort to restricting alter EIP in Florida in anticipation of the 2012 general elections parallel “methods pioneered by the white supremacists from another era that achieved the similar results,” as Risa Goluboff and Dahlia Lithwick contend,⁴⁵ they very well could impact future early voting turnout of Democratic, minority, younger, and first-time voters in the Sunshine State.

⁴⁴ Quoted in David G. Savage, “Election laws tightening in GOP-run states,” *Los Angeles Times*, October 30, 2011. Available: http://www.latimes.com/news/nationworld/nation/la-na-vote-florida-20111031_0,1962738.story.

⁴⁵ Risa Goluboff and Dahlia Lithwick, “A Fraudulent Case: The ugly parallels between Jim Crow and modern vote-suppression laws.” *Slate*. October 20, 2011. Available: http://www.slate.com/articles/news_and_politics/jurisprudence/2011/10/voter_id_laws_their_proponents_should_have_to_answer_for_the_ugly.html.

Figure 1
Comparison of Party Registration of Florida Voters and Early Voters, 2008 General election

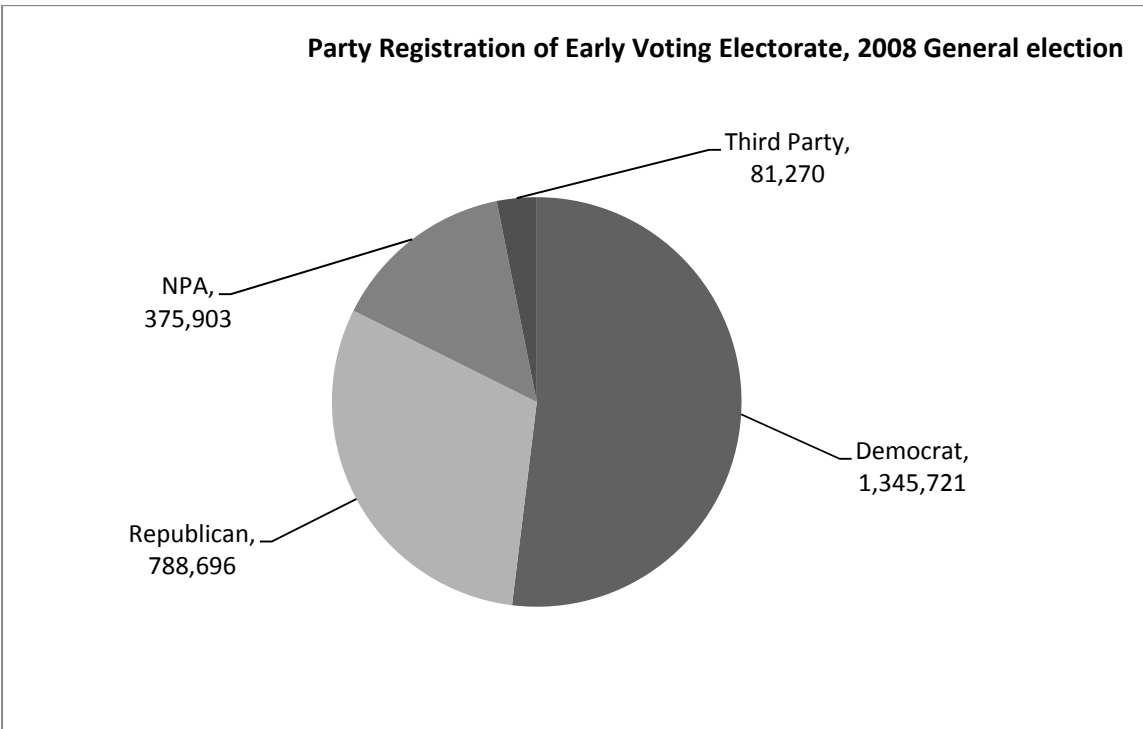
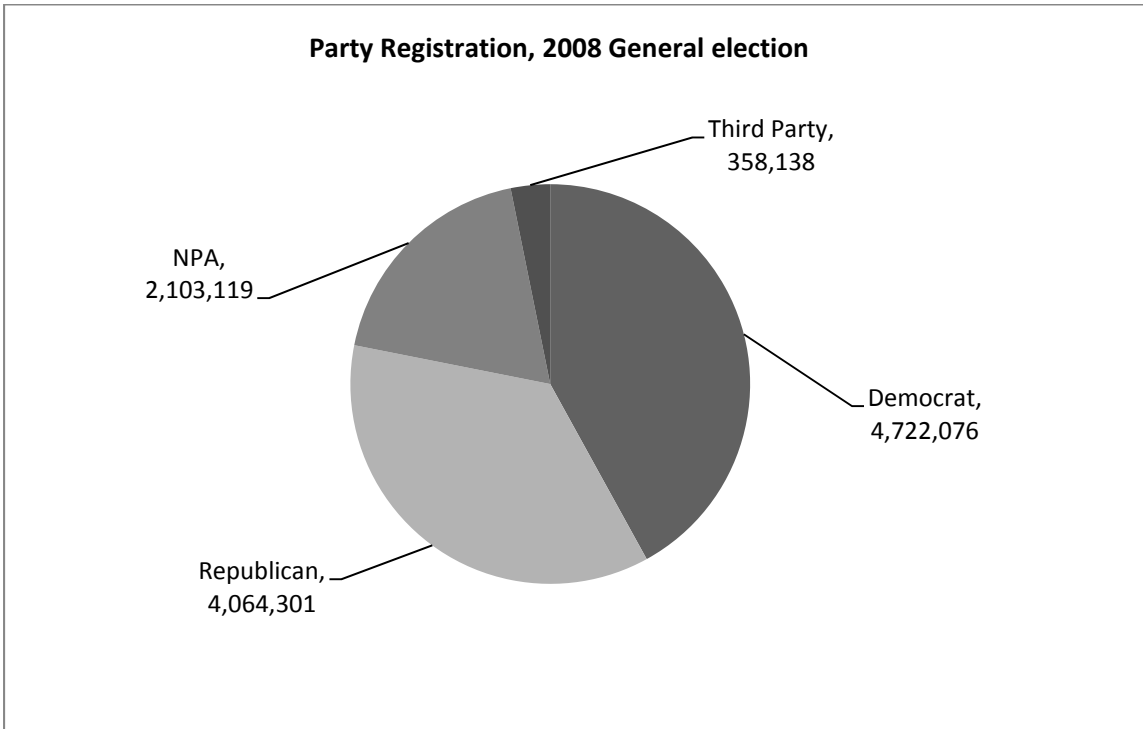


Figure 2
Comparison of Florida Non-Early Voters and Early Voters, 2008 General election

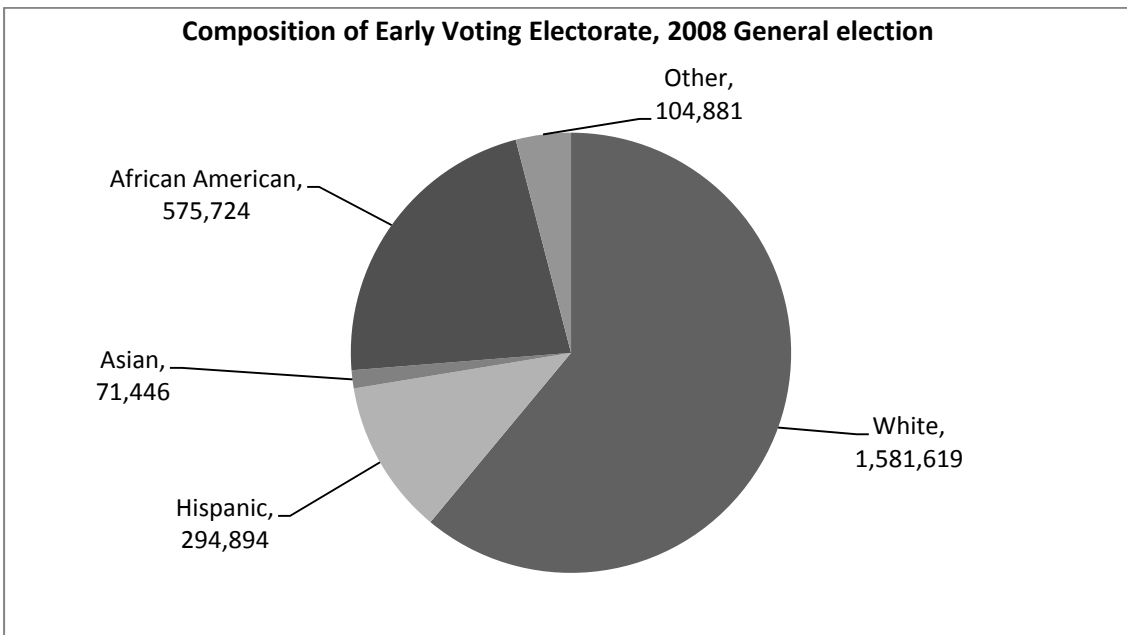
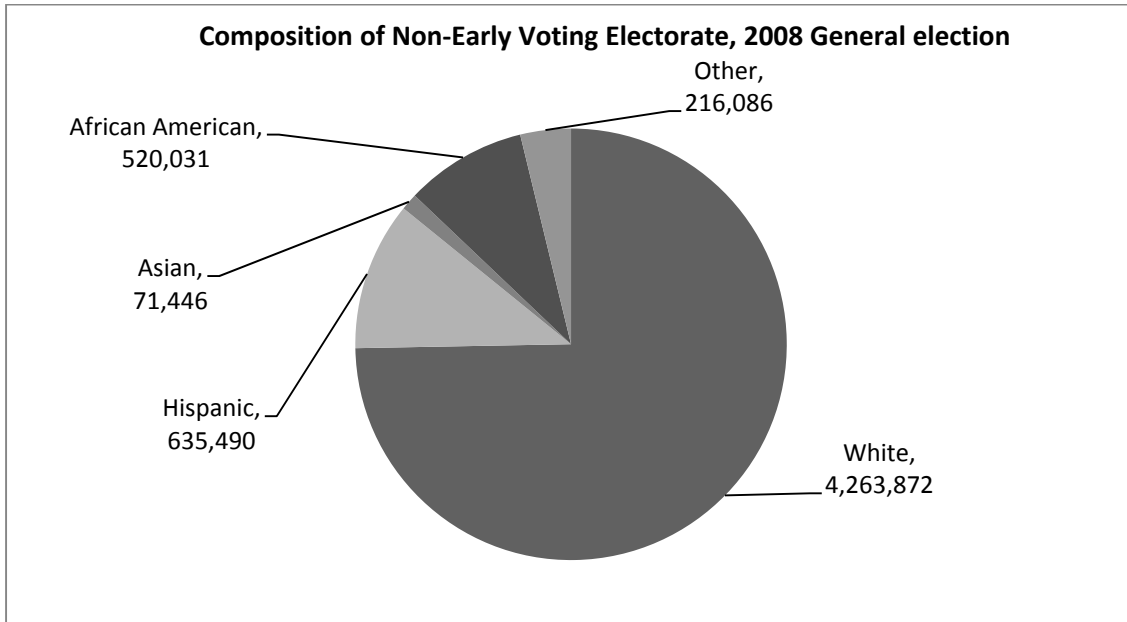


Figure 3
Overall Patterns in Early Voting in Florida, 2008 General election

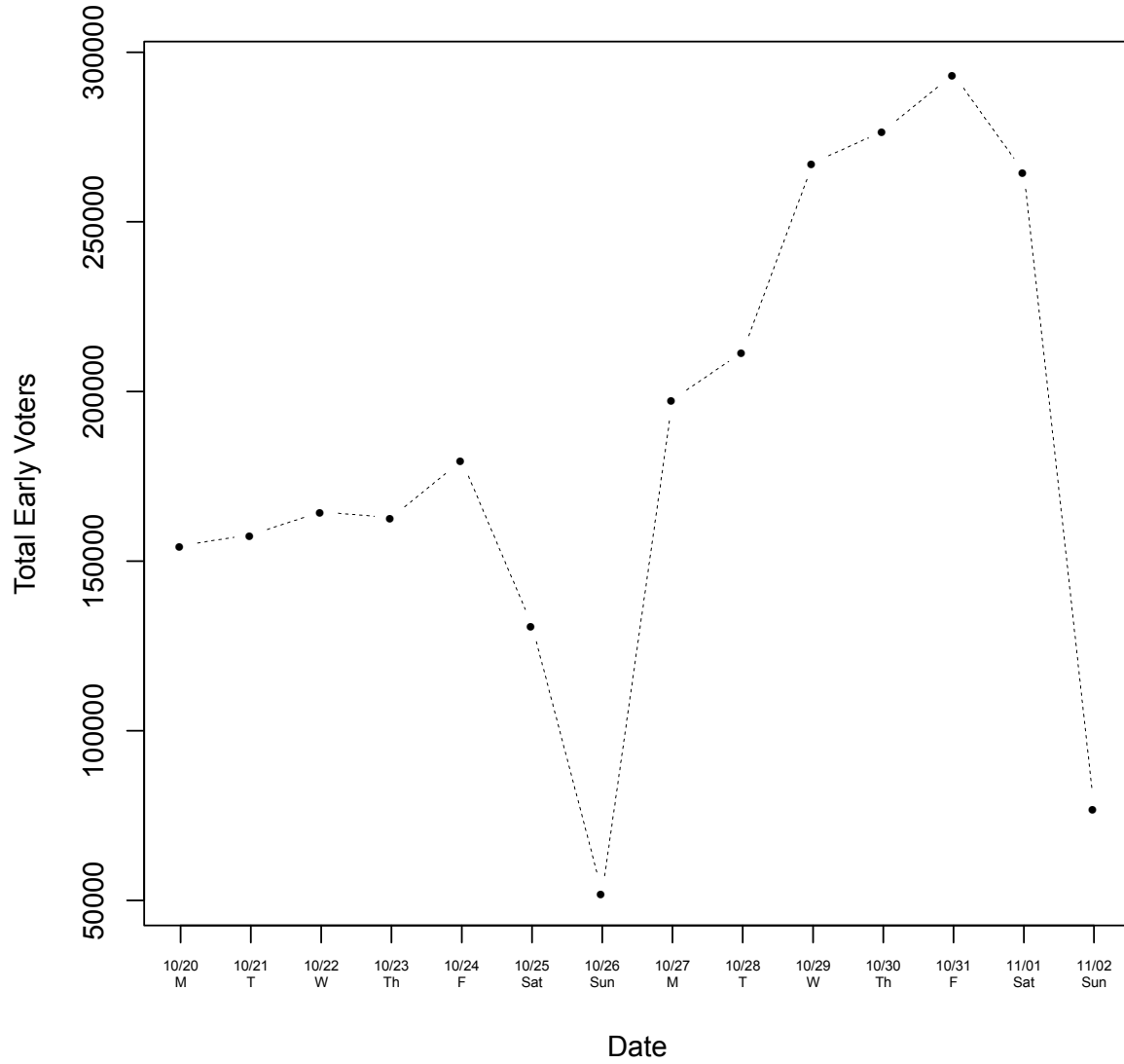


Figure 4
Overall Patterns in Early Voting in Florida, 2008 General election,
across Counties that Offered Sunday Early Voting

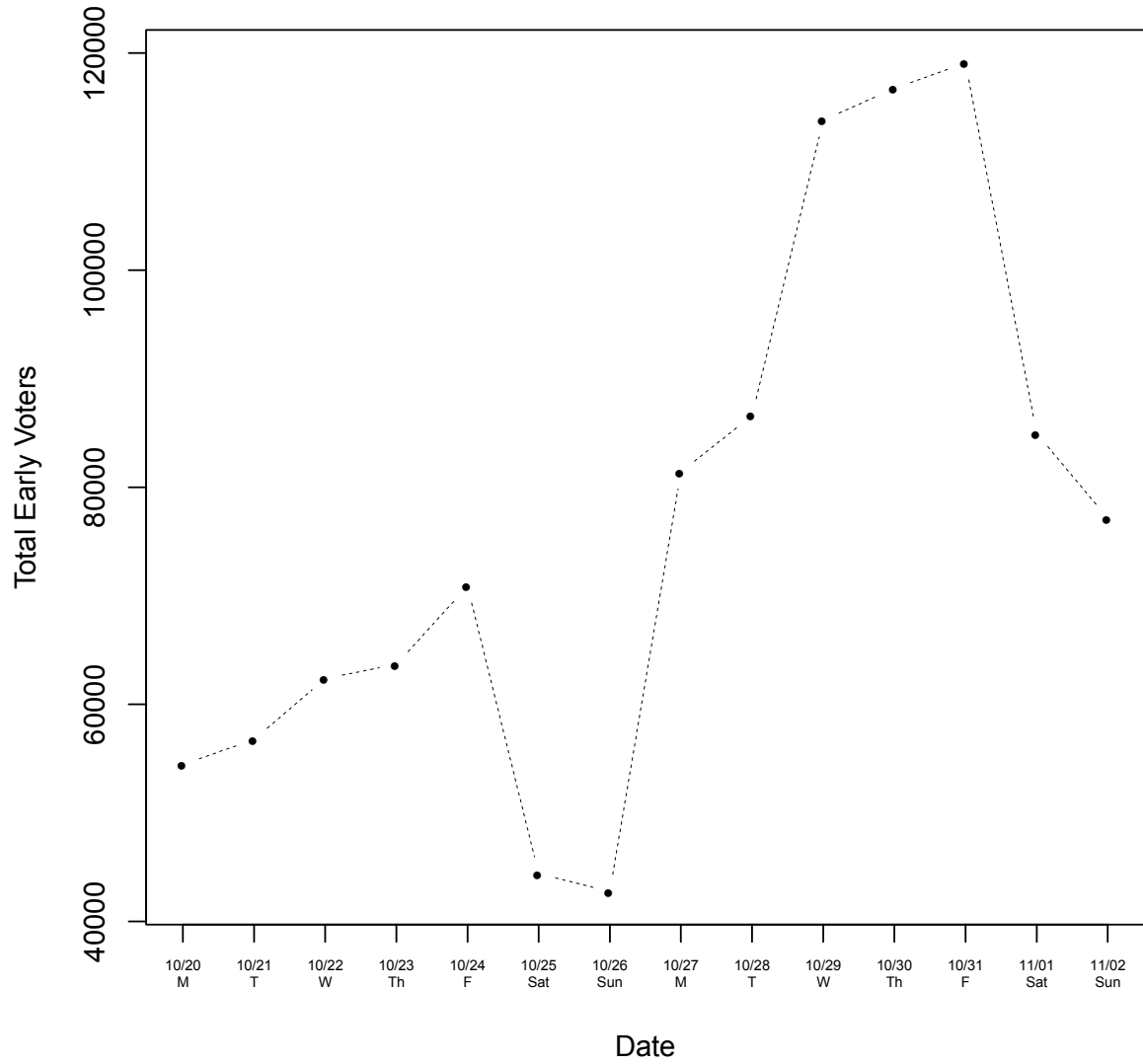


Figure 5
Party Registration Trends in Early Voting in Florida, 2008 General election

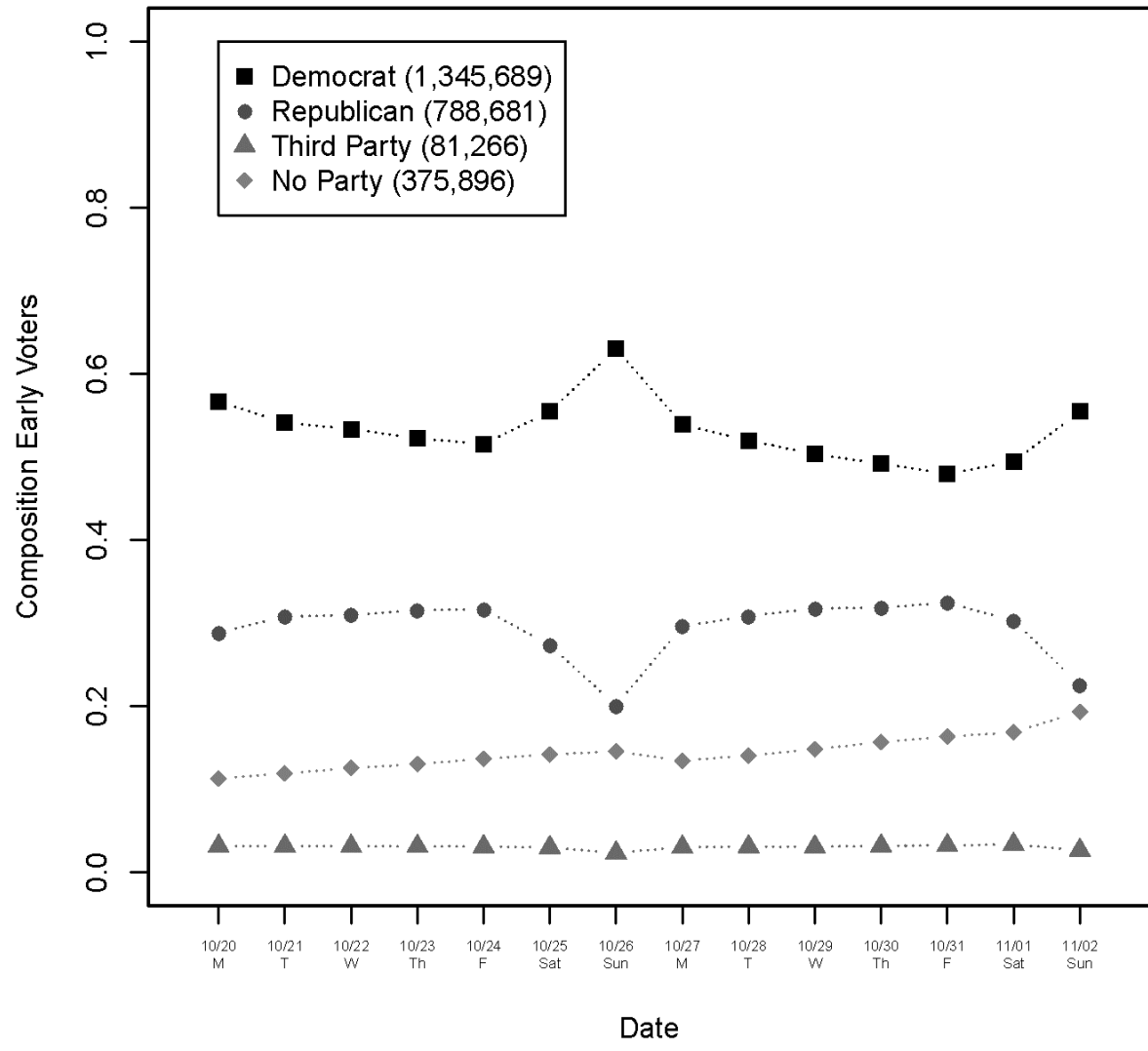


Figure 6
Racial/Ethnic Composition of Early Voters

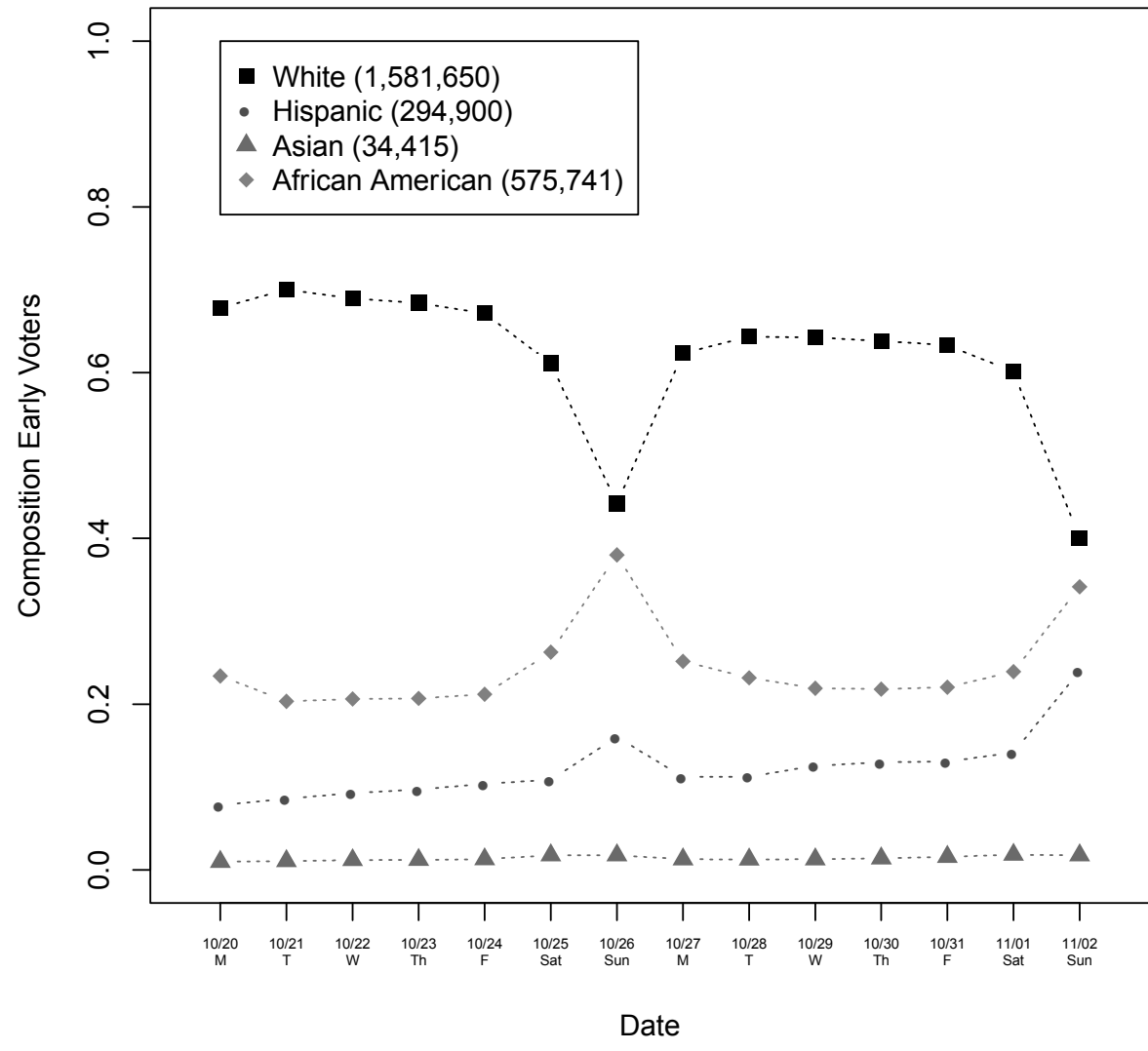


Figure 7
Racial/Ethnic Trends in Early Voting

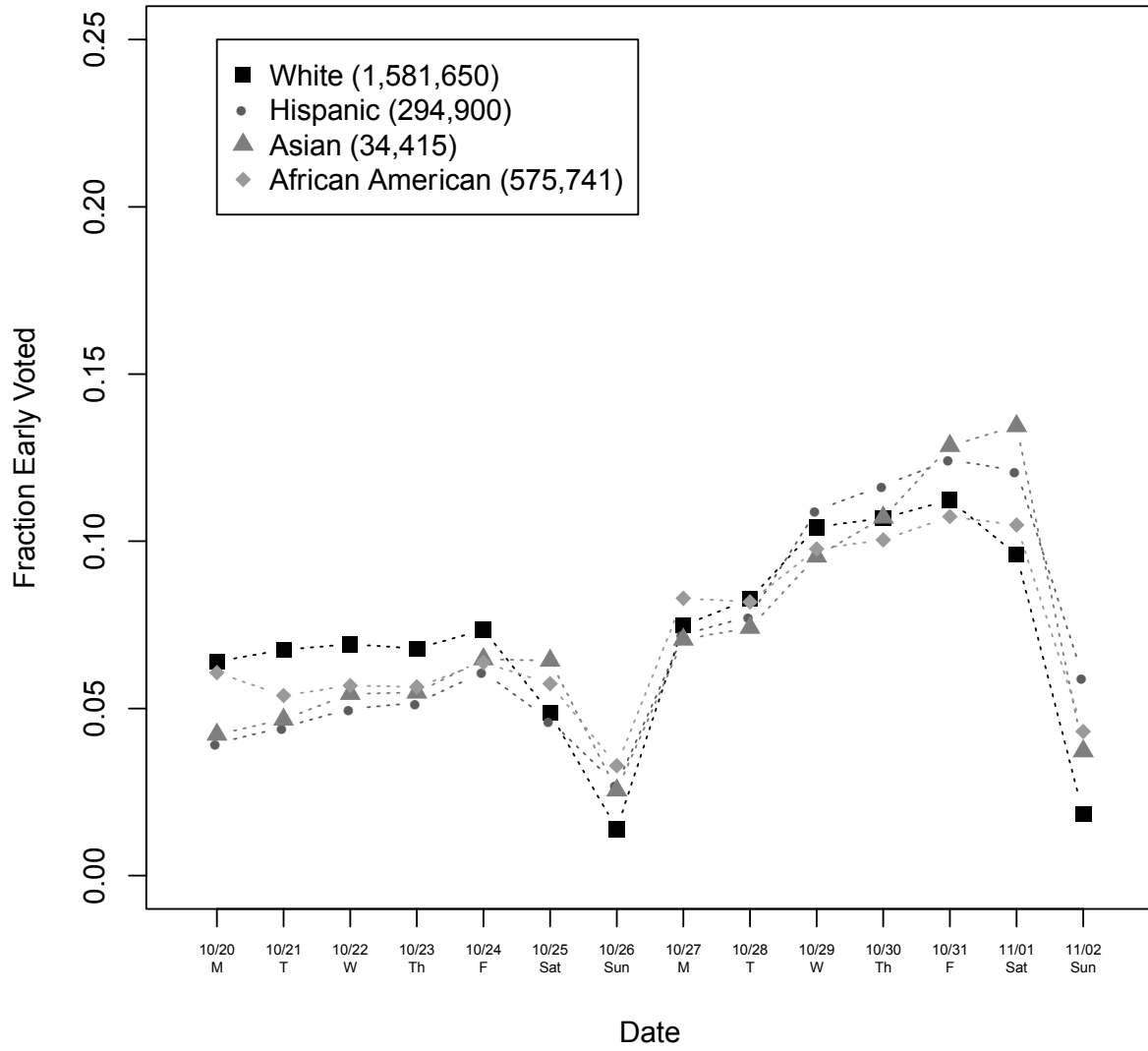


Figure 8
Age-based Composition of Early Voters

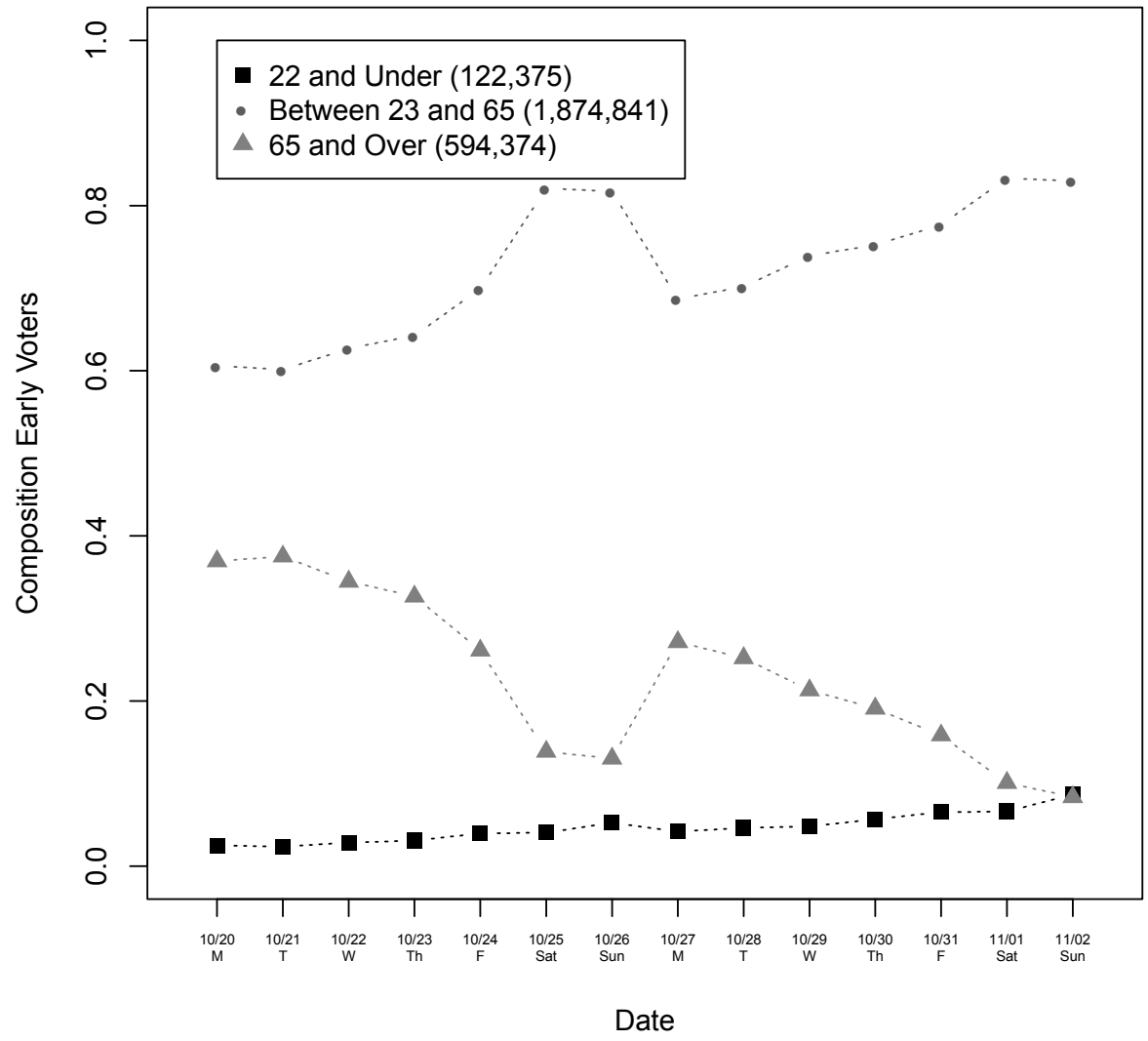


Figure 9
Age-Based Trends in Early Voting

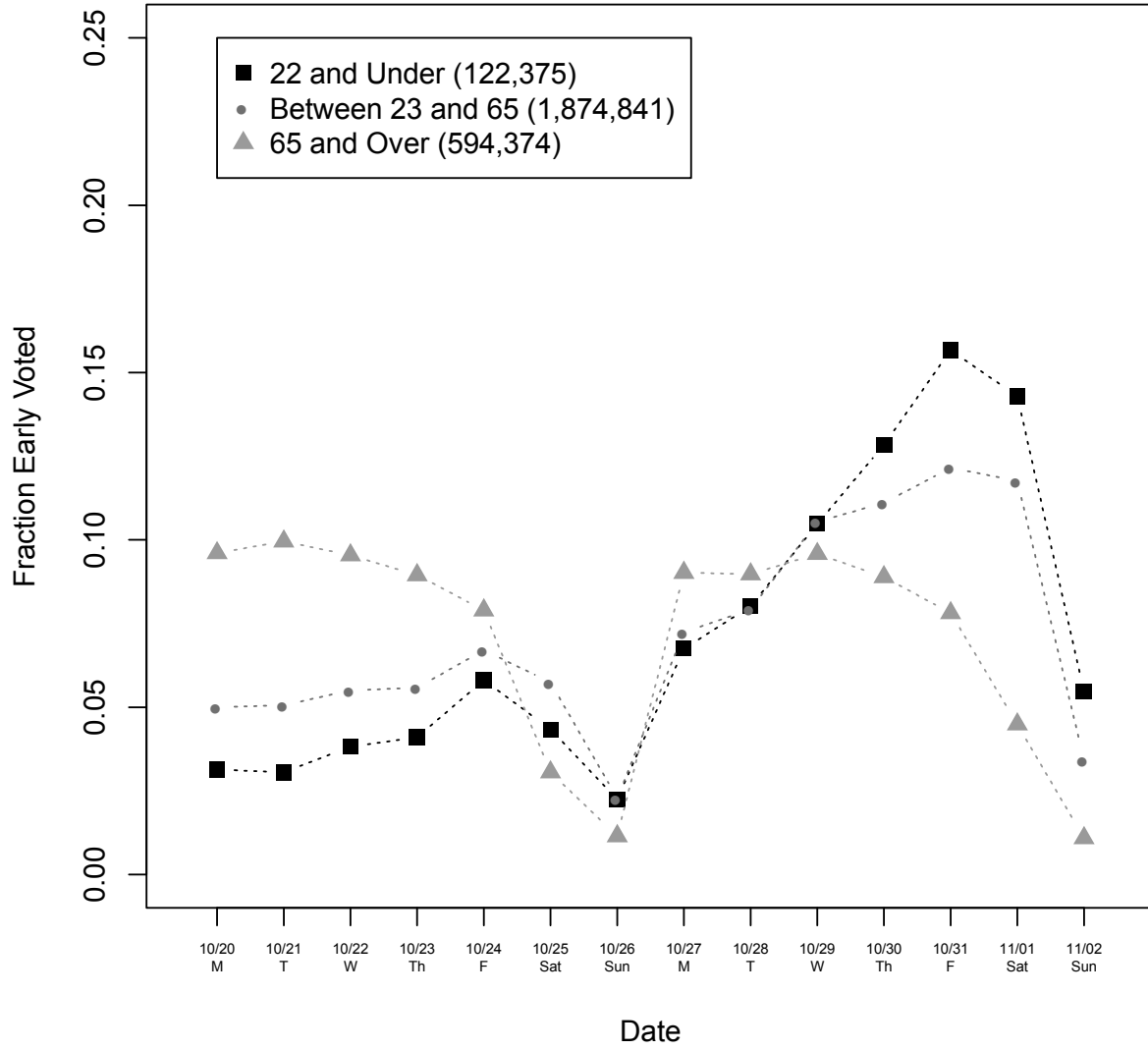


Figure 10
Registration-Based Trends in Early Voting

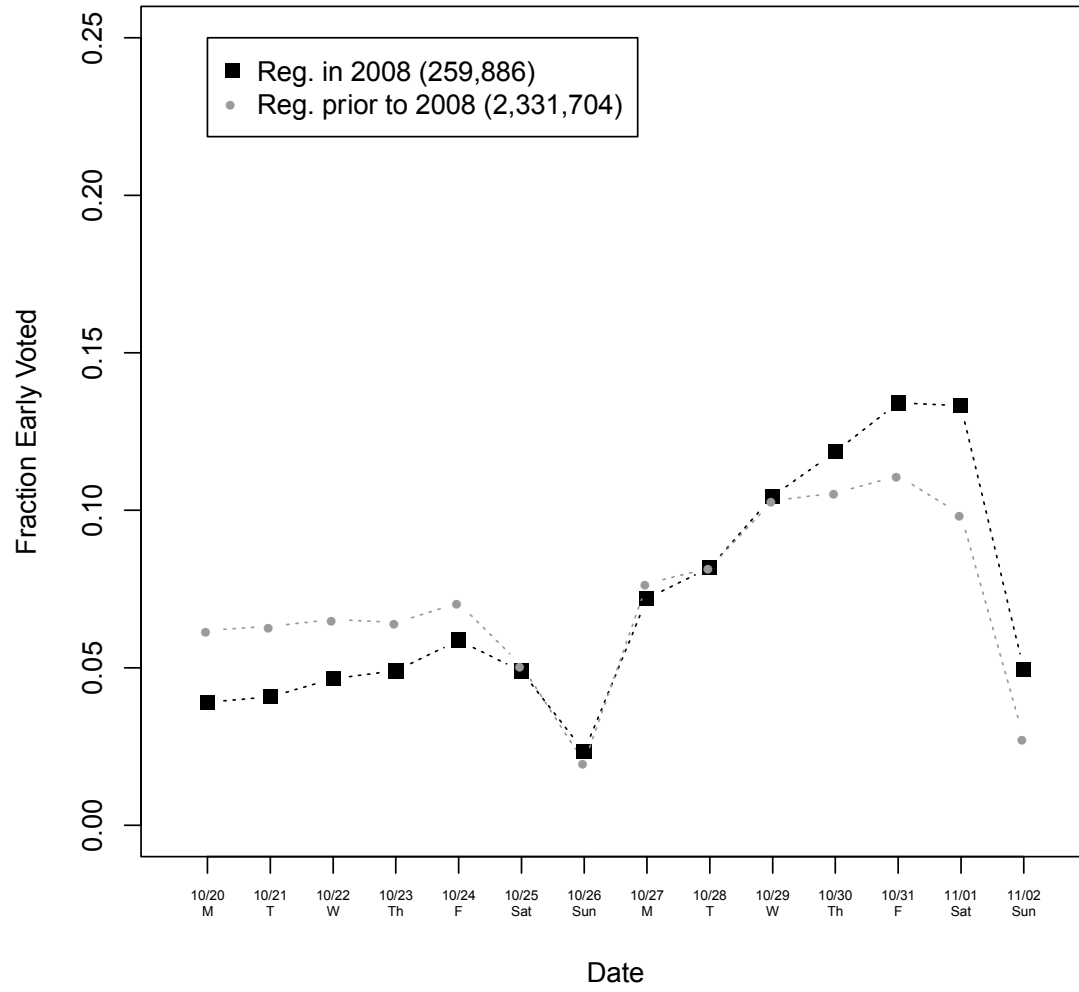


Figure 11
Voter History-Based Trends in Early Voting

